

# **Sovereign controlled companies**

## Feedback to CP17/21 and Final Rules

**Policy Statement**

PS18/11

June 2018



## This relates to

Consultation Paper 17/21  
which is available on our website at  
[www.fca.org.uk/publications](http://www.fca.org.uk/publications)

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# 1 Overview

## Introduction

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- 1.1** In CP17/21 published in July 2017<sup>1</sup>, we proposed a new premium listing category open to companies controlled by sovereign countries. Following our consultation, we are taking forward the new listing category for sovereign controlled companies, but we have **amended** the proposals to ensure the regulatory requirements are appropriately calibrated in light of feedback we received.
- 1.2** Our experience from listing applications by sovereign controlled companies is that two particular parts of the premium listing requirements - the requirement for a controlling shareholder agreement and advance approval of transactions with the sovereign - can present practical obstacles to some sovereign controlled companies.
- 1.3** These companies should, however, be able to meet all other aspects of the premium regime. These include requirements to run an independent business, report against the UK Corporate Governance Code, employ a sponsor, follow the requirements regarding pre-emption rights, and comply with the provisions on dealing in own shares. Under our final rules set out in this policy statement, and following amendments to our proposals in response to feedback, companies in the new category will also be subject to the same requirements as other premium listed issuers to hold independent shareholder votes on the election of independent directors, and a requirement to provide transparency on related party transactions (RPTs) with the sovereign. We think that meeting these standards properly places such companies alongside others in the premium list. We do not want the Listing Rules to contain a structural barrier that excludes companies willing to meet these standards.
- 1.4** While responses to our proposals revealed split opinions, feedback from many stakeholders acknowledged that the relationship between a company and a sovereign controlling shareholder is likely to be different from that with other types of controlling shareholder. Sovereigns may have different motivations and constraints from other shareholders. Issuers may have a different or wider range of interactions with a state, or parts of the state, than they would have with other controlling shareholders. Investors are likely to have different and more varied ways of assessing how the sovereign will act than they would have for other controlling shareholders.
- 1.5** Our final rules for the new category contain a small number of modifications to the existing premium listing rules. There are two key amendments. First, there will not be a requirement for a controlling shareholder agreement. Second, there will not be a requirement for an advance sponsor opinion or advance approval by independent shareholders of certain transactions with the sovereign or its associates. We consider these modifications to be proportionate and appropriate. It will be fully transparent to investors that these modifications apply to companies in the new category. We think that the other provisions of the premium regime, alongside other publicly available information, will allow investors to assess these companies as any other in the premium list.

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<sup>1</sup> CP 17/21 Proposal to create a new premium listing category for sovereign controlled companies, July 2017  
[www.fca.org.uk/publication/consultation/cp17-21.pdf](http://www.fca.org.uk/publication/consultation/cp17-21.pdf)



- 1.6** We believe that these two tailored modifications of the existing premium listing rules will encourage sovereign controlled companies to meet the other premium requirements that feedback shows to be highly valued by investors. Without the modifications, these companies would likely default to the standard segment of the UK list, or list in other jurisdictions which do not have the additional protections investors wish to see in place. In our view that would not benefit investors or issuers.

### Who does this affect?

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- 1.7** This Policy Statement will be of interest to:
- companies listed in and considering listing in the UK
  - firms advising listed companies, sponsors, institutions offering depository services and their advisers
  - firms or persons investing in or dealing in UK-listed securities, or advising on these investments

### Is this of interest to consumers?

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- 1.8** This Policy Statement is of interest to consumers in their capacity as investors and potential investors.

### Context

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- 1.9** The FCA has a strategic objective to ensure that relevant markets function well.
- 1.10** Primary capital markets support the wider economy by bringing together investors seeking investment opportunities, and issuers that want to access capital to finance their businesses. We can help these markets to work well by calibrating the regulatory requirements to support the needs of both issuers and investors.
- 1.11** Against this backdrop, in February 2017 we published a Discussion Paper on the effectiveness of UK primary markets.<sup>2</sup> In July 2017 we launched a consultation on a separate premium listing category for sovereign controlled companies in CP17/21.
- 1.12** The UK's primary and secondary market regulation is largely based on European Union legislation. However, the UK regime also has distinct provisions, in particular the premium listing regime. This builds on European minimum requirements by adding certain 'super-equivalent' rules reflecting longstanding UK corporate governance traditions.

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<sup>2</sup> DP 17/2 Review of the Effectiveness of Primary Markets The UK Primary Markets Landscape, February 2017  
[www.fca.org.uk/publication/discussion/dp17-02.pdf](http://www.fca.org.uk/publication/discussion/dp17-02.pdf)

- 1.13** Feedback to CP17/21 from stakeholders highlighted the continued support for the premium listing regime. It also generated a range of views and an important and valuable debate about how best to accommodate sovereign controlled companies in the listing structure.
- 1.14** Some feedback we received implied differing understanding of some aspects of capital markets regulation. In light of this, we have set out in this policy statement the purpose of some key elements in the framework and operation of the Listing Rules, including the free float requirement and the relationship between premium listing and indexation.
- 1.15** In setting the Listing Rules, our overall role has always been to achieve an appropriate balance of the interests of issuers and investors, to enhance investor confidence and market attractiveness for issuers. We believe that encouraging issuers to meet high, but achievable, disclosure standards and corporate governance will enhance the effectiveness of UK primary markets by increasing investor confidence.

## Principles underpinning capital market regulation

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### Markets evolve and regulation must evolve with them to remain effective

- 1.16** We have an overarching duty to ensure markets work well.
- 1.17** Over time we have amended the Listing Rules to adapt to market expectations. This has included a clearer articulation of the Listing Principles to ensure transparency where historically these were just unwritten good practice, and putting in place additional requirements concerning controlling shareholders.
- 1.18** We want a market that offers investors a range of options, provides good liquidity, achieves strong standards of confidence and contributes to the success of London as a global market.
- 1.19** Premium listing rules represent a high benchmark of standards that issuers are expected to meet. However some rules may be a practical structural barrier to sovereign controlled entities that might otherwise represent attractive investment opportunities for UK investors.
- 1.20** We therefore launched a review through CP17/21, identifying the issues that cause difficulty for issuers with sovereign controlling shareholders, and proposing a new category of premium listing better tailored to their circumstances.

### UK capital markets regulation focuses on ensuring transparency

- 1.21** Capital markets regulation seeks to ensure that investors have sufficient information to make an informed decision according to their own particular risk appetite. In having this emphasis, capital market regulation differs from other areas of regulation, such as product regulation, which places a greater emphasis on suitability.
- 1.22** At the point of initial admission to market, disclosure requirements focus on the information that an investor will want to know to make an informed judgement on the commitment of capital. To inform secondary markets, ongoing disclosure obligations are imposed on issuers.



- 1.23** The requirements of premium listing give investors an additional level of transparency. They also seek to provide investors with the tools to engage with companies effectively, for example through voting rights.

**Listing standards need to be objective and transparent to all**

- 1.24** The Listing Rules set out the criteria that apply to all relevant issuers. The criteria that determine an issuer's eligibility to be admitted to a particular listing category must be transparent and objective.

- 1.25** Objective criteria ensure that companies seeking to list in the UK and meeting these criteria can raise capital to support their growth and investment plans, and investors have a clear understanding of the standards these companies meet.

- 1.26** In considering the efficacy of our listing regime, we need to have regard to different types of issuer. We do not wish to exclude entities that have legitimate capital-raising proposals because the rules contain structural barriers to certain types of potential issuers. We also do not want to discourage them from committing to premium standards if they wish to meet them and if prospective investors would value such compliance. Ensuring our Listing Rules allow a broad range of issuers willing to meet appropriate standards to access UK capital markets, should investors wish to fund them, is part of ensuring that the regime works well. However, this needs to be achieved objectively and transparently. Thus, if it is appropriate to accommodate a cohort of issuers with a tailored set of requirements, this should be reflected in the body of rules, not through individual waivers, to ensure transparency to the market.

- 1.27** To enhance transparency of these standards, we recently amended the premium listing eligibility criteria to improve clarity. This included removing references to waiver powers that we have not used in the past.<sup>3</sup>

**Maintaining a meaningful super-equivalent regime**

- 1.28** We recognise the value UK market participants (issuers, investors and intermediaries) place on the premium listing regime. We are committed to maintaining these standards.

- 1.29** High standards are more likely to attract higher quality issuers to the UK. The level of shareholder rights and transparency provided through the regime shapes the UK market's attractiveness to a broad range of investors.

- 1.30** We should encourage the greatest number of issuers to meet the highest standards they reasonably can, thereby maximising investor confidence in the super-equivalent regime.

- 1.31** At the same time, investors and issuers should have choices. By having a premium and a standard listing regime, the UK gives issuers a choice of listing route appropriate to their needs. It also gives investors an informative segmentation of the market to help their decision-making.

**Shareholder rights should be proportionate to their economic interest**

- 1.32** A core principle of the UK premium listing regime is that shareholders should have rights that are proportionate to their economic interest in the institution. The principle that a premium listing of equity shares is only available for those that confer full voting

<sup>3</sup> See PS17/22 - Review of the Effectiveness of Primary Markets: Enhancements to the Listing Regime October 2017 [www.fca.org.uk/publications/policy/ps17-22.pdf](http://www.fca.org.uk/publications/policy/ps17-22.pdf)

rights was enshrined in the Listing Rules in 2010. This applies equally to majority and minority stakeholders, meaning we have in the past resisted calls to give minorities undue veto rights in the regime.

### **The free float test is a liquidity test**

**1.33** Our ability to consider a listing application where the free float will be less than 25% is related to whether there would be a sufficient number of shares in public hands to ensure the orderly operation of the market. International investors clearly contribute to liquidity. So we will typically take them into account when determining whether a company has sufficient shares in public hands. Some very large companies can make a credible case for a liquid market at a free float of less than 25%. We have regard to the scale and proposed distribution of a security in judging whether an applicant meets this eligibility criterion. The free float requirement as included in the Listing Rules is not a requirement related to corporate governance matters.

**1.34** The rules set by FTSE for its UK index series<sup>4</sup> also include a free float requirement. However, this is expressed as relating to the 'investability' of the stock in question. The assessment of liquidity of stocks under the FTSE rules is dealt with separately.

### ***Eligibility for listing and for index inclusion***

**1.35** We do not determine the eligibility criteria or the composition of indices constructed from issuers that make up the UK's Official List or any one listing segment. This is a matter for index providers.

**1.36** Feedback to our consultation included concern that because premium listing is needed to make a company eligible for inclusion in the FTSE UK Index series the proposed new sovereign controlled company category of the premium list would expose passive investors in relevant indices to a different type of risk from that which they had assumed. For some respondents this was a main reason for objecting to our proposal.

**1.37** Any index provider subject to the EU Benchmarks Regulation must take account of the need for the inputs to adequately represent the market each benchmark intends to measure.<sup>5</sup> Provided this is fulfilled, the provider has discretion to apply eligibility criteria in respect of the securities included in a benchmark. The FTSE UK Index Series Ground Rules, for example, include a number of relevant criteria including in relation to nationality, liquidity, free float and voting rights as well as that the shares must be admitted to a premium listing.

## **The proposed new premium listing category**

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**1.38** When we proposed a new premium listing category for sovereign controlled companies, we set out an amended set of requirements we consider consistent with the principles above.

**1.39** We identified sovereign controlled companies as a cohort of issuers with different characteristics and needs. They are often perceived as an attractive investment proposition, but have different characteristics from other commercial companies. We do not wish inadvertently to exclude such companies from the UK's capital markets, and we set out in the CP why the current listing regime may not cater for them adequately.

<sup>4</sup> The FTSE UK Index Series is administered by FTSE International, a subsidiary of the London Stock Exchange Group plc

<sup>5</sup> EU Benchmarks Regulation No. 2016/1011/EU



- 1.40** In the past, these kinds of companies have faced challenges meeting the premium listing criteria because of their different characteristics. For example, the relationship between a sovereign controlled company and the state that owns it is likely to be different from the relationship a company would have with other types of controlling shareholder. Sovereign owners tend to be different in their motivations. Sovereigns may own enterprises for historic reasons, for example as a result of nationalisation policies or because the enterprise carries out activities of strategic importance to the state. The responsibilities and scope of the sovereign entity's involvement in these enterprises may sometimes be of statutory nature.
- 1.41** Sovereign owners also differ from other controlling shareholders in their structure and the extent of their activities. A sovereign may operate through a web of government bodies, many of which may interact with the company for reasons entirely unrelated to the sovereign's shareholding. At the same time, it is typically difficult for one signatory to control all of a state's transactions. This makes it difficult for a sovereign to enter into a normal controlling shareholder agreement.
- 1.42** At the same time, more information is available on states than on most other types of controlling shareholders. Investors will carefully consider sovereign risk as part of an investment in any state-controlled company or sovereign debt. We consider investors are accustomed to assessing sovereign risk.
- 1.43** The rules for premium listed commercial companies do not envisage frequent interactions with a controlling shareholder. Premium listed commercial companies with a controlling shareholder must comply with a number of requirements to ensure they are not unduly influenced by the controlling shareholder. A controlling shareholder would also be a related party under the Listing Rules, and transactions with related parties are subject to detailed requirements.
- 1.44** If a sovereign controlled company is listed in the existing premium category, any transaction with the sovereign would be subject to these requirements. This applies even if such interactions are anticipated by both issuers and investors. These can make practical compliance with the current premium listing rules unduly onerous for some sovereign controlled companies. This is so even if they can comply with all other important provisions of the premium listing, such as the requirement to carry on an independent business as their main activity.
- 1.45** The current premium listing category for commercial companies is open to sovereign controlled companies and will remain so. But we do not think its provisions strike the right balance between the interests of issuers and investors in all cases where the controlling shareholder is a sovereign. In some cases they either present a structural barrier to the issuer entering the premium list, or a disproportionately onerous burden on the issuer.
- 1.46** We think creating a new dedicated category within the premium listing segment is justified, considering the difficulties sovereign controlled companies have in meeting requirements for controlling shareholder agreements and related party transactions. A dedicated category also has the benefit of transparency about the variation in the standards applicable. It will have its own name and be explicitly distinguished as a separate category that can be observed and assessed by investors
- 1.47** The purpose of the new category is to create a regime of high standards that is appropriately tailored for sovereign controlled companies in the two areas where the



sovereign nature of the controlling shareholder creates particular issues for companies otherwise able to meet premium listing standards. While the requirements are tailored, we believe overall that companies in this category will be held to high standards that fully justify the premium listed designation.

- 1.48** Although sovereign controlled companies have specific characteristics and tailored requirements are justified, a company of this type that wishes to obtain a premium listing should be held to the same high standards as any other premium listed company where no material barriers to this exist. We have tested every amendment proposed in our CP, and considered whether it can be justified by the different nature of sovereign controlled companies and the practical challenges caused by the existing rules. Where feedback persuaded us that it is not justified we have reinstated the relevant requirements, in line with our aim to encourage companies to meet the highest possible standards.
- 1.49** All our consultation proposals on other elements of the premium listing requirements will remain. Notably, any company to be listed in this category will have to carry on an independent business as its main activity, and will have to have in place other systems and controls commensurate with the status of a premium listed company.
- 1.50** Sovereign controlled companies, as is the case for any other commercial company, also have the option of seeking a standard listing. This is a listing regime substantively based on minimum EU directive requirements.<sup>6</sup> However, having this as the only viable route to listing for companies that could meet significantly higher standards may discourage these companies from meeting those higher standards, or discourage them from listing in the UK.

### The new category's fit within premium listing

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- 1.51** Figure 1 illustrates how the various key elements and requirements that distinguish a premium from a standard listing will apply to issuers in the sovereign controlled category. The middle column shows our proposals in CP17/21. The final column shows the effect of the final rules set out in Appendix 1. The figure shows how almost all the elements of the premium regime apply unchanged.

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6 See LR1.5.1G(2)

**Figure 1: Key requirements applicable to new listing category**

Existing Premium requirements	C17/21	Final rules
Controlling shareholder agreement (LR 6/9)	No	No
RPTs – shareholder approval and sponsor fair and reasonable opinions (LR 11)	No	No
RPTs – announcement obligations (LR 11)	No	Yes
Independent votes on election of independent directors (LR 6/9)	No	Yes
Independent business (LR 6/9)	Yes	Yes
Control of business (LR 6/9)	Yes	Yes
Track record (LR 6)	Yes	Yes
Shares in public hands (LR 6/9)	Yes	Yes
Premium listing principles including equality of treatment (LR 7)	Yes	Yes
Sponsor regime (LR 8)	Yes	Yes
FRC Corporate Governance Code reporting (LR 9)	Yes	Yes
Pre-emption rights (LR 6/9)	Yes	Yes
Significant transactions regime including class tests (LR 10)	Yes	Yes
Dealing in own shares (LR 12)	Yes	Yes
Shareholder circulars (LR 13)	Yes	Yes

## Equality and diversity considerations

- 1.52** We have considered the equality and diversity issues that may arise from the proposals in this Policy Statement.
- 1.53** Overall, we do not consider that the proposals in this Policy Statement adversely impact any of the groups with protected characteristics i.e. age, disability, gender, marriage or civil partnership, pregnancy and maternity, race, religion and belief, sexual orientation and gender reassignment.

## Next steps

- 1.54** Issuers will be able to seek an admission, or a transfer, of securities to listing under the category from 1 July 2018. Issuers who wish to obtain a listing under the category (or their sponsor) should contact the FCA's Listing Transactions department.

## 2 Feedback to our proposal

- 2.1** In this chapter we summarise the feedback received in response to our overall proposal to create a new premium listing category for sovereign controlled commercial companies. Feedback was divergent and polarised, and broadly split between buy-side and others. Most, but not all, buy-side institutions that responded did not support the proposals but across other constituencies this pattern was reversed.
- 2.2** We believe it is right to proceed with the new category, but with important modifications. Many respondents accepted that sovereign controlling shareholders have a different relationship with the issuer than other types of controlling shareholder. In our view the existence of this different relationship is a compelling reason for a distinct listing category.
- 2.3** To ensure it is clear how we have reached our conclusions, we have focused this chapter on analysing the arguments made against creating the category. Where we have not agreed with the arguments made, we have also set out our reasons for this.

### Summary of our proposal

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- 2.4** As already highlighted in Chapter 1, in CP17/21 we argued that companies with a sovereign controlling shareholder can have interactions with the sovereign that differ in scope, frequency and nature from interaction with other types of controlling shareholder, and that we perceived parts of the existing premium listing requirements as unduly onerous for some companies in this group.
- 2.5** We accordingly proposed a new premium listing category with two key modifications to recalibrate the requirements:
- The sovereign would not be a related party for the purposes of the Listing Rules. This would mean transactions with the sovereign could take place without the additional checks and balances the related party rules currently require
  - Removing controlling shareholder rules as far as the sovereign is concerned – meaning:
    - the sovereign controlling shareholder would not have to be bound by a controlling shareholder agreement including a requirement to interact at arm's length with the company
    - independent shareholders would not be entitled to an additional vote on the election of independent directors
- 2.6** We also proposed that depositary receipts (DRs) would be eligible for listing in the new category. We suggested that potential issuers wishing to comply fully with premium standards as tailored for this category may reasonably wish to have their equity admitted to listing in DR form and potential investors might, in some cases, prefer to hold interests in overseas issuers eligible for this category in that form.



- 2.7** The consultation proposed to retain all other important features and investor protections of our premium listing regime, applying as eligibility criteria or as continuing obligations.

## Summary of responses

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- 2.8** We received 36 responses to the consultation paper. Half of these were from institutional investors, and the rest split between sell-side organisations, a range of professional bodies and some individual investors. In addition, we have met various interested stakeholders during and since the consultation period. A list of the non-confidential respondents is in Annex 1.
- 2.9** Responses, in particular but not only from, sell-side representatives, were received which supported the proposals and agreed with the high-level arguments we made for our changes and the detailed arrangements. Responses received from the investor community were mostly opposed to the proposal. This resulted in a small majority overall being opposed to our proposal.
- 2.10** Respondents in favour argued that the proposals represented a good evolution of the regime, catering for evolving demands of market participants. We note in this context that companies being privatised and at an early stage of moving from a fully public sector to a market-quoted existence are likely to have a close relationship with the relevant sovereign. Such companies would be unlikely to be able to fully transition to a business without any close links to the sovereign by the time of their initial flotation.
- 2.11** They also highlighted that both domestic and global investors would have greater protections through the new category within premium listing than the alternative of either a standard listing in the UK or a listing on overseas markets. UK investors would have access to such investment opportunities through UK markets rather than having to use overseas exchanges with potentially lower protections.
- 2.12** Respondents opposing the creation of a new category argued it would dilute premium standards and the premium listing brand. These respondents generally argued that companies not meeting the existing requirements should seek a standard listing.

## Key arguments opposing the category

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### Labelling

- 2.13** Some respondents objected not to creating a new category, but to labelling it 'premium'.
- 2.14** The main arguments about labelling the category were that
- only the existing eligibility and continuing obligation requirements should attract the premium label
  - investors would not be able to understand the differences in rights and obligations between premium categories.

- 2.15** Some respondents suggested that the category could be labelled as a standard category, or at least that the premium label not be attached to it.
- 2.16** The current structure of the listing regime gives companies a binary choice of premium or standard listing. Standard listing reflects minimum EU-directive requirements whilst premium listing reflects UK corporate governance traditions. A range of important obligations and protections are contained within the premium requirements.
- 2.17** As highlighted in our introduction, the premium requirements have evolved over time to meet the needs of issuers and investors. Where a strong and distinct need has been identified, we will consider making amendments. We most recently created a concessionary route to premium listing for property companies, which market participants supported.
- 2.18** However, we would only do so where a strong case for different requirements can be made, and where we are persuaded that only a tailored set of requirements would adequately balance the interests of issuers and investors in relation to specific characteristics of a group of issuers.
- 2.19** The new category, as set out in this Policy Statement, is intended to maintain the standards of the existing premium regime, but tailored to the specific nature of the controlling shareholder. It will retain the key components of the premium regime and requirements vary only if the need to adjust them can be directly linked to the different nature of the sovereign controlling shareholder. Because of this, and because almost all the requirements of premium listing apply (as shown in figure 1), we think the category justifies the premium designation.
- 2.20** It will, however, be a distinct category (rather than an additional concessionary route within the existing premium category for commercial companies). This gives full clarity to investors of the variation in requirements.
- 2.21** Creating a new third segment in the list would amount to a fundamental restructuring of the listing regime. Given that almost all the premium listing requirements apply unchanged, we do not think this is justified. For the same reason we think it clear that the category belongs in the premium, not the standard, listing segment. The distinct category within the premium segment will, however, ensure transparency to investors, and this will be made clearly visible to those viewing the Official List.
- 2.22** Some opponents of our proposal argued that the risk of investors misunderstanding the variation in the requirements outweighed the benefits of the issuer meeting the premium listing requirements. We do not share this view and think market participants will understand the difference, and their assessment of the advantages and consequences of the sovereign relationship will be reflected in market value.
- Companies could choose a standard listing**
- 2.23** Some respondents argued that issuers not meeting the existing eligibility requirements as set out in Chapter 6 of the Listing Rules should seek a standard listing.
- 2.24** Some also argued that companies with a sovereign controlling shareholder that could not comply with the existing eligibility requirements set out in Chapter 6 could list in other jurisdictions. In such jurisdictions there may be no requirements to offer any of the protections the premium listing regime affords. They argued investors could invest in them there, but they said it was important that they should not be permitted to list in the UK to ensure the premium listing brand is not diluted.



**2.25** We do not think either of these arguments encourages good outcomes for market participants. In either scenario the company in question would not be held to the higher standards envisaged by our regime.

**2.26** In our view it is important that the listing regime encourages issuers to meet the highest standards they reasonably can. This gives shareholders the highest feasible level of protection. Creating the new category would support these objectives. We also believe that creating a category with tailored requirements means issuers with a sovereign controlling shareholder will have appropriate listing choices depending on their stage of development, just as other commercial companies have.

### **Indexation**

**2.27** Some respondents were concerned that labelling the new category as 'premium' would increase the likelihood of inappropriate companies achieving UK index inclusion, either now or in the future. Passive investors would effectively be 'compelled' to invest in them as a result.

**2.28** We note these concerns, but as explained in CP17/21 and in Chapter 1, the issue of index composition is distinct from eligibility for listing. The FCA has supervisory oversight over UK-based index providers that are benchmark administrators but rules for inclusion of particular firms or data in an index are set by the relevant index providers.

**2.29** It is for index providers to consider, in consultation with users as appropriate, what entities and securities should be included in an index that seeks to measure a particular sector, geography, or type of company and what other eligibility criteria should apply. Premium listing is a requirement for inclusion in the FTSE UK index series but not all premium listed companies are included. This is because they do not meet all the other relevant index inclusion criteria, for example free float and nationality requirements. If inclusion criteria were changed in an inappropriate way, that may be a concern, but this would be unrelated to the creation of this new listing category.

**2.30** Some respondents also noted the increasingly global nature of investors' mandates and the likelihood that they would invest in companies with sovereign controlling shareholders wherever listed.

**2.31** A standard listing could equally lead to inclusion in various indices. Therefore we do not believe these wider concerns about potential index inclusion represent a valid argument against creating the new category.

### **Free float**

**2.32** Several respondents were concerned about the likelihood of issuers with low free floats being admitted to the category. One respondent noted rightly that in the case of depositary receipt (DR) issuers, which would be eligible for the first time for premium listing in the new category, there was a possibility that issuers with very low free floats by reference to the total underlying equity capital of the company would be eligible. This would be so although it would meet the 25% hurdle in respect of the DRs as the class of security admitted to listing.

**2.33** We did not consult on amending, and do not propose to amend, the existing free float requirements for this category. Clearly a listing of DRs can lead to fewer underlying shares being represented compared to a listing of the class of shares themselves.

**2.34** The free float requirements have always applied to a given class of securities, and aim to ensure adequate liquidity exists to allow proper price formation. We did not receive arguments to suggest that a liquid market in DRs of this nature would be unlikely. Indeed, companies in the sovereign controlled category are likely to be large enterprises able to issue in large enough volumes to maintain ample liquidity.

#### **Sovereign shareholders are different**

**2.35** We highlighted in our CP and in Chapter 1 (paragraphs 1.37 to 1.39) a core reason for creating a different listing category for companies with a sovereign as controlling shareholder. The reason is that such companies are likely to have a very different relationship with their controlling shareholder compared with companies with other types of controlling shareholder. Respondents in favour of the proposals agreed with this assessment.

**2.36** Some respondents who opposed the creation of a new category also acknowledged this, but drew different conclusions.

**2.37** Some argued that in light of the different nature of a sovereign owner, the current controlling shareholder requirements applicable to premium listed companies are of greater importance for these types of issuers. Others went further arguing that greater controls should be placed on sovereign controlled companies than on other issuers. They believed that the existing controlling shareholder agreements would be inadequate and should be strengthened such as by making compliance with the UK Corporate Governance Code mandatory or be supplemented by other provisions.

**2.38** Where respondents argued for additional requirements they implied that the existing controlling shareholder rules, which were designed with private sector controlling shareholders in mind, would be unlikely to provide meaningful or effective safeguards in the context of sovereign controlled companies.

**2.39** By contrast, others highlighted that signing up to a controlling shareholder agreement has a strong signalling power, indicating the sovereign's intentions to potential investors.

**2.40** We have carefully considered the comments made about the nature of the sovereign controlling shareholder, and in particular requirements that a controlling shareholder agreement may place on the sovereign's interaction with the issuer.

**2.41** On balance we consider the arguments made do not invalidate the case for the creation of a new category. They also tend to underline the point about different needs in the context of a sovereign controlled company. In this context we have taken into account that significant information will be in the public domain about the relationship between the issuer and the sovereign, and about the sovereign itself. This should allow investors to make an informed assessment about the relationship, in a way that would probably be more difficult in relation to other controlling shareholders.

#### **Ability to assess sovereign risk**

**2.42** We said in CP17/21 that we considered market participants collectively sufficiently able to assess and price sovereign risk. Some respondents who opposed the introduction of the new category did not agree that they had the ability to do this. Respondents who agreed with our proposal supported our view.



- 2.43** We are sceptical of the assertion that institutional shareholders in particular are not capable of assessing sovereign risk, or would invest in a sovereign-related asset if they do not have a view of the risk associated with a given sovereign. Other shareholders may place greater reliance on the investment assessments of these professional investors being reflected in security prices in the market.
- 2.44** We believe that more information is usually available on sovereign states than on private controllers. This means the ability to assess risk associated with analysing the role of the controlling shareholder is different.
- 2.45** In addition, the company must disclose information on its relationship with the sovereign at time of listing (under the Prospectus Directive) and, where this would constitute relevant inside information, disclose on an ongoing basis changes to that relationship as a result of the Market Abuse Regulation (MAR). We are also reinserting more detailed requirements on disclosure of related party transactions. This is to ensure that investors have sufficient information about transactions between the issuer and state bodies.

### **Arguments for calibrating the requirements of the category differently**

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- 2.46** The arguments on the fundamental question of whether to proceed with the new category also helped us to consider how to calibrate the requirements of the new category to meet issuers' and investors' needs. We detail the changes we have made in Chapter 3, but set out below how they relate to the broader question of whether to create a new category.

#### **Ability for investors to engage**

- 2.47** Institutional investors, who predominantly opposed our proposal, also identified that the ability for investors to engage with the companies in which they invest is crucial. Engagement can be particularly challenging where there is a controlling shareholder. The ability to engage effectively relies on appropriate rights, checks and balances, and investors regard the responsiveness of independent directors as particularly important in this context.
- 2.48** Some respondents commented on the removal of the opportunity for independent shareholders to vote as a class on resolutions to elect or re-elect the independent directors of the company. They felt this removed a key accountability mechanism which supported their engagement with independent directors and with the company.
- 2.49** We recognise this is a valid concern. We have amended our rules in response to this feedback. We explore this further in Chapter 3 (paragraphs 3.33 to 3.38).

#### **Transparency of related party transactions**

- 2.50** In our Consultation Paper, we suggested that the disclosures issuers would have to make under the Market Abuse Regulation (MAR) and their financial reporting obligations under International Financial Reporting Standards (IFRS) should give investors sufficient transparency regarding transactions with the sovereign controlling shareholder. Some respondents did not agree that MAR would ensure adequate at-the-time disclosure of related party transactions to meet investors' expectations of a premium listed issuer. These respondents were mainly but not exclusively drawn from those who opposed the new category.



- 2.51** One respondent was concerned that information about related party transactions disclosed only retrospectively through annual financial reporting would be too late to inform investment decisions.
- 2.52** Investors responding from both sides of the argument emphasised that transparency is critical to allow investors to assess any changes in the relationship with the sovereign on a timely basis.
- 2.53** Investors also said that transparency at the time such transactions are being undertaken is necessary. This allows them to judge whether management and directors are acting in the interests of the company as a whole, in the way they would expect in the context of a premium listed company.
- 2.54** We appreciate the concerns raised. But we also recognise that a sovereign may have numerous interactions with the listed company so that disclosure, shareholder approval and sponsor opinion requirements may impose a significant burden. We believe these concerns highlight the need to set requirements that strike an appropriate balance between the particular needs of sovereign controlled companies, and the potential investors in such companies. We have amended our rules in response to this feedback. We explore this further in Chapter 3, paragraphs 3.3 to 3.17.
- 2.55** In CP17/21 we asked:
- Q1: Do you agree with the overall proposal outlined in this paper of creating a premium listing category for sovereign controlled commercial companies?**
- Q2: Do you agree that the changes proposed are best effected through the addition of a new listing category?**

### Our response

The arguments presented against our proposals have persuaded us to amend our proposals in two areas described more fully in Chapter 3. We do not think they would justify a decision not to proceed with the new category.

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## 3 Modifications for the listing category

- 3.1** As stated in Chapter 1, it is important that the new category is appropriately calibrated. This is because the category is intended to embody substantively equivalent standards as for other commercial companies, but tailored to be appropriate for the specific features of sovereign controlled issuers
- 3.2** In this chapter we consider the specific requirements which we consulted on modifying. We outline the feedback received, provide our analysis and then our response in the light of that feedback. In two areas, we have reinstated requirements to ensure sovereign controlled companies are encouraged to meet the highest reasonably practicable standards.

### Related party transactions

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- 3.3** We proposed in CP17/21 the disapplication of the entire related party transaction regime as far as transactions by the issuer with the sovereign controlling shareholder are concerned.
- 3.4** The related party regime encompasses the:
- announcement of the agreement of the transaction with the related party, as soon as it has been entered into, except the smallest, and certain exempt, transactions
  - requirement to obtain a fair and reasonable opinion from a sponsor for all but the smallest, and certain exempt, transactions
  - need to obtain independent shareholder approval for the largest transactions
- 3.5** There is an exemption from these requirements for transactions in the ordinary course of business. However, this exemption is tightly drawn and meeting the evidential threshold could be even more challenging for a sovereign to demonstrate.
- 3.6** For smaller transactions, the provisions require an opinion from the sponsor that the transaction is fair and reasonable so far as shareholders are concerned. For larger transactions that equal or exceed 5% on any of the class tests, the issuer must obtain prior shareholder approval in a vote in which the related party and their associates are required to refrain from voting. In support of this vote, the issuer must also send a circular to shareholders with all details necessary in order for them to make their voting decision including the rationale from the board for the proposed transaction.
- 3.7** We proposed to disapply the regime in respect of the sovereign controlling shareholder because a sovereign controlled company would typically have extensive and complex relationships with bodies that are part of the state it is controlled by. Although some of these may be exempt as being in the ordinary course of business<sup>7</sup>, we had suggested that the need to make such determinations on a frequent basis would be burdensome.

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<sup>7</sup> LR11.1.5R excludes transactions in the ordinary course of business from the definition of an RPT.

- 3.8** Without amendments to the related party regime, these transactions would have been subject to the full set of requirements applying to any premium listed commercial company. This would apply, even for transactions that would not be of the nature that shareholders would expect to vote on. Thus the normal related party transaction rules would likely be unduly onerous.
- 3.9** Removing the related party regime as proposed in CP 17/21 would have resulted in the removal of a number of disclosure obligations. We suggested the disclosures that issuers would have to make under MAR and their financial reporting obligations under IFRS should provide investors with enough transparency regarding these transactions. Those respondents who opposed our proposals overall opposed our proposed outright related party exemption for the sovereign controlling shareholder. Arguments about the different elements of the related party regime varied.
- 3.10** In CP17/21 we asked:
- Q6: Do you agree that the sovereign controlling shareholder should not be considered a related party for the purposes of the Listing Rules?**
- Q7: Do you agree that MAR-mandated disclosures are sufficient to secure the necessary at-the-time transparency?**
- 3.11** Respondents argued that without detailed, timely disclosures, investors could not judge the conduct of the sovereign in its interactions with the issuer in the way they would expect to in the context of a premium listed company, in particular whether value is removed from the company for the benefit of the sovereign, or whether the relationship is changing. Many respondents did not agree that meeting the requirements of disclosure under MAR would necessarily provide sufficient at-the-time disclosure.
- 3.12** We received responses arguing we should maintain certain elements of disclosure for related party transactions from respondents in favour of, as well as from those against, our proposal overall.
- 3.13** In light of the comments received and the importance investors place on the disclosures, we considered carefully whether removing the disclosure obligations in the related party regime would meet the test of balancing the needs of issuers and investors, and whether having to make immediate disclosures truly meets the test of being unduly burdensome.
- 3.14** Whilst there is clearly a cost to the issuer in being required to make immediate disclosure, it is one a premium listed company can reasonably expect to incur, and the cost needs to be weighed up against the benefit to investors. We were persuaded that investors cannot assess and influence a sovereign controlled company with a premium listing in a manner in which they would expect, without timely transparency. We have therefore decided to reinstate disclosure obligations for transactions with the sovereign.
- 3.15** We also received arguments that we should reinstate other aspects of the related party regime. Here the arguments are more nuanced. At the heart of our proposal to create the new category was that we recognise that a company with a sovereign



controlling shareholder would quite likely enter into numerous transactions with different entities related to the sovereign.

**3.16** As a result of the different relationship with the sovereign, different types of transaction with the controlling shareholder may also take place than would be expected with any other controlling shareholder. For example, a sovereign controlled company may have a duty to provide services to the state or have a wider public policy obligation in addition to its core business. So we are not persuaded that the right balance of obligations would be achieved if these other requirements were reinstated. The basis of such transactions should, however, be known to investors given the disclosures made by the company. The issuer is also under an ongoing obligation to carry on an independent business as its main activity, and demonstrate that it exercises operational control over that business. Conversely, share repurchases by the company have some specific additional safeguards.<sup>8</sup> We think the case for disapplying these specific provisions for sovereign controlled issuers is not merited by the nature or likely frequency of such transactions.

**3.17** Market respondents also suggested to us that in lieu of a vote we could impose disclosures ahead of entering into related party transactions, to allow shareholders to intervene if necessary. We believe this would be extremely difficult in practice, because it would in effect force the issuer to negotiate terms in public. We do not require transparency ahead of finalisation of terms in the context of any other transactions.

### Our response

We consider there are strong arguments for a high level of transparency on related party transactions. We have noted the concerns among respondents on both sides of the debate that reliance on MAR alone to trigger disclosure obligations would not be sufficient.

While there would be some increase in the burden of complying with the disclosure obligations in the Listing Rules related party transactions regime<sup>9</sup>, given the possible number of transactions involved, we accept the arguments made to us that lower levels of transparency for sovereign controlled companies might not strike the right balance between the needs of issuers and investors. The issuer would in all likelihood have to identify such transactions for year-end disclosure purposes in the annual report and accounts, and the additional substantive obligation would be limited to a duty to disclose at the time of the transaction. In addition, the actual disclosure obligations for the announcement under LR Ch11 for smaller transactions between 0.25% and 5% and the Class 2 requirements at the 5% and above band are not in themselves onerous. However, they are important in allowing investor assessment of the impact of these transactions and in supporting shareholder engagement with the issuer where appropriate.

We have concluded that the disclosure obligations in the LR11 regime should be retained in this category and should apply on the same basis as for commercial companies. Issuers will be responsible for ensuring

<sup>8</sup> LR 12.3.1R applies the provisions of the LR11 RPT regime unless the transaction is made under a tender offer or without prior understanding, arrangement or agreement between the company and the related party.

<sup>9</sup> Listing Rules Chapter 11: Related party transactions: Premium listing

that such transactions are properly identified and that the requirements regarding announcement are met, including the disclosure of any other relevant circumstances concerning the transactions as required by LR 11.1.10R(c)(v). To meet this requirement any such announcement must put an investor in a position to understand the true nature of such a transaction with the sovereign controller, and we would expect that the processes issuers need to have in place pursuant to Listing Principle 1 explicitly recognise this.

By contrast, we consider that the case we made in CP17/21 not to apply sponsor opinions and shareholder voting requirements remains. To be appropriately tailored, the new listing category needs to recognise a differentiation between transactions with a sovereign and transactions with another type of controller. To require sponsor opinions and shareholder approval would be disproportionately burdensome given the potential number of transactions involved; this would also fail to recognise that such transactions may be entered into for reasons other than normal commercial reasons that a company should have when entering into a transaction with any other type of controller.

The reasons why some transactions with a sovereign might have public policy rather than purely commercial purpose should, however, be disclosed in the Prospectus and understood by investors. We would expect the issuer's choice of this category to prompt investors to ensure they understand the different nature of the sovereign-issuer relationship. In addition, our related party transaction disclosure requirements will maintain transparency.

We are therefore proceeding with our proposal that the sponsor opinion and independent shareholder approval requirements should not apply in the new category in respect of transactions with the sovereign.

The related party rules require transactions with a related party to be aggregated for the purposes of disclosure, sponsor opinions and voting. As we are reinstating transparency requirements but not the requirement to obtain a sponsor opinion or hold a vote, we also clarify that, for the purpose of the aggregation rules in respect of smaller and small transactions, the announcement of such transactions, rather than shareholder approval, will represent the 'cleansing' event that resets the aggregation process. Without this clarification, the disclosure obligations for companies with a sovereign controlling shareholder would exceed those applying to other premium listed companies in certain circumstances because companies would have to continue to disclose even very small transactions once the 5% threshold is reached.

We have taken a different approach for specific share buy-backs from the sovereign controlling shareholder. Such transactions are rare, and so the arguments about the relative burden on the issuer balanced against the interest of shareholders do not extend to such transactions. We are therefore retaining the requirements in LR Chapter 12 on share repurchases by the issuer from a related party for the company to comply with the provisions of LR Chapter 11, without any modifications in the case of purchases of own shares from a sovereign controlling shareholder.



## Controlling shareholder rules

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### Controlling shareholder agreements

**3.18** In CP17/21 we proposed an exemption from the Listing Rules provisions that require the company to have an agreement with the controlling shareholder. This agreement is intended to ensure that the controlling shareholder does not abuse its position to the detriment of other shareholders. These controlling shareholder agreement provisions require the listed company to have in place a written and binding agreement intended to ensure that the controlling shareholders and its associates:

- will enter into transactions with the company on normal commercial terms and on an arm's length basis
- will not take actions that would have the effect of preventing the listed company from complying with its obligations under the Listing Rules
- will not propose, or procure the proposal of, a shareholder resolution that is intended, or appears to be intended, to circumvent the proper application of the Listing Rules

**3.19** In our experience, sovereign controlling shareholders find significant practical difficulties in agreeing to a controlling shareholder agreement. Most states are not set up in a way that one signatory can bind all facets of the state. In particular, the entity holding or controlling stakes in the listed company may have limited ability to influence other parts of the state. As a result, sovereigns have found it difficult to provide the undertakings required under the rules for controlling shareholders, which are typically individuals or corporates.

**3.20** This practical challenge arises quite separately from any questions about how the sovereign will in practice interact with the company.

**3.21** In CP17/21 we asked:

**Q8: Do you agree that the controlling shareholder provisions should not apply in respect of the sovereign controlling shareholder for companies listed in this category?**

**3.22** Some respondents said that these provisions should not be disapplied for sovereign controlling shareholders. They said that the requirement for a controlling shareholder agreement is important, that the sovereign should be bound by certain standards, and that the willingness to sign an agreement of this nature is an important indicator of the sovereign's approach overall. They also noted that the requirement for an agreement was central to the reforms we introduced for commercial companies in 2014 after governance issues at companies with other controlling shareholders. Many recognised, however, that the issues that surfaced before we introduced these reforms were at companies controlled by private sector entities and that the position is different for sovereign controlling shareholders.

**3.23** Investors also highlighted the need for information to understand the intentions of the sovereign towards the company, and whether a company has obligations towards the sovereign that could indicate a risk of diversion or extraction of value from the company. Investors clearly have a legitimate interest in understanding the relationship between the sovereign and the listed company and it is not an unreasonable

expectation for appropriate disclosure, especially in the context of a premium listed company.

- 3.24** We considered whether we should prescribe a different type of agreement (different in both form and substance). We also considered alternative disclosures to ensure that shareholders would have a clear understanding of the specific relationship a given sovereign would have with the listed company.
- 3.25** In this context we also considered the OECD's code for sovereign controlled enterprises.<sup>10</sup> Some respondents suggested that such issuers should be specifically required to report against it on a 'comply or explain' basis. However, it was not clear that this code provides a template that would make a prescriptive requirement of this type viable.
- 3.26** On balance we believe such disclosures would in any case need to be included in the prospectus accompanying an IPO as it would normally be necessary information for investors, and in some cases would amount to a material contract. We thus concluded that together with existing ongoing disclosure obligations (including in relation to related party transactions), investors would have sufficient transparency about the arrangements in place. The issuer's decision to list in the sovereign controlled category of the premium list should prompt investors to consider relevant prospectus disclosures or seek further information.
- 3.27** We also considered the suggestion that we should have more prescriptive requirements, and define what type of relationship a state can have with a company it controls. This would address concerns about a state's ability to extract value from a company. We do not believe this would be a viable option, not least because different states will have very different relationships with particular issuers. We are sceptical that the Listing Rules can successfully create a regime to standardise such interactions while allowing the category to be suitable for a wide range of companies.
- 3.28** In light of the different nature of the sovereign as a controlling shareholder, we still think that the shareholder agreement requirement as specified by the existing rules creates practical difficulties.
- 3.29** That said, the absence of a controlling shareholder agreement does not mean that we do not have expectations of the interactions between a sovereign and the listed issuer. While the sovereign may have a different relationship with the listed company than any other controller would have, we would expect the listed company to have an independent business as its main activity that would be run separately and without interference. Retaining the substantive independent business requirements provides for that, even though the explicit requirements under LR6.5 to demonstrate the fact will not apply.
- 3.30** Under existing requirements, an issuer has to have published a prospectus at the point of listing. In this it must disclose material contracts entered into which are not in the ordinary course of business. It must also make certain disclosures about its major shareholders, including what voting rights they have, the nature of control and the measures in place to ensure that control is not abused, and details of related party transactions entered into in the period to which the financial reporting disclosures

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10 [OECD Guidelines on Corporate Governance of State-Owned Enterprises, 2015 Edition](http://www.oecd-ilibrary.org/governance/oecd-guidelines-on-corporate-governance-of-state-owned-enterprises-2015_9789264244160-en)  
[www.oecd-ilibrary.org/governance/oecd-guidelines-on-corporate-governance-of-state-owned-enterprises-2015\\_9789264244160-en](http://www.oecd-ilibrary.org/governance/oecd-guidelines-on-corporate-governance-of-state-owned-enterprises-2015_9789264244160-en)



relate and up to the date of the prospectus. There is also an overarching requirement to disclose all necessary information in the prospectus for an investor to make an informed investment decision.

**3.31** In practice, we think issuers will provide a comprehensive description of any arrangements with the sovereign. We do not believe an issuer would be able to meet its overall disclosure obligations if it did not at least explain:

- any additional purposes or objectives the company must have regard to in addition to its core business purpose arising as a result of its state ownership, in particular any additional duties to the state or public policy objectives
- what material contracts (those not in the ordinary course of its core business, and/or those not entered into on normal commercial terms) are in place between the issuer and the sovereign
- what formal arrangements are in place between the issuer and the sovereign to exercise influence over the issuer, outside normal voting mechanisms

**3.32** This company-specific information, together with more general information publicly available about the sovereign (which would not normally be available for a private sector controlling shareholder), should provide investors with the overall transparency they need. The related party transaction disclosures that we have now decided to retain should also ensure sufficient, timely updates.

**3.33** We have concluded that we are justified in removing the requirement to have a binding controlling shareholder agreement about the matters specified in our existing rules, as consulted on in CP17/21.

### **Independent shareholder votes on independent directors**

**3.34** In 2014 we introduced the controlling shareholder regime that applies in the premium listing segment. A key element requires the election of independent directors<sup>11</sup> by shareholders also to be subject to separate approval by independent shareholders. Where independent shareholders do not vote in favour of the election there is a 90-day cooling off period after which the election can proceed without the separate vote of independent shareholders.

**3.35** This requirement, introduced after extensive consultation, was intended to give independent shareholders a meaningful voice, without giving them a disproportionate power that would not reflect their economic interest in the company. The independent shareholder vote on independent directors is a part of this overall package of Handbook provisions on arrangements for controlling shareholders. In disapplying the controlling shareholder rules, our consultation therefore also proposed to remove the requirement for the independent shareholder vote.

**3.36** Some respondents stressed their concern at the loss of the independent shareholder vote on independent directors. Those in favour of retaining the vote argued that the publicity and transparency created in the case of a significant dissenting vote in such cases is an effective tool to ensure that controllers engage with independent

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11 There is no substantive requirement under the Listing Rules for a premium listed company to have independent directors – this is embedded in the UK Corporate Governance Code against which premium listed companies must report on a comply-or-explain basis.



shareholders. Some even suggested that the vote should be made binding in the case of controlling shareholders that are sovereign.

**3.37** This provision has signalling as well as practical significance. An argument exists that retaining it for the category would not create a significant constraint on sovereign controlling shareholders - though there may be sensitivities for them.

**3.38** Having considered the feedback received, we agree that it is not more onerous for a company with a sovereign controlling shareholder to stage an independent vote, and also that there is no distinct reason relating to the nature of the sovereign controlling shareholder that would justify removing this requirement. We will therefore retain the requirement.

### Our response

Our proposal to disapply the controlling shareholder provisions in their entirety for sovereign controlling shareholders meant that the independent shareholder vote on independent director provisions ceased to apply. However, we have noted the importance that respondents see in retaining this provision to provide a signalling device and to support their engagement with independent directors. We see no compelling reason why this aspect of the existing controlling shareholder arrangements cannot exist in isolation, even if the requirement to have a shareholder agreement and prescriptive provisions about its contents does not apply.

We consider that retaining the existing requirement for approval by independent shareholders is justified and strikes an appropriate balance between the interests of different shareholders. This provides a voice for independent shareholders, thereby helping ensure their protection but recognising that this should not equate to providing control for independent shareholders. We have therefore decided to retain this approval on the same basis as now. We also have retained the supporting provisions<sup>12</sup> that require the company's constitution to make appropriate provision for this. The rule is intended to ensure that only the independent holders of the equity shares can vote. To ensure the same substantive outcome in the case of a premium listing of DRs we have specified that, for the purposes of this vote, only independent shareholders who hold equity shares of the class which the certificates that have been admitted to premium listing represent and DR holders that would qualify as independent shareholders if they held the underlying equity shares, can vote.

We have also considered carefully whether there is a case for more explicit rules on the contents of any controlling shareholder agreements that the company and its sovereign controlling shareholder have in place and/or to introduce an explicit eligibility condition. We have concluded on balance that it should not be necessary for us to make such additional explicit rules. However, we wish to make clear our expectations in this regard, that such disclosure should be made both on admission – as required under existing PD requirements – and, if arrangements change, that the details are



disclosed promptly to the market and its users. We also intend to monitor practice and, if necessary, take appropriate action, including through proposing further Handbook rules or guidance, if issuer practice does not deliver the appropriate transparency.

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## Depository receipts

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- 3.39** An important aspect of our overall proposal in CP17/21 is that DRs over equity shares should be eligible for listing in this category as an alternative to the listing of equity shares directly.
- 3.40** We noted that potential issuers wishing to comply fully with premium listing standards as tailored for this category may reasonably wish to have their equity admitted to listing in DR form and that potential investors might, in some cases, prefer to hold interests in overseas issuers eligible for this category in that form.
- 3.41** Clearly DR structures and the relevant legal provisions relating to DRs vary. In our proposals we wanted to ensure that only DR structures that provide holders substantially with the same rights as equity holders would be eligible for premium listing.
- 3.42** The proportion of the equity shares of an issuer that a DR facility will cover will vary, and thus, in substance, only a small proportion of the company's overall equity capital may be the subject of the float. The free float requirements, which are intended to ensure there is sufficient liquidity in a security, operate on a per-class basis, and we had not proposed to modify the requirements in CP17/21. We recognise that this can result in a smaller proportion of an issuer's underlying equity share capital being eligible for listing via a DR structure.
- 3.43** A class of DRs may not represent 100% of the underlying equity share class. As a result, a company with less than 25% of the underlying equity being distributed to the public could be premium listed. This is already the case with existing listed DRs, but DRs can currently only be standard listed. However, it is likely that potential applicants in this new category will be relatively large in size, so we do not see a risk of insufficient liquidity in the DRs.
- 3.44** In CP17/21 we asked:
- Q9: Do you agree that DRs over equity shares should be eligible for this category?**
- Q10: Do you agree that full pass-through of voting and other rights on the basis described should be a requirement for eligibility of DRs for listing in the proposed category?**
- 3.45** Few responses addressed the technical aspects of our proposals but those that did were favourable. Where respondents did comment it was in virtually all cases to reject this element when they also disagreed with the core proposal for the new category and to support it when they supported the new category. One respondent stressed the importance of the quality of the contract underpinning the DR security in ensuring that the investor could have full control over the shares and the rights attaching to them.

- 3.46** Consultation responses identified one omission from our draft rules: that there should be an explicit eligibility condition and matching continuing obligation on the issuer to ensure that the rights attaching to the underlying equity shares must pass through to the holders of the DRs. The eligibility condition will require that the rights attaching to the underlying equity shares must be capable of being exercised by the DR holders as if they were the holders of the equity shares. It will also require the issuer to have arrangements in place that enable DR holders to exercise those rights.
- 3.47** This additional condition and obligation clearly reflects what we proposed in the CP and what we want to ensure our finalised rules provide for. It would have the effect of imposing an obligation on an issuer to demonstrate that 'pass-through' rights can be provided as a condition for eligibility. This reinforces the specific 'pass-through' continuing obligations on the issuer which were in the instrument we consulted on. We have updated the final rules to insert the additional eligibility and withstanding obligation requirements.

### Our response

Those respondents who opposed the overall proposal for the new category were generally also opposed to the proposal for DRs over equity shares to be eligible for the new category. However, many of those in favour of the new category agreed with our argument in CP17/21 that the ability to list DRs would benefit potential issuers, as well as those investors who may wish to invest in the issuers eligible for this category. We think that this pattern of support, plus the relative absence of difficulties encountered in dealing with the technical challenges associated with ensuring that premium protections are fully and effectively applied to DR securities, justifies this innovation in our listing regime.

We have concluded that we should enable DRs over equity shares to be eligible for listing in this new category. But we consider we should address the omission in our proposed rules identified above. We also agree that the quality of the contract governing the DR facility is of key importance. In extending eligibility to premium listing in this category we must be sure that the rights of security holders that we require are fully upheld. We are therefore proceeding with our proposal with an amendment to address the omission identified above. Specifically, we have introduced an explicit eligibility condition and matching obligation on the issuer. This reinforces the specific ongoing obligations on which we consulted to ensure that rights must pass through to the holder of the DR.

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### Eligibility criteria

- 3.48** We asked certain other questions related to our proposed eligibility criteria for the new category.



### Control threshold

3.49 In CP17/21 we asked:

**Q3: Do you agree that the threshold for control should be set at 30%?**

3.50 This 30% threshold is aligned with the threshold in the existing definition of 'controlling shareholder' under the Listing Rules eligibility provisions for premium listing.<sup>13</sup> It is also the threshold that the Takeover Panel uses for its Rule 9 obligation on parties, and persons acting in concert with them, acquiring interests in shares that will raise their interest to or above 30% of the voting rights, to make a Rule 9 mandatory offer.<sup>14</sup>

3.51 Of those respondents who commented on this question, all favoured retaining the 30% level to establish the eligibility criterion for the new category.

### Nationality

3.52 In CP17/21 we asked:

**Q4: Do you agree that eligibility for the new category should not be restricted on grounds of national identity of the controlling shareholder? Do you agree that it should also not be restricted on grounds of country of incorporation of the company?**

3.53 We said in CP17/21 that the new category was likely to be of particular use for overseas companies seeking to list cross-border. However, we saw no reasonable case for restricting eligibility to those companies whose sovereign controlling shareholder is an overseas state.

3.54 Of those respondents who commented on either part of this question, all agreed with our proposal not to discriminate on grounds of nationality. One respondent nevertheless considered that we should have an explicit quality standard for country risk; another remarked in their response that it would be difficult in some jurisdictions for independence of the company to be maintained. No respondents suggested that UK-incorporated issuers or ones controlled by the UK Government should be specifically excluded.

3.55 These observations appear to speak more directly to the question of sovereign risk, and perhaps the closely related question of jurisdictional risk. We have concluded that they are not of defining relevance to the question of whether we should impose an eligibility criterion that refers to issuer nationality or sovereign identity.

### Additional protections for investors (transfers)

3.56 In CP17/21 we proposed to include additional rules on transfers from the existing premium listing category into the new one. This was to ensure that the existing protections of independent shareholders under the Listing Rules only change with their consent.

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13 The FCA Handbook definition used in the LR provides, subject to detailed clarifications over the calculation of voting rights that "A controlling shareholder" means any person who exercises or controls on their own or together with any person with whom they are acting in concert, 30% or more of the votes able to be cast on all or substantially all matters at general meetings of the company".

14 The Panel on Takeovers and Mergers: The Takeover Code [www.thetakeoverpanel.org.uk/wp-content/uploads/2008/11/code.pdf](http://www.thetakeoverpanel.org.uk/wp-content/uploads/2008/11/code.pdf)

**3.57** We also proposed to retain existing provisions on transfers from the new category out of premium listing either through a move to standard listing or a delisting. In each case we ensured that these moves would be subject to approval by the independent holders of the premium listed class, as they would for the existing premium listing (commercial company) category.

**3.58** In relation to these proposals we asked:

**Q5: Do you agree that independent shareholder approval should be required for a transfer from an existing premium listing into the new category?**

**3.59** Of those respondents who commented on this question, all agreed that this requirement should apply to transfers from an existing premium listing into the new category.

#### Our response

Given the firm backing we received, and the absence of responses arguing for a different course of action, we are proceeding with our proposals regarding eligibility criteria unaltered in respect of control thresholds, nationality and additional protections.

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## Annex 1

# List of non-confidential respondents

Association for Financial Markets in Europe (AFME)

Alternative Investment Management Association (AIMA)

Allianz Global Investors GmbH

BNY Mellon

Castlefield Investment Partners

City of London Corporation

Citigroup Global Markets

Council of Institutional Investors

Deutsche Bank

Financial Reporting Council

Herbert Smith Freehills LLP

Hermes Investment Management

Investment Association

Institute of Chartered Secretaries and Administrators

International Corporate Governance Network

Institute of Directors

Kames Capital

Law Society and City of London Law Society (joint response)

Listing Authority Advisory Panel and Markets Practitioner Panel (joint response)

Local Authority Pension Fund Forum

London Stock Exchange Group

Norges Bank Investment Management

Personal Investment Management and Financial Advice Association

Pensions and Lifetime Savings Association



Quoted Companies Alliance

Royal London Asset Management

Share Action

Universities Superannuation Scheme Investment Management



## Annex 2

# Abbreviations in this document

<b>CP</b>	Consultation Paper
<b>DP</b>	Discussion Paper
<b>DR</b>	Depository receipt
<b>EU</b>	European Union
<b>IFRS</b>	International Financial Reporting Standards
<b>IPO</b>	Initial public offering
<b>LR</b>	Listing Rules
<b>MAR</b>	Market Abuse Regulation No. 569/2014/EU
<b>OECD</b>	Organisation for Economic Co-operation and Development
<b>PD</b>	Prospectus Directive
<b>PS</b>	Policy Statement
<b>RPT</b>	Related party transaction

We have developed the policy in this Policy Statement in the context of the existing UK and EU regulatory framework. The Government has made clear that it will continue to implement and apply EU law until the UK has left the EU. We will keep the proposals under review to assess whether any amendments may be required in the event of changes in the UK regulatory framework in the future.

All our publications are available to download from [www.fca.org.uk](http://www.fca.org.uk). If you would like to receive this paper in an alternative format, please call 020 7066 9644 or email: [publications\\_graphics@fca.org.uk](mailto:publications_graphics@fca.org.uk) or write to: Editorial and Digital team, Financial Conduct Authority, 25 The North Colonnade, Canary Wharf, London E14 5HS





# Appendix 1

## Made rules (legal instrument)

**LISTING RULES (SOVEREIGN CONTROLLED COMMERCIAL COMPANIES)  
INSTRUMENT 2018**

**Powers exercised**

- A. The Financial Conduct Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (the “Act”):
- (1) section 69 (Statement of policy);
  - (2) section 73A (Part 6 Rules);
  - (3) section 88 (Sponsors);
  - (4) section 93 (Statement of policy);
  - (5) section 96 (Obligations of issuers of listed securities);
  - (6) section 137A (The FCA’s general rules);
  - (7) section 137T (General supplementary powers);
  - (8) section 139A (Power of the FCA to give guidance); and
  - (9) paragraph 23 (Fees) of Part 3 (Penalties and Fees) of Schedule 1ZA (The Financial Conduct Authority).
- B. The rule-making powers listed above are specified for the purpose of section 138G(2) (Rule-making instruments) of the Act.

**Commencement**

- C. This instrument comes into force on 1 July 2018.

**Amendments to the Handbook**

- D. The modules of the FCA’s Handbook of rules and guidance listed in column (1) below are amended in accordance with the Annexes to this instrument listed in column (2).

(1)	(2)
Glossary of definitions	Annex A
Fees manual (FEES)	Annex B
Decision Procedure and Penalties manual (DEPP)	Annex C
Listing Rules sourcebook (LR)	Annex D

**Notes**

- E. In Annex D to this instrument, the “notes” (indicated by “**Note:**”) are included for the convenience of readers but do not form part of the legislative text.

**Citation**

- F. This instrument may be cited as the Listing Rules (Sovereign Controlled Commercial Companies) Instrument 2018.

By order of the Board  
24 May 2018

## Annex A

## Amendments to the Glossary of definitions

In this Annex, underlining indicates new text and striking through indicates deleted text, unless otherwise stated.

Insert the following new definitions in the appropriate alphabetical position. The text is not underlined.

*premium listing (sovereign controlled commercial company)* a *premium listing* of:

- (a) *equity shares* (other than those of a *closed-ended investment fund* or of an *open-ended investment company*); or
- (b) *certificates representing shares*,

where the *issuer* of the *equity shares* or, in the case of *certificates representing shares*, the issuer of the *equity shares* which the certificates represent is a *sovereign controlled commercial company* and is required to comply with the requirements in LR 21 and other requirements in the *listing rules* that are expressed to apply to *securities* in this category.

*sovereign controlled commercial company* an *issuer* in which a *State* exercises or controls 30% or more of the votes able to be cast on all or substantially all matters at general meetings of that *company*.

*sovereign controlling shareholder* (in relation to a *company* with or applying for a *listing* of *equity shares* or *certificates representing shares* in the category of *premium listing (sovereign controlled commercial company)*) a *State* which exercises or controls 30% or more of the votes able to be cast on all or substantially all matters at general meetings of the *company*.

*State* means:

- (a) the sovereign or other head of a State in their public capacity;
- (b) the government of a State;
- (c) a department of a State; or
- (d) an agency or a special purpose vehicle of a State, including an agency or special purpose vehicle of (a), (b) or (c).

Amend the following definitions as shown.

*premium* (a) in relation to *equity shares* (other than those of a *closed-ended*

*listing*

*investment fund* or of an *open-ended investment company* or of a sovereign controlled commercial company that is required to comply with the requirements in LR 21), means a *listing* where the *issuer* is required to comply with those requirements in LR 6 (Additional requirements for premium listing (commercial company)) and the other requirements in the *listing rules* that are expressed to apply to such *securities* with a *premium listing*;

...

- (c) in relation to *equity shares* of an *open-ended investment company*, means a *listing* where the *issuer* is required to comply with LR 16 (Open-ended investment companies: Premium listing) and other requirements in the *listing rules* that are expressed to apply to such *securities* with a *premium listing*;
- (d) in relation to equity shares of a sovereign controlled commercial company, means a *listing* where the *issuer* is required to comply with the requirements in LR 21 (Sovereign controlled commercial companies: Premium listing) and other requirements in the *listing rules* that are expressed to apply to such *securities* with a *premium listing*; and
- (e) in relation to certificates representing shares of a sovereign controlled commercial company, means a *listing* where the *issuer* is required to comply with the requirements in LR 21 (Sovereign controlled commercial companies: Premium listing) and other requirements in the *listing rules* that are expressed to apply to such *securities* with a *premium listing*.

*premium listing (commercial company)*

a *premium listing* of *equity shares* (other than those of a *closed-ended investment fund* or of an *open-ended investment company* or of a sovereign controlled commercial company that is required to comply with the requirements in LR 21).

## Annex B

### Amendments to the Fees manual (FEES)

In this Annex, underlining indicates new text and striking through indicates deleted text.

#### 3 Application, Notification and Vetting Fees

...

#### 3 Annex UKLA transaction fees 12R

...

Category A1 includes:

...

(ca) applying for eligibility for listing of equity shares where LR 21.2.5R(1) or (2) applies; or

(cb) applying for eligibility for listing of certificates representing shares where LR 21.6.13R(1) or (2) applies; or

...

...

Category A4 includes:

...

(da) applying for eligibility for listing of equity shares under LR 21; or

(db) applying for eligibility for listing of certificates representing shares under LR 21; or

...

...

#### 4 Periodic fees

...

#### 4 Annex UKLA periodic fees for the period from 1 April 2017 to 31 March 2018 14R

Part 1 Base fee
-----------------

Activity group or invoice code (Note 1)	Description	Base fee payable (£)
...		
E.2	Premium listed issuer	A <i>listed issuer of equity shares and certificates representing shares</i> with a <i>premium listing</i> (see Note 2)
5,200		
...		

...

## Annex C

### Amendments to the Decision Procedure and Penalties manual (DEPP)

In this Annex, striking through indicates deleted text.

#### 6 Penalties

...

#### 6.2 Deciding whether to take action

...

- 6.2.16 G The Listing Principles and Premium Listing Principles are set out in *LR 7*. The Listing Principles set out in *LR 7.2.1R* are a general statement of the fundamental obligations of all *listed companies*. In addition to the Listing Principles, the Premium Listing Principles set out in *LR 7.2.1AR* are a general statement of the fundamental obligations of all *listed companies* with a *premium listing of equity shares*. The Listing Principles and Premium Listing Principles derive their authority from the *FCA*'s rule making powers set out in section 73A(1) (Part 6 Rules) of the *Act*. A breach of a Listing Principle or, if applicable, a Premium Listing Principle, will make a *listed company* liable to disciplinary action by the *FCA*.

...



## Annex D

### Amendments to the Listing Rules sourcebook (LR)

In this Annex, underlining indicates new text and striking through indicates deleted text, unless otherwise stated.

#### 1 Preliminary: All securities

...

#### 1.5 Standard and Premium Listing

Standard and premium listing explained

##### 1.5.1 G ...

(3) *Premium listing* exists for:

(a) *equity shares* of:

(i) commercial companies,

(ii) *closed-ended investment funds*, ~~and~~

(iii) *open-ended investment companies*, and

(iv) *sovereign controlled commercial companies*; and

(b) *certificates representing shares of sovereign controlled commercial companies*.

Any other *listing* will be a *standard listing*.

(4) ~~In one case, for~~ In the case of *equity shares* of a commercial company or *equity shares* or *certificates representing shares of a sovereign controlled commercial company*, an issuer will have a choice under the *listing rules* as to whether it has a *standard listing* or a *premium listing*. The type of *listing* it applies for will therefore determine the requirements it must comply with.

(5) *LR 5.4A* provides a process for the transfer of the category of *listing of equity shares* and for the transfer of the category of *listing of certificates representing shares*.

...

Misleading statements about status

1.5.2 R An issuer that is not an issuer with a *premium listing* ~~of its equity shares~~ must not describe itself or hold itself out (in whatever terms) as having a

*premium listing* or make any representation which suggests, or which is reasonably likely to be understood as suggesting, that it has a *premium listing* or complies or is required to comply with the requirements that apply to a *premium listing*.

## 1.6 Listing Categories

...

- 1.6.1A R An *issuer* must comply with the *rules* that are applicable to every *security* in the category of *listing* which applies to each *security* the *issuer* has *listed*. The categories of *listing* are:

...

(3A) *premium listing (sovereign controlled commercial company)*;

...

...

## 3 Listing Applications: All securities

...

### 3.4 Debt and other securities

...

Documents to be provided 48 hours in advance

- 3.4.4 R ...

(4) written confirmation of the number of *securities* to be issued (pursuant to a board resolution) [**Note:** if this is not possible, see *LR 3.4.5R*]; and

(5) any working capital statement required to be published under *LR 21.6.14R* or *LR 21.8.27R(2)*.

...

...

## 5 Suspending, cancelling and restoring listing and reverse takeovers: All securities

...

### 5.2 Cancelling listing

...

Cancellation of listing of ~~equity shares~~ securities with a premium listing

- 5.2.5 R Subject to *LR 5.2.7R*, *LR 5.2.10R*, *LR 5.2.11AR* and *LR 5.2.12R*, an *issuer* with a *premium listing* that wishes the *FCA* to cancel the *listing* of any of its ~~*equity shares*~~ *securities* with a *premium listing* must:
- (1) send a *circular* to the holders of the ~~*shares*~~ *relevant securities*. The *circular* must:
 

...

    - (2) in the case of a cancellation of *listing of equity shares*, obtain, at a general meeting, the prior approval of a resolution for the cancellation from:
      - (a) a majority of not less than 75% of the votes attaching to the *shares* voted on the resolution; and
      - (b) where an *issuer* has a *controlling shareholder*, a majority of the votes attaching to the *shares* of *independent shareholders* voted on the resolution;
    - (2A) in the case of a cancellation of *listing of certificates representing shares*, obtain, at a meeting of the holders of the certificates, the prior approval of a resolution for the cancellation from:
      - (a) a majority of not less than 75% in value of the *certificates representing shares* in issue at the time of the meeting that are voted on the resolution; and
      - (b) where an *issuer* has a *controlling shareholder*, a majority in value of the *certificates representing shares* in issue at the time of the meeting that are:
        - (i) held by holders of certificates other than the *controlling shareholder*; and
        - (ii) that are voted on the resolution;
  - (3) notify a *RIS*, at the same time as the *circular* is despatched to the relevant holders of the ~~*shares*~~ *securities*, of the intended cancellation and of the notice period and meeting; and
  - (4) notify a *RIS* of the passing of the resolution in accordance with *LR 9.6.18R* or (as applicable) *LR 21.8.11R*.
- 5.2.7 R *LR 5.2.5R(2)* and (2A) will not apply where an *issuer* of ~~*equity shares*~~ *securities* notifies a *RIS*:

...

(3) ...

- (b) why the approval of shareholders or, in the case of certificates representing shares, holders of certificates will not be sought prior to the cancellation of *listing*; and

...

...

#### Requirements for cancellation of other securities

- 5.2.8 R An *issuer* that wishes the *FCA* to cancel the *listing* of *listed securities* (other than ~~*equity shares*~~ *securities* with a *premium listing*) must notify a *RIS*, giving at least 20 *business days* notice of the intended cancellation, but is not required to obtain the approval of the holders of those *securities* contemplated in *LR 5.2.5R(2)* or (2A).

...

#### Cancellation in relation to takeover offers: offeror interested in 50% or less of voting rights

- 5.2.10 R *LR 5.2.5R* does not apply to the cancellation of ~~*equity shares*~~ *securities* with a *premium listing* in the case of a takeover offer if:

...

- 5.2.11 R The *issuer* must notify shareholders and, in the case of certificates representing shares, holders of certificates that the required 75% has been obtained and that the notice period has commenced and of the anticipated date of cancellation, or the explanatory letter or other material accompanying the section 979 notice must state that the notice period has commenced and the anticipated date of cancellation.

#### Cancellation in relation to takeover offers: offeror interested in more than 50% of voting rights

- 5.2.11A R *LR 5.2.5R* does not apply to the cancellation of ~~*equity shares*~~ *securities* with a *premium listing* in the case of a takeover offer if:

...

...

- 5.2.11C R The *issuer* must notify shareholders and, in the case of certificates representing shares, holders of certificates that the relevant thresholds described in *LR 5.2.11AR* (2) to (3) have been obtained and that the notice period has commenced and of the anticipated date of cancellation, or the explanatory letter or other material accompanying the section 979 notice

must state that the notice period has commenced and the anticipated date of cancellation.

...

Cancellation as a result of schemes of arrangement etc

5.2.12 R *LR 5.2.5R and LR 5.2.8R do not apply to the cancellation of equity shares and certificates representing shares as a result of:*

...

...

#### 5.4A **Transfer between listing categories: ~~Equity shares~~**

Application

5.4A.1 R This section applies to an issuer that wishes to transfer ~~its~~ the category of ~~equity shares~~ its listing from:

...

(2A) a standard listing (shares) to a premium listing (sovereign controlled commercial company); or

(2B) a standard listing (certificates representing certain securities) to a premium listing (sovereign controlled commercial company); or

...

(7) a premium listing (commercial company) to a premium listing (sovereign controlled commercial company); or

(8) a premium listing (sovereign controlled commercial company) to a premium listing (commercial company); or

(9) a premium listing (investment company) to a premium listing (sovereign controlled commercial company); or

(10) a premium listing (sovereign controlled commercial company) to a premium listing (investment company); or

(11) a premium listing (sovereign controlled commercial company) to a standard listing (shares); or

(12) a premium listing (sovereign controlled commercial company) to a standard listing (certificates representing certain securities).

...

Initial notification to the FCA

- 5.4A.3 R (1) If an *issuer* wishes to transfer ~~its~~ the category of ~~equity shares~~ its listing it must notify the *FCA* of the proposal.

...

...

Shareholder approval required in certain cases

- 5.4A.4 R (1) This rule applies to a transfer of the *listing* of:
- (a) *equity shares* with a *premium listing* into or out of the category of *premium listing (investment company)*; or
  - (b) ~~a transfer of the listing of equity shares with a premium listing~~ out of the category of *premium listing (commercial company)*; or
  - (c) *equity shares* or *certificates representing shares* with a *premium listing* out of the category of *premium listing (sovereign controlled commercial company)* into the category of *standard listing (shares)* or *standard listing (certificates representing certain securities)*.
- (2) The issuer must:
- (a) send a *circular* to the holders of the *equity shares* or the *certificates representing shares*, as applicable;
  - (b) notify a *RIS*, at the same time as the ~~circular~~ *circular* is despatched to the relevant holders of the *equity shares* or the *certificates representing shares* (as applicable), of the intended transfer and of the notice period and meeting date; and
- ...
- (3) ...
- (b) ...
    - (ii) where an *issuer* has a *controlling shareholder*, a majority of the votes attaching to the *shares* of *independent shareholders* voted on the resolution; or
  - (c) in the case of a transfer of the *listing* of *equity shares* with a *premium listing (commercial company)* into the category of *premium listing (sovereign controlled commercial company)*, the *issuer* must obtain at a general meeting the prior approval of a resolution for the transfer from:

- (i) a majority of not less than 75% of the votes attaching to the *shares* voted on the resolution; and
  - (ii) where an *issuer* has a *controlling shareholder*, a majority of the votes attaching to the *shares* of *independent shareholders* voted on the resolution; or
- (d) in the case of a transfer of the *listing* of *equity shares* with a *premium listing* (*sovereign controlled commercial company*) into the category of *standard listing* (*shares*), the *issuer* must obtain at a general meeting the prior approval of a resolution for the transfer from:
- (i) a majority of not less than 75% of the votes attaching to the *shares* voted on the resolution; and
  - (ii) where an *issuer* has a *controlling shareholder*, a majority of the votes attaching to the *shares* of *independent shareholders* voted on the resolution; or
- (e) in the case of a transfer of the *listing* of *certificates representing shares* with a *premium listing* (*sovereign controlled commercial company*) into the category of *standard listing* (*certificates representing certain securities*), the *issuer* must obtain, at a meeting of the holders of the *certificates*, the prior approval of a resolution for the transfer from:
- (i) a majority of not less than 75% in value of the *certificates representing shares* in issue at the time of the meeting that are voted on the resolution; and
  - (ii) where an *issuer* has a *controlling shareholder*, a majority in value of the *certificates representing shares* in issue at the time of the meeting that are:
    - (A) held by holders of *certificates* other than the *controlling shareholder*; and
    - (B) that are voted on the resolution.

Announcement required in other cases

- 5.4A.5 R (1) This rule applies to any transfer of a *listing* of *equity shares* or *certificates representing shares* other than a transfer referred to in LR 5.4A.4R(1).

...

...

## Approval and contents of announcement

- 5.4A.7 R The announcement referred to in *LR 5.4A.5R(2)* must:
- (1) contain the same substantive information as would be required under *LR 13.1* and *LR 13.3* if it were a *circular* but modified as necessary so it is clear that no ~~shareholder~~ vote of holders of the relevant securities is required; and

...

...

## Applying for the transfer

- 5.4A.10 R If an *issuer* has initially notified the *FCA* under *LR 5.4A.3R* it may apply to the *FCA* to transfer the *listing* of its ~~equity shares~~ securities from one category to another. The application must include:

...

- (2) details of the ~~equity shares~~ securities to which the transfer relates;

...

## Issuer must comply with eligibility requirements

- 5.4A.11 R (1) An *issuer* applying for a transfer of its ~~equity shares~~ securities must comply with all eligibility requirements that would apply if the *issuer* was seeking admission to *listing* of the ~~equity shares~~ securities to the category of *listing* to which it wishes to transfer.

- (2) ...

- (a) to the admission of ~~equity shares~~ securities is to be taken to be a reference to the transfer of the ~~equity shares~~ securities; and

...

## Approval of transfer

- 5.4A.12 R ...
- (3) the *issuer* and the ~~equity shares~~ securities will comply with all eligibility requirements that would apply if the *issuer* was seeking admission to *listing* of the ~~equity shares~~ securities to the category of *listing* to which it wishes to transfer.
- 5.4A.13 G The *FCA* will not generally reassess compliance with eligibility requirements (for example *LR 6.7.1R* (Working capital) if the *issuer* has previously been assessed by the *FCA* as meeting those requirements under



its existing *listing* category when its ~~equity shares~~ securities were listed.

...

Transfer as an alternative to cancellation

...

5.4A.17 **G** There may be situations in which an issuer with a listing of securities in the category of premium listed (sovereign controlled commercial company) no longer has a sovereign controlling shareholder. In those situations, the FCA may consider cancelling the listing of the securities or suggest to the issuer that, as an alternative, it applies for a transfer of its listing category.

...

## 7 Listing Principles and Premium Listing Principles

### 7.1 Application and purpose

Application

7.1.1 R ...

(2) In addition to the Listing Principles referred to in (1), the Premium Listing Principles in LR 7.2.1AR apply to every *listed company* with a *premium listing* ~~of equity shares~~ in respect of all its obligations arising from the *listing rules, disclosure requirements, transparency rules* and *corporate governance rules*.

...

### 7.2 The Listing and Premium Listing Principles

...

7.2.1A R The Premium Listing Principles are as follows:

...	
Premium Listing Principle 2	A <i>listed company</i> must act with integrity towards the holders and potential holders of its <i>premium listed</i> <del>shares</del> <u>securities</u> .
Premium Listing Principle 3	All <i>equity shares</i> in a class that has been admitted to <i>premium listing</i> must carry an equal number of votes on any shareholder vote. <u>In respect of certificates representing shares that have been admitted to premium listing, all the equity shares of the class which the certificates represent</u>

	<u>must carry an equal number of votes on any shareholder vote.</u>
Premium Listing Principle 4	Where a <i>listed company</i> has more than one class of <i>equity shares</i> <del>admitted</del> <u>securities admitted</u> to <i>premium listing</i> , the aggregate voting rights of the <del>shares</del> <u>securities</u> in each class should be broadly proportionate to the relative interests of those classes in the equity of the <i>listed company</i> .
Premium Listing Principle 5	A <i>listed company</i> must ensure that it treats all holders of the same class of its <u>premium listed securities</u> and its <u>listed equity shares</u> that are in the same position equally in respect of the rights attaching to those <u>premium listed securities</u> and <u>listed equity shares</u> .
Premium Listing Principle 6	A <i>listed company</i> must communicate information to holders and potential holders of its <u>premium listed securities</u> and its <u>listed equity shares</u> in such a way as to avoid the creation of a false market in those <u>premium listed securities</u> and <u>listed equity shares</u> .

...

- 7.2.4 G In assessing whether the voting rights attaching to different classes of *premium listed* ~~shares~~ securities are proportionate for the purposes of Premium Listing Principle 4, the *FCA* will have regard to the following non-exhaustive list of factors:

...

## 8 Sponsors: Premium listing

...

### 8.2 When a sponsor must be appointed or its guidance obtained

When a sponsor must be appointed

- 8.2.1 R A *company* with, or applying for, a *premium listing* of its ~~equity shares~~ securities must appoint a *sponsor* on each occasion that it:
- (1) is required to submit any of the following documents to the *FCA* in connection with an application for *admission* of ~~equity shares~~ securities to *premium listing*:
 

...

    - (d) *listing particulars* referred to in *LR 15.3.3R*, ~~or~~ *LR 16.3.4R*, *LR 21.3.3R* or *LR 21.7.4R* or supplementary *listing*

*particulars; or*

...

8.2.1A R A *company* must appoint a *sponsor* where it applies to transfer its category of ~~*equity shares'*~~ *listing* from:

...

- (4) *a premium listing (commercial company) to a premium listing (investment company); or*
- (5) *a standard listing (shares) to a premium listing (sovereign controlled commercial company); or*
- (6) *a standard listing (certificates representing certain securities) to a premium listing (sovereign controlled commercial company); or*
- (7) *a premium listing (commercial company) to a premium listing (sovereign controlled commercial company); or*
- (8) *a premium listing (sovereign controlled commercial company) to a premium listing (commercial company); or*
- (9) *a premium listing (investment company) to a premium listing (sovereign controlled commercial company); or*
- (10) *a premium listing (sovereign controlled commercial company) to a premium listing (investment company).*

...

### 8.3 Role of a sponsor: general

Responsibilities of a sponsor

8.3.1 R A *sponsor* must in relation to a *sponsor service*:

- (1) referred to in *LR 8.2.1R(1) to (4), LR 8.2.1R(11), LR 8.2.1AR* and, where relevant *LR 8.2.1R(5)*, provide assurance to the *FCA* when required that the responsibilities of the *company* with or applying for a *premium listing* of its ~~*equity shares*~~ *securities* under the *listing rules* have been met;
- (1A) provide to the *FCA* any explanation or confirmation in such form and within such time limit as the *FCA* reasonably requires for the purposes of ensuring that the *listing rules* are being complied with by a *company* with or applying for a *premium listing* of its ~~*equity shares*~~ *securities*; and
- (2) guide the *company* with or applying for a *premium listing* of its ~~*equity shares*~~ *securities* in understanding and meeting its

responsibilities under the *listing rules*, the *disclosure requirements* and the *transparency rules*.

...

8.3.2 G The *sponsor* will be the main point of contact with the *FCA* for any matter referred to in *LR 8.2*. The *FCA* expects to discuss all issues relating to a transaction and any draft or final document directly with the *sponsor*. However, in appropriate circumstances, the *FCA* will communicate directly with the *company* with or applying for a *premium listing* of its ~~*equity shares*~~ *securities*, or its advisers.

8.3.2A G A *sponsor* remains responsible for complying with *LR 8.3* even where a *sponsor* relies on the *company* with or applying for a *premium listing* of its ~~*equity shares*~~ *securities* or a third party when providing an assurance or confirmation to the *FCA*.

...

Principles for sponsors: relations with the *FCA*

...

8.3.5A R If, in connection with the provision of a *sponsor service*, a *sponsor* becomes aware that it, or a *company* with or applying for a *premium listing* of its ~~*equity shares*~~ *securities* is failing or has failed to comply with its obligations under the *listing rules*, the *disclosure requirements* or the *transparency rules*, the *sponsor* must promptly notify the *FCA*.

...

## 8.4 Role of a sponsor: transactions

Application for admission

8.4.1 R *LR 8.4.2R* to *LR 8.4.4G* apply in relation to an application for *admission* of ~~*equity shares*~~ *securities* to *premium listing* if an *applicant* does not have ~~*equity shares*~~ *securities* already admitted to *premium listing*, the conditions in *LR 6.1.1R(1)*, ~~*LR 6.1.1R(2)*~~, *LR 21.2.5R(1)*, *LR 21.2.5R(2)*, *LR 21.6.13R(1)* or *LR 21.6.13R(2)* do not apply and, in connection with the application, the *applicant* is required to submit to the *FCA*:

...

...

New applicants: procedure

8.4.3 R A *sponsor* must:

...

- (3) ensure that all matters known to it which, in its reasonable opinion, should be taken into account by the *FCA* in considering:
- ...
- (b) whether the *admission* of the ~~*equity shares*~~ *securities* would be detrimental to investors' interests;
- ...
- (4) submit a letter to the *FCA* setting out how the *applicant* satisfies the criteria in *LR 2* (Requirements for listing – all securities), *LR 6* (Additional requirements for premium listing (commercial company)) and, if applicable, ~~*LR 15* or *LR 16*~~ *LR 15*, *LR 16* or *LR 21*, no later than when the first draft of the *prospectus* or *listing particulars* is submitted (or, if the *FCA* is not approving a *prospectus* or if it is determining whether a document is an *equivalent document*, at a time to be agreed with the *FCA*).
- ...

- 8.4.4 G Depending on the circumstances of the case, a *sponsor* providing services to an *applicant* on an application for *admission* to *listing* may have to confirm in writing to the *FCA* that the board of the *applicant* has allotted the ~~*equity shares*~~ *securities*.

[**Note:** see *LR 3.3.4R*]

...

#### Application for admission: further issues

- 8.4.7 R *LR 8.4.8R* to *LR 8.4.10G* apply in relation to an application for *admission* of ~~*equity shares*~~ *premium listed securities* of an *applicant* that has ~~*equity shares*~~ *securities* already *premium listed* or in circumstances in which *LR 6.1.1R(1)*, ~~or *LR 6.1.1R(2)*, *LR 21.2.5R(1)*, *LR 21.2.5R(2)*, *LR 21.6.13R(1)* or *LR 21.6.13R(2)*~~ applies.

- 8.4.8 R A *sponsor* must not submit to the *FCA* an application on behalf of an *applicant*, in accordance with *LR 3* (Listing applications), unless it has come to a reasonable opinion, after having made due and careful enquiry, that:

...

- (3) the *directors* of the *applicant* have a reasonable basis on which to make the working capital statement;
- (a) that is, in the case of *equity shares*, required to be included in the *applicant's prospectus* or *listing particulars* and submitted to the *FCA* in accordance with *LR 3.3.2R(2)*; or
- (b) that is, in the case of *certificates representing shares*,

- (i) included in the *applicant's prospectus* or *listing particulars* for the *certificates representing shares* that are being admitted, or
- (ii) required to be published by the *applicant* in accordance with *LR 21.8.27R(2)*.

...

- 8.4.10 G Depending on the circumstances of the case, a *sponsor* providing services to an *applicant* on an application for *admission to listing* may have to confirm in writing to the *FCA* the number of ~~*equity shares*~~ *securities* to be allotted or admitted.

...

Class 1 circulars, refinancing and purchase of own equity shares

- 8.4.11 R *LR 8.4.12R* to *LR 8.4.13R* apply in relation to transactions involving an issuer with a *premium listing* ~~of *equity shares*~~ that is required to submit to the *FCA* for approval:

...

...

## 8.5 Responsibilities of listed companies

...

Cooperation with sponsors

- 8.5.6 R In relation to the provision of a *sponsor service*, a *company* with or applying for a *premium listing* of its ~~*equity shares*~~ *securities* must cooperate with its *sponsor* by providing the *sponsor* with all information reasonably requested by the *sponsor* for the purpose of carrying out the *sponsor service* in accordance with *LR 8*.

...

## 9 Continuing obligations

### 9.1 Preliminary

Application

- 9.1.1 R This chapter applies to a *company* that has a *premium listing* ~~of *equity shares*~~.

### 9.2 Requirements with continuing application

...

9.2.13A R In relation to the provision of a *sponsor service*, a *company* with a *premium listing* ~~of its equity shares~~ must cooperate with its *sponsor* by providing the *sponsor* with all information reasonably requested by the *sponsor* for the purpose of carrying out the *sponsor service* in accordance with *LR 8*.

...

Voting on matters relevant to premium listing

9.2.21 R Where the provisions of *LR 5.2*, *LR 5.4A*, *LR 9.4*, *LR 9.5*, *LR 10*, *LR 11*, *LR 12* or *LR 15* require a shareholder vote to be taken, that vote must be decided by a resolution of the holders of the *listed company's shares* that have been *admitted to premium listing*. Where the provisions of *LR 5.2.5R(2)*, *LR 5.4A.4R(3)(b)(ii)*, *LR 5.4A.4R(3)(c)(ii)* or *LR 9.2.2ER* require that the resolution must in addition be approved by the *independent shareholders*, only *independent shareholders* who hold the *listed company's shares* that have been *admitted to premium listing* can vote.

...

**10 Significant transactions: Premium listing**

**10.1 Preliminary**

Application

...

10.1.2 G The purpose of this chapter is to ensure that shareholders of *companies* with ~~*equity shares*~~ *securities listed*:

...

...

**10 The Class Tests**

**Annex**

**1G**

...

**The Profits Test: Anomalous Results**

12R	Paragraph 13R applies to a <i>company</i> that has a <i>premium listing</i> <del>of equity shares</del> where:
-----	--

...
-----

13R	A <i>company</i> that has a <i>premium listing</i> <del>of equity shares</del> may:
-----	---

	...	
...		
15G	A <i>company</i> that has a <i>premium listing</i> <del>of equity shares</del> does not have to consult the <i>FCA</i> in accordance with paragraph 10G or 11G before relying on paragraph 13R.	

...

## 11 Related party transactions: Premium listing

### 11.1 Related party transactions

...

11.1.11 R ...

(3) ...

...

(b) ~~LR 11.1.10R(2)(a)~~ and ~~LR 11.1.10R(2)(c)~~ in respect of the aggregated small transactions.

...

## 12 Dealing in own securities and treasury shares: Premium listing

### 12.1 Application

Application

12.1.1 R This chapter applies to a company that has a *premium listing* ~~of equity shares~~.

...

### 12.3 Purchase from a related party

...

12.3.2 R Where a purchase by a listed company of its own equity securities or preference shares is to be made from a related party which is a sovereign controlling shareholder or an associate of a sovereign controlling shareholder, the modifications to LR 11 (Related party transactions) in LR 21.5 (Transactions with related parties: Equity shares) and LR 21.10 (Transactions with related parties: Certificates representing shares) do not apply for the purposes of LR 12.3.1R.

...

## 18 Certificates representing certain securities: Standard listing



**18.1 Application**

- 18.1.1 R This chapter applies in respect of a *standard listing of certificates representing certain securities* and applies to:
- (1) a *depository*; and
  - (2) an *issuer* of the *securities* which are represented by certificates.

...

After LR 20 (Miscellaneous Securities: Standard listing) insert the following new chapter LR 21. The text is not underlined.

**21 Sovereign Controlled Commercial Companies: Premium listing****21.1 Application**

- 21.1.1 R This chapter applies to a *sovereign controlled commercial company* applying for, or with, a *premium listing (sovereign controlled commercial company)*.
- 21.1.2 R *LR 21.2 to LR 21.5* apply in respect of a *premium listing (sovereign controlled commercial company)* of *equity shares*.
- 21.1.3 R *LR 21.6 to LR 21.10* apply in respect of a *premium listing (sovereign controlled commercial company)* of *certificates representing shares* and apply to:
- (1) a *depository*; and
  - (2) an *issuer* of the *equity shares* which are represented by certificates.

**21.2 Requirements for listing: Equity shares**

- 21.2.1 R To be *listed*, an *applicant* must comply with:
- (1) *LR 2* (Requirements for listing: All securities);
  - (2) *LR 6* (Additional requirements for premium listing (commercial company)) except *LR 6.1.1R* and subject to the modifications and additional requirements set out in *LR 21.2.2G to LR 21.2.5R*; and
  - (3) *LR 21.2.6R* and *LR 21.2.7R*.
- 21.2.2 G For the purposes of *LR 21.2.1R(2)*, in *LR 6.4.3G* factors that may indicate that an *applicant* does not satisfy *LR 6.4.1R* also include situations where an *applicant* has granted or may be required to grant security over its business in connection with the funding of a *sovereign controlling shareholder*.

- 21.2.3 R For the purposes of *LR 21.2.1R(2)*, in *LR 6.5* references to a *controlling shareholder* must be read as excluding a *sovereign controlling shareholder*.
- 21.2.4 R For the purposes of *LR 21.2.1R(2)*, in *LR 6.14.5G(2)(c)* the reference to *premium listing (commercial companies)* must be read as a reference to *premium listing (sovereign controlled commercial company)*.
- 21.2.5 R *LR 21.2.1R(2)* does not apply where:
- (1) the *applicant* meets the following conditions:
    - (a) it has an existing *premium listing (sovereign controlled 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 (sovereign controlled 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*.
- 21.2.6 R An *applicant* must have a *sovereign controlling shareholder*.
- 21.2.7 R To comply with *LR 21.2.6R*, a State which is a *sovereign controlling shareholder* must be either:
- (1) recognised by the government of the *UK* as a State at the time the application is made; or
  - (2) the *UK*.

### **21.3 Listing applications and procedures: Equity shares**

- 21.3.1 G An *applicant* is required to comply with *LR 3* (Listing applications: All securities).
- Sponsors
- 21.3.2 G An *applicant* that is seeking admission of its *equity shares* is required to

retain a *sponsor* in accordance with LR 8 (Sponsors: Premium listing).

- 21.3.3 R An *applicant* must appoint a *sponsor* on each occasion that it makes an application for *admission of equity shares* which requires the production of *listing particulars*.

## 21.4 Continuing obligations: Equity shares

- 21.4.1 R A *listed company* must comply with:
- (1) LR 9 (Continuing obligations) subject to the modifications and additional requirements set out in LR 21.4.2G to LR 21.4.4R;
  - (2) LR 10 (Significant transactions: Premium listing);
  - (3) LR 12 (Dealing in own securities and treasury shares: Premium listing); and
  - (4) LR 13 (Contents of circulars: Premium listing) subject to the modifications set out in LR 21.4.3R.
- 21.4.2 G For the purposes of LR 21.4.1R(1), in LR 9.2.2AAG factors that may indicate that a *listed company* does not satisfy LR 9.2.2AR also include situations where a *listed company* has granted or may be required to grant security over its business in connection with the funding of a *sovereign controlling shareholder*.
- 21.4.3 R For the purposes of LR 21.4.1R(1) and LR 21.4.1R(4), references to *controlling shareholder* must be read as excluding a *sovereign controlling shareholder* in, or for the purposes of, the following:
- (1) LR 9.2.2ABR and LR 9.2.2ACG;
  - (2) LR 9.2.2ADR(1);
  - (3) LR 9.2.2BR;
  - (4) LR 9.2.2CR;
  - (5) LR 9.2.2GR and LR 9.2.2HG;
  - (6) LR 9.8.4 R(11);
  - (7) LR 9.8.4R(14); and
  - (8) LR 13.8.18R.
- 21.4.4 R For the purposes of LR 21.4.1R(1):
- (1) in the second sentence of LR 9.2.21R the reference to the provisions of LR 5.4A.4R(3)(b)(ii) and LR 5.4A.4R(3)(c)(ii) must be read as a

reference to the provisions of *LR 5.4A.4R(3)(d)(ii)*;

- (2) in *LR 9.2.26G* the reference to *LR 9.2* must be read as a reference to *LR 9.2* as modified by *LR 21.4*; and
- (3) in *LR 9.8.4CR* the reference to *LR 9.8.4R* must be read as a reference to *LR 9.8.4R* as modified by *LR 21.4.3R*.

- 21.4.5 G Where a purchase by a *listed company* of its own *equity securities* or *preference shares* is to be made from a *related party* which is a *sovereign controlling shareholder* or an *associate* of a *sovereign controlling shareholder*, the *listed company* should note *LR 12.3.2R*.

Additional requirements: sovereign controlling shareholder

- 21.4.6 R A *listed company* must at all times have a *sovereign controlling shareholder*.
- 21.4.7 R To comply with *LR 21.4.6R*, a State which is a *sovereign controlling shareholder* must be either:
- (1) recognised by the government of the *UK* as a State; or
  - (2) the *UK*.
- 21.4.8 R A *listed company* must notify the *FCA* without delay if it no longer complies with the continuing obligation set out in *LR 21.4.6R*.
- 21.4.9 G Where a *listed company* is unable to comply with the continuing obligation set out in *LR 21.4.6R*, it should consider seeking a cancellation of *listing* or applying for a transfer of its *listing* category. In particular, the *listed company* should note *LR 5.2.2G(2)* and *LR 5.4A.17G*.

Sponsors

- 21.4.10 G A *listed company* should consider the requirements in *LR 8.2* (When a sponsor must be appointed or its guidance obtained) and *LR 8.5* (Responsibilities of listed companies), subject to the modification to *LR 8.2.3R* in *LR 21.5.3R*.

## 21.5 Transactions with related parties: Equity shares

- 21.5.1 R A *listed company* must comply with *LR 11* (Related party transactions: Premium listing) subject to the modifications in *LR 21.5.2R*.
- 21.5.2 R For the purposes of *LR 21.5.1R*, in the case of a *related party* which is a *sovereign controlling shareholder* or an *associate* of a *sovereign controlling shareholder*:
- (1) the following provisions do not apply:

- (a) *LR 11.1.1AR to LR 11.1.1ER*;
  - (b) *LR 11.1.7R(2) to LR 11.1.7R(4)*;
  - (c) *LR 11.1.7CR and LR 11.1.8G*;
  - (d) *LR 11.1.10R(2)(b)*; and
  - (e) *LR 11.1.11R(3)(a)*;
- (2) the following provisions are modified as follows:
- (a) *LR 11.1.7AR* must be read as if the words “after obtaining shareholder approval but” are omitted;
  - (b) *LR 11.1.9G* must be read as follows:
    - (i) the reference to *LR 11.1.7R* must be read as a reference to *LR 11.1.7R* as modified by *LR 21.5.2R(1)*; and
    - (ii) as if the words “and *LR 11.1.8G*” are omitted;
  - (c) *LR 11.1.11R(1)* must be read as if the words “and the transactions or arrangements have not been approved by shareholders” are replaced by “and *LR 11.1.11R(2)* as modified by *LR 21.5.2R(2)(d)* has not been complied with in relation to these transactions or arrangements”; and
  - (d) *LR 11.1.11R(2)* must be read as follows:
    - (i) as if the first sentence is omitted and replaced by the following sentence “If any *percentage ratio* is 5% or more for the aggregated transactions or arrangements, the *listed company* must comply with *LR 11.1.7R* as modified by *LR 21.5.2R(1)* in respect of the latest transaction or arrangement, and details of each of the transactions or arrangements being aggregated must be included in the notification required by *LR 11.1.7R(1)*.”; and
    - (ii) as if the “Note” is omitted.

21.5.3 R The requirement in *LR 8.2.3R* to obtain the guidance of a sponsor does not apply where a *listed company* is proposing to enter into a transaction which is, or may be, a *related party transaction* and the *related party* concerned is a *sovereign controlling shareholder* or an *associate* of a *sovereign controlling shareholder*, unless the *related party transaction* is, or may be, a purchase by the *listed company* of its own *equity securities* or *preference shares*.

- 21.5.4 G Where a purchase by a *listed company* of its own *equity securities* or *preference shares* is to be made from a *related party* which is a *sovereign controlling shareholder* or an *associate* of a *sovereign controlling shareholder*, the *listed company* should note LR 12.3.2R.

## 21.6 Requirements for listing: Certificates representing shares

Issuer of equity shares is taken to be the issuer

- 21.6.1 R If an application is made for the *admission of certificates representing shares*:
- (1) the *issuer* of the *equity shares* which the certificates represent is the *issuer* for the purpose of the *listing rules*; and
  - (2) the application will be dealt with as if it were an application for the *admission of the equity shares*.

Certificates representing shares

- 21.6.2 R For *certificates representing shares* to be admitted to *listing*, an *issuer* of the *equity shares* which the certificates represent must comply with LR 21.6.3R to LR 21.6.8R.
- 21.6.3 R An *issuer* must be:
- (1) duly incorporated or otherwise validly established according to the relevant laws of its place of incorporation or establishment; and
  - (2) operating in conformity with its *constitution*.
- [Note: article 42 of CARD]
- 21.6.4 R For the certificates to be *listed*, the *equity shares* which the certificates represent must:
- (1) conform with the law of the *issuer's* place of incorporation;
  - (2) be duly authorised according to the requirements of the *issuer's constitution*; and
  - (3) have any necessary statutory or other consents.

[Note: article 45 of CARD]

- 21.6.5 R (1) For the certificates to be *listed*, the *equity shares* which the certificates represent must be freely transferable.

[Note: article 46 of CARD]

- (2) For the certificates to be *listed*, the *equity shares* which the certificates represent must be fully paid and free from all liens and from any restriction on the right of transfer (except any restriction imposed for failure to comply with a notice under section 793 of the Companies Act 2006 (Notice by company requiring information about interests in its shares)).
- 21.6.6 G The *FCA* may modify *LR 21.6.5R* to allow partly paid *equity shares* if it is satisfied that their transferability is not restricted and investors have been provided with appropriate information to enable dealings in the *equity shares* to take place on an open and proper basis.
- [**Note:** article 46 of *CARD*]
- 21.6.7 G The *FCA* may, in exceptional circumstances, modify or dispense with *LR 21.6.5R* where the *issuer* has the power to disapprove the transfer of *equity shares* if the *FCA* is satisfied that this power would not disturb the market in those *equity shares*.
- 21.6.8 R (1) For the certificates to be *listed*, the *applicant* must demonstrate that the rights attaching to the *equity shares* which the certificates represent are capable of being exercised by the holders of the certificates as if they were the holders of the relevant *equity shares*.
- (2) For the certificates to be *listed*, the *applicant* must demonstrate that it has arrangements in place which enable the holders of the certificates to exercise the rights attaching to the *equity shares* which the certificates represent as if they were the holders of the relevant *equity shares*.

#### Additional requirements for the issuer

- 21.6.9 R For *certificates representing shares* to be admitted to *listing*, an *issuer* must comply with:
- (1) *LR 6* (Additional requirements for premium listing (commercial company)) except *LR 6.1.1R* and *LR 6.14.1R* to *LR 6.15.1R* and subject to the modifications and additional requirements set out in *LR 21.6.10G* to *LR 21.6.13R*; and
- (2) *LR 21.6.14R* to *LR 21.6.21R*.
- 21.6.10 G For the purposes of *LR 21.6.9R(1)*, in *LR 6.4.3G* factors that may indicate that an *applicant* does not satisfy *LR 6.4.1R* also include situations where an *applicant* has granted or may be required to grant security over its business in connection with the funding of a *sovereign controlling shareholder*.
- 21.6.11 R For the purposes of *LR 21.6.9R(1)*, in *LR 6.5* references to a *controlling shareholder* must be read as excluding a *sovereign controlling shareholder*.
- 21.6.12 R For the purposes of *LR 21.6.9R(1)*, references to *shares* or *equity shares* must be read as references to *certificates representing shares* in the

following:

- (1) *LR 6.3.2G(2)*;
- (2) *LR 6.4.2G*;
- (3) *LR 6.5.2G*;
- (4) *LR 6.6.2G*;
- (5) *LR 6.7.1R*;
- (6) *LR 6.10.1R*;
- (7) *LR 6.10.2R*;
- (8) *LR 6.10.3R(1)*;
- (9) *LR 6.11.1R*; and
- (10) *LR 6.12.1R*.

21.6.13 R *LR 21.6.9R(1)* does not apply where:

- (1) the *applicant* meets the following conditions:
  - (a) it has an existing *premium listing (sovereign controlled commercial company)* of *certificates representing shares*;
  - (b) it is applying for the *admission of certificates representing shares* of the same *class* as the certificates 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 (sovereign controlled commercial company)* of *certificates representing 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*.

21.6.14 R If the *prospectus* or *listing particulars* for the *certificates representing shares* that are being admitted does not include a working capital statement which demonstrates that *LR 6.7.1R* is satisfied, then:



- (1) an *applicant* must prepare and publish a working capital statement which demonstrates that *LR 6.7.1R* is satisfied;
  - (2) the working capital statement required by paragraph (1) must be prepared in accordance with item 3.1 of Annex 3 of the *PD Regulation*; and
  - (3) the working capital statement required by paragraph (1) must be published at the same time as the *prospectus* or *listing particulars*, as applicable.
- 21.6.15 R A working capital statement published for the purposes of *LR 21.6.14R* must be published by means of a *RIS*.
- 21.6.16 R An *applicant* must have a *sovereign controlling shareholder*.
- 21.6.17 R To comply with *LR 21.6.16R*, a State which is a *sovereign controlling shareholder* must be either:
- (1) recognised by the government of the *UK* as a State at the time the application is made; or
  - (2) the *UK*.

#### Certificates in public hands

- 21.6.18 R
- (1) If an application is made for the *admission* of a *class* of *certificates representing shares*, a sufficient number of certificates must, no later than the time of *admission*, be distributed to the public in one or more *EEA States*.
  - (2) For the purposes of paragraph (1), account may also be taken of holders in one or more states that are not *EEA States*, if the certificates are listed in the state or states.
  - (3) For the purposes of paragraph (1), a sufficient number of certificates will be taken to have been distributed to the public when 25% of the certificates for which application for *admission* has been made are in public hands.
  - (4) For the purposes of paragraphs (1), (2) and (3), certificates are not held in public hands if they are:
    - (a) held directly or indirectly by:
      - (i) a *director* of the *applicant* or of any of its *subsidiary undertakings*; or
      - (ii) a *person* connected with a *director* of the *applicant* or of any of its *subsidiary undertakings*; or

- (iii) 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
- (iv) any *person* who under any agreement has a right to nominate a *person* to the board of *directors* of the *applicant*; or
- (v) any *person* or *persons* in the same *group* or *persons* acting in concert who have an interest in 5% or more of the certificates of the relevant *class*; or

(b) subject to a lock-up period of more than 180 calendar days.

[Note: article 48 of *CARD*]

- 21.6.19 G (1) The *FCA* may modify *LR* 21.6.18R 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 certificates of the same *class* and the extent of their distribution to the public.

[Note: article 48 of *CARD*]

- (2) In considering whether to grant a modification, the *FCA* may take into account the following specific factors:
- (a) certificates 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 holders of certificates; and
  - (c) in relation to *premium listing (sovereign controlled commercial company)* whether the expected market value of the certificates in public hands at *admission* exceeds £100 million.

- 21.6.20 G When calculating the number of certificates for the purposes of *LR* 21.6.18R(4)(a)(v), 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.

Certificates of a non-EEA company

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

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

Additional requirements for the certificates

- 21.6.22 R (1) To be *listed*, the *certificates representing shares* must satisfy the requirements set out in *LR 2.2.2R* and *LR 2.2.4R* to *LR 2.2.11R*.
- (2) For this purpose, in those *rules* references to *securities* must be read as references to the *certificates representing shares* for which application for *listing* is made.
- 21.6.23 R To be *listed*, the *certificates representing shares* must be admitted to trading on a *regulated market* for *listed securities* operated by a *RIE*.
- 21.6.24 R To be *listed*, the *certificates representing shares* must not impose obligations on the *depository* that issues the certificates except to the extent necessary to protect the certificate holders' rights to, and the transmission of entitlements of, the *equity shares*.

Additional requirements for a depository

- 21.6.25 R A *depository* that issues *certificates representing shares* must maintain adequate arrangements to safeguard certificate holders' rights to the *equity shares* to which the certificates relate, and to all rights relating to the *equity shares* and all money and benefits that it may receive in respect of them, subject only to payment of the remuneration and proper expenses of the *issuer* of the certificates.
- 21.6.26 G The requirement to maintain adequate arrangements to safeguard all rights relating to the *equity shares* includes enabling the holders of the *certificates representing shares* to exercise the votes attaching to the *equity shares* to which the certificates relate. A *depository* must not vote or attempt to exercise the votes attaching to the *equity shares* to which the certificates relate except pursuant to and in accordance with instructions from the holders of the *certificates representing shares*.

**21.7 Listing applications and procedures: Certificates representing shares**

- 21.7.1 R An *applicant* for *admission* of *certificates representing shares* must comply with *LR 3.2* and *LR 3.4.4R* to *LR 3.4.6R* subject to the modification and additional requirement set out in *LR 21.7.2R*.
- 21.7.2 R In addition to the documents referred to in *LR 3.4.6R*, an *applicant* for *admission* of *certificates representing shares* must keep a copy of the executed deposit agreement for six years after the *admission* of the relevant certificates.

Sponsors

- 21.7.3 G An *applicant* that is seeking *admission* of *certificates representing shares* is required to retain a *sponsor* in accordance with LR 8 (Sponsors: Premium listing).
- 21.7.4 R An *applicant* must appoint a *sponsor* on each occasion that it makes an application for *admission* of *certificates representing shares* which requires the production of *listing particulars*.

## 21.8 Continuing obligations: Certificates representing shares

Compliance with LR 9 (Continuing obligations)

- 21.8.1 R A *listed company* must comply with LR 9 (Continuing obligations) except:
- (1) LR 9.2.1R to LR 9.2.2R;
  - (2) LR 9.2.5G to LR 9.2.6BR;
  - (3) LR 9.2.15R to LR 9.2.15AG;
  - (4) LR 9.2.21R to LR 9.2.22G; and
  - (5) LR 9.2.26G; and
- subject to the modifications and additional requirements set out in LR 21.8.2R to LR 21.8.12R.
- 21.8.2 R For the purposes of LR 21.8.1R, references to the *listed company* or the *issuer* must be read as references to the *issuer* of the *equity shares* which the certificates represent in LR 9.
- 21.8.2A R For the purposes of LR 21.8.1R, in LR 9.2.23R the reference to LR 9.2.21R should be read as a reference to LR 21.8.22R.
- 21.8.3 G For the purposes of LR 21.8.1R, in LR 9.2.2AAG factors that may indicate that a *listed company* does not satisfy LR 9.2.2AR also include situations where a *listed company* has granted or may be required to grant security over its business in connection with the funding of a *sovereign controlling shareholder*.
- 21.8.4 R For the purposes of LR 21.8.1R, references to *controlling shareholder* must be read as excluding a *sovereign controlling shareholder* in, or for the purposes of, the following:
- (1) LR 9.2.2ABR and LR 9.2.2ACG;
  - (2) LR 9.2.2ADR(1);
  - (3) LR 9.2.2BR;

- (4) *LR 9.2.2CR*;
  - (5) *LR 9.2.2GR* and *LR 9.2.2HG*;
  - (6) *LR 9.8.4 R(11)*; and
  - (7) *LR 9.8.4R(14)*.
- 21.8.5 G For the purposes of obtaining the shareholder approvals required by:
- (1) *LR 9.2.2ER*;
  - (2) *LR 9.2.2FR*;
  - (3) *LR 9.4.1R(2)*;
  - (4) *LR 9.4.4R(2)*; and
  - (5) *LR 9.5.10R(3)(a)*,
- a *listed company* is required under *LR 21.8.13R* to ensure that the holders of its *certificates representing shares* are able to exercise the votes attaching to the *equity shares* which the certificates represent on any shareholder vote.
- 21.8.6 G For the purposes of *LR 9.3.11R* the *listed company* is required under *LR 21.8.13R* to ensure that, where the offer is made to holders of the *class* of *equity shares* which the certificates represent, the holders of its *certificates representing shares* have an equal opportunity to participate in the offer.
- 21.8.7 R For the purposes of *LR 21.8.1R*, *LR 9.5* is modified as follows:
- (1) in *LR 9.5.1R(4)* the *equity securities* which are the subject of the *rights issue* must be of the same *class* as the *equity shares* which are represented by the *listed certificates representing shares*;
  - (2) *LR 9.5.3G* does not apply;
  - (3) in *LR 9.5.10R(1)*:
    - (a) the reference to a *class* already *listed* must be read as a reference to a *class* of *equity shares* which the *listed* certificates represent; and
    - (b) for the purposes of *LR 9.5.10R*, if the *equity shares* are not listed, then the middle market price of those *equity shares* shall be determined by reference to the middle market price of the *listed certificates representing shares*; and
  - (4) a *listed company* must comply with the requirements in *LR 9.5.15R* and *LR 9.5.16R* so far as relevant to *certificates representing shares*.
- 21.8.8 G For the purposes of *LR 21.8.1R*, in *LR 9.5* the *listed company* is required

under LR 21.8.13R to ensure that in relation to:

- (1) any *rights issue*; or
- (2) any *open offer* where the offer relates to the *class* of *equity shares* which the certificates represent,

the holders of its *certificates representing shares* have an equal opportunity to participate in the *rights issue* or *open offer*.

- 21.8.9 R In addition to complying with LR 9.6.2R, a *listed company* must also forward to the FCA, for publication through the *document viewing facility*, two copies of all resolutions passed by the holders of the *listed certificates representing shares*. It must also comply with the notification requirements set out in LR 9.6.3R in relation to such resolutions.
- 21.8.10 R For the purposes of LR 21.8.1R:
- (1) in LR 9.6.4R(3) the reference to *listed shares* must be read as a reference to *equity shares* of the *class* which the certificates represent; and
  - (2) in LR 9.8.4CR the reference to LR 9.8.4R must be read as a reference to LR 9.8.4R as modified by LR 21.8.4R.
- 21.8.11 R In addition to complying with LR 9.6.18R, a *listed company* must also notify a *RIS* as soon as possible after a meeting of the holders of the *listed certificates representing shares* of all resolutions passed by the holders.
- 21.8.12 R In addition to complying with LR 9.7A.2R, a *listed company* must comply with the notification requirements in LR 9.7A.2R in respect of the *equity shares* which the certificates represent.

Additional requirements: exercise of rights attaching to the equity shares which the certificates represent

- 21.8.13 R
- (1) The rights attaching to the *equity shares* which the certificates represent must at all times be capable of being exercised by the holders of the certificates as if they were the holders of the relevant *equity shares*.
  - (2) A *listed company* must at all times have in place arrangements which enable the holders of the certificates to exercise the rights attaching to the *equity shares* which the certificates represent as if they were the holders of the relevant *equity shares*.
  - (3) Every *circular* which is sent by a *listed company* to the holders of the *equity shares* which the certificates represent must be sent to the holders of its *certificates representing shares* at the same time as the *circular* is despatched to the holders of those *equity shares*.

Additional requirements: compliance with the disclosure requirements and transparency rules

- 21.8.14 G A *listed company*, whose *certificates representing shares* are admitted to trading on a *regulated market* in the *United Kingdom*, should consider its obligations under the *disclosure requirements*.
- 21.8.15 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*.
- 21.8.16 G A *listed company*, whose *certificates representing 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).
- 21.8.17 R A *listed company* that is not already required to comply with *DTR 4*, *DTR 5* and *DTR 6* (or with corresponding requirements imposed by another *EEA Member State*) must comply with *DTR 4*, *DTR 5* and *DTR 6* as if it were an *issuer of shares* for the purposes of the *transparency rules*.

Additional requirements: certificates in public hands and admission to trading

- 21.8.18 R A *listed company* must comply with *LR 21.6.18R* at all times.
- 21.8.19 G Where the *FCA* has modified *LR 21.6.18R* to accept a percentage lower than 25% on the basis that the market will operate properly with a lower percentage, but the *FCA* considers that in practice the market for the *certificates representing shares* is not operating properly, the *FCA* may revoke the modification in accordance with *LR 1.2.1R(4)*.
- 21.8.20 R A *listed company* must comply with *LR 21.6.23R* at all times.
- 21.8.21 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 certificates representing shares* to trading; or
  - (2) requested a *RIE* to cancel or suspend trading of any of its *listed certificates representing shares*; or
  - (3) been informed by a *RIE* that trading of any of its *listed certificates representing shares* will be cancelled or suspended.

Additional requirements: voting on matters relevant to premium listing

- 21.8.22 R (1) Where pursuant to *LR 21.8*, *LR 21.9* or *LR 21.10* the provisions of

*LR 9.4, LR 9.5, LR 10, LR 11 or LR 12* require a shareholder vote to be taken, that vote must be decided by a resolution of the holders of the *class of equity shares* which the certificates that have been admitted to *premium listing* represent.

(2) Where pursuant to *LR 21.8* the provisions of *LR 9.2.2ER* require that the resolution must in addition be approved by the *independent shareholders*, only:

(a) *independent shareholders* who hold *equity shares* of the *class* which the certificates that have been admitted to *premium listing* represent; and

(b) holders of certificates admitted to *premium listing* who would be *independent shareholders* within (a) if they held the *equity shares* which the certificates represent;

can vote.

(3) Where the provisions of *LR 5.2* or *LR 5.4A* require a vote of the holders of the certificates to be taken, that vote must be decided by a resolution of the holders of the *listed company's certificates representing shares* that have been admitted to *premium listing*.

(4) Where the provisions of *LR 5.2.5R(2A)* or *LR 5.4A.4R(3)(e)(ii)* require that the resolution must in addition be approved by holders of certificates other than the *controlling shareholder*, only holders of the *listed company's certificates representing shares* that have been admitted to *premium listing* can vote.

- 21.8.23 G (1) In the case of a shareholder vote referred to in *LR 21.8.22R(1)* the *listed company* is required under *LR 21.8.13R* to ensure that the holders of the *listed certificates representing shares* are able to exercise the votes attaching to the *equity shares* which the certificates represent on any shareholder vote.
- (2) The purpose of *LR 21.8.22R(2)* is to ensure that the election or re-election of *independent directors* must be approved by the *independent shareholders* as a class. That class includes those persons whose entitlement to vote on the election of the *independent directors* arises as a result of their holding of *certificates representing shares* that have been admitted to *premium listing*. Accordingly, in the case of approval by the *independent shareholders* referred to in *LR 21.8.22R(2)* the *listed company* is required under *LR 21.8.13R* to ensure that the holders of the *listed certificates representing shares* are able to exercise the votes attaching to the *equity shares* which the certificates represent in relation to any such approval.

- 21.8.24 G Where the provisions of *LR 5.2.5R(2A)* or *LR 5.4A.4R(3)(e)(ii)* require that the resolution must in addition be approved by holders of certificates other



than the *controlling shareholder*, the *controlling shareholder* will include a *sovereign controlling shareholder*.

- 21.8.25 G The *FCA* may modify the operation of *LR 21.8.22R* 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.
- 21.8.26 G Where a *listed company* is unable to comply with a continuing obligation set out in:
- (1) *LR 9.2* as modified by *LR 21.8*; or
  - (2) *LR 21.8.13R* to *LR 21.8.25G*,
- it should consider seeking a cancellation of *listing* or applying for a transfer of its *listing* category. In particular, the *listed company* should note *LR 5.2.2G(2)* and *LR 5.4A.16G*.

Additional requirements: working capital statement

- 21.8.27 R In relation to an application for *admission* of *certificates representing shares* of an *applicant* that has *certificates representing shares* already listed:
- (1) 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 *certificates representing shares* that are being admitted; and
  - (2) if the *prospectus* or *listing particulars* for the *certificates representing shares* that are being admitted does not include a working capital statement which demonstrates that the requirement under paragraph (1) is satisfied, then:
    - (a) an *applicant* must prepare and publish a working capital statement which demonstrates that the requirement under paragraph (1) is satisfied;
    - (b) the working capital statement required by paragraph (a) must be prepared in accordance with item 3.1 of Annex 3 of the *PD Regulation*; and
    - (c) the working capital statement required by paragraph (a) must be published at the same time as the *prospectus* or *listing particulars*, as applicable.

- 21.8.28 R A working capital statement published for the purposes of *LR 21.8.27R* must be published by means of a *RIS*.

Additional requirements: sovereign controlling shareholder

- 21.8.29 R A *listed company* must at all times have a *sovereign controlling shareholder*.
- 21.8.30 R To comply with *LR 21.8.29R*, a State which is a *sovereign controlling shareholder* must be either:
- (1) recognised by the government of the *UK* as a State; or
  - (2) the *UK*.
- 21.8.31 R A *listed company* must notify the *FCA* without delay if it no longer complies with the continuing obligation set out in *LR 21.8.29R*.
- 21.8.32 G Where a *listed company* is unable to comply with the continuing obligation set out in *LR 21.8.29R*, it should consider seeking a cancellation of *listing* or applying for a transfer of its *listing* category. In particular, the *listed company* should note *LR 5.2.2G(2)* and *LR 5.4A.17G*.

Change of depositary

- 21.8.33 R Prior to any change of the *depositary* of *certificates representing shares*, the new *depositary* must satisfy the *FCA* that it meets the requirements of *LR 21.6.22R* to *LR 21.6.26G*.

Notification of change of depositary

- 21.8.34 R
- (1) An *issuer* of *equity shares* represented by *listed certificates representing shares* must notify a *RIS* of any change of *depositary*.
  - (2) The notification required by paragraph (1) must be made as soon as possible and in any event by 7:30 a.m. on the *business day* following the change of *depositary*, and must contain the following information:
    - (a) the name, registered office and principal administrative establishment if different from the registered office of the *depositary*;
    - (b) the date of incorporation and length of life of the *depositary*, except where indefinite;
    - (c) the legislation under which the *depositary* operates and the legal form which it has adopted under the legislation; and
    - (d) any changes to the information regarding the *certificates representing shares*.

## Sponsors

- 21.8.35 G A *listed company* should consider the requirements in *LR 8.2* (When a sponsor must be appointed or its guidance obtained) and *LR 8.5* (Responsibilities of listed companies), subject to the modification to *LR 8.2.3R* in *LR 21.10.5R*.

**21.9 Transactions and circulars: certificates representing shares**Compliance with *LR 10* (Significant transactions: Premium listing)

- 21.9.1 R A *listed company* must comply with *LR 10* (Significant transactions: Premium listing) subject to the modifications and additional requirements set out in *LR 21.9.2G* to *LR 21.9.9R*.
- 21.9.2 G Where a *company* has *certificates representing shares listed*, the purpose of *LR 10* is also to ensure that holders of *certificates representing shares*:
- (1) are notified of certain transactions entered into by the *listed company*; and
  - (2) have the opportunity to vote on larger proposed transactions.
- 21.9.3 R For the purposes of *LR 21.9.1R*, references to the *listed company* or the *issuer* must be read as references to the *issuer* of the *equity shares* which the certificates represent in *LR 10*.
- 21.9.4 R For the purposes of *LR 21.9.1R*, in *LR 10.2.7R(1)(b)* the figure used to determine the market capitalisation of the *listed company* is calculated as follows:
- (1) where the *class* of *equity shares* which the certificates represent is listed, the aggregate market value of all the *equity shares* which are listed (excluding *treasury shares*); and
  - (2) where the *class* of *equity shares* which the certificates represent is not listed:
    - (a) by dividing the aggregate market value of all the *equity shares* which are represented by the certificates in issue by the number of *equity shares* represented by the certificates; and
    - (b) then multiplying the result by the total number of *equity shares* in the *class* of the *equity shares* which the certificates represent (excluding *treasury shares*).
- 21.9.5 G A *listed company* is required under *LR 21.8.13R(3)* to ensure that any *circular* which is sent to shareholders pursuant to *LR 10.5.1R(2)* or *LR 10.5.4R(1)(b)* is sent to holders of its *certificates representing shares* at the

same time as the *circular* is despatched to shareholders.

- 21.9.6 G For the purposes of obtaining the prior shareholder approval required by *LR* 10.5.1R, a *listed company* is required under *LR* 21.8.13R to ensure that the holders of its *certificates representing shares* are able to exercise the votes attaching to the *equity shares* which the certificates represent on any shareholder vote.
- 21.9.7 G For the purposes of *LR* 21.9.1R, in *LR* 10.5.5G it may also be necessary to adjourn a convened shareholder meeting if a supplementary *circular* cannot be sent to holders of *listed certificates representing shares* at least 7 days prior to the convened shareholder meeting as required by *LR* 13.1.9R.
- 21.9.8 R For the purposes of *LR* 21.9.1R, paragraph 5R(5) of Annex 1 to *LR* 10 (Significant transactions: Premium listing) does not apply and, for the purposes of paragraph 5R(1) of Annex 1, the figure used to determine market capitalisation is calculated as at the close of business on the last *business day* before the announcement as follows:
- (1) where the *class* of *equity shares* which the certificates represent is listed, the aggregate market value of all the *equity shares* which are listed (excluding *treasury shares*); and
  - (2) where the *class* of *equity shares* which the certificates represent is not listed:
    - (a) by dividing the aggregate market value of all the *equity shares* which are represented by the certificates in issue by the number of *equity shares* represented by the certificates; and
    - (b) then multiplying the result by the total number of *equity shares* in the *class* of the *equity shares* which the certificates represent (excluding *treasury shares*).
- 21.9.9 R For the purposes of *LR* 21.9.1R, in paragraphs 7R(4)(a) and 7R(5)(a) of Annex 1 to *LR* 10 the market value of the *listed company's shares* is to be calculated as follows:
- (1) where the *class* of *equity shares* which the certificates represent is listed, the aggregate market value of all the *equity shares* which are listed (excluding *treasury shares*); and
  - (2) where the *class* of *equity shares* which the certificates represent is not listed:
    - (a) by dividing the aggregate market value of all the *equity shares* which are represented by the certificates in issue by the number of *equity shares* represented by the certificates; and
    - (b) then multiplying the result by the total number of *equity shares* in the *class* of the *equity shares* which the certificates represent

(excluding *treasury shares*).

Compliance with LR 12 (Dealing in own securities and treasury shares: Premium listing)

- 21.9.10 R A *listed company* must comply with all the requirements of LR 12 (Dealing in own securities and treasury shares: Premium listing) subject to the modifications and additional requirements set out in LR 21.9.11R to LR 21.9.17G.
- 21.9.11 R For the purposes of LR 21.9.10R, in LR 12:
- (1) references to the *listed company* must be read as references to the *issuer* of the *equity shares* which the certificates represent; and
  - (2) the reference in the definition of *tender offer* to a *class* of its *listed equity securities* must be read as a reference to a *class* of *equity shares* which the certificates represent.
- 21.9.12 G In relation to the requirement set out in LR 12.3.1R(1), the *listed company* is required under LR 21.8.13R to ensure that, where the *tender offer* is made to holders of the *class* of *equity shares* which the certificates represent, the holders of its *certificates representing shares* have an equal opportunity to participate in the *tender offer*.
- 21.9.13 G Where a purchase by a *listed company* of its own *equity securities* or *preference shares* is to be made from a *related party* which is a *sovereign controlling shareholder* or an *associate* of a *sovereign controlling shareholder*, the *listed company* should note LR 12.3.2R.
- 21.9.14 G For the purposes of LR 21.9.10R, in relation to the requirement set out in LR 12.4.2R (for purchases by the *listed company* of 15% or more of any *class* of its *equity shares* to be by way of a *tender offer* to all shareholders of that *class*), the *listed company* is required under LR 21.8.13R to ensure that, where the *tender offer* is made to holders of the *class* of *equity shares* which the certificates represent, the holders of its *certificates representing shares* have an equal opportunity to participate in the *tender offer*.
- 21.9.15 G For the purposes of obtaining the shareholder approval required by LR 12.4.2AR, a *listed company* is required under LR 21.8.13R to ensure that the holders of its *certificates representing shares* are able to exercise the votes attaching to the *equity shares* which the certificates represent on any shareholder vote.
- 21.9.16 R For the purposes of LR 21.9.10R, references to *securities* convertible into *equity shares* with a *premium listing* must be read as references to *securities* convertible into the *equity shares* which the certificates with a *premium listing* represent in the following:
- (1) LR 12.5.1R; and

(2) *LR 12.5.2R.*

- 21.9.17 G *A listed company* is required under *LR 21.8.13R(3)* to ensure that any *circular* which is sent to shareholders pursuant to *LR 12.5.7R* is sent to holders of its *certificates representing shares* at the same time as the *circular* is despatched to shareholders.

Compliance with *LR 13* (Contents of circulars: Premium listing)

- 21.9.18 R *A listed company* must comply with all the requirements of *LR 13* (Contents of circulars: Premium listing) subject to the modifications and additional requirements set out in *LR 21.9.19R* to *LR 21.9.22R*.
- 21.9.19 R For the purposes of *LR 21.9.18R*, in *LR 13* references to the *listed company* or to the *issuer* must be read as references to the *issuer* of the *equity shares* which the certificates represent.
- 21.9.20 R *A listed company* must ensure that *circulars* it issues to:
- (1) holders of its *listed certificates representing shares*; and
  - (2) holders of the *class* of *equity shares* which the certificates represent,
- comply with the requirements of *LR 13* as amended by this section.
- 21.9.21 R For the purposes of *LR 21.9.18R*, references to holders of *listed equity shares* must be read as references to holders of *listed certificates representing shares* and holders of the *class* of *equity shares* which the certificates represent in the following:
- (1) *LR 13.1.9R*;
  - (2) *LR 13.2.10R*; and
  - (3) *LR 13.8.8R*.
- 21.9.22 R For the purposes of *LR 21.9.18R*, in *LR 13.8.18R* references to *controlling shareholder* must be read as excluding a *sovereign controlling shareholder*.

**21.10 Transactions with related parties: certificates representing shares**

Transactions with related parties

- 21.10.1 R *A listed company* must comply with *LR 11* (Related party transactions: Premium listing) subject to the modifications and additional requirements in *LR 21.10.2R* to *LR 21.10.8G*.
- 21.10.2 R For the purposes of *LR 21.10.1R*:
- (1) in *LR 11* references to a *listed company* must be read as references to the *issuer* of the *equity shares* which the certificates represent; and

- (2) in *LR 11.1.4AR* the reference to the *company* must be read as a reference to the *issuer of the equity shares* which the certificates represent.
- 21.10.3 G For the purposes of *LR 21.10.1R*, a *listed company* that is required under *LR 11.1.7CR* to send a supplementary *circular* should have regard to the *guidance* in *LR 21.9.5G*.
- 21.10.4 R In the case of a *related party* which is a *sovereign controlling shareholder* or an *associate* of a *sovereign controlling shareholder*:
- (1) the following provisions do not apply:
- (a) *LR 11.1.1AR* to *LR 11.1.1ER*;
  - (b) *LR 11.1.7R(2)* to *LR 11.1.7R(4)*;
  - (c) *LR 11.1.7CR* and *LR 11.1.8G*;
  - (d) *LR 11.1.10R(2)(b)*; and
  - (e) *LR 11.1.11R(3)(a)*;
- (2) the following provisions are modified as follows:
- (a) *LR 11.1.7AR* must be read as if the words “after obtaining shareholder approval but” are omitted;
  - (b) *LR 11.1.9G* must be read as follows:
    - (i) the reference to *LR 11.1.7R* must be read as a reference to *LR 11.1.7R* as modified by *LR 21.10.4R(1)*; and
    - (ii) as if the words “and *LR 11.1.8G*” are omitted;
  - (c) *LR 11.1.11R(1)* must be read as if the words “and the transactions or arrangements have not been approved by shareholders” are replaced by “and *LR 11.1.11R(2)* as modified by *LR 21.10.4R(2)(d)* has not been complied with in relation to these transactions or arrangements”; and
  - (d) *LR 11.1.11R(2)* must be read as follows:
    - (i) as if the first sentence is omitted and replaced by the following sentence “If any *percentage ratio* is 5% or more for the aggregated transactions or arrangements, the *listed company* must comply with *LR 11.1.7R* as modified by *LR 21.10.4R(1)* in respect of the latest transaction or arrangement, and details of each of the transactions or arrangements being aggregated must be included in the notification required by *LR 11.1.7R(1)*.”;

and

(ii) as if the “Note” is omitted.

21.10.5 R The requirement in *LR 8.2.3R* to obtain the guidance of a sponsor does not apply where a *listed company* is proposing to enter into a transaction which is, or may be, a *related party transaction* and the *related party* concerned is a *sovereign controlling shareholder* or an associate of a *sovereign controlling shareholder*, unless the *related party transaction* is, or may be, a purchase by the *listed company* of its own *equity securities* or *preference shares*.

21.10.6 G Where a purchase by a *listed company* of its own *equity securities* or *preference shares* is to be made from a *related party* which is a *sovereign controlling shareholder* or an *associate* of a *sovereign controlling shareholder*, the *listed company* should note *LR 12.3.2R*.

Additional requirements

21.10.7 G A *listed company* is required under *LR 21.8.13R(3)* to ensure that any *circular* which is sent to shareholders pursuant to *LR 11.1.7R(2)* or *LR 11.1.8G(2)* is sent to holders of its *certificates representing shares* at the same time as the *circular* is despatched to shareholders.

21.10.8 G For the purposes of obtaining the shareholder approval required by *LR 11.1.7R(3)* (and any shareholder approval required under *LR 11.1.7AR*), a *listed company* is required under *LR 21.8.13R* to ensure that the holders of its *certificates representing shares* are able to exercise the votes attaching to the *equity shares* which the certificates represent on any shareholder vote.

...

Insert the following new definitions in the appropriate alphabetical position and amend the existing definitions as shown.

**Appendix 1 Relevant definitions**

**App 1.1 Relevant definitions**

1.1.1 ...

...

<p><i>premium listing</i></p>	<p>(a)</p>	<p>in relation to <i>equity shares</i> (other than those of a <i>closed-ended investment fund</i> or of an <i>open-ended investment company</i> <u>or of a <i>sovereign controlled commercial company</i> that is required to comply with the requirements in <i>LR 21</i></u>), means a <i>listing</i> where the <i>issuer</i> is</p>
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		required to comply with those requirements in <i>LR 6</i> (Additional requirements for premium listing (commercial company)) and the other requirements in the <i>listing rules</i> that are expressed to apply to such <i>securities</i> with a <i>premium listing</i> ;
	...	
	(c)	in relation to <i>equity shares</i> of an <i>open-ended investment company</i> , means a <i>listing</i> where the <i>issuer</i> is required to comply with <i>LR 16</i> (Open-ended investment companies: Premium listing) and other requirements in the <i>listing rules</i> that are expressed to apply to such <i>securities</i> with a <i>premium listing</i> ;
	(d)	<u>in relation to <i>equity shares</i> of a <i>sovereign controlled commercial company</i>, means a <i>listing</i> where the <i>issuer</i> is required to comply with the requirements in <i>LR 21</i> (Sovereign controlled commercial companies: Premium listing) and other requirements in the <i>listing rules</i> that are expressed to apply to such <i>securities</i> with a <i>premium listing</i>; and</u>
	(e)	<u>in relation to <i>certificates representing shares</i> of a <i>sovereign controlled commercial company</i>, means a <i>listing</i> where the <i>issuer</i> is required to comply with the requirements in <i>LR 21</i> (Sovereign controlled commercial companies: Premium listing) and other requirements in the <i>listing rules</i> that are expressed to apply to such <i>securities</i> with a <i>premium listing</i>.</u>
	...	
<i>premium listing</i> (commercial company)		a <i>premium listing</i> of <i>equity shares</i> (other than those of a <i>closed-ended investment fund</i> or of an <i>open-ended investment company</i> <u>or of a <i>sovereign controlled commercial company</i> that is required to comply with the requirements in <i>LR 21</i></u> ).
<i>premium listing</i> (sovereign controlled commercial company)	a <i>premium listing</i> of:	
	(a)	<u><i>equity shares</i> (other than those of a <i>closed-ended investment fund</i> or of an <i>open-ended investment company</i>); or</u>
	(b)	<u><i>certificates representing shares</i>.</u>
		<u>where the <i>issuer</i> of the <i>equity shares</i> or, in the case of <i>certificates representing shares</i>, the <i>issuer</i> of the <i>equity shares</i> which the <i>certificates</i> represent is a <i>sovereign controlled commercial company</i> and is required to comply with the requirements in <i>LR 21</i> and other requirements in the <i>listing rules</i> that are expressed to apply to <i>securities</i> in this category.</u>
	...	
<i>sovereign controlled</i>		<u>an <i>issuer</i> in which a <i>State</i> exercises or controls 30% or more of the votes able to be cast on all or substantially all matters at general meetings of that</u>

<u>commercial company</u>	<u>company.</u>
<u>sovereign controlling shareholder</u>	<u>(in relation to a company with or applying for a listing of equity shares or certificates representing shares in the category of premium listing (sovereign controlled commercial company)) a State which exercises or controls 30% or more of the votes able to be cast on all or substantially all matters at general meetings of the company.</u>
<u>State</u>	<u>means:</u>
	<u>(a) the sovereign or other head of a State in their public capacity;</u>
	<u>(b) the government of a State;</u>
	<u>(c) a department of a State; or</u>
	<u>(d) an agency or a special purpose vehicle of a State, including an agency or special purpose vehicle of (a), (b) or (c).</u>

