

# **Proposal to create a new premium listing category for sovereign controlled companies**

**Consultation Paper**

CP17/21\*\*

July 2017

## How to respond

We are asking for comments on this Consultation Paper (CP) by 13 October 2017.

You can send them to us using the form on our website at: [www.fca.org.uk/cp17-21-response-form](http://www.fca.org.uk/cp17-21-response-form).

**Or in writing to:**

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Financial Conduct Authority  
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Canary Wharf London E14 5HS

**Telephone:**

020 7066 6698

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**How to navigate this document onscreen**

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takes you to helpful abbreviations

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# 1 Summary

## Why we are consulting

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- 1.1** We are consulting on a targeted proposal to make the listing regime work better for companies controlled by a shareholder that is a sovereign country. We think this will provide a route that will result in a greater number of companies exceeding the basic obligations of our standard listing regime while ensuring that the high standards of the existing premium listing regime are retained for all companies within the existing premium listing categories.

## Who this applies to

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

## The wider context of this consultation

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- 1.3** In Chapter 2 we explain that in February this year we published our discussion paper DP17/2 'Review of the Effectiveness of Primary Markets: The UK Primary Markets Landscape'. The DP discussed the role of listed primary markets as an important component of the broader capital markets landscape, and the structure of the UK listing regime in supporting that role. One of the issues we asked for views on was the broad question of whether our existing listing arrangements might be improved for international companies, and if so how. We are continuing to analyse feedback to the DP and considering how best to take forward this wider policy project.

## What we want to change

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- 1.4** We propose to amend the listing regime to include a new premium listing category. Currently premium listing is sub-divided into three categories.<sup>1</sup> We propose adding another. This new category will be available to commercial companies controlled

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<sup>1</sup> They are: premium listing (commercial company), premium listing (closed-ended investment fund) and premium listing (open-ended investment companies).



by a shareholder that is a sovereign country. The investor protections common to the current premium listing (commercial company) category will apply save that the following will be disapplied for sovereign controlling shareholders:

- the related party rules
- the controlling shareholder rules

**1.5** We also propose that, in addition to equity shares, the new listing category will be open to commercial companies who instead want their listing of the interests in their equity to be in the form of Depositary Receipts (DRs).<sup>2</sup>

**1.6** In Chapter 3 we explain in greater detail why we are electing to bring forward at this stage this targeted proposal for reform of the categories of premium listing. We outline the reasons why we are proposing to disapply the controlling shareholder and related party transaction rules in the specific circumstances of a sovereign controlling shareholder and to extend eligibility for this category to depositary receipts.

## The outcome we aim to deliver

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**1.7** We want to ensure that the UK's investment markets work well and that the regulatory protections for investors at the core of the listing regime are well targeted. These protections should apply where they are required to uphold the integrity of UK capital markets and protect their users. Refining the listing regime in the way we propose would make UK markets more accessible to sovereign controlled companies, while ensuring that protections remain in place where they are valued by investors.

## Next steps

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**1.8** We welcome your views on the questions and proposals put forward in this paper. Please send your responses to us by 13 October 2017.

**1.9** Use the online response form on our website or write to us at the address on page 2.

**1.10** We will consider your feedback and publish our rules in a Policy Statement towards the end of the year. At the same time we will continue to progress our Review of the Effectiveness of UK Primary Markets and, should we choose to advance any other specific policy proposals as a result of the DP17/2, we will issue a further consultation paper.

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<sup>2</sup> We use the description DR in this consultation paper. The technical term employed within the Listing Rules for instruments of this type is 'Certificates representing certain securities'. In the context of the proposals in this CP the technical reference is to 'Certificates representing shares'.

## 2 The wider context

### Overview

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- 2.1** In February this year we launched our discussion paper DP17/2, 'Review of the Effectiveness of Primary Markets: The UK Primary Markets Landscape'.<sup>3</sup> It discussed the role of listed primary markets in the broader capital markets landscape, and the structure of the UK listing regime that supports this role.
- 2.2** The DP looked at the role the UK listing regime could play in supporting the growth of science and technology companies, improving debt capital markets and how it might address the needs of international companies that want to list in the UK. The paper was published together with CP17/4, 'Review of the Effectiveness of Primary Markets: Enhancements to the Listing Regime'<sup>4</sup>, a consultation on proposed targeted improvements to the listing regime identified during discussions with stakeholders when preparing the discussion paper.
- 2.3** We have received responses from a wide range of parties. We will continue the review we started with DP17/2 and we will summarise, in one or more documents, stakeholder feedback together with further detail about any proposed reforms. We also intend to publish a policy statement on CP17/4.
- 2.4** We had mixed responses to our question in DP17/2 about a distinct international segment. A number of negative responses were received on specific points. We noted these areas of concern from respondents and therefore at this stage we are bringing forward a more targeted proposal which we believe would make the listing regime work better for companies of a defined type, those with a substantial level of ownership by a sovereign country, while ensuring the standards of the regime remain high.
- 2.5** This consultation paper therefore sets out proposals to develop the UK listing regime so that it better addresses the circumstances of companies controlled by sovereign countries.

### Summary of our proposals

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- 2.6** In this paper we set out proposals to amend the listing regime to include a new premium listing category. There are currently three categories within premium listing. This new category will address commercial companies controlled by a shareholder that is a sovereign country. It would include all the investor protections that apply to companies in the existing premium listing (commercial companies) category of the UK listing regime, apart from several modifications we consider appropriate for sovereign controlled companies. As with the premium listing (commercial companies) category, the new category would have the following key investor protections:

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<sup>3</sup> <https://www.fca.org.uk/publication/discussion/dp17-02.pdf>

<sup>4</sup> <https://www.fca.org.uk/publication/consultation/cp17-04.pdf>



- a requirement for a new applicant to have an audited three year revenue earning track record
- a requirement that the company's application is supported by a sponsor firm, and that the company continues to consult with a sponsor on the application of certain continuing obligations under the Listing Rules
- a requirement that the working capital statement is not qualified
- the requirement for a new applicant to demonstrate that it will be carrying on an independent business as its main activity, and that it has strategic control over its business
- related party rules governing transactions between the listed company and directors, substantial shareholders or their associates
- rules governing significant transactions (e.g. shareholder approval will continue to be required for class 1 transactions including in relation to transactions with the sovereign controlling shareholder) and the buying back of shares
- controlling shareholder provisions in respect of such shareholders that are not the sovereign controlling shareholder

**2.7** We also have a general power under s75(5) of the Financial Services and Markets Act 2000 (FSMA) to refuse an application for listing if, for a reason relating to the issuer, we consider that granting it would be detrimental to the interests of investors.

**2.8** However, we propose two important modifications:

- the related party rules will be modified for companies in this new category: a sovereign controlling shareholder will not be considered a related party for the purposes of the Listing Rules
- The controlling shareholder rules will not apply to companies in the new category in respect of the sovereign controlling shareholder.

**2.9** The related party and controlling shareholder rules would continue to apply in full to existing listed companies in the premium listing (commercial companies) category. The few existing listed companies in this category that would be eligible for the new category would be entitled to apply to transfer their listing to take advantage of these new rules. However, a vote of independent shareholders would be required in order to do so. By this we mean the sovereign controlling shareholder (and any other controlling shareholders) would not be permitted to participate in the vote.

**2.10** We also propose that, for the first time, premium listing in this new category will be available to companies who want the listing of interests in their equity to be in the form of depositary receipts (DRs). The new category will provide the basis on which this can happen. New provisions are included which, in essence, aim to ensure the rights (and in some cases obligations) attaching to the underlying class of equity share must 'pass through' to the DR holders. For example, whilst a vote required on a significant transaction under LR10 will be carried out at the level of the underlying class of equity share, the voting rights must pass through to DR holders so that they would be able to exercise those rights as if they were holders of the underlying shares. The issuer of the

underlying shares will be treated as the issuer of the securities for the purposes of the Listing Rules.

- 2.11** Creating this new category would provide an appropriate regime within premium listing to meet the requirements of commercial entities that are sovereign controlled and would be of likely interest to cross-border investors. We believe that this type of issuer could be discouraged from listing in the premium listing category without our proposed changes and also that there is enough interest for premium listing from this type of applicant to justify the change. Aside from the eligibility of DR issuers, the two principal points of difference between the new category and the existing premium listing (commercial companies) category relate to important areas of investor protection. However, we think investors should be able to assess how the relationship with the sovereign state and its government will influence a sovereign controlled company's prospects. The wider regime of disclosure and transparency requirements that will apply provides the appropriate level of disclosure to ensure investors can make that assessment.
- 2.12** Regulatory protections for investors lie at the core of the listing regime. However, it is important that these protections remain well-targeted, and imposed only where needed to uphold the integrity of UK capital markets and protect their users. Refining the listing regime in the way we propose would make UK markets more accessible to sovereign controlled companies while ensuring that relevant protections remain in place where they are valued by investors. Currently, issuers that do not want or are unable to meet all the requirements of premium listing can apply for standard listing. The new category provides sovereign controlled commercial companies that cannot or do not wish to satisfy the rules in respect of controlling shareholders and related party transactions as they would relate to the sovereign controlling shareholder, but wish to demonstrate that they meet the other premium listing requirements, the opportunity to do so without forgoing access to the premium segment. We think that encouraging companies to satisfy the other elements of the premium listing regime will benefit investors. We therefore consider that our proposals will ensure that the protections of our premium listing regime are well-targeted and proportionate and so will advance our consumer protection and market integrity objectives.
- 2.13** We are setting out the proposed changes to the Listing Rules in the draft instrument in Appendix 1. The draft instrument is based on the Listing Rules as they are proposed to be amended by the draft instrument set out in CP17/4 – Review of the Effectiveness of Primary Markets: Enhancements to the Listing Regime.

## How our proposals meet our objectives

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- 2.14** These proposals are compatible with the FCA's strategic objective of ensuring that the relevant markets function well.<sup>5</sup> They address the gap in the market in respect of companies with characteristics of the type that will determine eligibility for the proposed new listing category.

### Market integrity

- 2.15** Our proposals advance our operational objective of protecting and enhancing the integrity of the UK financial system by consulting on a targeted proposal to make

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<sup>5</sup> For the purposes of this strategic objective, 'relevant markets' are defined by s. 1F FSMA



the listing regime work better for companies controlled by a shareholder that is a sovereign country. They address the gap in the market in respect of companies with characteristics of the type that will determine eligibility for the proposed new listing category. We think this will provide a route that will result in a greater number of companies exceeding the basic obligations of our standard listing regime while ensuring that the high standards of the existing premium listing regime are retained for all companies within the existing premium listing categories.

### **Consumer protection**

- 2.16** Our proposals also advance our operational objective of securing an appropriate degree of protection for consumers by ensuring this is well-targeted. This paper also builds upon DP17/2's 'Review of the Effectiveness of UK Primary Markets'. As with that paper, this consultation paper will be of interest to consumers who deal and invest in UK-listed securities.

### **Equality and diversity considerations**

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- 2.17** We have considered the potential equality and diversity issues of the proposals in this Consultation Paper.
- 2.18** Overall, we do not consider that the proposals in this CP adversely impact any of the groups with protected characteristics i.e. age, disability, sex, marriage or civil partnership, pregnancy and maternity, race, religion and belief, sexual orientation and gender reassignment.
- 2.19** We will continue to consider the equality and diversity implications of the proposals during the consultation period, and will revisit them when publishing the final rules.
- 2.20** In the interim, we welcome any input to this consultation on these issues.



## 3 Our proposed new premium listing category for sovereign controlled companies

- 3.1** In DP17/2 we discussed, among other things, how the listing regime caters for large overseas companies. The responses we received about a distinct international segment in DP17/2 highlight a diversity of opinion among interested parties. Areas of stakeholder concern included the need to maintain standards in premium listing and avoid introducing lower standards of regulation on the grounds of nationality.
- 3.2** At this stage we are bringing forward a more targeted proposal which we think would make the listing regime work better for a particular type of companies, while ensuring the standards of the regime remain high. We are, accordingly, proposing a new premium listing category designed to cater for companies controlled by a shareholder that is a sovereign country. Box 1 explains further what a listing category is.

### Box 1: Listing categories explained

The listing regime is divided into premium and standard listing. These segments are then further sub-divided into individual categories. As DP17/2 explains, there are currently three premium listing categories and five standard listing categories.

The requirements for the five standard listing categories stem broadly from the applicable framework of EU directives. They are consistent with regulatory frameworks for listed securities across the EU.

The premium listing categories build on those requirements by adding certain 'super-equivalent' rules. These require issuers to meet additional conditions and, in the case of admission criteria, a greater degree of business maturity.

The main premium listing category for commercial companies is called 'Premium listing (Commercial Companies)'. Its requirements include being able to demonstrate that the company carries on an independent business, has a three-year revenue earning track record, sufficient working capital and unqualified financial statements.

The individual categories set out specific requirements for different company or security types. Each category is essentially a separate set of obligations that apply to an issuer of securities as a result of the security being listed. Investors and issuers know which obligations apply to the issuer's listing because the relevant category is shown against the particular entry on the Official List.

In certain circumstances, issuers can apply to the FCA to have their listing re-categorised. As a result, their obligations under the Listing Rules will change. We will allow a re-categorisation as long as the issuer's securities are eligible for inclusion in the new category and they comply with the processes required by the relevant listing rules.



## Why address sovereign controlled companies now?

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- 3.3** We think this type of company is sufficiently distinctive to justify a modified set of arrangements within the listing regime. Over the past decade we have given careful consideration to the appropriate treatment of companies with controlling shareholders within the premium listing regime. We have introduced Handbook provisions to address the circumstances of listing of companies with controlling shareholders. We believe that we arrived at a set of arrangements that commands broad support from stakeholders. However, this did not specifically address the potential impact on companies that are sovereign controlled or on the sovereign controlling shareholders.
- 3.4** Sovereign owners tend to be different from private sector individuals or entities in both their motivations and their nature, i.e. in terms of their structure and the extent of their activities. Sovereign states may own enterprises for historic reasons, among others, for example, as a result of government bailouts or 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 a statutory nature. Additionally, a sovereign state's interests may be pursued through many entities and across a broad range of activities.
- 3.5** The current listing regime does not, in some respects, easily accommodate issuers with sovereign controlling shareholders, because of the different nature of a sovereign owner as opposed to private sector individuals or entities. Although the group of sovereign controlled commercial companies is not likely to be large numerically, their likely market value, for example arising from major privatisation transactions, is large enough to justify creating a new regime category.
- 3.6** We are therefore proposing a targeted set of changes to the regime. We are bringing these forward ahead of other possible proposals from our review of the effectiveness of the listing regime. We are doing so because we think it is clear there is a gap in the market in this area and because there are benefits in consulting on these changes promptly, to ensure that our regulatory framework has well targeted provisions and provides appropriate choices for those seeking a listing for their equity.
- 3.7** We believe that investors and the market are sufficiently able to assess the additional risks arising from sovereign ownership. Those making decisions to invest in the securities of sovereign controlled issuers will wish to do so taking into account the nature of the sovereign owner. By introducing a separate premium listing category we will ensure investors are able to differentiate those companies listed in this category and subject therefore to slightly different rules from other premium listed issuers.

## Overview of the proposed new premium listing category

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- 3.8** Our proposed new premium listing category will be based on the existing premium listing (commercial companies) category. It will include the full suite of investor protection that applies there, apart from two modifications we consider appropriate for companies eligible for the new category. This suite of investor protections includes our general power as competent authority for listing under s75(5) of FSMA to refuse an application for listing if we consider that granting it would be detrimental to the interests of investors. This would be for a reason relating to the issuer. This power

provides an important protection enabling the authority to refuse a listing in order to protect investors in appropriate cases.

- 3.9** The two important proposed modifications, which are explained in greater detail below, are:
- the related party rules will operate on a modified basis: the sovereign controlling shareholder will not be considered a related party for the purposes of the UK Listing Rules
  - the controlling shareholder rules will not apply to companies in the new category in respect of the sovereign controlling shareholder
- 3.10** We propose an appropriate definition of a “State” for the purpose of identifying which companies have shareholders that provide eligibility for the proposed new category. The State which is the sovereign controlling shareholder must be recognised by the UK government as a state at the time the application is made.
- 3.11** In essence, when assessing eligibility for this new category we will look at the substantive control being exercised by the State on a case by case basis. We are unlikely to agree that a passive stake held by a sovereign wealth fund would demonstrate substantive control by the State. However, we would assess the question of control on the facts specific to an application at the time it is made.
- 3.12** We also propose that, for the first time, premium listing will also be open to companies who wish to list depositary receipts over their equity shares. The new category will set out a basis on which this can happen.
- 3.13** We propose that all companies listed in the new category will have to comply in full with DTR4 (periodic financial reporting), DTR5 (vote holder and issuer notification rules) and DTR 6 (continuing obligations and access to information). We also propose that all companies in the new category will have to comply with DTR 7.2 (corporate governance statement) and with the existing requirements under LR 9.8.6 R (5) and (6) which require them to report on their application of the principles and relevant provisions of the UK Corporate Governance Code.<sup>6</sup> For the avoidance of doubt, the requirements around disclosure of inside information under Article 17 of the Market Abuse Regulation will apply to companies in the new category. In relation to a listing of DRs, the issuer of the underlying equity shares will be subject to these requirements.
- 3.14** The fact that this proposal would be implemented by creating a new listing category is important. The current protections of investors in companies that are already listed will therefore not change unless the company transfers to a different listing category. It means the new rules would only apply to companies that apply for and are granted a listing in the new category, having met the applicable criteria.
- 3.15** As we explain in detail below, we propose that the criteria for the new category be more tightly drawn than for the existing premium (commercial companies) category. This means very few of these companies will be eligible for the new category. However, companies with existing listings under other categories that do meet the new category criteria would be able to apply to us to have their listing transferred into the

<sup>6</sup> The Financial Reporting Council (FRC) is responsible for the content of the UK Corporate Governance Code and announced in February 2017 a review of the Code and its intention to consult on its proposals later in 2017.



new category. In the case of a move from the existing premium listing (commercial companies) category, this would be conditional on the company getting the approval of their independent shareholders. We think this is an important protection that will ensure that the existing protections of independent shareholders under the Listing Rules only change with their consent.

**3.16** In developing these proposals we decided it was appropriate to create a new category with tailored requirements. We have chosen not to modify the related party rules, controlling shareholder rules and provisions relating to depositary receipts (DRs) in the regime in a way that mean the modifications would apply more generally to companies in the premium (commercial companies) category. We are not currently persuaded that a more widely available concession would have the full support of users of the listing regime. However, we welcome stakeholders' views on whether that would be a better way of effecting the changes.

**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?**

### Key elements of the proposed new listing category

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**3.17** We explain the key elements of the proposed new listing category that would differ from the current premium listing requirements in greater detail below. In summary, they are:

- Admission criteria that are designed to define the population of companies eligible for admission to the new category. The criteria would also set out the conditions these companies must comply with in order to be listed in the new category.
- Changes to the application of the related party rules.
- Companies in the new category will not be subject, in respect of the sovereign controlling shareholder, to the controlling shareholder rules applicable in the premium listing (commercial companies) category.
- DRs over equity shares as well as equity shares will be eligible to be listed in the new category, and
- There will be provisions governing the transfer of companies in and out of the category.

**3.18** We provide a draft instrument which sets out the proposed changes to the Handbook in Annex 1.

#### Eligibility criteria

**3.19** As this is to be a premium listing category, companies seeking admission will have to comply with a suite of 'super-equivalent' requirements, as well as all of the directive-

minimum requirements<sup>7</sup> set out in LR2. As we have explained, the new category will have most of the features of the existing premium listing (commercial companies) category with a small number of differences.

### **Control threshold**

**3.20** An important aspect of the new category is the key definition 'sovereign controlled commercial company'. We are proposing to restrict eligibility for the new category to companies with a shareholder that is a sovereign country which controls 30% or more of the voting rights of the company. For a listing of DRs, the 30% figure is calculated on the basis of voting rights attaching to underlying equity shares. The State which is the sovereign controlling shareholder must be recognised by the UK government as a state at the time the application is made.

**3.21** In proposing this important threshold is set at 30% are aligning the concept of control largely with the existing definition of 'controlling shareholder' under the LR6<sup>8</sup> provisions. Among other things, this definition imposes a 'bright line' threshold of control of at least 30% of the voting rights in the premium listed company. It is also the threshold that the Takeover Panel uses for its obligation on parties buying shares that will raise their holding to or above 30% to make a Rule 9 mandatory offer.<sup>9</sup> However, there may be a case for specifying the eligibility criterion for admission to this category at a higher level, perhaps most obviously so that it applies only above the 50% level, which for example under Takeover Code criteria provides the substantive bright line for demonstrating control, and we would appreciate views on this alternative course of action.

**3.22** Eligibility for a listing of DRs would require that the DR holders can exercise the votes attaching to their underlying equity in the company. This upholds our listing rule requirements that premium listing is not available for equity securities that do not confer full voting rights.

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

### **Nationality issues**

**3.23** We have also considered carefully whether, and if so how, we should restrict eligibility for the new category based on the jurisdiction where the company is incorporated or the national identity of the sovereign controlling shareholder. We have identified the new category as being particularly useful for overseas companies seeking to list cross-border. We do not see the new category as being of evident value for UK companies. However, we also do not see a principled case for restricting eligibility to those companies whose sovereign controlling shareholder is an overseas state and so we do not propose this.

**3.24** In practice, a sovereign controlled company would be likely to be incorporated in that sovereign's jurisdiction. However, distinguishing by country of incorporation does raise other more complex issues. Where companies incorporated in the sovereign's jurisdiction do not adhere in full to national governance and regulatory standards

<sup>7</sup> The Consolidated Admissions and Reporting Directive No. 2001/34/EC contains relevant provisions in this regard.

<sup>8</sup> LR 6.1.2A R 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."

<sup>9</sup> The Panel on Takeovers and Mergers: The Takeover Code  
<http://www.thetakeoverpanel.org.uk/wp-content/uploads/2008/11/code.pdf>



this may raise concerns, particularly for domestic investors. For UK-incorporated companies the consequent focus would then be on the views of UK investors. In principle, though, the case for not restricting eligibility to non-UK incorporated companies is much the same as the case for avoiding distinguishing on grounds of national identity of the controlling shareholder. As a result, our proposals do not restrict eligibility based on country of incorporation.

**3.25** Nationality issues are relevant also in the context of index inclusion such as the FTSE UK series. The FTSE indices are owned and operated by FTSE International Ltd and are not the responsibility of the FCA. Under FTSE rules, companies must be included in the premium list in order to be included in the FTSE UK index series. However, an issuer in the proposed new premium listing category would also have to satisfy other criteria, including nationality criteria. Issuers that are neither incorporated, nor have their primary listing, in the UK would not be eligible under the rules set out by FTSE. This means that premium listing would not be expected to lead to inclusion in the UK series for most companies of the type that might wish to list in the proposed category under FTSE's current rules.

**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?**

#### ***Protections for investors***

**3.26** For the purposes of assessing eligibility for premium listing under the new category, the sovereign controlling shareholder will not be deemed to be a 'controlling shareholder' as defined by the Listing Rules, meaning the controlling shareholder rules will not apply.

**3.27** However, all other LR6 eligibility requirements will continue to apply to the applicant. This includes, but is not limited to, the requirement to have an audited three year revenue earning track record, which is representative of the applicant's business, and an unqualified working capital statement.

**3.28** The requirement that the applicant can demonstrate that it will be carrying on an independent business as its main activity will continue to be a key consideration when determining whether an applicant is eligible for the proposed listing category. This requirement applies whether or not the applicant has a controlling shareholder. The proposed redrafting of LR6 as set out in CP17/4 – Review of the Effectiveness of Primary Markets: Enhancements to the Listing Regime sets out the corresponding proposed rules and guidance in LR6.4 (Independent business) and LR6.5 (Controlling shareholders).

**3.29** As discussed in more detail below, we are proposing that, for companies listed in the new category, the controlling shareholder provisions will not apply in respect of the sovereign controlling shareholder and therefore the provisions in LR6.5 would not apply. However, we have specifically included guidance in the draft instrument for the new listing rule chapter clarifying that, in addition to the factors listed in the proposed guidance in LR6.4.3G, the granting of, or the requirement to grant, security over its business in connection with the funding of the sovereign controlling shareholder is a factor which may indicate an applicant does not carry on an independent business. Whilst this guidance is currently set out in the proposed LR6.5.3G, we are proposing

to include it in the guidance relevant for the proposed LR6.4.1R, as it is nonetheless a factor which we would consider when assessing if an applicant for this new category carries on an independent business. It should be noted that in any case the factors set out in the guidance in LR6.4.3G are non-exhaustive and we may take other factors into consideration when determining whether an applicant is carrying on an independent business as its main activity.

- 3.30** Finally, as we note above, our proposals provide that any application by an existing premium listed company that meets the definition of a sovereign controlled company to transfer to the proposed new listing category would be subject to the approval by a vote of the independent shareholders.

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

**Modified related party rules**

- 3.31** The related party rules<sup>10</sup> are an important shareholder protection within the premium listing regime. In particular, they provide for the scrutiny and approval by independent shareholders of transactions and arrangements between listed companies and their 'related parties' (their directors and substantial shareholders, or associates of directors and substantial shareholders). Under the related party rules, a listed company proposing to enter into a related party transaction must obtain prior approval for the transaction through a vote of independent shareholders. That approval is obtained on the basis of information set out in a shareholder circular explaining the transaction to shareholders and includes an opinion from the board, supported by a sponsor firm, that the terms of the transaction are 'fair and reasonable' so far as the shareholders are concerned.
- 3.32** The related party rules provide a number of exemptions for different transactions and arrangements, including exemptions based on the size of the transaction and its type. They also provide for modified requirements for what are classified as 'smaller related party transactions' in the Listing Rules. Currently, under these modified requirements, no prior shareholder approval is required and instead the company obtains a 'fair and reasonable' opinion from its sponsor, and makes an announcement giving details of the transaction. The related party rules are not applicable to companies in the standard listing segment.
- 3.33** Our proposed modification is that, for companies in the new category of the listing regime, the sovereign controlling shareholder would not be considered a related party for the purposes of the UK listing regime. This means none of the related party rules will apply to transactions between the listed company and the sovereign controlling shareholder and/or its associates (as defined by the Listing Rules). All other aspects of the related party rules would remain in respect of any other parties that would otherwise be covered by the definition of a related party. So, for example, a transaction between the listed company and any of its directors (including any director who may have been appointed by the sovereign controlling shareholder) or with any other substantial shareholder would still be treated as a related party transaction.

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10 Listing Rules Chapter 11. <https://www.handbook.fca.org.uk/handbook/LR/11/?view=chapter>





- 3.34** Our proposed change recognises the fact that sovereign countries are very different entities from private-sector shareholders and are unlikely to have the same set of motivations as private-sector investors.
- 3.35** When making an investment in a sovereign controlled company, an investor is making a judgement about how the sovereign will interact with that company. Capital markets, many of whose participants have extensive experience of investing in sovereign securities, understand this and are well-positioned to assess the relevant sovereign and jurisdictional risks.
- 3.36** We think, therefore, it is justifiable and realistic to take a different approach where there is a sovereign controlling shareholder. Sovereign controlled companies seeking to expand their international investor base are likely to have extensive and complex relationships with the sovereign controlling shareholder. They may, therefore, be deterred from listing in the UK by rules treating them the same as other shareholders, and which are over and above those in other international centres.
- 3.37** It should also be noted that, in addition to the related party rules in the UK listing regime, a range of disclosure and transparency rules apply and will do so within the proposed new category. In common with all other companies admitted to trading on regulated markets, companies in the new category will be required to meet the obligations set out in the EU Market Abuse Regulation (MAR)<sup>11</sup>, including regarding disclosure of inside information. To the extent that the existence of a related-party type of transaction would be inside information, this information would be disclosable even in the absence of specific related party requirements. The requirements of international accounting standards will continue to provide after-the-event transparency and accountability that will complement that provided at-the-time through MAR-related controls and disclosure.

**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?**

#### **No controlling shareholder rules**

- 3.38** The controlling shareholder rules<sup>12</sup> were introduced to the premium listing (commercial companies) category in May 2014 to provide appropriate protections for minority shareholders where the company has a controlling shareholder (which we define primarily by whether a person exercises or controls 30% or more of the voting rights that can be cast at general meetings of the company).
- 3.39** These provisions comprise two main elements:
- election of independent directors – a requirement that the applicant company's constitution provides for the election and re-election of independent directors subject to approval via votes of both all shareholders and, voting separately, all independent shareholders

<sup>11</sup> Regulation No 596/2014/EU

<sup>12</sup> These are contained within LR6 relating to criteria governing admission to premium listing and LR9 relating to continuing obligations.



- controlling shareholder agreements – a requirement that the applicant enters into a written and legally binding agreement with any controlling shareholder intended to ensure that the controlling shareholder does not abuse its controlling shareholding in the applicant company to the detriment of other shareholders (see Box 2)

**3.40** However, the debates leading to the introduction of these provisions did not specifically address the impact on companies that are sovereign controlled or the impact on the sovereign controlling shareholders. Nor did they address the different criteria that investors may employ in assessing sovereign risk given the significance of the sovereign's track record and the incentives it faces to maintain its credibility in this regard.

**3.41** We are therefore sceptical about the usefulness of the controlling shareholder rules when applied to a situation whereby the controlling shareholder is a sovereign country. We consider that capital markets participants collectively are capable of assessing directly the influence of a sovereign shareholder on a company's risks and prospects rather than needing to rely on legal or regulatory protections that otherwise provide valuable safeguards for private sector companies with significant shareholder relationships. We also note that under Section 75(5) of FSMA, we have the power to refuse an application for listing if, for a reason relating to the issuer, we consider that granting it would be detrimental to the interests of investors.

**3.42** We are therefore proposing that, for companies listed in this new category, the controlling shareholder provisions will not apply in respect of the sovereign controlling shareholder. In circumstances where there was another shareholder captured within the definition of 'controlling shareholder', the controlling shareholder provisions would apply to that shareholder.

**3.43** However, we are proposing to maintain the current requirement for a vote by independent shareholders on the decision to apply for a cancellation of a premium listing or where the listed company is proposing to transfer to a standard listing, in circumstances where there is a controlling shareholder, be it a sovereign controlling shareholder or otherwise. In the case of a listing of DRs, only independent DR holders would be entitled to vote on a proposal to transfer listing category or cancel the listing. For the avoidance of doubt, the holders of the underlying shares would not be entitled to vote on proposals to transfer listing category or cancel the listing, but would be entitled to vote on all other matters for which a shareholder vote is required under the Listing Rules.

**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?**



### Box 2: Controlling shareholder agreements explained

The existing premium (commercial companies) rules require that the written agreement the applicant and controlling shareholder should conclude must cover, as a minimum, three areas:

- First, the agreement should contain undertakings that transactions and arrangements between the listed company and the controlling shareholder (and/or any of its associates) should be conducted at arm's length and on normal commercial terms.
- Second, it should contain undertakings that neither the controlling shareholder nor any of its associates will take actions that would have the effect of preventing the listed company from complying with its obligations under the Listing Rules.
- Third, it should contain undertakings that neither the controlling shareholder nor any of its associates will 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.

Where a premium listed company subject to the rules cannot or will not enter into such an agreement, or where the company or the shareholder is not in compliance with such an agreement, it will be subject to an 'enhanced oversight regime'. Under these arrangements, related party transactions between company and controlling shareholder cannot qualify for any of the exemptions (for example, for size of transactions) set out in the Listing Rules, meaning that independent shareholder approval would be required for all transactions between listed company and controlling shareholder.

### Depository Receipts

- 3.44** We are also proposing that, for the first time, depository receipts (DRs) over equity shares would be eligible for this proposed new category of premium listing on the same basis as equity shares. This would be permitted provided that holders of the DRs enjoy the rights attaching to the underlying shares and the underlying shares would be eligible for premium listing. This route to premium listing would only be available in the proposed new category and not generally.
- 3.45** DRs are not currently eligible for premium listing, principally because we have not previously perceived there to be demand for this and so no rules to support premium listing of DRs have been developed. However, we consider 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 potential investors might, in some cases, have a preference to hold interests in overseas issuers eligible for this category in that form.
- 3.46** We are, therefore, proposing to allow DRs to be listed in this new category, but subject to all relevant premium listing provisions relating to equity shares also extending to DRs. For the purposes of drafting the proposed rules we have deemed the issuer of the underlying equity shares as being the issuer of the securities to which the rules will apply. The DRs will also need to be admitted to trading on a regulated market.
- 3.47** The high standards of corporate governance that premium listing requirements are designed to support are also underpinned by accountability to shareholders who in turn are able to exercise their voting rights. For all shareholder votes required under the Listing Rules, the vote must be a vote of the holders of the underlying equity shares, save for votes in relation to proposals to transfer listing category or cancel the listing, which would require the approval of the independent DR holders. However, we would

require a full 'pass through' of voting rights to DR holders. This would ensure that DR holders will be able to exercise their voting entitlements as if they were holders of the underlying shares.

- 3.48** Issuers would be required to ensure that there is a vote held by the company in all circumstances where the premium listing rules require these (such as for class 1 transactions under LR Chapter 10), and that DR holders would have the full voting power implied by their proportionate equity interest in the company and the votes will be exercised to reflect the DR holders' instructions.
- 3.49** All other rights afforded as a result of the premium listing will be required to 'pass through' to the DR holders as if they were the holders of the underlying equity shares. For example, the rights relating to a rights issue or open offer or in relation to participation in a share buyback. The issuer must ensure that shareholder documentation required under the Listing Rules, e.g. a shareholder circular, is provided to the DR holders as well to the holders of the underlying equity shares.
- 3.50** If an issuer wishes to seek a premium listing of DRs within this category, the Premium Listing Principles set out in LR7 will apply to the issuer and to the underlying equity shares (notwithstanding that these may not be listed), as well as transparency obligations under the DTRs.
- 3.51** The Prospectus Rules do not mandate the inclusion of a working capital statement in a prospectus when seeking admission of DRs to the Official List. As the ability to provide a working capital statement which is unqualified will be an eligibility requirement when seeking admission to this new category, if the issuer chooses not to include a working capital statement within its prospectus it will be required to publish this statement via an announcement.
- 3.52** For the avoidance of doubt, the requirement that the company's application is supported by a sponsor firm and that the company continues to consult with a sponsor on the application of certain continuing obligations under the Listing Rules will apply in relation to the premium listing of DRs.

**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?**

**What happens when the sovereign country exits its controlling position?**

- 3.53** In the event that the sovereign controlling shareholder ceases to hold at least 30% of the voting rights of the company, the rationale for the differing treatment under the rules falls away. Therefore we are proposing provisions which address this scenario. In these circumstances the company will be required to notify us of that fact. We would expect the company would then wish to discuss a transfer of listing category with the FCA.
- 3.54** Given that such issuers will already be complying with all relevant provisions of premium listing other than the controlling shareholder and related party provisions in relation to the sovereign controlling shareholder, they may be able to transition easily to the existing premium listing category for commercial companies if their listing is of



shares. Alternatively, it could transfer to a standard listing or cancel its listing subject to independent shareholder approval. If shareholders vote against the resolution to transfer or cancel listing in a scenario where there is no longer a sovereign controlling shareholder the FCA will have the ability to suspend and cancel the listing as the issuer will no longer be eligible for inclusion in this category.

- 3.55** A shareholder vote will not be required if an issuer of shares wishes to transfer from a listing in this category to a premium listing commercial company listing under LR6 as the protections afforded to shareholders under that category will increase, i.e. the controlling shareholder and related party requirements will apply in full.
- 3.56** A company with DRs admitted to listing in this category would have to transfer to a standard listing or cancel its listing. However, in line with our existing premium protections, any resolution to transfer or cancel the listing of DRs from this category must be voted upon by the independent holders of the listed DRs. If DR holders vote against the resolution to transfer or cancel listing in a scenario where there is no longer a sovereign controlling shareholder the FCA will have the ability to suspend and cancel the listing as the issuer will no longer be eligible for inclusion in this category.
- 3.57** To maintain the integrity and smooth functioning of this aspect of the regime we are proposing to include a continuing obligation for companies in this category that requires them to have a sovereign controlling shareholder. As noted above there will also be a notification requirement where a company no longer complies with this continuing obligation. The lack of a sovereign controlling shareholder would constitute a breach of a continuing obligation, and therefore the FCA will have the ability to suspend and cancel the listing under LR5.1 and LR5.2 in the unlikely event that no proposal to recategorise the listing of the issuer is forthcoming.

## Other changes

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- 3.58** The introduction of the proposed new premium listing category would require consequential changes to the existing Listing Rules, as well as the addition of a proposed new Chapter (Chapter 21) setting out the rules which would be applicable to the new category. The principal changes to the existing Listing Rules would be to Chapters 1, 5, 7 and 8 of the Listing Rules. The introduction of the new listing category would also require consequential changes to certain other parts of the Handbook, more detail on which is provided below.
- 3.59** We are proposing to update the Fees manual to include applications for eligibility for listing of equity shares and certificates representing shares in the proposed new category in the Category A4 fee category in FEES 3 Annex 12 R (UKLA transaction fees) and to reflect the proposed premium listing for certificates representing shares in the periodic fees table in FEES 4 Annex 14R.
- 3.60** We are proposing also to review technical and procedural notes within the UK Listing Authority knowledge base, and relevant forms and we will consult on consequential amendments in due course.

**Q11: Do you agree with the proposed consequential changes to the Listing Rules and to the Fees manual set out in Appendix 1?**

## These proposals and our ongoing review

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- 3.61** Our proposals here represent an early output from our review of the effectiveness of primary markets. We are bringing these forward now because the gap in the market is clearer in the case of sovereign controlled companies. However, we want to ensure that we provide appropriate routes for listing for all categories of potential issuers on a basis that will be attractive to investors. We will explain our developing thinking when we take forward the policy initiatives of DP17/2.



## Annex 1

# Questions in this paper

All questions can be found in Chapter 3.

- Q1:** Do you agree with the overall proposal outlined in this paper of creating a premium listing category for sovereign controlled companies?
- Q2:** Do you agree that the changes proposed are best effected through the addition of a new listing category?
- Q3:** Do you agree that the threshold for control should be set at 30%?
- 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?
- Q5:** Do you agree that independent shareholder approval should be required for a transfer from an existing premium listing into the new category?
- 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?
- Q8:** Do you agree that controlling shareholder provisions should not apply in respect of the sovereign controlling shareholder for companies listed in this category?
- 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?
- Q11:** Do you agree with the proposed consequential changes to the Listing Rules and to the Fees manual set out in Appendix 1?

## Annex 2

# Cost-benefit analysis

### Introduction

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1. FSMA, as amended by the Financial Services Act 2012, requires us to publish a cost-benefit analysis (CBA) of our proposed rules. Specifically, section 138I requires us to publish a CBA of proposed rules, defined as 'an analysis of the costs, together with an analysis of the benefits that will arise if the proposed rules are made'.
2. This analysis presents estimates of the significant impacts of our proposal. We provide monetary values for the impacts where we believe it is reasonably practicable to do so. For others, we provide estimates of outcomes in other dimensions. Our proposals are based on carefully weighing up these multiple dimensions and reaching a judgement about the appropriate level of consumer protection, taking into account all the other impacts we foresee.

### Our proposals

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3. As explained in this CP, we propose creating a new category within premium listing to make further provision for the listing of sovereign controlled companies. The aim of this change is to take reasonable account of the basis on which such companies are controlled and governed, with corresponding rules that differ in some respects to those pertaining to other premium listed issuers.
4. In summary, our proposals would have the following effect:
  - provide an appropriately tailored regime within premium listing for the requirements of commercial entities that are sovereign controlled
  - allow, for the first time, DRs in respect of equity shares to be eligible for premium listing on the same basis as equity shares in this listing category.

### Assessing the benefits and costs

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5. The above proposals do not change the regulatory requirements on companies with an existing premium or standard listing. They serve only to create a new category within premium listing for issuers that meet the relevant criteria for admission. By the nature of the proposed change, flexibility would be provided to qualifying companies to gain a premium listing if they complied with the modified requirements, but would not otherwise be able to meet the required standard. Because of this, companies that met the relevant criteria would only have additional costs if they chose to use this route to gain a premium listing. Additionally, they would still be able to apply for



a standard listing – a choice for the issuer’s management based on the perceived commercial benefits of premium listing and the associated costs of complying with the corresponding regulatory requirements. Conversely, any potential costs to investors deriving from companies that follow the modified requirements, would depend on the nature and number of companies that take advantage of the new route to premium listing.

6. It is not reasonably practicable to quantify the number of companies that may obtain a listing in the new category and their benefits from doing so. Therefore our subsequent analysis of the costs and benefits of the proposals is qualitative.

## Benefits

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7. We recognise that the companies that may seek admission to the new category may vary greatly in nature and size. The benefit to any company that chooses to pursue such a listing would very much depend on their specific circumstances. The anticipated benefits may involve, among other things, the impact on the company’s cost of capital, its management’s aim to increase the company’s visibility in the markets, and the broadening of the company’s set of potential investors.
8. These benefits could potentially vary significantly and applying to list in the new category is purely optional for those companies that meet its criteria. This means that we do not believe it is reasonably practicable to provide an estimate of the total benefits that may be obtained. Nevertheless, at best the new rules offer relevant companies a new way to pursue these benefits and, at worst, an option that they choose not to use.
9. From a competition perspective, companies from different sectors of the real economy should be able to access the listed equity market under similar conditions. However, we think this group of companies is sufficiently distinct to merit a modified set of arrangements within the listing regime. Private sector individuals or entities are motivated by different considerations from those that motivate sovereign countries. Those who invest in the securities of sovereign controlled issuers will do so, in part, on the basis of assessing their confidence in the treatment of other investors by the sovereign entity as much as through specific legal or regulatory protections. Capital markets and their participants have long experience of making assessments of the associated risks. Indeed, to the extent that the majority of operating assets of a sovereign controlled commercial entity are located in the sovereign entity’s territory, specific legal or regulatory protections in the country of listing could prove to be of limited use with respect to the sovereign entity in extremis.
10. Furthermore, while this group of companies is not likely to be large, the scale of the opportunity, for example from privatisation transactions, is sufficient to justify the construction of a new category of the regime.

## Costs

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11. The requirements for the existing routes to premium and standard listing are not themselves changing and so neither are the costs. Introducing the new category



simply creates a tailored route to the new premium listing category for those companies that meet its criteria and choose to pursue such a listing.

- 12.** As with the above benefits, the costs an issuer faces in obtaining a listing in the new category may depend significantly on their circumstances. However, we do not judge that they materially differ from the costs a company would face in obtaining a conventional premium listing. Indeed, they will be lower to the extent they make any administrative savings relating to non-preparation of controlling shareholder agreements or not holding general meetings of shareholders to vote on whether to approve related party transactions with sovereign controlling shareholders.
- 13.** However, in previous consultations regarding the Listing Rules, we have also noted an additional potential cost: that premium listed companies whose behaviour is not seen as meeting the high standards expected can undermine the perception of the regime as a whole. This could reduce the attractiveness to investors of the UK market and so may raise the cost of capital for all UK-listed issuers. However, we do not consider the changes we propose to create material risks. In addition, the new category within premium listing would be distinctly labelled and have clear criteria for admission and corresponding requirements on issuers. This would ensure investors knew what admission to that category required of the issuer, and they would be able to assess to what extent they were content to invest. On that basis, we think that any potential reputational risks to the premium listing brand, and to the UK markets more generally, should not arise.
- 14.** For passive investors that argument requires a slightly different interpretation. From their perspective, if the companies in question were to be included in a widely followed existing index, this should in principle prompt an assessment of whether the eligibility criteria for, and constituents of, that index remain suitable and therefore on the overall benefits of continuing to follow that index. This might present a more challenging task for retail investors indirectly accessing the market. Active investors using an index as a benchmark will also be subject to pressures to justify any decisions, on perceived suitability grounds, to exclude such companies from their portfolios and risk greater volatility of performance relative to their chosen benchmark.
- 15.** Decisions on index composition are, however, ones for index providers to take given their understanding of the requirements of their users for appropriate benchmarks related to available investments through the market. We do not therefore consider that material costs for investors should arise by virtue of admission of new companies to listing which then expand the range of available investment opportunities.



## Annex 3

# Compatibility statement

### Compliance with legal requirements

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1. This Annex records the FCA's compliance with a number of legal requirements applicable to the proposals in this consultation, including an explanation of the FCA's reasons for concluding that our proposals in this consultation are compatible with certain requirements under the Financial Services and Markets Act 2000 (FSMA).
2. When consulting on new rules, the FCA is required by section 138I(2)(d) FSMA to include an explanation of why it believes making the proposed rules is (a) compatible with its general duty, under s. 1B(1) FSMA, so far as reasonably possible, to act in a way that is compatible with its strategic objective and advances one or more of its operational objectives, and (b) its general duty under s. 1B(5)(a) FSMA to have regard to the regulatory principles in s. 3B FSMA. The FCA is also required by s. 138K(2) FSMA to state its opinion on whether the proposed rules will have a significantly different impact on mutual societies as opposed to other authorised persons.
3. This Annex also sets out the FCA's view of how the proposed rules are compatible with the duty on the FCA to discharge its general functions (which include rule-making) in a way that promotes effective competition in the interests of consumers (s. 1B(4)). This duty applies in so far as promoting competition is compatible with advancing the FCA's consumer protection and/or integrity objectives.
4. In addition, this Annex explains how we have considered the recommendations made by the Treasury under s. 1JA FSMA about aspects of the economic policy of Her Majesty's Government to which we should have regard in connection with our general duties.
5. This Annex includes our assessment of the equality and diversity implications of these proposals.
6. Under the Legislative and Regulatory Reform Act 2006 (LRRRA) the FCA is subject to requirements to have regard to a number of high-level 'Principles' in the exercise of some of our regulatory functions and to have regard to a 'Regulators' Code' when determining general policies and principles and giving general guidance (but not when exercising other legislative functions like making rules). This Annex sets out how we have complied with requirements under the LRRRA.

### The FCA's objectives and regulatory principles: Compatibility statement

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7. The proposals set out in this consultation are primarily intended to advance the FCA's operational objective of protecting and enhancing the integrity of the UK financial system. They are also relevant to the FCA's operational objective of securing an

appropriate degree of protection for consumers. We are doing this by consulting on a targeted proposal to make the listing regime work better for companies controlled by a shareholder that is a sovereign country. We think this will provide a route that will result in a greater number of companies exceeding the basic obligations of our standard listing regime while ensuring that the high standards of the existing premium listing regime are retained for all companies within the existing premium listing categories.

8. We consider these proposals are compatible with the FCA's strategic objective of ensuring that the relevant markets function well because they address evidence of a gap in the market for companies with characteristics of the type that will determine eligibility for the proposed new listing category. For the purposes of the FCA's strategic objective, 'relevant markets' are defined by s. 1F FSMA.
9. In preparing the proposals set out in this consultation, the FCA has had regard to the regulatory principles set out in s. 3B FSMA:
10. **The need to use our resources in the most efficient and economic way:** We consider that the proposals set out in this CP represent an efficient and economic use of our resources.
11. **The principle that a burden or restriction should be proportionate to the benefits:** Our proposals are designed to ensure that the protections of premium listing are well targeted, that the full suite of protections valued by investors in UK premium listed companies are not impaired and that companies in the new category can commit to and demonstrate compliance with those elements that are valued and relevant in their circumstances.
12. **The general principle that consumers should take responsibility for their decisions:** Our proposals are consistent with the principle that potential investors should take responsibility for their investment decisions while ensuring appropriate safeguards within our listing regime that would be relevant to a choice to invest in companies with the characteristics that would qualify for the new category.
13. **The principle that we should exercise our functions as transparently as possible:** We consider that the proposal to create specific listing categories that will cater effectively for eligible companies represents a transparent approach to the exercise of our functions and will clearly be preferable to a possible alternative approach of providing waivers for companies to access the existing premium listing segment.
14. In formulating these proposals, the FCA has had regard to the importance of taking action intended to minimise the extent to which it is possible for a business carried on (i) by an authorised person or a recognised investment exchange; or (ii) in contravention of the general prohibition, to be used for a purpose connected with financial crime (as required by s. 1B(5)(b) FSMA).

### Expected effect on mutual societies

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15. The FCA does not expect the proposals in this paper to have a significantly different impact on mutual societies as there are no relevant implications.

## Compatibility with the duty to promote effective competition in the interests of consumers

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16. In preparing the proposals as set out in this consultation, we have had regard to the FCA's duty to promote effective competition in the interests of consumers.

## Equality and diversity

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17. We are required under the Equality Act 2010 to 'have due regard' to the need to eliminate discrimination and to promote equality of opportunity in carrying out our policies, services and functions. As part of this, we conduct an equality impact assessment to ensure that the equality and diversity implications of any new policy proposals are considered.
18. The outcome of the assessment in this case is stated in paragraphs 2.17 to 2.20 of the Consultation Paper.

## Legislative and Regulatory Reform Act 2006 (LRRRA)

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19. We have had regard to the principles in the LRRRA for the parts of the proposals that consist of general policies, principles or guidance, and consider that our proposals are:
- Transparent: we are following a consultation process in proposing to make Handbook changes
  - Accountable: we are seeking feedback on our proposals from interested parties
  - Proportionate: we are proposing limited modifications to the premium listing regime that will not disturb the application of the full regime for existing listed companies unless they are eligible for the new category of listing and their independent shareholders sanction a change of listing category
  - Consistent: our proposals seek to apply our underlying premium listing principles in an effective manner
  - Targeted only at cases where action is needed: we are proposing a new category of listing that is relevant for a particular type of issuer.
20. We have had regard to the Regulators' Code for the parts of the proposals that consist of general policies, principles or guidance and consider that our proposals are consistent with the Code, including that all elements of guidance being proposed alongside new rules are designed to contribute to clarity of understanding and interpretation of our proposed new Handbook provisions.

## Treasury Recommendations about economic policy

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- 21.** We consider that our proposals are consistent with the aspects of the government's economic policy to which the Financial Conduct Authority should have regard. They are of relevance, in particular, regarding competitiveness and the government's wish to ensure that the UK remains an attractive domicile for internationally active financial institutions, and that London retains its position as the leading international financial centre.



## Annex 4

### Abbreviations used in this paper

<b>DR</b>	Depository Receipt
<b>DTR</b>	The Disclosure Guidance and Transparency Rules sourcebook
<b>EU</b>	European Union
<b>FRC</b>	Financial Reporting Council
<b>FSMA</b>	The Financial Services and Markets Act 2000
<b>FTSE</b>	FTSE International Limited
<b>LR</b>	Listing Rules
<b>MAR</b>	Market Abuse Regulation No 596/2014/EU

We have developed the policy in this Consultation Paper 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.

We make all responses to formal consultation available for public inspection unless the respondent requests otherwise. We will not regard a standard confidentiality statement in an email message as a request for non-disclosure.

Despite this, we may be asked to disclose a confidential response under the Freedom of Information Act 2000. We may consult you if we receive such a request. Any decision we make not to disclose the response is reviewable by the Information Commissioner and the Information Rights Tribunal.

You can download this Consultation Paper from our website: [www.fca.org.uk](http://www.fca.org.uk).

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

## Draft Handbook text

[*Editor's note:* The text in this instrument takes account of the changes proposed in CP17/4 'Review of the Effectiveness of Primary Markets: Enhancements to the Listing Regime' (February 2017) as if they were made.]

## LISTING RULES (SOVEREIGN CONTROLLED COMMERCIAL COMPANIES) INSTRUMENT 2017

### Powers exercised

- A. The Financial Conduct Authority (the "FCA") 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 [*date*].

### 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 2017.

By order of the Board  
[*date*]

## 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 State in his or her public capacity;
  - (b) the government of that State;
  - (c) a department of that State; or
  - (d) an agency or a special purpose vehicle of that State.

Amend the following definitions as shown.

- premium listing*
- (a) in relation to *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 complies 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* complies with the requirements in LR 21 (Sovereign controlled 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 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 complies 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 applies; or

(cb) applying for eligibility for listing of certificates representing shares where LR 21.6.12R 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	<i>A listed issuer of equity shares and certificates representing shares with a premium listing (see Note 2)</i>	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 commercial companies, closed-ended investment funds, open-ended investment companies and 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* 21.6.13R or *LR* 21.8.22R.

...

...

## 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) 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* and *LR 21.8.10R*.
- 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;
- (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) 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 that *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 listed company must act with integrity towards the holders and potential holders of its <i>premium listed shares securities</i> .
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 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 securities</i> <del>admitted</del> <u>admitted</u> to <i>premium listing</i> , the aggregate voting rights of the <i>shares securities</i> 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 <i>premium listed equity shares securities</i> that are in the same position equally in respect of the rights attaching to those <i>premium listed equity shares securities</i> .
Premium Listing Principle 6	A <i>listed company</i> must communicate information to holders and potential holders of its <i>premium listed equity shares securities</i> in such a way as to avoid the creation of a false market in those <i>premium listed equity shares securities</i> .

...

- 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*:

...

...

- 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) standard listing (shares) to a premium listing (sovereign controlled commercial company); or
- (6) standard listing (certificates representing certain securities) to a premium listing (sovereign controlled commercial company); or
- (7) premium listing (commercial company) to a premium listing (sovereign controlled commercial company); or
- (8) premium listing (sovereign controlled commercial company) to a premium listing (commercial company); or
- (9) premium listing (investment company) to a premium listing (sovereign controlled commercial company); or
- (10) 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 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 Sponsor: transactions

Application for admission: new applicants

- 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) or *LR* 6.1.1R(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* or *LR 21.6.12R* 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) 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) in the case of *certificates representing shares*, included in the *applicant's prospectus* or *listing particulars* for the *certificates representing shares* that are being admitted, or required to be published by the *applicant* in accordance with *LR 21.8.22R(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 <i>equity shares</i></del> where:
-----	---

...
-----

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

...
-----

...

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

...

**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*.

...

**18 Certificates representing certain securities: Standard listing****18.1 Application**

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

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

**21 Sovereign Controlled 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 21.9* 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);
  - (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 21.2.5R* and *LR 21.2.6R*.
- 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)*, references to a *controlling shareholder* are to be read as not including a *sovereign controlling shareholder* in the following:
- (1) *LR 6.5*; and
  - (2) *LR 6.9.1R(2)*.
- 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)* is to 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).  
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).
- 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 21.4.2R to LR 21.4.4R;
  - (2) LR 10 (Significant transactions);
  - (3) LR 12 (Dealing in own securities and treasury shares) subject to the modifications set out in LR 21.4.5R; and
  - (4) LR 13 (Contents of circulars) subject to the modifications set out in LR 21.4.3R and LR 21.4.6G.
- 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* are to be read as not including a *sovereign controlling shareholder* in the following:



- (1) *LR 9.2.2ABR to LR 9.2.2HG;*
- (2) *LR 9.8.4 R(11);*
- (3) *LR 9.8.4R(14); and*
- (4) *LR 13.8.17R to LR 13.8.18R.*

- 21.4.4 R For the purposes of *LR 21.4.1R(1)*, in *LR 9.2.21R*:
- (1) in the second sentence the reference to the provisions of *LR 5.4A.4(3)(b)(ii)* and *LR 5.4A.4R(3)(c)(ii)* is to be read as a reference to the provisions of *LR 5.4A.4(3)(d)(ii)*; and
  - (2) the reference to *independent shareholders* that can vote is, for the purposes of *LR 9.2.2ER* only, to be read as including a *sovereign controlling shareholder* who holds the *listed company's shares* that have been admitted to *premium listing*.
- 21.4.5 R For the purposes of *LR 21.4.1R(3)*, references to a *related party* are to be read as not including a *sovereign controlling shareholder* in *LR 12.3.1R*.
- 21.4.6 G For the purposes of *LR 21.4.1R(4)*, references to a *substantial shareholder* are to be read as including a *sovereign controlling shareholder* in *LR 13.7.1AG*.

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*.

## **21.5 Transactions with related parties: Equity shares**

- 21.5.1 R A *listed company* must comply with *LR 11* (Related party transaction) subject to the modification in *LR 21.5.2R*.

- 21.5.2 R A *sovereign controlling shareholder* is not a *related party* for the purposes of LR 11.

## 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 21.6.7G.
- 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*.

Additional requirements for the issuer

- 21.6.8 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* 21.6.9G to *LR* 21.6.12R; and
  - (2) *LR* 21.6.13R to *LR* 21.6.20R.
- 21.6.9 G For the purposes of *LR* 21.6.8R(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*.
- 21.6.10 R For the purposes of *LR* 21.6.8R(1), references to a *controlling shareholder* are to be read as not including a *sovereign controlling shareholder* in the following:
- (1) *LR* 6.5; and
  - (2) *LR* 6.9.1R(2).
- 21.6.11 R For the purposes of *LR* 21.6.8R(1), references to *shares* or *equity shares* are to 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*.

21.6.12 R *LR 21.6.8R(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*.

21.6.13 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.

- 21.6.14 R A working capital statement published for the purposes of *LR 21.6.13R* must be published by means of a *RIS*.
- 21.6.15 R An *applicant* must have a *sovereign controlling shareholder*.
- 21.6.16 R To comply with *LR 21.6.15R*, 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

- 21.6.17 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*]

- 21.6.18 G (1) The *FCA* may modify *LR* 21.6.17R 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.

- 21.6.19 G When calculating the number of certificates for the purposes of *LR* 21.6.17R(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

- 21.6.20 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

- 21.6.21 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* are to be read as references to the *certificates representing shares* for which application for *listing* is made.
- 21.6.22 R To be *listed*, the *certificates representing shares* must be admitted to trading

on a *regulated market for listed securities* operated by a *RIE*.

- 21.6.23 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

- 21.6.24 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.
- 21.6.25 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).
- 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*; and
  - (4) *LR 9.2.21R* to *LR 9.2.22G*; and
- subject to the modifications and additional requirements set out in *LR 21.8.2R* to *LR 21.8.11R*.
- 21.8.2 R For the purposes of *LR 21.8.1R*, references to the *listed company* or the *issuer* are to be read as references to the *issuer* of the *equity shares* which the certificates represent in *LR 9*.
- 21.8.3 R 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* are to be read as not including a *sovereign controlling shareholder* in the following:
- (1) *LR 9.2.2ABR* to *LR 9.2.2HG*;
  - (2) *LR 9.8.4 R(11)*; and
  - (3) *LR 9.8.4R(14)*.
- 21.8.5 R 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* must 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 R For the purposes of *LR 9.3.11R* the *listed company* must 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) the *listed company* must ensure that in relation to:
    - (a) any *rights issue*; or
    - (b) 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*;
  - (4) in LR 9.5.10R(1):
    - (a) the reference to a *class* already *listed* is to 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
  - (5) 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 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.
- 21.8.9 R For the purposes of LR 21.8.1R, in LR 9.6.4R(3) the reference to *listed shares* is to be read as a reference to *equity shares* of the *class* which the certificates represent.
- 21.8.10 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.
- 21.8.11 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: Compliance with the disclosure requirements and transparency rules

- 21.8.12 G A *listed company*, whose *certificates representing shares* are admitted to trading on a *regulated market* in the *United Kingdom*, should consider the obligations under the *disclosure requirements*.
- 21.8.13 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*.
- 21.8.14 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* (Access to information) and *DTR 7* (Corporate governance).
- 21.8.15 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

- 21.8.16 R A *listed company* must comply with *LR 21.6.17R* at all times.
- 21.8.17 G Where the *FCA* has modified *LR 21.6.17R* 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)*.
- 21.8.18 R A *listed company* must comply with *LR 21.6.22R* at all times.
- 21.8.19 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

- 21.8.20 R (1) Where pursuant to *LR 21.8* or *LR 21.9* 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 represent, but the *listed company* must 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) 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*:
  - (a) only *independent shareholders* who hold *equity shares* of the *class* which the certificates represent can vote; and
  - (b) the reference to *independent shareholders* that can vote is to be read as including a *sovereign controlling shareholder* who holds *equity shares* of the *class* which the certificates represent.
- (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*:
  - (a) the reference to *controlling shareholder* is to be read as including a *sovereign controlling shareholder*; and
  - (b) only holders of the *listed company's certificates representing shares* that have been admitted to *premium listing* can vote.

- 21.8.21 G The *FCA* may modify the operation of *LR 21.8.20R* 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.

Additional requirements: Working capital statement

- 21.8.22 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.

21.8.23 R A working capital statement published for the purposes of *LR 21.8.22R* must be published by means of a *RIS*.

Additional requirements: Sovereign controlling shareholder

21.8.24 R A *listed company* must at all times have a *sovereign controlling shareholder*.

21.8.25 R To comply with *LR 21.8.24R*, 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*.

21.8.26 R A *listed company* must notify the *FCA* without delay if it no longer complies with the continuing obligation set out in *LR 21.8.24R*.

21.8.27 G Where a *listed company* is unable to comply with the continuing obligation set out in *LR 21.8.24R*, 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

21.8.28 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 21.6.21R* to *LR 21.6.25G*.

Notification of change of depositary

- 21.8.29 R (1) An *issuer of equity shares* represented by *listed certificates representing shares* must notify a *RIS* of any change of *depository*.
- (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 *depository* and contain the following information:
- (a) the name, registered office and principal administrative establishment if different from the registered office of the *depository*;
  - (b) the date of incorporation and length of life of the *depository*, except where indefinite;
  - (c) the legislation under which the *depository* operates and the legal form which it has adopted under the legislation; and
  - (d) any changes to the information regarding the *certificates representing shares*.

## 21.9 Transactions and circulars: Certificates representing shares

### Compliance with LR 10 (Significant transactions)

- 21.9.1 R A *listed company* must comply with *LR 10* (Significant transactions) 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* are to 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 R A *listed company* must 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 R For the purposes of obtaining the prior shareholder approval required by LR 10.5.1R, a *listed company* must 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 21.8.1R, 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 21.8.1R, paragraph 5R(5) of Annex 1 to LR 10 (Significant transactions) 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 21.8.1R, 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*).

#### Transactions with related parties

- 21.9.10 R A *listed company* must comply with LR 11 (Related party transactions) subject to the modifications in LR 21.9.11R to LR 21.9.13R.
- 21.9.11 R A *sovereign controlling shareholder* is not a *related party* for the purposes of LR 11.
- 21.9.12 R For the purposes of LR 21.9.10R:
- (1) in LR 11 references to a *listed company* are to 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* is to be read as a reference to the *issuer of the equity shares* which the certificates represent.
- 21.9.13 R For the purposes of LR 21.9.10R, LR 11.1.7CR applies as modified by LR 21.9.5R

#### Additional requirements

- 21.9.14 R A *listed company* must 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.
- 21.9.15 R 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* must 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.

#### Compliance with LR 12 (Dealing in own securities and treasury shares)

- 21.9.16 R A *listed company* must comply with all the requirements of LR 12 (Dealing in own securities and treasury shares) subject to the modifications and additional requirements set out in LR 21.9.17R to LR 21.9.22R.

- 21.9.17 R For the purposes of LR 21.9.16R, in LR 12:
- (1) references to the *listed company* are to 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* is to be read as a reference to a *class* of *equity shares* which the certificates represent.
- 21.9.18 R For the purposes of LR 21.9.16R, references to a *related party* are to be read as not including a *sovereign controlling shareholder* in LR 12.3.1R. In relation to the requirement set out in LR 12.3.1R(1), the *listed company* must 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*.
- 21.9.19 R For the purposes of LR 21.9.16R, 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* must 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*.
- 21.9.20 R For the purposes of obtaining the shareholder approval required by LR 12.4.2AR, a *listed company* must 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.
- 21.9.21 R For the purposes of LR 21.9.16R, references to *securities* convertible into *equity shares* with a *premium listing* are to 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.
- 21.9.22 R A *listed company* must 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)

- 21.9.23 R A *listed company* must comply with all the requirements of LR 13 (Contents of circulars) subject to the modifications and additional requirements set out in LR 21.9.24R to LR 21.9.28R.
- 21.9.24 R For the purposes of LR 21.9.23R, in LR 13 references to the *listed company* or to the *issuer* are to be read as references to the *issuer* of the *equity shares*



which the certificates represent.

- 21.9.25 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.
- 21.9.26 R For the purposes of *LR 21.9.23R*, references to holders of *listed equity shares* are to 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*.
- 21.9.27 G For the purposes of *LR 21.9.23R*, in *LR 13.7.1AG* references to a *substantial shareholder* shall be read as including a *sovereign controlling shareholder*.
- 21.9.28 R For the purposes of *LR 21.9.23R*, in *LR 13.8.17R* and *LR 13.8.18R* references to *controlling shareholder* are to be read as not including a *sovereign controlling shareholder*.

...

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 ...

...

<i>premium listing</i>	(a)	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 complies with the requirements in <i>LR 21</i></u> ), means a <i>listing</i> where the <i>issuer</i> is required to comply with those requirements in <i>LR 6</i> (Additional requirements for <i>premium listing (commercial company)</i> ) 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> ;
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	...	
	(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 LR 16 (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> complies with the requirements in LR 21 (Sovereign controlled 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 LR 21 (Sovereign controlled 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 (commercial company)</i>		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 complies with the requirements in LR 21</u> .
<u><i>premium listing (sovereign controlled commercial company)</i></u>		<u>a <i>premium listing</i> of:</u>
	(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 LR 21 and other requirements in the <i>listing rules</i> that are expressed to apply to <i>securities</i> in this category.</u>
	...	
<u><i>sovereign controlled commercial</i></u>		<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>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>
	(a) <u>the sovereign or other head of State in his or her public capacity;</u>
	(b) <u>the government of that State;</u>
	(c) <u>a department of that State; or</u>
	(d) <u>an agency or a special purpose vehicle of that State.</u>

