

Chapter 15

Certificates representing
certain securities
(depository receipts):
requirements for listing and
continuing obligations

15.1 Application

15.1.1

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- (1) This chapter applies in respect of a *listing of certificates representing certain securities*, where the certificate represents a *share* in an *overseas company*.
- (2) The chapter applies to:
 - (a) a *depository*; and
 - (b) an *issuer* of the *shares* which are represented by certificates.



15.2 Requirements for listing

Issuer of shares is taken to be the issuer

- 15.2.1 **R** If an application is made for the *admission of certificates representing certain securities*, the *issuer* of the *shares* which the certificates represent is the *issuer* for the purpose of the *listing rules* and the application will be dealt with as if it were an application for the *admission* of the *shares*.

Certificates representing certain securities

- 15.2.2 **R** For *certificates representing certain securities* to be *admitted to listing*, an *issuer* of the *shares* which the certificates represent must comply with ■ UKLR 15.2.3R to ■ UKLR 15.2.7G.

- 15.2.3 **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*.

- 15.2.4 **R** For the certificates to be *listed*, the *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.

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

15.2.6 G The *FCA* may modify ■ UKLR 15.2.5R to allow partly paid *shares* if it is satisfied that their transferability is not restricted and investors have been provided with appropriate information to enable dealings in the *shares* to take place on an open and proper basis.

15.2.7 G The *FCA* may, in exceptional circumstances, modify or dispense with ■ UKLR 15.2.5R where the *issuer* has the power to disapprove the transfer of *shares* if the *FCA* is satisfied that this power would not disturb the market in those *shares*.

Admission to trading on overseas market

15.2.8 R For the certificates to be *listed*, the *shares* which the certificates represent must be admitted to trading on an *overseas* regulated, regularly operating, recognised open market.

Certificates in public hands

15.2.9 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.

(2) For the purposes of paragraph (1), a sufficient number of certificates will be taken to have been distributed to the public when 10% of the certificates for which application for *admission* has been made are in public hands.

(3) For the purposes of paragraphs (1) and (2), 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*;

(ii) a *person* connected with a *director* of the *applicant* or of any of its *subsidiary undertakings*;

(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*;

(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.

15.2.10 G When calculating the number of certificates for the purposes of ■ UKLR 15.2.9R(3)(a)(v), holdings of *investment managers* in the same *group* will be disregarded where:

(1) investment decisions are made independently by the individual in control of the relevant fund; and

(2) those decisions are unfettered by the *group* to which the *investment manager* belongs.

Certificates representing securities of an investment entity

15.2.11 **R** Certificates representing *equity securities* of an *investment entity* will be *admitted to listing* only if the *equity securities* they represent are already *listed* or are the subject of an application for *listing* at the same time.

Additional requirements for the certificates

15.2.12 **R** To be *listed*, the *certificates representing certain securities* must satisfy the requirements set out in ■ UKLR 3.2.2R to ■ UKLR 3.2.11R. For this purpose, in those *rules*, references to *securities* are to be read as references to the *certificates representing certain securities* for which application for *listing* is made.

15.2.13 **R** To be *listed*, the *certificates representing certain securities* 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 *shares*.

Additional requirements for a depository

15.2.14 **R** A *depository* that issues *certificates representing certain securities* must maintain adequate arrangements to safeguard certificate holders' rights to the *shares* to which the certificates relate, and to all rights relating to the *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.

15.3 Continuing obligations

- 15.3.1 **R** An *issuer* of the *equity shares* which the certificates represent must comply with:
- (1) the requirements of this section (■ UKLR 15.3);
 - (2) ■ UKLR 3.2.3R, ■ UKLR 15.2.8R and ■ UKLR 15.2.9R at all times;
 - (3) the continuing obligations set out in ■ UKLR 14.3 (Requirements with continuing application) (other than in ■ UKLR 14.3.1R to ■ UKLR 14.3.4R, ■ UKLR 14.3.16R, ■ UKLR 14.3.22R and ■ UKLR 14.3.23R); and
 - (4) the obligations in articles 17 and 18 of the *Market Abuse Regulation* as if it were an *issuer* for the purposes of those obligations and the *transparency rules*, subject to article 22 of the *Market Abuse Regulation*.

- 15.3.2 **R** For the purposes of ■ UKLR 15.3.1R(3):
- (1) a reference to complying with the obligations in ■ UKLR 14.3 is to be read as a reference to complying with those obligations in respect of the certificates; and
 - (2) references to *listed shares* in ■ UKLR 14.3.12R to ■ UKLR 14.3.15R must be read as references to:
 - (a) *listed certificates* representing the *equity shares*; and
 - (b) the *equity shares* which the *listed certificates* represent.

Annual accounts

- 15.3.3 **R**
- (1) An *issuer* of the *equity shares* which the certificates represent must publish its annual report and annual accounts as soon as possible after they have been approved.
 - (2) An *issuer* of the *equity shares* which the certificates represent must approve and publish its annual report and accounts within 6 months of the end of the financial period to which they relate.
- The annual report and accounts must:
- (a) have been prepared in accordance with the *issuer's* national law and, in all material respects, with national accounting standards or *UK-adopted IFRS*; and

- (b) have been independently audited and reported on, in accordance with:
 - (i) the auditing standards applicable in the *United Kingdom*; or
 - (ii) an equivalent auditing standard.

Change of depository

- 15.3.4 **R** Prior to any change of the *depository of certificates representing certain securities*, the new *depository* must satisfy the *FCA* that it meets the requirements of **UKLR 15.2.12R** to **UKLR 15.2.14R**.

Notification of change of depository

- 15.3.5 **R**
- (1) An *issuer of shares* represented by *listed certificates representing certain securities* 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 7.30am 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 certain securities*.

Documents of title

- 15.3.6 **R** An *issuer* must comply with the requirements in **UKLR 9.4.18R** (Temporary documents of title (including renounceable documents)) and **UKLR 9.4.19R** (Definitive documents of title) so far as relevant to *certificates representing equity securities*.

Compliance with transparency rules

- 15.3.7 **G** An *issuer* whose *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) and **DTR 6** (Continuing obligations and access to information).
- 15.3.8 **G** An *issuer* that is not already required to comply with the *transparency rules* must comply with **DTR 6.3** as if it were an *issuer* for the purposes of the *transparency rules*.

15.4 Reverse takeovers

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■ UKLR 14.4 (Reverse takeovers) applies to an *issuer* of the *shares* which the certificates represent.