

New UK Listing Rules: controlling shareholders of premium listed companies

The Financial Conduct Authority (FCA) has adopted final changes to the Listing Rules affecting companies listed on the UK's main market with a premium listing. The changes will come into force on 16 May 2014. The key new rules are summarised below:

Relationship agreement

Premium listed companies with a controlling (30%+) shareholder must enter into a relationship agreement with that shareholder, which must contain the following undertakings on the shareholder's part:

- transactions and relationships with the controlling shareholder (and/or any of its associates) will be conducted at arm's length and on normal commercial terms;
- neither the controlling shareholder nor any of its associates will take any action that would have the effect of preventing the listed company from complying with its obligations under the Listing Rules; and
- neither the controlling shareholder nor any of its associates will propose or procure the proposal of a shareholder resolution which is intended or appears to be intended to circumvent the proper application of the Listing Rules,

(the "independence provisions").

The consequence of a controlling shareholder failing to enter into a relationship agreement, or of non-compliance with the independence provisions, is that a listed company will become subject to the related party requirements in Chapter 11 of the Listing Rules for any transaction with the controlling shareholder (in particular, the requirement for a vote of independent shareholders). The Listing Rules contain exceptions to normal related party requirements for ordinary course transactions, small transactions or other

exempt transactions (for example, the take up of rights on a rights issue), which will not apply to transactions with a controlling shareholder unless a compliant relationship agreement is in place and is complied with.

Companies with a controlling shareholder with an existing relationship agreement will need to ensure that it includes the above undertakings, or agree appropriate amendments with the controlling shareholder.

A listed company will need to include a compliance statement relating to the relationship agreement in its annual report. If there is non-compliance by a controlling shareholder with an independence provision, or if any independent director does not support the compliance statement, then the strict related party regime described above will apply until the next annual report is published which contains a 'clean' compliance statement. A listed company must notify the FCA of any non-compliance with an independence provision.

Election of independent directors

When a premium listed company has a controlling shareholder, directors proposed for election or re-election as independent directors (within the meaning of the UK Corporate Governance Code) will be subject to approval by both (a) all shareholders and (b) independent shareholders.

If this approval is not obtained, the company may propose a further resolution 90-120 days after the first, on which all shareholders will be entitled to vote - no approval by independent shareholders is required. This is effectively a "cooling off" period – the ability of all shareholders to force through a second resolution ultimately prevents the new rules from transferring control of the board to minority shareholders.

Implementing the rules relating to the appointment of directors will require amendments to companies' articles of association.

De-listing and transferring to standard listing

Normally, cancellation of listing of equity shares requires a resolution approved by 75% of holders of those shares who vote. Where a company with a premium listing has a controlling shareholder, the new rules require that this resolution also be passed by a majority of independent shareholders who vote.

Similar provisions apply to transfer from a premium listing category to a standard listing.

Following a successful takeover offer for a premium listed company, in most circumstances the requirement for a shareholder vote for cancellation of listing will (as now) not apply where the bidder acquires 75% or more of the company's voting rights. However, where the company has a controlling shareholder before the takeover offer is announced holding more than 50% of the company's voting rights, and that controlling shareholder is the bidder, then in order to avoid the shareholder vote requirement it will need either (a) to receive acceptances of the offer from a majority of independent shareholders, or (b) to acquire 80% or more of the company's voting rights.

Transitional arrangements

New applicants for listing must comply with the new rules from 16 May 2014. Existing listed companies with controlling shareholders have until 16 November to put in place an appropriate relationship agreement, and until the next annual general meeting (later in certain circumstances) to amend their articles of association to incorporate the independent director approval regime. A similar grace period applies where a listed company acquires a controlling shareholder as a result of a change of ownership.

Impact

The new rules are squarely aimed at dominant shareholders who seek to abuse their position. For the vast majority of controlling shareholders of existing listed companies, they will require procedural changes, and perhaps amendments to existing relationship agreements, but will have limited effect to the way those shareholders

conduct their relationship with the listed company.

They are also unlikely to have a significant impact on IPOs, particularly of private-equity backed companies. Private equity sponsors seeking an exit by way of IPO are typically keen to be model shareholders – to maximise value they will usually want the listed company to be independent and fully compliant with corporate governance best practice. Market practice in such cases is already to put in place relationship agreements which comply with the new regime.



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