

Client Alert

Latham & Watkins
Corporate Department

London Listings for Russian Mineral Companies

Click below to jump to the following pages:

Schedule 1 Pg. 14

Comparison of Listing Requirements and Obligations for a Mineral Company.

Schedule 2(A) Pg. 23

Mineral Standards

Schedule 2(B) Pg. 24

Metals & Mining Competent Person's Report — Minimum Content

Schedule 2(C) Pg. 26

Oil & Gas Competent Person's Report — Minimum Content

Against a backdrop of continued global economic uncertainty and risk aversion, mineral companies are generally better placed than companies in many other sectors to seek admission of their securities to the London Stock Exchange and access the international equity capital markets. Indeed, in the past year a number of high profile Russian mineral companies, including Evraz, Polymetal, Nord Gold, RusPetro and Polyus Gold, have successfully raised equity financing and/or listed securities in London and we anticipate that Russian mineral companies will continue to seek to do so. In particular, we expect to see a continuation of the recent trend for Russian mineral companies to seek more prestigious premium listings for their shares, or standard listings for their shares, as opposed to standard listings of global depository receipts representing shares (GDRs), the option that Russian issuers have traditionally selected.

With these trends and considerations in mind, this *Alert* (i) discusses the various advantages of a premium listing of shares, (ii) provides a comparative analysis of the key regulatory and other requirements that a Russian mineral company must comply with depending on the type of listing — premium, standard (shares) or standard (GDRs) — it obtains, and (iii) analyzes how a Russian mineral company issuer with an existing standard listing of GDRs or shares can transfer such listing to a premium listing.

1. Advantages of a Premium Listing

A premium listing is only available to companies that list equity shares (rather than GDRs) on the Official List of the UK Listing Authority (the UKLA) and requires the listed company to comply with the more onerous listing requirements and continuing listing obligations applicable to premium listings — the so-called 'super-equivalent' listing requirements — rather than the EU minimum requirements applicable to standard listings.

Russian mineral companies have recently shown a tendency to move away from their traditional approach of listing GDRs and are now increasingly seeking to obtain premium listings for their shares. As a result of the more onerous requirements imposed on premium listed companies, a premium listing is considered significantly more prestigious than a standard listing of either shares or GDRs. Consequently, a premium listed issuer hopes to obtain many benefits, including:

- higher valuations;
- a higher profile with international and institutional investors;
- access to a deeper pool of investment capital;

"Russian mineral companies have recently shown a tendency to move away from their traditional approach of listing GDRs and are now increasingly seeking to obtain premium listings for their shares."

- greater liquidity; and
- a more attractive acquisition currency to finance future acquisitions.

However, shares of companies incorporated in Russia currently cannot be admitted to the Official List of the UKLA and to trading on the London Stock Exchange, primarily as a result of restrictions imposed by Russian law. Therefore, in order to be eligible to obtain a premium (or standard) listing for its shares, a Russian company must be able and willing to introduce an off-shore holding company into its company group to act as the listing vehicle. See *Number 4, Further Regulatory Considerations*, below.

Crucially, only premium listed equity shares are eligible for inclusion in the FTSE UK Indices. Entry to the FTSE UK Indices, and particularly the FTSE 100, accentuates all of the expected advantages of a premium listing referred to above and has been a stated aim of many of the Russian mineral companies seeking a premium listing in the past year, including Polymetal, Evraz and Polyus Gold. Eligibility for inclusion is determined by the FTSE Nationality Committee according to published ground rules. A premium listed issuer with a listing vehicle incorporated in the UK must have a minimum free float of at least 25 percent, but if the listing vehicle is incorporated outside the UK in a 'developed' country (as per the FTSE country classification) or an approved low-tax jurisdiction (such as the Channel Islands) it must have a free float in excess of 50 percent and must acknowledge adherence to the principles of the UK Corporate Governance Code, pre-emption rights and the UK Takeover Code. Listing vehicles incorporated outside the UK and not in a 'developed' country or an approved low-tax jurisdiction are not eligible for inclusion in the FTSE UK Indices. The FTSE free float requirement is distinct from the UKLA's Listing Rules "shares in public hands" test. The FTSE ground rules set out details of how free float is to be calculated and what constitutes restricted free float and these requirements are different from the Listing Rules shares in public hands test in a number of respects. Interestingly, while the UKLA has discretion under the Listing Rules to reduce its own minimum 25 percent shares in public hands requirement where the size of the issuer means that a lower percentage will provide sufficient liquidity, FTSE has declined to allow itself a similar discretion in respect of the 25 percent free float threshold for UK incorporated companies.

2. Comparison of Applicable Regulatory Requirements

Each of the three main London listing options available to a Russian mineral company — a premium listing of shares, a standard listing of shares and a standard listing of GDRs — have different eligibility requirements and impose different continuing obligations. Broadly, a premium listing will be the most expensive and time-consuming and will entail the most rigorous regulatory scrutiny. Therefore, before it decides to pursue a premium listing (or indeed a standard listing), a potential Russian mineral company issuer must understand these various requirements and obligations and how they vary across the three listing options and must realistically assess the extent to which it is willing and able to comply with them. Crucially, a Russian mineral company must also be aware of the specific additional requirements imposed on "mineral company" issuers by the UKLA's Listing Rules and the CESR Recommendations¹. A comprehensive analysis chart identifying and comparing the major regulatory requirements and obligations imposed on mineral companies seeking and maintaining premium and standard listings is included at Schedule 1.

Listing Eligibility and Disclosure

At an early stage in the listing application vetting process, and certainly no later than when the first draft of the prospectus is submitted to the UKLA for review, a

Russian mineral company applicant must demonstrate to the UKLA that it satisfies the eligibility requirements applicable to the type of listing it is seeking.

One key difference between an application for a premium listing and an application for a standard listing (either of shares or GDRs) is that an applicant seeking entry to the premium listing segment of the Official List of the UKLA must appoint a sponsor which will advise and work with it to ensure it is eligible for listing, has in place all necessary procedures and has otherwise taken all steps and actions necessary to satisfy all applicable rules and regulations of the UKLA. Sponsors vary from large investment banks to smaller corporate finance houses, as well as a number of accounting and legal firms, in each case approved by the UKLA. The sponsor will submit an eligibility letter to the UKLA in respect of the applicant on or prior to the date of the submission of the first draft of the prospectus confirming the applicant's eligibility for a premium listing. Under the UKLA's Listing Rules, the sponsor must not submit a formal application for listing in respect of the applicant to the UKLA unless it is satisfied in respect of various matters, including that the directors of the applicant have a reasonable basis on which to give the required working capital statement (see further below), that the applicant has satisfied all applicable requirements of the UKLA's Listing Rules and Prospectus Rules, that the directors of the applicant understand the ongoing requirements and reporting and disclosure obligations imposed on the applicant and that suitable procedures are in place to enable the applicant to comply with such ongoing requirements and obligations and to enable its directors to make proper judgments on an ongoing basis as to the applicant's financial position and prospects. The sponsor is required to submit a declaration to the UKLA confirming these matters, amongst other things.

By contrast, an applicant seeking entry to the standard listing segment need not appoint a sponsor. Although the applicant's advisers will help to ensure it is eligible for listing, it must submit the eligibility letter and formal application for listing to the UKLA itself (or arrange for its advisers to do so on its behalf).

In addition to complying with the eligibility requirements applicable to a standard listing applicant, a mineral company applying for a premium listing must comply with certain additional obligations, including the requirements to demonstrate that:

- it either holds a controlling interest in the majority of its fields/mines or has a reasonable spread of direct investments in mineral resources and has rights to actively participate in their extraction; and
- it and its group has sufficient working capital for the next 12 months from the date of the prospectus.

Further, it must demonstrate to the sponsor (and through the sponsor to the UKLA) that it can and will comply with the UKLA's Listing Principles, including Listing Principle 2 which provides that a premium listed issuer must take reasonable steps to establish and maintain adequate procedures, systems and controls to enable it to comply with its obligations, in particular to identify when certain of the continuing obligations imposed on it as a premium listed company arise (particularly in respect of 'significant' and 'related party' transactions) and to provide timely and accurate information to the market. See the discussion on *Continuing Obligations* below.

The level of disclosure required to be included by a premium listing applicant in the prospectus it must prepare and submit to the UKLA is not significantly more onerous than that required in respect of a standard listing applicant. However, the disclosure requirements imposed on "mineral companies" do differ substantially from those imposed on other companies, regardless of the type of listing the mineral company applicant is seeking. See section on *Additional Regulatory Requirements for Mineral Companies* below.

Continuing Obligations

The ongoing continuing obligations imposed on premium listed issuers are considerably more onerous than those imposed on issuers with standard listings of shares or GDRs. In addition to complying with those obligations imposed on issuers with standard listings, a premium listed issuer must, amongst other things:

- include a statement in each annual report as to whether it has complied throughout the year with the provisions of the UK Corporate Governance Code, or explain any non-compliance;
- comply with, and ensure its senior managers and directors comply with, the restrictions imposed by the Model Code on dealings in its shares; and
- publish a UKLA approved circular in respect of, and obtain shareholder approval for, certain 'significant' and 'related party' transactions (in the case of a 'related party' transaction, the related party and its associates cannot vote on the resolution).

A premium listed issuer must also continue to comply with the Listing Principles, including Listing Principle 2, and must appoint a sponsor in certain circumstances; for example, in connection with the publication of certain shareholder circulars or prior to entering into certain 'significant' or 'related party' transactions. In order to cancel a premium listing, an issuer must publish a shareholder circular and obtain approval of a resolution of not less than 75 percent of its shareholders (voting in person or by proxy).

Even within the standard listing category there are important differences between the continuing obligations imposed on issuers with standard listings of GDRs and those with standard listings of shares. GDR issuers are not required to publish half-yearly financial reports or interim management statements (although as a matter of practice, most Russian GDR issuers do publish half-yearly financial reports), or notify the market of any significant variations in major shareholding levels. Further, although Listing Principle 2 and the sponsor declaration requirements do not apply to issuers with standard listings of shares or GDRs, and although both types of standard listing impose similar ongoing disclosure requirements, it has been noted that the UKLA's Equity Markets Group (which is responsible for premium and standard share listings) typically expects a company seeking a standard listing of shares to have more extensive and more rigorous internal controls and procedures in place, including with respect to internal accounting functions, than is typically required by the UKLA's Global Debt Group (the UKLA department responsible for standard GDR listing) of a company seeking a standard listing of GDRs. Therefore, although the formal requirements may not differ significantly between a standard listing of shares and a standard listing of GDRs, in practice the requirements imposed on an issuer seeking a standard listing of shares may be more exacting.

Additional Regulatory Requirements for Mineral Companies

Under the UKLA Listing Rules

Certain of the UKLA's eligibility requirements and continuing obligations applicable to premium listings do not apply to "mineral companies"²:

- A mineral company need not include three years of audited accounts in its prospectus if it has not been in operation for such period.
- A mineral company need not include consolidated and independently audited accounts that are the latest accounts for a period ended not more than six months before the date of the prospectus unless it has published accounts³.

- A mineral company need not demonstrate that (i) at least 75 percent of its business is supported by a historic revenue earning record for the previous three financial years; (ii) it controls the majority of its assets and has done so for the three previous financial years and (iii) it will be carrying on an independent business as its main activity.

However, certain additional requirements do apply to premium listed mineral companies:

- To the extent a mineral company does not hold controlling interests in a majority (by value) of the properties, fields, mines or other assets in which it has invested, it must demonstrate that it has a “reasonable spread” of direct interests in mineral resources and has rights to participate actively in their extraction, whether by voting or through other rights which give it influence in decisions over the timing and method of extraction of those resources.
- Transactions entered into by a premium listed mineral company involving significant mineral resources are subject to an additional class test, the ‘reserves’ test⁴. Under the ‘reserves’ test the volume/amount of the proven reserves and probable reserves to be acquired or disposed is calculated as a percentage of the total volume/amount⁵ of the aggregate proven reserves and probable reserves of the listed company. The imposition of an additional class test increases the chance that such transactions will be classified as class 1 transactions (or even a reverse takeover).
- Any circular prepared in respect of a class 1 transaction relating to an acquisition or disposal of mineral resources must include a mineral expert’s report prepared in accordance with the CESR Guidelines⁶. See *CESR Guidelines* below.

CESR Guidelines

A mineral company applying for either a premium or a standard listing must comply with the various requirements applicable to mineral companies set out in the CESR Guidelines. Pursuant to the CESR Guidelines, a prospectus prepared by a mineral company⁷ in connection with its listing application must include the following information:

- details of its mineral resources and, where applicable, reserves (presented separately) and exploration results/prospects presented in accordance with one of the reporting standards/codes set out in Schedule 2(A);
- details of the anticipated mine life and exploration potential of its deposits or the anticipated duration of commercial activity associated with extracting reserves;
- an indication of the duration and main terms of its licenses or concessions and the legal, economic and environmental conditions thereof;
- indications of the current and anticipated progress of mineral exploration and/or extraction and processing, including a discussion of the accessibility of the deposit; and
- an explanation of any exceptional factors that have influenced the above factors.

Further, the prospectus must also include a competent person’s report⁸ (a CPR) dated not more than six months from the date of the prospectus and a statement by the mineral company that no material changes have occurred since the date of the CPR which would make it misleading. Information relating to mineral resources/reserves and exploration results/prospects as well as other information of a scientific or technical nature set out elsewhere in the prospectus must not be inconsistent with the information in the CPR. The CPR must:

- be prepared by an individual who is suitably qualified under one of the standards/codes set forth in Schedule 2(A) or, if such requirements are not prescribed by the relevant standard/code, is a member of an appropriate recognized professional association/institution and has at least five years' relevant professional experience in the estimation, assessment and evaluation of the relevant type of mineral or deposit. Such individual must also be independent of the mineral company, its directors, senior management and its other advisers, have no interest in the mineral company or its minerals assets the subject of evaluation and not be remunerated by any fee that is linked to the admission or value of the mineral company;
- report mineral resources/reserves and exploration results/prospectus in accordance with one of the reporting standards/codes set out in Schedule 2(A); and
- contain the information set out in Schedule 2(B) (if the mineral company has mining projects) or Schedule 2(C) (if the company has oil and gas projects).

A mineral company may omit from its prospectus or CPR any information that is otherwise required to be disclosed under the CESR Guidelines if such disclosure is prohibited under applicable securities laws or regulations, provided that it must identify both the omitted information and the laws/regulation restricting its disclosure.

Further Considerations – UK Bribery Act 2010

Foreign companies may become subject to the "failure to prevent bribery" offence under the UK Bribery Act 2010 if they "carry on part of their business in the UK". This issue is likely to be fact specific, and the analysis will differ for different companies. Guidance issued by the United Kingdom's Ministry of Justice suggests that a London listing (whether on the premium listing segment or otherwise) is unlikely of itself to constitute carrying on part of a business in the UK, but a London listing may be one factor which, when taken with others, might do so. Thus far there has been no indication from the UK authorities that a premium listing is considered any more suggestive of a "business presence" in the UK than a standard listing.

3. Transferring to a Premium Listing

As the various attractions of a premium listing become ever more apparent, more Russian mineral company issuers with existing standard listings of GDRs or shares may elect to follow the examples set by Polymetal and Evraz and seek to transfer to a premium listing.

Transferring From a Standard Listing of Shares

The Listing Rules permit a Russian mineral company issuer with an existing standard listing of shares to transfer to a premium listing without requiring it to reapply for a new listing and produce a new prospectus. The procedure for transferring from a standard listing of shares to a premium listing of shares is summarized below.

- The issuer must appoint a sponsor in connection with the transfer and must demonstrate to the sponsor that it satisfies all eligibility requirements applicable to premium listed companies and that it has established procedures which enable it to comply with the various regulatory obligations imposed on premium listed companies going forward and to provide a reasonable basis for the directors to make proper judgments on an ongoing basis as to the financial position and prospects of the issuer.

The sponsor is required to submit an eligibility letter in respect of the issuer to the UKLA and will be required to submit a sponsor's declaration before approval of the announcement detailed below.

- The issuer must notify the UKLA of its intention to transfer to a premium listing. Such notification must include an explanation as to why it is seeking to transfer its listing, the sponsor's eligibility letter, a proposed timetable for the transfer and a draft of the announcement that the issuer will publish in connection with the transfer. The notification must be made as early as possible and not less than 20 business days before the publication of the announcement.
- The announcement will need to contain the information that would be required if a shareholder circular was required to be published and, in particular, to include the anticipated transfer date (which must not be less than 20 business days after the announcement is published), the background and reasons for the proposed transfer, any changes to the issuer's business that have been made or are proposed to be made in connection with the proposal, the effect of the transfer on the issuer's obligations under the Listing Rules, how the issuer will meet any new eligibility requirements and any other matter that the UKLA may reasonably require. The announcement must be approved by the UKLA before it is published.
- The issuer must then provide a second notification to the UKLA requesting it to approve the transfer and containing a proposed transfer date. If the UKLA is satisfied that the issuer satisfies the premium eligibility requirements and has complied with the listing category transfer requirements and that 20 business days has elapsed since the date of the announcement it may approve the listing transfer and will announce its decision on a RIS, whereupon the transfer shall become effective.
- The London Stock Exchange must be notified no later than three business days before the transfer is due to take place.

Transferring From a Standard Listing of GDRs

By contrast, no such expedited process exists for a Russian mineral company issuer with a listing of GDRs. A GDR issuer desiring to transfer its standard GDR listing to a premium listing of shares must submit a new listing application (and a new prospectus) for the premium listing of shares to the UKLA. In the past year, a number of Russian companies with standard listed GDRs have elected, or announced their intention, to switch to a premium listing (Polymetal, Evraz, AFI Development and Polyus Gold), most for the stated purpose of seeking inclusion in the FTSE UK Indices. Broadly, this can be achieved in one of three ways, as summarized below.

Option A — Structure Used by Polymetal and Evraz

- A new company will be incorporated to act as the holding company for the Russian mineral company and its group (the ListCo). ListCo will typically be incorporated in a jurisdiction which is acceptable to the FTSE for the purpose of entry to the FTSE UK Indices and is reasonably tax efficient for the Russian mineral company's Russian shareholders.
- ListCo will then apply to the UKLA to have its shares admitted to the premium listing segment of the Official List and to trading on the London Stock Exchange (Admission) and may also prepare to effect an initial public offering of its shares to investors (the Initial Offering), including if it needs to increase its shares in public hands/free float.

- At the same time, a wholly-owned subsidiary of ListCo (the Offeror) will extend to Eligible Shareholders (as defined below) of the Russian mineral company an offer to exchange their securities (shares and/or GDRs) in the Russian mineral company for shares in ListCo (the Exchange Offer). Completion of the Exchange Offer will be conditional on the receipt by the Offeror of valid acceptances in respect of securities representing not less than a certain percentage of the share capital of the Russian mineral company (the "Take-Up Threshold") (for example, 85 percent, as per the Polymetal Exchange Offer) and the application for Admission being approved by both the UKLA and the London Stock Exchange.
- Immediately following the completion of the Exchange Offer the Initial Offering will close and Admission will occur, whereupon ListCo will hold substantially all of the shares of the Russian mineral company and will have obtained a premium listing of its shares. At this stage ListCo will procure that the Russian mineral company applies to have its shares delisted from MICEX and RTS, if applicable, its GDRs delisted from the Official List and the GDR listing terminated.
- Assuming that the Offeror acquires more than 50 percent of the share capital of the Russian mineral company in the Exchange Offer, it will then be required to launch a mandatory tender offer under and in accordance with Russian law (the MTO) for all of the shares in the Russian mineral company not acquired in the Exchange Offer. The Offeror may also elect (but shall not be required) to extend the mandatory offer to holders of the Russian mineral company's GDRs. The MTO must be made in cash at the price prescribed by Russian law and the Offeror must ensure it has a bank guarantee in place for the full amount of the consideration payable thereunder. ListCo and the Offeror must ensure that sufficient funds are available to finance the MTO and ListCo may need to increase the size of the Initial Offering to ensure that sufficient proceeds are available for this purpose. Shareholders of the Russian mineral company will be entitled, but not required, to accept the MTO and sell their shares to the Offeror.
- The Offeror should ensure that, following completion of the MTO, the Russian mineral company gives notice to its GDR depositary bank (the Depositary) to cancel its GDR facility, such cancellation to become effective after the conclusion of the Squeeze Out (defined below) in order that the Depositary can still act on the instructions of the Russian mineral company as required throughout the duration of the Squeeze Out.
- If, following the Exchange Offer and the MTO, the Offeror holds in excess of 95 percent of the shares of the Russian mineral company, the Offeror will be entitled, under Russian law, to purchase all the remaining shares of the Russian mineral company, provided that the 95 percent threshold was reached as a result of acceptances under the MTO and at least 10 percent of the shares acquired in the MTO were acquired from shareholders unaffiliated with the Offeror (the Squeeze Out). The purchase price payable under the Squeeze Out may not be lower than the price paid under the MTO. Following the completion of the Squeeze Out, ListCo will indirectly hold the entire share capital of the Russian mineral company.

A Russian mineral company issuer must consider the following issues in connection with Option A:

- The Offeror will want to extend the Exchange Offer to as many shareholders of the Russian mineral company as possible so as to maximise its chances of reaching the relevant Take-Up Threshold, but, in order to avoid the need to comply with certain onerous securities laws and regulatory and registration requirements, the Exchange Offer must only be made to specific shareholders, including 'Qualified Investors'/'QIBs'

and their equivalent in the UK, EU and US and 'qualified investors' in Russia (Eligible Shareholders). Consequently, it is advisable to perform a comprehensive shareholder analysis exercise to identify all 'eligible' and non-'eligible' shareholders and obtain the advice of securities lawyers practising in the jurisdictions in which such shareholders are located. A solicitation agent may also be appointed to contact shareholders and GDR holders and assist them to understand the Exchange Offer.

- In order to maximise acceptances under the Exchange Offer, the major shareholder(s) of the Russian mineral company can give binding irrevocable undertakings to accept the Exchange Offer.
- Depending on the size, nature and location of the assets of the Russian mineral company, the acquisition of the securities of the Russian mineral company by the Offeror under the Exchange Offer may require the approval of Russian Federal Antimonopoly Service and the Russian Strategic Assets Commission. Further, any transaction (including the Initial Offering) which will result in a foreign-owned entity holding 25 percent or more of ListCo's share capital may also need Strategic Assets Commission approval.
- ListCo must demonstrate to the UKLA that it will have at least 25 percent of its shares in public hands upon Admission. If ListCo is incorporated outside of the UK and intends to seek entry to the FTSE UK Indices, its free float under the FTSE tests must be in excess of 50 percent. ListCo will have to tailor the Initial Offering so as to ensure the shares in public hands/free float requirement is satisfied, bearing in mind the anticipated take up under the Exchange Offer.
- If ListCo is subject to the UK Takeover Code (*i.e.* if it is incorporated in the UK, the Channel Islands, the Isle of Man or another EEA jurisdiction (where shared jurisdiction may apply) or has acknowledged adherence to the Code in order to be eligible for inclusion in the FTSE UK Indices), to the extent any major shareholder or, if they are 'acting in concert', major shareholders in aggregate, will control 30 percent or more of the voting rights in ListCo as a result of the Exchange Offer, discussions should be initiated with the UK Takeover Panel at an early stage to obtain their confirmation that a mandatory takeover offer under Rule 9 of the UK Takeover Code will not be required. Arguments in support of such a confirmation include that a Russian mandatory tender offer will be effected later in the transaction and all other shareholders in ListCo will be fully aware of the major shareholder(s)' shareholding(s) in ListCo and such shareholding(s) will be disclosed in the prospectus.
- The Russian mineral company may incur significant fees and expenses as a result of the early termination of its GDR facility.

Option B — Structure Used by AFI Development

If a Russian mineral company GDR issuer is already incorporated in an off-shore jurisdiction, it may elect to create a new class of shares (Class B shares), issue such Class B shares to its existing shareholders by way of a bonus issue and apply to have only its Class B shares admitted to the premium listing segment of the Official List and to trading on the London Stock Exchange. The mineral company's original class of shares (Class A shares) would not be admitted to the premium listing segment and its GDRs would represent only Class A shares, not the new Class B shares. As a result, the Russian mineral company would have both a GDR listing (representing Class A shares only) and a premium share listing (for its Class B shares only). The holding of GDR holders should be replicated in the Class B shares through the bonus issue.

A Russian mineral company issuer must consider the following issues in connection with Option B:

- If the Russian mineral company intended to seek entry to the FTSE UK Indices, it is not clear how the FTSE rules in relation to free float would apply in the case of dual classes of ordinary shares, only one of which was premium listed.
- The off-shore jurisdiction in which the company is incorporated may not be eligible for FTSE UK Index inclusion. Even if it is eligible, the 50 percent free float requirements will apply, as compared to 25 percent for UK incorporated companies.
- Liquidity would be split between the premium listed Class B shares and the GDRs representing Class A shares.
- The UKLA may require that the market capitalisation of the mineral company to be used for the purpose of the class tests under the Listing Rules (for example for 'significant' transactions) be calculated on the basis of the premium listed Class B shares only — this approach would give an artificially low market capitalisation value for the mineral company which would increase the class test ratios and could result in more transactions being classified as class 1 transactions or even reverse takeovers.
- GDR holders would not be able to convert their GDRs into premium listed Class B shares as the GDRs would represent shares of a different class, *i.e.* Class A shares.
- The UKLA may require split voting arrangements (as they did in respect of AFI Development) pursuant to which only the holders of premium listed Class B shares would be entitled to vote on resolutions which are required by the Listing Rules (subject to applicable law).
- There would be ongoing complications (and costs) of maintaining two listings and the unwind arrangements would not be straightforward.

Option C — Structure Used by Polyus Gold

In order to avoid the complications arising in connection with splitting the issuer's share capital and maintaining two separate listings (of GDRs and premium shares) under Option B, a Russian mineral company that has a standard listing of GDRs through an offshore holding company may simply elect to cause such offshore holding company to apply for its ordinary shares (which underlie the GDRs) to be admitted to the premium segment of the Official List and to trading on the main market of the LSE and cancel its GDR listing once its premium share listing is confirmed. In advance of the admission of such shares to listing and trading the issuer would either extend an exchange offer to its GDR holders entitling them to convert their GDRs into premium listed shares at a specific conversion ratio, or notify GDR holders that their GDRs will be automatically cancelled and converted into premium listed shares. The delisting of the GDRs and the conversion of GDRs to premium listed shares would be conditional on the admission of the shares to the premium listing segment and to trading.

A Russian mineral company issuer must consider the following issues in connection with Option C:

- Option C enables a Russian mineral company with an offshore GDR listing vehicle to avoid the various expenses, administrative burdens and complexities highlighted in Option B above that result from the creation of separate classes of shares and maintaining two LSE listings (GDRs and premium shares) simultaneously.

- As the issuer is already an offshore company, it is not necessary to introduce a new listing vehicle into the group structure in advance of the listing application.
- In connection with the admission to premium listing, the issuer may elect to offer shares to investors in order to raise additional capital and to increase its shares in public hands/free float (as necessary).
- Shares deposited with a depositary bank and held in the form of GDRs do not count for the purpose of satisfying the UKLA's shares in public hands eligibility requirement in connection with the premium share listing application. Only once shares are withdrawn from the GDR Program and are held by the relevant shareholder(s) can they represent free float. As a consequence, depending upon its shareholding structure, an issuer's eligibility for premium listing may be contingent on ensuring that all, or substantially all, of its GDRs are converted to shares.
- The Russian mineral company may incur significant fees and expenses as a result of the early termination of its GDR facility.
- The off-shore jurisdiction in which the company is incorporated may not be eligible for FTSE UK Index inclusion. Even if it is eligible, the 50 percent free float requirements will apply, as compared to 25 percent for UK incorporated companies. Polyus Gold had stated its intention to redomicile from Jersey to the UK by including a new UK top company into its group structure, but that has not yet been possible due to Russian regulatory approval requirements.

Polyus Gold did not have the requisite 25 percent shares in public hands upon admission — it eventually had approximately 22 percent shares in public hands on admission — and had to rely on a special waiver granted by the UKLA. In order to maximise its shares in public hands, all Polyus Gold's GDRs held outside of DTC were automatically converted. In order to address the concerns of the (primarily US) holders of GDRs held through DTC, such holders were given the option to elect to retain their GDRs, but the size of GDR Program was reduced to 4.99 percent of the issued share capital of the issuer, and to the extent holders elected to retain more GDRs than such limit permitted, the excess GDR were automatically converted to shares on a pro rata basis. The reduced 4.99 percent GDR Program limit enabled Polyus Gold to avoid totally disenfranchising GDR holders unable to hold premium listed shares, (although such holders were required to receive (and presumably) sell premium listed shares to extent they elected to retain an aggregate amount of GDRs in excess of such limit), but at the same time ensure that sufficient GDRs would be automatically converted to enable it to meet the level of shares in public hands required by the UKLA. Further, Polyus Gold acknowledged that its decision to delist the GDRs promptly following, and conditional on, the admission of its shares to a premium listing was calculated to incentivize GDR holders to convert their GDRs into shares in order to avoid holding unlisted GDRs. As noted above, Polyus Gold has not been able to attain eligibility for the FTSE UK indices due to being below the minimum 50 percent free float requirement for non-UK incorporated companies.

Regardless of which route to a premium listing a mineral company adopts, it is important to consider the taxation consequences of the various listing transaction structures available to it, including the tax residency of the listing vehicle (particular if a UK incorporated entity is selected as the listing vehicle for the purpose of FTSE UK Index eligibility) and its group corporate structure and management compensation scheme(s) posting-listing.

4. Further Regulatory Considerations

As briefly discussed above, currently a Russian company must be able to introduce an off-shore listing vehicle into its group in order to be eligible to list its shares (but not its GDRs) on the London Stock Exchange, either in the form of a premium or a standard listing. For a number of reasons, most of which are related to restrictions imposed by Russian law, shares of Russian companies cannot be admitted to the Official List or to trading on the London Stock Exchange.

Russian Shares Not Eligible for Electronic Settlement

Shares admitted to the London Stock Exchange must be eligible for electronic settlement through CREST. Shares of UK, Channel Islands, Isle of Man and Irish companies may be admitted directly to CREST, but companies incorporated in other jurisdictions must appoint a depository to hold their shares on trust and issue shareholders with depository interests representing such underlying overseas shares which can be settled through CREST.

Due to concerns related to the efficiency/reliability of the settlement of Russian shares in the Russian share register, shares of Russian companies are not eligible for CREST settlement (either directly or by way of depository interests). Therefore, a Russian mineral company issuer seeking a premium or standard share listing must introduce an offshore holding company into its group corporate structure and list the shares of such offshore parent entity (rather than the Russian company itself). The share register of the offshore holding company will then be maintained either by the company or by a suitable securities depository in the jurisdiction of incorporation of the offshore company and, depending on the jurisdiction of the offshore company, its shares will either be eligible for direct settlement in CREST or through the use of depository interests.

A Russian mineral company may obtain a standard listing of GDRs without introducing an offshore holding company because a foreign bank acting as the Depository will issue the listed GDRs and maintain the GDR register, and the GDRs will typically be held and traded through Euroclear, Clearstream and/or DTC, thereby rendering them CREST eligible.

Restrictions on the Circulation of Russian Securities

The UKLA requires that an application for the listing of securities of any class must relate to all of the securities of that class, but, under Russian law, the maximum percentage of a Russian company's shares that may be listed and traded on a foreign exchange (including in the form of GDRs) is 25 percent.

Consequently, in order to obtain a premium (or standard) listing for its shares, a Russian mineral company must use a listing vehicle incorporated outside of the Russian Federation. However, if its unable or unwilling to move off-shore, it may still obtain a standard GDR listing — the GDR programme can be structured so that not more than 25 percent of the share capital of the issuer may be deposited in the GDR facility from time to time, but 100 percent of the GDRs issued representing such shares can and will be admitted to listing/trading.

Approvals Required Under the Strategic Enterprises Law

Pursuant to the Strategic Enterprises Law of the Russian Federation, any acquisition by a foreign investor of 25 percent or more of the voting shares of a company undertaking operations at subsoil plots of federal importance (a Strategic Subsoil Company) is subject to the prior approval of the Government Commission for Control of Foreign Investments in the Russian Federation (the Government Committee)⁹. Any such acquisition of voting shares effected without the prior approval of the Government Committee may be deemed void and the voting rights attaching to such shares in the Strategic Subsoil Company may be removed. Consequently, to the extent a Strategic Subsoil Company inserts a new offshore holding company into its group structure to obtain a premium listing of shares, such offshore holding company must obtain the approval of the Government Committee in respect of its acquisition (directly or indirectly) of 100 percent of the Strategic Subsoil Company, unless the ultimate beneficial owner of the new holding company is a Russian citizen that is a Russian tax resident or the Russian Government.

Acquisitions of shares in a London listed offshore holding company of a Strategic Subsoil Company are also be subject to the above limitations. Therefore, the constitutional documents of such offshore holding companies typically provide that shareholders must notify the company of acquisitions of shares through certain shareholding levels, and that any acquisition in breach of the Strategic Enterprises Law is also a breach of the constitutional documents of the company entitling the board of directors to require that some or all of such shares so acquired be sold and suspending voting rights attached to some or all of the shares.

Schedule 1: Comparison of Listing Requirements and Obligations for a Mineral Company

	Premium Listing (Shares)	Standard Listing (Shares)	Standard Listing (GDRs)
ELIGIBILITY CRITERIA			
Due Incorporation: Applicant must be duly incorporated or validly established and operating in conformity with its constitution.	Yes	Yes	Yes
Validity: Securities to be listed must conform with the law of the applicant's place of incorporation, be authorised under the applicant's constitution and have any necessary statutory or other consents.	Yes	Yes	Yes. Applicable to both the underlying shares and the GDRs.
Admission to Trading: Securities to be listed must be admitted to trading on regulated market for listed securities operated by a Recognised Investment Exchange (e.g. the London Stock Exchange).	Yes	Yes	Yes
Transferability: Securities to be listed must be freely transferable, fully paid up and free of all liens and restrictions on the right of transfer ¹⁰ .	Yes	Yes	Applicable to the underlying shares. GDRs must be freely transferable and fully paid up.
Market Capitalisation: Securities to be listed must have an expected aggregate market value of at least £700,000 ¹¹ .	Yes	Yes	Yes
Listing of Securities: An application for the listing of securities must relate to all the securities of such class of securities.	Yes	Yes	Yes
Electronic Settlement: Securities to be listed must be eligible for electronic settlement on CREST ¹² .	Yes	Yes	Yes
Shares in Public Hands: At least 25 percent of the listed class of securities (excluding treasury shares) must be held in public hands no later than on the date of admission ¹³ .	Yes	Yes	Yes
Accounts: To the extent it has published accounts, the applicant must provide independently audited consolidated accounts which are the latest accounts for a period ending not more than 6 months before the date of the prospectus ¹⁴ . (Historical Financial Information must be provided in the prospectus as per the requirements set forth below).	Yes Yes	No Yes	No Yes
Control of Mineral Resources: If the applicant does not hold controlling interests in a majority (by value) of the properties, fields, mines or other assets in which it has invested, it must demonstrate it has a reasonable spread of direct investments in mineral resources and has rights to participate actively in their extraction, (whether by voting or through other rights).	Yes	No	No
Working Capital: Applicant must demonstrate that it has sufficient working capital for its group's requirements for at least the next 12 months from the date of the prospectus. (See also the requirement to provide a Working Capital Statement in the prospectus, as set forth below).	Yes	No. Applicant must state in the prospectus that, in its opinion, its working capital is sufficient for its present requirements ¹⁵ , or, if not, how it proposes to provide the additional working capital required	No

	Premium Listing (Shares)	Standard Listing (Shares)	Standard Listing (GDRs)
Warrants/Options: The total of all issued warrants and options to subscribe for equity shares must not exceed 20 percent of the issued equity share capital (excluding treasury shares) of the applicant as at the time of the issue of the warrants or options ¹⁶ .	Yes	No	No
Depository: The depository bank that issues the GDRs must be a suitably authorised and regulated financial institution.	N/A	N/A	Yes
Prospectus: A prospectus must be published and approved by the UKLA in respect of the initial public offer and admission of securities to the Official List of the UKLA and to trading on the London Stock Exchange.	Yes	Yes	Yes
Sponsor: Applicant is required to appoint a sponsor in connection with an application for the admission of securities which requires the publication of a prospectus.	Yes	No	No

	Premium Listing (Shares)	Standard Listing (Shares)	Standard Listing (GDRs)
KEY ITEMS FOR INCLUSION IN THE PROSPECTUS			
Responsibility Statement: A declaration(s) by those persons responsible for the prospectus (or any part thereof) that, having taken reasonable care to ensure such is the case, the information in the prospectus (or, as applicable, the part for which they are responsible) is to the best of their knowledge, in accordance with the facts and contains no omission likely to affect its import.	Yes. Directors and the Company. Reporting accountants and Competent Person with respect to their reports/ sections.	Yes. Directors and the Company. Reporting accountants and Competent Person with respect to their reports/ sections.	Yes. The Company but not the Directors. Reporting accountants and Competent Person with respect to their reports/ sections.
Selected Financial Information: Key selected financial information regarding the applicant for the period covered by the historical financial information and any subsequent interim financial period summarising the financial condition of the applicant.	Yes	Yes	Yes
Risk Factors: Prominent disclosure of risk factors relevant to the applicant, its industry and the securities.	Yes	Yes	Yes
Information About the Applicant: Information concerning the applicant, including its name, place of registration, date of incorporation, important events in its development history and jurisdiction of incorporation.	Yes	Yes	Yes
Principal Investments: A description of the applicant's principal investments for the period covered by the historical financial information and the applicant's principal future investments in respect of which firm commitments have been made by management.	Yes	Yes	Yes
Business Overview: (i) A description of, and key factors relating to, the nature of the applicant's operations and its principal activities, (ii) an indication of any significant new products and/or services introduced and (iii) a breakdown of the applicant's principal markets (including a breakdown of revenue by activity and geographic market for the period covered by the historical financial information).	Yes	Yes	Yes
Organization Structure: A description of the applicant's group, its position in the group and its subsidiaries.	Yes	Yes	Yes

	Premium Listing (Shares)	Standard Listing (Shares)	Standard Listing (GDRs)
<p>Property, Plant and Equipment: Information relating to existing or planned material tangible fixed assets and any major encumbrances thereon and a description of any environmental issues that may affect the utilisation of such tangible fixed assets.</p>	Yes	Yes	Yes
<p>Operating and Financial Review: A description of (i) the applicant's financial condition and results of operations for each year and interim period covered by the historical financial information, and (ii) significant factors, policies or developments that have materially affected, or could materially affect the applicant's income and operations.</p>	Yes	Yes	Yes
<p>Capital Resources: Information concerning (i) the applicant's long and short term capital resources, borrowing requirements and funding structure and a narrative description of the issuer's cash flows, and (ii) anticipated sources of funding to fulfil future principal investment commitments and acquire any planned material tangible fixed assets.</p>	Yes	Yes	Yes
<p>Research and Development: A description of any material research and development policies of the applicant for each year covered by the historical financial information.</p>	Yes	Yes	Yes
<p>Trend Information: Information concerning (i) any significant trends in production, sales and inventory and costs and selling prices since the end of the last financial year, (ii) and trends, demands, factors or uncertainties that are reasonably likely to have a material effect on the applicant's prospects or operations for at least the current financial year.</p>	Yes	Yes	Yes
<p>Management: A description of the functions, activities, terms of service, potential conflicts of interest, remuneration and experience of, or in respect of the members of the administrative, management or supervisory bodies of the applicant. Information as to whether, in the previous five years, any such person has/had (i) any convictions in relation to fraudulent offences, (ii) any official public incrimination and/or sanctions imposed on him by a statutory or regulatory authority, or (iii) been a member of the administrative, management or supervisory bodies of an entity that entered into bankruptcy or insolvency.</p>	Yes	Yes	Yes
<p>Corporate Governance: A statement as to whether or not the applicant complies with the corporate governance regime of the jurisdiction of its incorporation, and, if not, an explanation of why not.</p>	Yes	Yes	Yes
<p>Employees: Information concerning (i) the number of employees at the end of each financial period, or the average for each financial period covered by the historical financial information, and (ii) employees' ownership of the applicant's share capital and/or stock options.</p>	Yes	Yes	Yes
<p>Major Shareholders: Information identifying any person holding interests in the applicant's capital or voting rights which is notifiable under the law of the applicant's jurisdiction of incorporation and clarifying whether any such person has different voting rights. A description (i) of how and by whom the applicant is controlled¹⁷ and the measures in place to ensure that such control is not abused, and (ii) of any arrangement known to the applicant that may result in a change of control. (A controlling shareholder may enter into a relationship agreement with the applicant regulating the exercise of such shareholder's control over the applicant).</p>	Yes Normally required by the UKLA — best market practice is to have.	Yes Can be required by the UKLA — best market practice is to have.	Yes UKLA less likely to require — no market practice to have.

	Premium Listing (Shares)	Standard Listing (Shares)	Standard Listing (GDRs)
<p>Related Party Transactions: <i>For an applicant incorporated in the EU:</i> a description of related party transactions that the applicant has entered into during the period covered by the historical financial information.</p> <p><i>For an applicant incorporated outside the EU:</i> a description of material related party transactions (including an explanation of why such transactions were not concluded at arm's length, if appropriate) and the value of all related party transactions as a percentage of the turnover of the applicant.</p>	Yes	Yes	Yes
<p>Historical Financial Information: Audited consolidated historical financial information covering the latest three financial years (or such shorter period that the applicant has been in operation) (including at least balance sheets, incomes statements, statements of changes in equity, cash flow statements and accounting policies and explanatory notes) and the audit report for each year. The last year of the audited financial information may not be older than (i) 18 months from the date of the prospectus if the prospectus includes audited interim financial information; or (ii) 15 months from the date of the prospectus if the prospectus includes unaudited interim financial information. If the prospectus is dated more than nine months after the end of the last audited financial year, interim financial information covering the first six months of the financial year and comparative interim financial information for the same period in the prior financial year must be included. Financial statements of an applicant incorporated in the EU must be prepared in accordance with EU-IFRS — non-EEA incorporated applicants must use EU-endorsed IFRS or an equivalent standard (US, Japanese, Canadian, South Korean, Chinese, Indian GAAP).</p>	Yes	Yes	Yes
<p>Pro Forma Financial Information: Pro forma financial information is required to be included in the prospectus in the event of any transaction(s) giving rise to a 'significant gross change'¹⁸ with respect to the applicant, in order to provide a description of how the transaction might have affected the assets, liabilities and earnings of the applicant had the transaction been undertaken at the commencement of the period being reported on or at the date reported. Pro forma financial information may only cover (i) the current financial period, (ii) the most recently completed financial period and/or (iii) the most recent interim period. A report prepared by independent accountants or auditors must state that in their opinion the pro forma financial information has been properly compiled on the basis stated and that that basis is consistent with the accounting policies of the applicant.</p>	Yes	Yes	Yes. Deemed by the UKLA to apply despite not being explicitly provided for in the Prospectus Rules.
<p>Governmental, Legal or Arbitral Proceedings: Information concerning any governmental, legal or arbitral proceedings (including those pending or threatened of which the issuer is aware) during the previous 12 months which may have, or have had, a significant effect on the applicant's financial position or profitability, or an appropriate negative statement.</p>	Yes	Yes	Yes
<p>Significant Change in Financial or Trading Position: A description of any significant change in the financial or trading position of the applicant's group which has occurred since the end of the last financial period for which either audited financial information or interim financial information has been published, or an appropriate negative statement.</p>	Yes	Yes	Yes
<p>Share Capital: Information concerning the issued capital of the applicant, including options granted in respect thereof.</p>	Yes	Yes	Yes
<p>Material Contracts: A summary of each material contract entered into by the applicant (or any member of its group) in the previous two years, other than in the ordinary course of business.</p>	Yes	Yes	Yes

	Premium Listing (Shares)	Standard Listing (Shares)	Standard Listing (GDRs)
Working Capital Statement: Applicant to state that it has sufficient working capital for its group's requirements for at least the next 12 months from the date of the prospectus.	Yes	No. Applicant must state that, in its opinion, its working capital is sufficient for its present requirements ¹⁹ or, if not, how it proposes to provide the additional working capital required.	No
Capitalisation and Indebtedness: A statement of capitalisation and indebtedness (including indirect and contingent indebtedness and distinguishing between guaranteed and unguaranteed, secured and unsecured indebtedness) as of a date no earlier than 90 days prior to the date of the prospectus.	Yes	Yes	Typically required by the UKLA — best market practice is to include.
Interests in the Issue/Offer: A detailed description of any interest of any person that is material to the issue/offer of securities.	Yes	Yes	Yes
Use of Proceeds: A description of the reason(s) for the offer of securities, an estimate of the net amount of proceeds, the intended use(s) of proceeds and an explanation of the sufficiency (or otherwise) of the proceeds for such intended uses.	Yes	Yes	Yes
Information Concerning the Securities to be Offered/Admitted to Trading: A description of the securities to be offered/admitted to trading, including rights attached thereto.	Yes	Yes	Yes. Information to be provided in respect of underlying shares and GDRs.
Expenses of the Offer: Total net proceeds and an estimate of the total expenses of the issue/offer of securities.	Yes	Yes	Yes
Terms and Conditions of the Offer: A description of the terms of the offer and conditions, statistics, expected timetable and actions required to apply for the offer.	Yes	Yes	Yes
Admission to Trading and Dealing Arrangements: Information as to (i) whether an application for admission to trading has or will be made in respect of the securities, (ii) all regulated markets or equivalent markets to which the securities are already admitted to trading and (iii) any stabilisation activities that may occur in connection with the offer.	Yes	Yes	Yes
Selling Securities Holders: Information concerning any selling securities holders, including any position, office or material relationship that any such person has had within or with the applicant in the previous three years.	Yes	Yes	Yes
Dilution: A description of any dilution that may result from the offer.	Yes	Yes	Yes
Competent Person's Report: A report on the applicant and its assets by a Competent Person in accordance with the CESR Guidelines.	Yes	Yes	Yes
Third Party Information and Statement by Expert: Where a statement or report attributed to an expert (such as the Competent Person's Report) is included in the prospectus, the following must be set out in the prospectus: (i) such expert's name, business address, qualifications and any material interests he may have in the applicant; and (ii) a statement that the report is included with the consent of the expert who has authorised the contents thereof.	Yes	Yes	Yes

	Premium Listing (Shares)	Standard Listing (Shares)	Standard Listing (GDRs)
CONTINUING OBLIGATIONS			
Eligibility Criteria: Issuer must at all times comply with the following Eligibility Criteria: (i) Admission to Trading; (ii) Electronic Settlement; and (iii) Shares in Public Hands.	Yes	Yes	Yes
Sponsor: Issuer must appoint a sponsor/obtain a sponsor's guidance in certain circumstances, including (i) in connection with further offers of shares requiring the production of a prospectus, (ii) if it is required to send certain types of circulars to shareholders and (iii) if it intends to enter into a large/significant transaction or a related party transaction.	Yes	No. Issuer need only appoint a sponsor in connection with an application to transfer to a premium listing.	No
Compliance with the Listing Principles: Issuer must comply with the six Listing Principles set out in Listing Rule 7.2, including to take reasonable steps to establish and maintain adequate procedures, systems and controls to enable it to comply with its obligations, in particular its obligations to (i) identify whether obligations arise under Listing Rule 10 (Significant transactions) and Listing Rule 11 (Related party transactions); and (ii) provide timely and accurate information to the market.	Yes	No	No
Model Code: The Model Code applies to the issuer and restricts dealings in its securities by persons discharging managerial responsibilities, or on behalf of the issuer itself, whilst in the possession of 'inside information'.	Yes	No. Best practice is to have a written 'market abuse/insider dealing' policy based on the Model Code.	No. Best practice is to have a written 'market abuse/insider dealing' policy based on the Model Code.
Pre-emption Rights: Pro rata pre-emption rights on further issuances of shares or sales of treasury shares for cash, except as expressly disapplied by the issuer's shareholders, or in connection with a rights issue or open offer, an open offer or a sale of treasury shares to an employee share scheme for cash.	Yes	No. Pre-emption rights only apply as per national law.	No. Pre-emption rights only apply to the underlying shares as per national law.
Employee Share Schemes/Director Long Term Incentive Plans: Employee share schemes must be approved by an ordinary resolution of the shareholders of the issuer before being adopted. Any long-term incentive plan for directors must be approved in advance by an ordinary resolution of the shareholders of the issuer unless (i) the plan is offered to all (or substantially all) of the employees of the issuer on similar terms, or (ii) the plan is offered to only one director to recruit or retain him in unusual circumstances (in which case a full description of the terms and purpose of the plan must be disclosed in the issuer's next annual report).	Applicable only to UK incorporated issuers and their major subsidiaries.	No	No
Discounted Options: Subject to certain exceptions, discounted option schemes giving directors or employees of the issuer (or any subsidiary thereof) the right to subscribe for shares at a discount to market value must receive the prior approval of the issuer's shareholders.	Yes	No	No

	Premium Listing (Shares)	Standard Listing (Shares)	Standard Listing (GDRs)
<p>Rights Issues: In connection with a rights issue, any placing of rights before the official start of dealings must relate to at least 25 percent²⁰ of the maximum number of shares offered. Placees must be committed to take up the rights placed with them and the price paid by the placees must not exceed the price of the shares that are the subject of the rights issue by more than one half of the premium²¹ over the offer price. A rights issue offer must remain open for at least 10 business days and the shares that are the subject of the rights issue must be of the same class as the shares already listed.</p> <p>If any rights are not taken up by existing shareholders, the shares the subject of the offer must be offered for subscription or purchase and any premium obtained over the subscription/purchase price shall be for the account of the holders (subject to a £5.00 <i>de minimis</i>). Shares may be sold/allotted to underwriters if no premium has been obtained by the expiry of the subscription period.</p> <p>The Issuer must notify a RIS as soon as possible of the issue price, the principal terms of the issue, the results of the issue and, if any rights are not taken up and are sold, details of the sale (date, price per share).</p>	Yes	No	No
<p>Discounts to Offer Price: Except as otherwise approved by the issuer's shareholders or under an existing disapplication of pre-emption rights, the offer price for shares offered in connection with an open offer, a placing, an offer for subscription to the public or an issue out of treasury (other than in respect of an employee share scheme) must not be at a discount of more than 10 percent to the middle market price of the shares at the time of the announcement of the terms of the offer or the agreement of the placing, (<i>i.e.</i> anything <i>other</i> than a rights issue).</p>	Yes	No	No
<p>Corporate Governance: Issuer must state in its annual financial report whether it has complied with the UK Corporate Governance Code, and if not, provide an explanation for such non-compliance.</p> <p>Issuer must include a corporate governance statement in its director's report which identifies the corporate governance code to which it is subject (and/or any corporate governance code it may have voluntarily decided to apply) and must explain the extent to which it departs from such corporate governance code.</p> <p>Issuer must have an audit committee (comprising at least one member with competence in accounting and/or auditing) responsible for monitoring financial reporting processes, internal controls, risk managements systems, internal audit functions, the statutory audit of annual consolidated accounts and the independence of the issuer's statutory auditor.</p>	Yes Yes	No. Best market practice is to adhere closely to the Code. Yes	No Yes
<p>Significant Transactions: Issuer's transactions are classified according to their size in relation to the issuer as either class 3 transactions, class 2 transactions, class 1 transactions or reverse takeovers²². Issuer must notify a RIS of most of its smaller transactions (class 3 and class 2) and must circulate an explanatory circular approved by the UKLA and obtain the prior approval of its shareholders for its larger transactions (class 1 and reverse takeovers)²³. In addition to the requirements for a class 1 transaction, on completion of reverse takeover the UKLA will usually cancel the issuer's listing so that it is required to apply for a new listing for its enlarged group.</p>	Yes	No	No

	Premium Listing (Shares)	Standard Listing (Shares)	Standard Listing (GDRs)
<p>Related Party Transactions: Subject to certain exceptions, an issuer entering into a related party transaction must (i) provide a notification of the transaction, (ii) send a circular to its shareholders and (iii) obtain shareholder approval (provided that the related party and its associates shall not be entitled to vote on the relevant shareholder resolution).</p> <p>The requirements set out in (i), (ii) and (iii) above do not apply to small transactions (<i>i.e.</i> where the class tests percentage ratios do not exceed 5 percent), provided that if any percentage ratio exceeds 0.25 percent the issuer must, in advance of entering into the transaction, provide the UKLA with a written confirmation of an independent financial adviser that the terms thereof are fair and reasonable with respect to its shareholders and confirm to the UKLA it will disclose details of the transaction in its next annual accounts.</p>	Yes	No	No
<p>Dealing in Own Securities: Purchases by an issuer of 15 percent or more of any class of its own shares must be by way of tender offer to all shareholders of that class.</p> <p>Unless a tender offer is made to all shareholders of the class, purchases by an issuer of less than 15 percent of any class of its own shares pursuant to a general authority granted by its shareholders must be at a price that is not more than 5 percent above the average market value of the shares for the five previous business days.</p>	Yes	No	No
<p>Disclosure of Inside Information: Issuer must notify a RIS as soon as possible of any 'inside information' which concerns it, provided that it may delay such disclosure so as not to prejudice its legitimate interests if (i) such omission is not likely to mislead the public, (ii) all persons receiving such information owe it a duty of confidentiality, and (iii) it is able to ensure the information remains confidential.</p>	Yes	Yes	Yes
<p>Insider List: Issuer must ensure that a list is drawn up identifying persons with access to 'insider information' relating directly or indirectly to it, whether on a regular or occasional basis.</p>	Yes	Yes	Yes
<p>Disclosure of Dealings by 'Persons Discharging Managerial Responsibilities': 'Persons discharging managerial responsibilities' must notify the issuer within four business days of the occurrence of any transactions conducted on their account in the shares of the issuer or in any financial instruments related to such shares. The issuer must then notify a RIS of such information not later than the following business day.</p>	Yes	Yes	Yes
<p>Annual Financial Report: Annual financial report (containing audited financial statements, a management report and appropriate responsibility statements) must be published within four months of the end of each financial period and prepared in accordance with EU-IFRS (or equivalent for non-EEA incorporated issuers).</p>	Yes	Yes	Yes
<p>Half-Yearly Financial Reports: Half-yearly financial reports (containing condensed financial statements (which need not be audited), an interim management report and appropriate responsibility statements) must be published within two months of the end of the period to which the report relates. Accounting standards used must be consistent with that used for the annual financial report.</p>	Yes	Yes	No legal requirement exists for GDR issuers to provide half-yearly financial reports, although it is best market practice for them to do so.
<p>Interim Management Statements: Interim management statements must be published during the first and second six-month periods of the financial year.</p>	Yes	Yes	No

	Premium Listing (Shares)	Standard Listing (Shares)	Standard Listing (GDRs)
<p>Major Shareholdings Notification: A person must, within two trading days, notify the issuer of the percentage of its voting rights that such person holds if such percentage reaches, exceeds or falls below 3 percent and every whole percentage above 3 percent (or for a non-UK issuer, within four trading days, on the basis of thresholds at 5 percent, 10 percent, 15 percent, 20 percent, 25 percent, 30 percent, 50 percent and 75 percent). A UK issuer must publicly disclose such information notified to it by the end of the trading day following receipt of such notification (for a non-UK issuer, by the end of the third trading day following receipt of such notification).</p> <p>In the event of any increase or decrease in the number of the voting rights and capital in respect of its shares, or the total number of voting rights in respect of shares held by it in treasury, the issuer must disclose the total number of voting rights and capital or the total number of voting rights in respect of shares held by it in treasury, as appropriate, at the end of that calendar month. In the event of a "material" increase or decrease in the total number of voting rights following the completion of a transaction (with the UKLA viewing an increase of 1% or more as material), the issuer must disclose to the public the total number of voting rights and capital in respect of its shares not later than the business day following the day in which the increase or decrease occurs.</p> <p>Issuer must give notice of any acquisition or disposal of its own shares within four trading days where, as a result thereof, the percentage voting rights attributable to the shares in itself that it owns reaches, exceeds or falls below 5 percent or 10 percent. Any change in the number of voting rights attributable to shares held in treasury must be disclosed not later than the following business day.</p>	Yes	Yes	No
<p>Cancellation of listing: Issuer must send a circular approved by the UKLA to its shareholders and obtain a resolution approved by not less than 75 percent of the holders of the listed shares for the cancellation of the listing.</p>	Yes	No. Issuer must (i) notify a RIS giving at least 20 business days notice and (ii) send a written request to the UKLA not less than 24 hours prior to cancellation.	No. Issuer must (i) notify a RIS giving at least 20 business days notice and (ii) send a written request to the UKLA not less than 24 hours prior to cancellation.

It is assumed for the purposes of this Schedule 1 that the UK is the Home Member State of the applicant/issuer.

Schedule 2(A): Mineral Standards

Mining Reporting

- The Australasian Code for Reporting of Exploration Results, Mineral Resources and Ore Reserves published by the Joint Ore Reserves Committee of the Australasian Institute of Mining and Metallurgy, Australian Institute of Geoscientists and Minerals Council of Australia, as amended (JORC);
- The South African Code for the Reporting of Exploration Results, Mineral Resources and Mineral Reserves published by the South African Mineral Resource Committee under the joint auspices of the Southern African Institute of Mining and Metallurgy and the Geological Society of South Africa, as amended (SAMREC);
- The various standards and guidelines published and maintained by the Canadian Institute of Mining, Metallurgy and Petroleum (CIM Guidelines), as amended;
- A Guide for Reporting Mineral Exploration Information, Mineral Resources and Mineral Reserves prepared by the US Society for Mining, Metallurgy and Exploration, as amended (SME);
- The Pan European Resources Code jointly published by the UK Institute of Materials, Minerals, and Mining, the European Federation of Geologists, the Geological Society, and the Institute of Geologists of Ireland, as amended (PERC); or
- Certification Code for Exploration Prospects, Mineral Resources and Ore Reserves as published by the Instituto de Ingenieros de Minas de Chile, as amended.

Oil and Gas Reporting

- The Petroleum Resources Management System jointly published by the Society of Petroleum Engineers, the World Petroleum Council, the American Association of Petroleum Geologists and the Society of Petroleum Evaluation Engineers, as amended;
- Canadian Oil and Gas Evaluation Handbook prepared jointly by The Society of Petroleum Evaluation Engineers and the Canadian Institute of Mining, Metallurgy & Petroleum (COGE Handbook) and resources and reserves definitions contained in National Instrument 51-101 Standards of Disclosure for Oil and Gas Activities; or
- Norwegian Petroleum Directorate classification system for resources and reserves.

Valuation

- The Code for Technical Assessment and Valuation of Mineral and Petroleum Assets and Securities for Independent Expert Reports, prepared by a joint committee of the Australasian Institute of Mining and Metallurgy, Australian Institute of Geoscientists and the Mineral Industry Consultants Association, as amended (VALMIN);
- The South African Code for the Reporting of Mineral Asset Valuation, prepared by the South African Mineral Valuation Committee under the joint auspices of the Southern African Institute of Mining and Metallurgy and the Geological Society of South Africa, as amended (SAMVAL); or
- Standards and Guidelines for Valuation of Mineral Properties endorsed by the Canadian Institute of Mining, Metallurgy and Petroleum, as amended (CIMVAL).

Schedule 2(B): Metals & Mining Competent Person's Report — Minimum Content

(i) Legal and Geological Overview — A description of:

- 1) the nature and extent of the company's rights of exploration and extraction and a description of the properties to which the rights attach, with details of the duration and other principal terms and conditions of these rights including environmental obligations, and any necessary licences and consents including planning permission; and
- 2) any other material terms and conditions of exploration and extraction including host government rights and arrangements with partner companies.

(ii) Geological Overview — A description of the geological characteristics of the properties, the type of deposit, its physical characteristics, style of mineralisation, including a discussion of any material geotechnical, hydro-geological/hydrological and geotechnical engineering issues.

(iii) Resources and Reserves

- 1) a table providing data on (to the extent applicable): exploration results inclusive of commentary on the quantity and quality of this, inferred, indicated/measured resources, and proved/probable reserves and a statement regarding the internationally recognised reporting standard used;
- 2) a description of the process followed by the competent person in arriving at the published statements and a statement indicating whether the competent person has audited and reproduced the statements, what additional modifications have been included, or whether the authors have reverted to a fundamental re-calculation;
- 3) a statement as to whether mineral resources are reported inclusive or exclusive of reserves;
- 4) supporting assumptions used in ensuring that mineral resource statements are deemed to be 'potentially economically mineable';
- 5) supporting assumptions including commodity prices, operating cost assumptions and other modifying factors used to derive reserve statements;
- 6) reconciliations between the proposed and last historic statement;
- 7) a statement of when and for how long a competent person last visited the property; and
- 8) for proved and probable reserves (if any) a discussion of the assumed:
 - (a) mining method, metallurgical processes and production forecast;
 - (b) markets for the company's production and commodity price forecasts;
 - (c) mine life; and
 - (d) capital and operating cost estimates.

(iv) Valuation of Reserves — Taking consideration of internationally recognised valuation codes as set out in Appendix 1 a valuation of reserves comprising:

- 1) an estimate of net present value (or a valuation arrived at on an alternative basis, with an explanation of the basis and of the reasons for adopting it) of reserves;
- 2) the principal assumptions on which the valuation of proved and probable reserves is based including those relating to discount factors, commodity prices, exchange rates, realised prices, local fiscal terms and other key economic parameters; and

- 3) information to demonstrate the sensitivity to changes in the principal assumptions.

(v) Environmental, Social and Facilities — An assessment of:

- 1) Environmental closure liabilities inclusive of biophysical and social aspects, including (if appropriate) specific assumptions regarding sale of equipment and/or recovery of commodities on closure, separately identified;
- 2) environmental permits and their status including where areas of material non-compliance occur; and
- 3) commentary on facilities which are of material significance.

(vi) Historic Production/Expenditures — An appropriate selection of historic production statistics and operating expenditures over a minimum of a three-year period per operating asset.

(vii) Infrastructure — A discussion of location and accessibility of the property, availability of power, water, tailings storage facilities, human resources, occupational health and safety.

(viii) Maps, etc — Maps, plans and diagrams showing material details featured in the text.

(ix) Special factors — If applicable, a statement setting out any additional information required for a proper appraisal of any special factors affecting the exploration.

Schedule 2(C): Oil & Gas Competent Person's Report — Minimum Content

(i) Legal Overview — A description of:

- 1) the nature and extent of the company's rights of exploration and extraction and a description of the properties to which the rights attach, with details of the duration and other principal terms and conditions of these rights including environmental and abandonment obligations, and any necessary licences and consents including planning permission; and
- 2) any other material terms and conditions of exploration and extraction including host government rights and arrangements with partner companies.

(ii) Geological Overview — A description of the geological characteristics of the properties, the type of deposit, its extent and the nature of the reservoir and its physical characteristics.

(iii) Resources and Reserves

- 1) A table providing data on (to the extent applicable): exploration prospects, prospective resources, contingent resources, possible reserves, probable reserves and proved reserves in accordance with either deterministic or probabilistic techniques of determination and an explanation of the choice of methodology;
- 2) a statement as to whether mineral resources are reported inclusive or exclusive of reserves;
- 3) reconciliations between the proposed and last historic statement;
- 4) a statement of when and for how long a competent person last visited the property (or a statement no visit has been made if that is the case); and
- 5) statement of production plans for proved and probable reserves (if any) including:
 - (a) a timetable for field development;
 - (b) time expected to reach peak production;
 - (c) duration of the plateau;
 - (d) anticipated field decline and field life; and
 - (e) commentary on prospects for enhanced recovery, if appropriate.
- 6) reconciliations between the proposed and last historic statement;

(iv) Valuation of Reserves — Taking consideration of internationally recognised valuation codes as set out in Annex 1 a valuation of reserves comprising:

- 1) an estimate of net present value (or a valuation arrived at on an alternative basis, with an explanation of the basis and of the reasons for adopting it) of reserves;
- 2) the principal assumptions on which the valuation of proved and probable reserves is based including those relating to discount factors, commodity prices, exchange rates, realised prices, local fiscal terms and other key economic parameters; and
- 3) information to demonstrate the sensitivity to changes in the principal assumptions.

(v) Environmental and Facilities — Commentary on facilities such as offshore platforms which are of material significance in the field abandonment plans and associated environmental protection matters.

(vi) Historic Production/Expenditures — An appropriate selection of historic production statistics and operating expenditures over a minimum of a three-year period.

(vii) Infrastructure — A discussion of location and accessibility of the property, availability of power, water, human resources, occupational health and safety.

(viii) Maps, etc — Maps, plans and diagrams showing material details featured in the text.

(ix) Special factors — If applicable a statement setting out any additional information required for a proper appraisal of any special factors affecting the exploration or extraction businesses of the company (for example in the polar regions where seasonality is a special factor).

Endnotes

- ¹ CESR Guidelines” means the “European Securities and Markets Authority update dated 23 March 2011 to the Committee of European Securities Regulators’ recommendation for the consistent implementation of Commission Regulation (EC) No 809/2004 implementing the Prospectus Directive.
- ² For the purpose of the Listing Rules, a “mineral company” means a company or group whose principal activity is or is planned to be the extraction of mineral resources (which may or may not include exploration for mineral resources), and “mineral resources” include metallic and non-metallic ores, mineral concentrates, industrial minerals, construction aggregates, mineral oils, natural gases, hydrocarbons and solid fuels including coal.
- ³ There is currently no requirement for mineral companies to have published or filed accounts since the inception of their business activities to be eligible for a premium listing, but the UKLA is currently considering introducing such a requirement into the Listing Rules.
- ⁴ Transactions entered into by premium listed companies are classified according to their size relative to the listed company, as calculated by the four class tests — the ‘gross assets’ test, the ‘profits’ test, the ‘consideration’ test and the ‘gross capital’ test — set out in Rule 10 of the Listing Rules. A premium listed company must only notify a RIS once the terms of certain of its class 3 transactions and all of its class 2 transactions — *i.e.* its smaller transactions — are agreed, but before completing larger transactions (class 1 transactions) it must circulate an explanatory circular approved by the UKLA to its shareholders and obtain their prior approval in a general meeting. Any agreement effecting a class 1 transaction must be conditional on such shareholder approval being obtained. For its largest transactions (reverse takeovers), where any of the class tests is 100 percent or more, it must comply with the same requirements as for a class 1 transaction but in addition its listing will normally be cancelled, thereby requiring it to re-apply for a new listing for the enlarged group.
- ⁵ If the mineral resources are not directly comparable, the UKLA may permit valuations to be used instead of amounts/volumes.
- ⁶ The UKLA currently may modify this requirement in respect of a class 1 disposal transaction, but it is also considering (i) extending this discretion to include class 1 acquisition transactions and (ii) amending the Listing Rules to provide that equivalent information can be provided in place of a mineral expert’s report in certain circumstances.
- ⁷ For the purpose of the CESR Guidelines, “mineral companies” include companies with mineral projects which are material in relation to the issuer and its group taken as a whole — “mineral projects” include exploration, development, planning or production activities in respect of minerals including metallic ore, fertilisers, gemstones, hydrocarbons (crude oil, natural gas, oil shale) and solid fuels (coal, peat).
- ⁸ A mineral company may not be required to produce a CPR if it is already admitted to trading on a regulated market (or overseas equivalent market) and has already published a competent person’s report prepared in accordance with one of the reporting standards set out in Schedule 2(A).
- ⁹ If the foreign investor is a foreign government, an international organisation or an entity under control of either of the foregoing, it shall require the prior approval of the Government Commission for any direct or indirect acquisition of more than 5 percent of the voting shares of a Strategic Subsoil Company.
- ¹⁰ The UKLA may permit partly paid securities to be listed if it is satisfied that their transferability is not restricted and investors have been provided with appropriate information.
- ¹¹ The UKLA may admit securities of lower aggregate value if it is satisfied there will be an adequate market for such securities.
- ¹² Only shares of UK, Irish, Channel Islands and Isle of Man incorporated companies may be admitted to the CREST System — companies incorporated in other jurisdictions must appoint a depository to hold their shares on trust and issue shareholders with depository interests representing such underlying overseas shares which can be settled through CREST. GDRs satisfy the electronic settlement requirement to the extent they are held through Euroclear, Clearstream and/or DTC.
- ¹³ The UKLA may accept a threshold of less than 25 percent if it considers that the market will operate properly with such lower percentage due to the large number of shares in issue and the extent of their distribution to the public.

- ¹⁴ There is currently no requirement for mineral companies to have published or filed accounts since the inception of their business activities to be eligible for a premium listing, but the UKLA is currently considering introducing such a requirement into the Listing Rules.
- ¹⁵ Considered by the UKLA to mean 12 months from the date of the prospectus.
- ¹⁶ Rights under employee shares schemes are not included for the purpose of the 20 percent limit.
- ¹⁷ A 30 percent plus shareholding is usually considered to be “controlling”.
- ¹⁸ The UKLA consider that a variation of more than 25 percent relative to one or more of the indicators of the size of the applicant’s business constitutes a “significant gross change”.
- ¹⁹ Considered by the UKLA to mean 12 months from the date of the prospectus.
- ²⁰ The UKLA may allow the placing to relate to less than 25 percent if it is satisfied this would not be detrimental to the success of the issue.
- ²¹ The ‘premium’ is calculated as the difference between the offer price and the theoretical ex-rights price.
- ²² Under Listing Rule 10, transactions entered into by a premium listed mineral company issuer are classified according to the class tests — (i) the ‘gross assets’ test calculates the gross assets of subject of the transaction as a percentage of the gross assets of the issuer; (ii) the ‘profits’ test calculates the profits attributable to the subject of the transaction as a percentage of the profits of the issuer; (iii) the ‘consideration’ test calculates the consideration for the transaction as a percentage of the market capitalization of the ordinary shares of the issuer; (iv) the ‘gross capital’ test (used only when the transaction is an acquisition) calculates the gross capital of the subject of the transaction as a percentage of the gross capital of the issuer; and (v) the ‘reserves’ test calculates the volume/amount of the proven and probable reserves to be acquired/disposed of in the transaction as a percentage of the total proven and probable reserves of the issuer. Transactions where (i) all percentage ratios are less than 5 percent are classified as class 3; (ii) all percentage ratios are less than 25 percent, but at least one is 5 percent or more, are classified as class 2; and (iii) any percentage ratio is 25 percent or more are classified as class 1. Transactions which are acquisitions where any percentage ratio is 100 percent or more, or which would result in a fundamental change in business or board or voting control of the issuer, are classified as reverse takeovers.
- ²³ An issuer in ‘severe financial difficulty’ can request that the UKLA modify these requirements.
- ²⁴ ‘Legitimate interests’ may include if it is involved in negotiations which would be affected by such public disclosure — particularly if its financial viability is in “grave and imminent danger” and public disclosure would seriously jeopardise existing and potential shareholder interests by undermining negotiations designed to ensure its long term financial recovery.

If you have any questions about this *Client Alert*, please contact the author listed below or the Latham attorney with whom you normally consult:

Claire A. Keast-Butler
+44.20.7710.3014
claire.keast-butler@lw.com
London

J. David Stewart
+7.495.644.1927
j.david.stewart@lw.com
Moscow

Edward R. Kempson
+7.495.644.1928
edward.kempson@lw.com
Moscow

Client Alert is published by Latham & Watkins as a news reporting service to clients and other friends. The information contained in this publication should not be construed as legal advice. Should further analysis or explanation of the subject matter be required, please contact the attorney with whom you normally consult. A complete list of our *Client Alerts* can be found on our website at www.lw.com.

If you wish to update your contact details or customise the information you receive from Latham & Watkins, visit <http://events.lw.com/reaction/subscriptionpage.html> to subscribe to our global client mailings program.

Abu Dhabi	Houston	Paris
Barcelona	London	Riyadh*
Beijing	Los Angeles	Rome
Boston	Madrid	San Diego
Brussels	Milan	San Francisco
Chicago	Moscow	Shanghai
Doha	Munich	Silicon Valley
Dubai	New Jersey	Singapore
Frankfurt	New York	Tokyo
Hamburg	Orange County	Washington, D.C.
Hong Kong		

* In association with the Law Office of Mohammed A. Al-Sheikh