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FCA Rolls Out the Red Carpet for Sovereign Controlled Companies

The FCA has created a new category for sovereign controlled companies who will be eligible for premium listing if they comply with the requirements applicable to premium listed issuers, with some key exceptions.

Further to the Financial Conduct Authority's (FCA's) consultation process in July 2017 (see Latham's *Client Alert* here), the regulator has published final rules for a new category within the premium listing segment for sovereign controlled companies. With effect from 1 July, 2018, issuers who have a sovereign state as their controlling shareholder will be able to seek admission to the premium listing segment of the Official List of the FCA under the new category of "premium listing (sovereign controlled commercial company)".

The FCA considers sovereign controlled companies as a cohort with different needs and characteristics posing an attractive investment proposition for UK investors, but for whom some rules may be a practical structural barrier. Therefore, in seeking to achieve an appropriate balance between the interests of issuers and investors, and to enhance market attractiveness for issuers while enhancing investor confidence, the FCA has decided that sovereign controlled companies will be required to comply with all the requirements applicable to premium listed issuers under the Listing Rules. The following requirements are the exception:

- A relationship agreement with a controlling shareholder under LR 6.5
- Obtaining advance approval from independent shareholders of certain transactions with the sovereign or its associates, or a prior written confirmation from the sponsor under LR 11.1

In addition to this new category, sovereign controlled companies — as is the case for any other commercial company — also have the option of seeking a standard listing, which is based on minimum EU directive requirements.

Controlling shareholder agreements

Under LR 6.5.4, an issuer is required to have in place a written and binding agreement with a controlling shareholder intended to ensure that the controlling shareholders and its associates:

- Enter into transactions and arrangements at arm's length and on normal commercial terms

- Do not take any action that would have the effect of preventing the issuer from complying with its obligations under the Listing Rules

- Do not propose or procure the proposal of a shareholder resolution that is intended or appears to be intended to circumvent the proper application of the Listing Rules

Under this new category, the issuer will not be required to enter into any such relationship agreement with its controlling shareholder. However, the issuer will still be bound by the obligation to have an independent business as its main activity that would be run separately and without interference under LR 6.4. The FCA has also clarified in LR 21.2.2G that factors potentially indicating that an issuer does not satisfy LR 6.4.1R also includes situations in which an issuer has granted, or may be required to grant, security over its business in connection with the funding of a sovereign controlling shareholder.

Further, the FCA had initially proposed to disapply the requirement for separate independent shareholder approval for election of independent directors. However, pursuant to feedback received in the consultation process, the FCA has decided to retain this provision as applicable to all premium listed companies with a controlling shareholder. In line with other premium listed companies with a controlling shareholder, if independent shareholders do not vote in favour of the election, the requirement for a 90-day "cooling-off" period after which the election can proceed without a separate vote of independent shareholders will apply.

Related party transactions

Under LR 11, an issuer is required to obtain:

- An opinion from a sponsor that the transaction is fair and reasonable so far as shareholders are concerned, for transactions with a related party if the percentage ratios under the class tests are all less than 5%, but one or more exceeds 0.25%.

- Prior shareholder approval in a vote in which the related party and their associates are required to refrain from voting for larger transactions that equal or exceed 5% on any of the class tests. In support of this vote, sovereign controlled companies are also required to send a circular to shareholders with all details necessary in order for them to determine their voting decision, including the rationale from the board for the proposed transaction.

Under this new category, the issuers will not have to comply with these requirements. However, all the other requirements for related party transactions applicable to premium listed companies, including the disclosure obligations under LR 11.1.10, will be applicable to sovereign controlled companies.

The FCA has also clarified that, for the purpose of the aggregation rules in respect of small transactions, the announcement of such transactions, rather than shareholder approval, will represent the "cleansing" event that resets the aggregation process. Without this clarification, the disclosure obligations for companies with a sovereign controlling shareholder would exceed those applying to other premium listed companies in certain circumstances, because companies would have to continue to disclose even very small transactions once the 5% threshold is reached.

Depositary receipts

The new premium listing category will also extend to sovereign controlled issuers of depositary receipts (DRs), who are currently only eligible for a standard listing. If DRs are eligible for listing, all relevant premium listing requirements applicable to equity shares would also apply to those DRs.

However, a class of DRs may not represent 100% of the underlying equity share class. As a result, a sovereign controlled company with less than 25% of the underlying equity being distributed to the public could also be premium listed. This is because the FCA believes that potential applicants in this category will be relatively large in size and, therefore, they will not present the risk of insufficient liquidity. Issuers with a premium DR listing will be required to afford DR holders the same level of rights, *e.g.*, voting rights, that shareholders of premium listed companies enjoy. Moreover the eligibility condition will require that such rights are capable of being exercised, and the issuer will be required to have arrangements in place to enable DR holders to exercise those rights.

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