

Obtaining a Secondary Listing on the Main Market of the London Stock Exchange

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Introduction

This eUpdate focuses on the eligibility requirements, process and continuing obligations for a company with a primary listing in a jurisdiction outside the UK which is seeking a secondary listing on the Main Market of the London Stock Exchange (LSE).

Eligibility Requirements for a Secondary Listing

The UK Listing Rules (UKLR) set out the general eligibility requirements applicable to all companies seeking admission of their securities to the Official List, including by way of a secondary listing (UKLR 3.2).

A summary of the general eligibility requirements is set out below:

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Incorporation	An applicant must be duly incorporated or otherwise validly established according to the laws of its place of incorporation or establishment and operating in conformity with its constitutional documents (UKLR 3.2.1R).
Validity	The shares must conform with the law of the applicant's place of incorporation, be duly authorised in accordance with the applicant's constitution, and have any necessary statutory or other consents (UKLR 3.2.2R).
Admission to trading	The shares must be admitted to trading

	on a regulated market (UKLR 3.2.3R). Admission to the Main Market of the LSE, as would be the case in conjunction with a secondary listing, would satisfy this requirement.
Transferability	The shares must be freely transferable, fully paid, free from liens, and not subject to restrictions on transfer, except any restriction imposed for failure to comply with a notice under section 793 of the Companies Act 2006 (UKLR 3.2.4R).
Market capitalisation	The expected aggregate market value of the shares to be listed must be at least £30 million (UKLR 3.2.7R). The FCA may modify this requirement to admit shares of a lower value if it is satisfied that there will be an adequate market for the shares concerned (UKLR 3.2.8G).
Whole class to be listed	The listing application must include all shares of the relevant class, issued or proposed to be issued (UKLR 3.2.9R).

These requirements include the preparation of a prospectus in the English language which contains specified items of information and also complies with a more broadly-based requirement under the UK Prospectus Regulation Rules (PRR) to disclose “all necessary information that is material to an investor for making an informed assessment of: (i) the assets and liabilities, profits and losses, financial position and prospects of the company; (b) the rights attaching to the securities; and (iii) the reasons for the issuance and its impact on the company” (PRR 2.1.1).

The primary document required to be produced for the purposes of an application for a secondary listing of securities in the UK is a prospectus which must be prepared in accordance with the PRR.

The prospectus must be approved by the Financial Conduct Authority (FCA). The FCA is responsible for vetting the prospectus and, in that role, it will review and comment on drafts of the prospectus in accordance with prescribed response times. Clean and blacklined versions of each revision of the prospectus must be submitted to the FCA together with full written responses to its comments (Article 43, PDR, reproduced in PRR 3.1.1UK). Once the FCA is satisfied that all of its comments have been addressed, a date can be set for the formal approval of the prospectus.

A sponsor is not required for a secondary listing nor is there any requirement to appoint a financial adviser in connection with a listing under the secondary listing category.

However, in practice it may be advisable to engage a financial adviser to guide and facilitate the process.

In addition to the general eligibility requirements described in Appendix A (including the publication of a prospectus), there are a number of specific additional requirements to be met by overseas companies seeking a secondary listing in London. These include the following:

Incorporation	The applicant must be an overseas company, defined as a company incorporated outside of the UK.
Shares in public hands	At least 10% of the applicant's shares (excluding treasury shares) must be in public hands at the time of admission.
Place of central management and control	The applicant's place of central management and control must be situated either in its country of incorporation or the country of its qualifying home listing.
Qualifying home listing	The shares to be listed under the secondary listing category, must: 1. have a qualifying home listing; 2. be tradable on the market of the qualifying home listing; and 3. be in the same class as those shares admitted to trading under the qualifying home listing (UKLR 14.2.6R).

The applicant is required to submit a letter to the FCA setting out how it satisfies the eligibility requirements for the secondary listing category. This eligibility letter must be accompanied by a completed eligibility checklist in the prescribed form. The eligibility letter is usually submitted to the FCA at the same time as the first draft of the prospectus.

The FCA will generally not admit shares in the secondary listing category if they are not listed in the applicant's country of incorporation or in the country where a majority of the

applicant's shares are held (although, exceptions may be available in limited cases).

In addition, the LSE requires that all securities that are admitted to trading must be eligible for electronic settlement.

Listing Process

The process for applying to the FCA to admit shares to the secondary listing category is set out under UKLR 20.2.2R and involves the following:

Board confirmation (UKLR 20.3.1R)	The applicant must provide a confirmation from its board that it has taken reasonable steps to establish adequate procedures, systems and controls to enable it to comply with its obligations under the UKLR, Articles 17, 18 and 19 of the retained EU law version of the Market Abuse Regulation (596/2014/EU) (UK MAR) and the FCA's Disclosure Guidance and Transparency Rules (DTR) and corporate governance rules.
Admission documents (UKLR 20.4.2R and UKLR 20.4.4R)	The applicant must submit the following documents by midday two business days before the FCA is to consider the application (UKLR 20.4.2R): 1. a completed Application for Admission of Securities to the Official List; 2. a prospectus approved by the FCA (see above); 3. any circular that has been published in connection with the application, if applicable; 4. any approved supplementary prospectus, if applicable; 5. written confirmation of the number of shares to be allotted (pursuant to a board resolution allotting the shares), if applicable; and 6. written confirmation of: 1. the contact details of key persons of the applicant as required under UKLR 1.3.5R; 2. the contact details of a nominated person at the applicant as required

	under UKLR 1.3.7R and UKLR 1.3.8R for the purposes of receiving service of relevant documents; and 3. the contact details of appropriate persons nominated by the applicant to act as the first point of contact with the FCA in relation to the applicant's compliance with the UKLR and DTR following admission under UKLR 14. The applicant must also submit a completed shareholder statement signed by a duly authorised officer of the applicant before 9am on the day that the FCA is to consider the application (UKLR 20.4.4R).
Additional documents	The applicant must submit all additional documents, explanations and information required by the FCA.
Verification	The applicant must submit verification of any information in such manner as the FCA may specify.
Fees	The applicable fees as set out in FEES 3 (Application, Notification and Vetting Fees) of the FCA Handbook must be paid by the required date.

Prior to submission of the documents mentioned above, an applicant must contact the FCA to agree the date on which the FCA will consider the application (UKLR 20.2.3G).

In addition to the above, the FCA may carry out its own enquiries, request that the applicant answer questions raised by it, impose any additional conditions as it considers appropriate, and take into account any concerns that it may have that the applicant has not responded satisfactorily to queries or has not been open and co-operative in its dealings with the FCA (UKLR 20.2.6G).

Admission becomes effective only when the FCA's decision to admit the securities to listing has been announced through a regulatory information service.

Continuing Obligations

The FCA generally applies the principle that compliance by the company with the rules of its home market (being its primary listing venue) is sufficient and the UKLRs are

designed to minimise regulatory overlap. However, a number of continuing obligations are imposed by the FCA for the benefit of investors in the UK.

Under UKLR 14.3.1R, the company must comply on an ongoing basis with the eligibility requirements and with the rules of the company's home market. The company must notify the FCA as soon as possible if it no longer complies with those requirements (UKLR 14.3.3R).

UKLR 14.3.21R extends the scope of DTR 7.2 (corporate governance statements) to companies with a secondary listing and requires them to confirm, in a corporate governance statement in the annual financial report, which corporate governance code the company is subject to or voluntarily applies, including any departures from that code.

The UK Takeover Code does not apply to a company with a secondary listing that is not incorporated in the UK, Channel Islands or the Isle of Man. However, UK MAR will apply to a company that has a secondary listing, irrespective of where it is incorporated. Inside information must therefore be disclosed as soon as possible (Article 17(1), UK MAR).

Conclusion

Overseas companies may seek a secondary listing in London for a variety of reasons. For some it may be a wish to have access to a broader pool of capital. For others it may be to achieve greater share liquidity and/or greater analyst coverage – and for others it may be a wish to raise profile in the UK and elsewhere.

The UK process and regime is designed to be robust without being unduly burdensome and the new regime which is now in place has been designed to avoid imposing extensive continuing obligations that would otherwise apply to the company in addition to those of its primary listing venue.

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Please contact Mark Taylor, Kate Francis, or Kanika Mathew for further information.

This eUpdate is issued to provide general guidance on the above topic. It is not comprehensive or exhaustive and does not constitute legal advice given by this Firm.