**Eligibility for listing on the Official List**

This element explains the rules governing eligibility for listing on the Official List of the FCA.

**Introduction**

There are a number of steps that a company intending to list must take before it can establish its eligibility for admission.

**Re-registration**

A private limited company cannot offer its shares to the public (s 755 CA 2006) and must be re-registered as a public limited company ('plc') before it can make an offer of its shares to the public. The re-registration procedure is set out in s 90 CA 2006.

**Corporate Governance**

In advising a company applying for listing, its lawyers will need to review its corporate governance procedures and identify any areas which need to be addressed prior to admission. These might, for example, relate to the company’s board composition.

**Applications to the FCA and the LSE**

Admission to the Official List is required for shares to be admitted to trading on the LSE’s Main Market for listed securities. Two applications therefore need to be made.

1. Application to the FCA for admission to the Official List
2. Application to the LSE for admission to trading

**Application to the FCA for admission to the Official List**

This application is made in compliance with the UKLRs, in particular UKLR 3 (requirements for listing all securities) and UKLR 5 , which deals with the procedure for applying for a listing of equity shares in the commercial companies category (‘**ESCC**’).

**Application to the LSE for admission to trading**

This application is made in compliance with LSE's Admission and Disclosure Standards. Whilst the LSE does not require the appointment of a sponsor for this application, it recommends that applicant companies nominate a representative to assist with the application. In practice, the sponsor appointed for the purposes of the UKLRs will perform this role. The admissions to trading and to listing will become effective simultaneously once both applications have been successfully processed and the decision to admit the company to listing and trading has been announced to a regulatory information service (‘RIS’).

**Eligibility for listing**

In order for a company to be admitted to the Official List, both (1) the company itself (known as the 'applicant') and (2) its shares must be eligible for listing.

UKLRs 3 and 5 specify conditions for listing that must be met.

These consist of:

- Requirements for listing: all securities​ (UKLR 3) and

**-** Requirements for admission to listing for ESCC. (UKLR 5)​

**Requirements for listing: all securities​**

These include:

1. the shares must be duly authorised (in accordance with the company's constitution) (UKLR 3.2.2(2));
2. the shares must be admitted to trading on a regulated market (UKLR 3.2.3);
3. the shares must be freely transferable (UKLR 3.2.4);
4. the market capitalisation of all securities to be listed must be at least £30,000,000; (UKLR 3.2.7);
5. the whole class of the shares must be listed (UKLR 3.2.9);
6. unless an exemption applies, a prospectus must be approved and published for the securities (UKLR 3.2.10).

**Requirements for admission to listing for equity shares in the commercial companies catergory (‘ESCC’)**

These include:

1. Constitutional arrangements – an applicant must have in place a constitution that allows it to comply with the UKLRs (UKLR 5.4.1) in particular on voting rights; ​
2. an applicant must ensure that all shares in a class carry an equal number of votes on any shareholder vote (UKLR 5.4.2); ​
3. on a listing certain investors (such as directors, investors and employees of the applicant) can be issued with weighted voting rights (UKLR 5.4.5). These must expire after 10 years;
4. An applicant with a ‘controlling shareholder’ (generally a shareholder who holds 30% or more of the votes which may be cast at a general meeting) must carry on the business as its main activity independently from such controlling shareholder (UKLR 5.3.1);
5. at least 10% of shares of the class to be listed must, no later than the time of admission, be in 'public hands’ (for example, not held by directors or major shareholders) (UKLR 5.5.1 to UKLR 5.5.3) – this is also known as the 'free float requirement’.

**Preparation for listing – other considerations**

In addition to the matters set out on the previous pages, a company intending to list must also consider the following points:

**Listing Principles**

There are 6 Listing Principles (‘**LPs**’) in UKLR 2.2.1 that apply to every listed company.

The purpose of the LPs is broadly to ensure that issuers (listed companies) make timely and fair disclosures to all shareholders, which in turn helps to maintain market confidence and ensure fair and orderly markets.

A company intending to list must ensure that it will be able to comply with the LPs from admission onwards and will therefore need to take them into account when preparing to list.

**LP 1** states that a listed company must take reasonable steps to establish and maintain adequate procedures, systems and controls to enable it to comply with its obligations (for example, its obligations under the UKLRs and its disclosure requirements under UK MAR).

**LP 2** states that a listed company must deal with the FCA in an open and co-operative manner.

**LP 3** states a listed company must take reasonable steps to enable its directors to understand their responsibilities and obligations as directors.

**LP 4** states that a listed company must act with integrity towards the holders and potential holders of its listed securities.

**LP 5** states that a listed company must ensure that it treats all holders of the same class of its listed securities that are in the same position equally in respect of the rights attaching to those listed securities.

**LP 6** states that a listed company must communicate information to holders and potential holders of its listed securities in such a way as to avoid the creation or continuation of a false market in those listed securities.

**Preparation for listing – CREST**

Prior to listing, an important issue for a company is the settlement and transfer of its shares once it is listed.

In private limited companies, share ownership is evidenced by a share certificate; a selling shareholder must execute a stock transfer form and submit it to the company (having paid stamp duty, if applicable) for change of ownership to be recorded in the company's register of members (provided the transfer complies with any restrictions on transfer).

The vast majority of listed shares are held in dematerialised (electronic) form through a system known as CREST. This facility is particularly useful for institutional investors who buy and sell shares frequently.

As a listed company usually has large numbers of members, it is impractical for its company secretary to update the company's register of members by hand. Instead, listed companies appoint a professional registrar that maintains an electronic database of the company's shareholder register on the company's behalf. The company's registrar will also have a connection to CREST so that it can receive updates to the register.

In addition to allowing members to hold their shares electronically, CREST facilitates other activities for CREST shareholders such as appointing proxies and voting at general meetings. CREST shareholders can receive dividend and interest payments through this system.

**Preparation for listing – other considerations**

**Continuing obligations**

Once a company is listed, it is subject to extra layers of rules and regulations. The obligations that a company must comply with once its shares are listed are known as 'continuing obligations’.

During preparations for listing, a company will need to be made aware of these continuing obligations and must put systems and procedures in place to ensure compliance.

For example: Once listed, a company will have to disclose certain information to the market and to shareholders. This ties back to Listing Principle 1, which translates into an obligation to put procedures in place to ensure that all necessary information is disclosed within the prescribed timeframe.

**Share capital reorganisation**

It may be necessary for the company to reorganise its share capital prior to its IPO.

The share capital of a private company is commonly made up of £1 shares (nominal value, rather than market value). In order to reorganise its share capital, a company will need to pass an **ordinary resolution** under s.618 CA 2006 to sub-divide its nominal share capital. This may make the shares a more marketable price on an IPO.

Note that the minimum nominal value of a public limited company’s allotted share capital is £50,000, paid up as to at least 25% (ss. 91(1)(a) and 763(1)(a) CA 2006).

An example of a share capital reorganisation is set out on the next page.

**Example of sub-division of shares**

XYZ plc is currently valued at £20 million.

Its share capital is made up of 100,000 shares of £1 each (nominal value).

How much is each XYZ share actually worth?

£20 million divided by 100,000 = **£200 per share** (this is not a very marketable price for a listed company).

However, if each £1 share is sub-divided to create one hundred 1 pence shares, each of those 1 pence shares would be worth **£2**.

This would be a much more marketable price and also gives the existing shareholders far greater flexibility as to (1) how to deal with their shares and (2) the percentage of the company they want to hold.

**Share capital reorganisation (continued)**

Other types of share capital reorganisation are also common. For example, to convert preference shares into ordinary shares; deal with outstanding options and warrants; insert a new holding company at the top of the group; and/or reduce the company’s share capital in order to create distributable profits.

**Issue of new shares**

In addition, if the company is undertaking a primary issue of shares as part of its listing (in order to raise finance for the company), the company will need to ensure that it has passed the necessary **resolutions** to carry out a share issue. This will include:

* checking that there is no cap on the number of shares which the company can allot;
* giving the directors authority to allot the shares; and
* disapplying pre-emption rights over the issue of those shares.

Assuming that the relevant shareholder resolutions have been passed, the board would then need to pass a board resolution approving the allotment of shares.

**Summary**

* A company which undertakes an IPO applies both to the FCA for admission to the Official List and to the London Stock Exchange for admission to trading on to the Main Market.
* Some of the rules governing eligibility to list apply to the applicant company and some apply to the securities being listed.
* In addition, the applicant must bear in mind the Listing Principles which overarch the UKLR obligations.
* Listed shares must be capable of being settled electronically through CREST.
* Companies may undertake a share capital reorganisation before admission.
* It is common for companies which list to issue new shares in order to raise capital.