**Introduction to continuing obligations**

This provides an introduction to the obligations that a company must comply with once its shares are listed.

**Introduction**

Listed company shares can be traded on the stock market. This provides greater access to sources of finance. It also, however, results in additional rules and regulations. These do not only apply on listing; many of the rules continue to apply on an ongoing basis and at all times. They are therefore referred to as “continuing obligations”.

Ongoing obligations are an important consideration for any company contemplating a listing; complying with the continuing obligations involves time and expense and opens the company up to wider public scrutiny.

When advising a listed company on its continuing obligations, you will need to consider the impact of all sources of law, regulations and any guidelines to be able to give proper advice.

Continuing obligations are broad and include a company having to: (1) make certain disclosures to the market; (2) ensure that they communicate with shareholders with regards to certain issues and in certain ways; and (3) obtain shareholder approval for certain actions and transactions.

**Overview: Continuing Obligations [*information from diagram replicated here*]**

Disclosures to be made include:

· General: Inside information Arts. 17 and 18 UK MAR and DTR 2

· Specific: UKLR 6, Art. 19 UK MAR, and DTRs 3, 4, 5, 6 and 7

Communications with shareholders:

· AGMs

· Circulars (UKLR 10)

Shareholder approval

· Buybacks (UKLR 9.2)

· Share issues

Note: this knowledge stream does not cover (1) shareholder approval required for Reverse Takeovers (UKLR 7.5) or (2) the required market notifications for significant transactions and related party transactions (UKLR 7.3 and UKLR 8 respectively).

**Continuing Obligations: Aims and methods**

The aim of the rules relating to continuing obligations is to ensure:

a) timely and accurate disclosure of all relevant information to shareholders;

b) equal treatment of all shareholders; and

b) maintenance of an orderly market in shares.

The rules achieve these aims by three methods:

1) requiring the disclosure of certain information to the market and to shareholders (with a record kept of anyone who has access to such information before it is disclosed);

2) regulating (and in certain instances requiring FCA approval of) the information communicated to shareholders; and

3) requiring the approval of certain key transactions by shareholders.

**Continuing Obligations: Legal framework [*information from diagram replicated here*]**

· FSMA

· FCA Listing Rules

· FCA Disclosure and Transparency Rules

· UK Market Abuse Regulation

· LSE Admissions and Disclosure Standards

· Company Law/CA 2006

**Continuing Obligations: disclosure**

You will consider listed companies’ disclosure obligations in detail in later elements.

**Continuing Obligations: communications with shareholders**

You will consider listed companies’ obligations in relation to communications with shareholders, in particular around the company’s AGM, in the elements which immediately follow this element.

Examples of when a listed company may need to seek shareholder approval under the UK Listing Rules are where it enters into certain kinds of share issues and share buybacks (UKLR 9).

**Buybacks**

The UK Listing Rules impose procedural controls over buybacks undertaken outside the ordinary course of business in addition to the controls set out in CA 2006.

UK Listing Rule 9 imposes procedural controls over buybacks undertaken outside the ordinary course of business in addition to the controls set out in CA 2006.

You will consider the typical resolutions which listed companies seek at their AGMs in relation to buybacks under CA 2006 and institutional investor guidelines in the element which follows this.

If a listed company purchases shares in any class of its equity shares under a general authority by the shareholders must be by way of a tender offer to all shareholders of that class **except where** a listed company purchases:

**(1) less than 15%** of a class of its equity shares in accordance with **UKLR 9.6.1-2**, it need not seek additional shareholder approval where the price to be paid is lower than or equal to the higher of 5% above the average market value of the *shares* for the 5 business days prior to the day the purchase is made; and the technical standards stipulated by Article 5(6) of MAR; or

(2) **15% or more of any class of its equity shares**(excluding treasury shares) where the full terms of the buyback have been **specifically approved by shareholders.**

**A tender offer** is an offer by a company to purchase all or some of a class of its listed equity securities at a maximum or fixed price that is communicated to all shareholders (usually via a circular), open on the same terms for at least seven days and open for acceptance by all holders of that class pro rata to their holdings.

**Monitoring continuing obligations**

The FCA adopts a robust stance when monitoring listed companies’ compliance with their continuing obligations. **UKLR 6.2.19** states that a listed company must ensure that the FCA has contact details of an appropriate person to be the first point of contact with the FCA in relation to the company’s compliance with the UKLRs, the DTRs and the disclosure obligations in UK MAR. That person must, under **UKLR 6.2.20**, be knowledgeable about the company and UKLRs applicable to it and capable of ensuring that appropriate action is taken.

On-going compliance with the disclosure requirements of UK MAR and with the transparency rules in the DTRs is included as a continuing obligation under **UKLR 6.2.11** and **UKLR 6.2.13**.

In the event that the company realises it has or may have committed a breach of its continuing obligations, it should contact the FCA promptly to discuss the breach and seek guidance on how to resolve the issue.

**Consequences of breaching Continuing Obligations**

The FCA can impose one or more of the following sanctions if a company has failed to meet its continuing obligations for listing:

require the issuer to publish such information as it considers appropriate to protect investors or to ensure the smooth operation of the market (**UKLR 1.3.2(1)R**);publish a statement censuring the issuer or director (**s.91(3) FSMA**);suspend or cancel the issuer’s listing (**UKLRs21.1** and **21.2** and **s.77 FSMA**); and/or impose an unlimited penalty on the issuer or director (**ss.91(1)** and **(2) FSMA**).

Failure to make necessary disclosures pursuant to the disclosure obligations in the UK Market Abuse Regulation (UK MAR) would also allow the FCA to impose appropriate sanctions, as it is empowered to do as the UK’s competent authority under Art. 30(2) UK MAR. These provisions are contained in **Part VIII FSMA** and include, at **s.123 FSMA**, the power to impose penalties or issue censure against any person who has contravened, or been knowingly concerned in the contravention of, the relevant provisions of UK MAR.

Other potential consequences include **s.90A FSMA and Part 7 FS Act 2012**.

**Summary**

* Listed companies must comply with a wide range of rules and regulations on an ongoing basis. These are therefore referred to as ‘continuing obligations’.
* Continuing obligations cover a wide range of areas, including disclosures to the market; communications with shareholders; and matters requiring shareholder approval.
* Continuing obligations arise as a result of multiple different legal, regulatory and guidance sources. These include FSMA, the FCA UK Listing Rules, the FCA Disclosure Guidance and Transparency Rules, the UK Market Abuse Regulation; the LSE Admissions and Disclosure Standards and the CA 2006.
* Breaches of continuing obligations are taken very seriously by the FCA and can carry considerable consequences.