# New Listing Rules for Premium-Listed UK Companies: The Fine Line Between Upholding Majority Rule and Protecting Minority Rights

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The protection of minority shareholders in companies with a premium listing on the London Stock Exchange came to the fore in the United Kingdom following the 2012 and 2013 publication of consultation papers on the effectiveness of the U.K. listing regime, largely in response to market pressure to improve protections for minority shareholders. The Financial Conduct Authority (FCA) introduced a number of Listing Rule changes in PS14/8, which became effective May 16, 2014. The requirements aim to ensure that premium-listed companies with a controlling shareholder are capable of, and are seen to be, acting independently of their controlling shareholders and their affiliates.

The new rules add an additional layer of scrutiny to the relationship between controlling shareholders and premium-listed issuers without opening the door to the risk of minority rule. Noteworthy changes include enhanced eligibility and relationship agreement requirements, the dual-voting mechanism for the election of independent directors and more rigorous oversight measures.

## A Company With a "Controlling Shareholder" Should Be Distinguished From a "Controlled Company"

The definition of "controlling shareholder" now includes the interests of any persons with whom the individual is "acting in concert" (a concept borrowed from the U.K. Takeover Code) when determining whether the shareholder in question owns or controls 30 percent or more of the voting rights in the issuer. This is a lower threshold than that provided in the definition of "controlled company" for NYSE- or NASDAQ-listed companies, which sets the bar at over 50 percent of the voting power for the election of directors.

## Applicants Must Comply With Enhanced Eligibility Requirements Regarding Carrying On an Independent Business

The new rules enhance the existing requirement that an applicant for a premium listing is carrying on an independent business as its main activity. The FCA has provided a non-exhaustive list of factors that indicate when this requirement may not be satisfied, many of which reference the company's relationship with its controlling shareholder(s). For example, if a new applicant cannot demonstrate that it has access to financing other than from a controlling shareholder (or the controlling shareholder's affiliates), it is unlikely that the FCA would be satisfied that the new applicant has met the "independent business" eligibility requirement.

## Controlling Shareholders Must Enter Into a Relationship Agreement With the Company

Premium-listed companies with a controlling shareholder must enter into a legally binding "relationship agreement" that includes the following three undertakings:

1. Transactions and arrangements between the issuer and the controlling shareholder will be

conducted at arm's length and on normal commercial terms;

2. The controlling shareholder will not take any action that would prevent the issuer from complying with its obligations under the Listing Rules; and

3. The controlling shareholder will not propose or procure the proposal of a shareholder's resolution that is intended or appears to be intended to circumvent the proper application of the Listing Rules.

The FCA has indicated that the aim of such agreements is to prevent "inappropriate relationships" from developing. Issuers with a controlling shareholder must include a statement in their annual reports confirming that they have entered into the required agreements, the extent of each party's compliance and explanations for any noncompliance. This echoes the "comply or explain" obligations imposed on premium-listed companies with regard to the U.K. Corporate Governance Code.

### Election Procedure for Independent Directors

Under the new rules, where a premium-listed company has a controlling shareholder, resolutions to elect or re-elect independent directors will require the approval of (1) the majority of shareholders as a whole, and (2) the majority of independent shareholders. This requirement can be fulfilled with a single vote per shareholder on a single resolution, provided the votes of the independent shareholders can be identified. Issuers must ensure that their constitutions permit dual approval, but the FCA has helpfully confirmed that constitutions need not positively provide for it; rather, it is enough that they do not prohibit it.

Additional information about independent directors (including information regarding their existing or previous relationships and transactions or arrangements with controlling shareholders) must be provided in a circular accompanying any notice for their election or re-election.

### Noncompliance Triggers Enhanced Oversight Measures

In the event an issuer with a controlling shareholder fails to adhere to the above rules, independent shareholders will be given the power to vote on (and veto) all transactions between the issuer and the controlling shareholder, regardless of size and whether they are in the ordinary course of business. These "enhanced minority protections" will remain in place until the issuer's board is able to make a unanimous statement of compliance in its annual report.

### Overall Impact on Premium-Listed Issuers With a Controlling Shareholder

Given that the new rules are binding rather than principles-based, at first blush they appear to bring the U.K. one step closer to a "regulator-led" approach — a tagline more often used to describe the U.S. approach to securities regulation. Yet, in substance, the U.K.'s additional requirements on companies with controlling shareholders are in stark contrast to the corporate governance exemptions available to "controlled companies" listed in the United States. While

issuers and applicants with controlling shareholders will need to bear in mind the above procedural requirements (which should not be too onerous for issuers to implement), ultimately, the new rules protect minority interests without substantively curtailing voting and other rights of controlling shareholders; hence, the principle of majority rule remains intact.