

LISTING RULES - GUIDANCE NOTE No. 03/2000

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Status of Guidance Notes

This Guidance Note reflects the views and experience of the UK Listing Authority. Its contents do not represent rules or regulations. The purpose is to improve understanding of how the Listing Rules operate or may be applied in practice and to assist companies and their advisers in working with the UK Listing Authority.

This Guidance note should be read in conjunction with the Listing Rules, which alone have binding effect.

Non-controlling Interests in a Merged Business

Introduction

- 1.1 This guidance note explains how the UK Listing Authority will apply the Listing Rules in the case of companies which hold a non-controlling interest in a merged business.
- 1.2 There are a number of examples of such structures where the business of a UK primary listed company has been merged with that of a company listed in another jurisdiction ("overseas listed parent") and the merged business is jointly managed and controlled by the two or more listed parent companies. The assets of the UK listed company may subsequently comprise a minority interest in the combined business, which will normally be equity accounted by the UK listed company. These arrangements are commonly referred to as "dual headed" structures.
- 1.3 Such companies do not comply with paragraph 3.6 of the Listing Rules as they do not operate through subsidiary undertakings or control the underlying assets of the business. However, subject to satisfying the criteria listed below, these companies will be admitted to listing.

Applicable criteria

- 2.1 Applicants should be able to demonstrate a three year record for the underlying businesses making up the merged business and all the conditions for listing set out in chapter 3 of the Listing Rules should be complied with in respect of the parts of the business which have not been previously listed in the UK.
- 2.2 The overseas listed parent company, which does not need to have a listing in the UK, must have a listing on another exchange.
- 2.3 The UK listed parent company should hold a minimum investment of at least 30% in the merged business. The 30% limit coincides with the definition in the Listing Rules of a "controlling shareholder", at which level it is deemed that an investor has significant influence over its investment.
- 2.4 The UK listed parent company should be able to demonstrate that it jointly controls the merged business. This may be evidenced through, for example, shareholders' agreements, veto rights,

super-majority voting or a deadlocked board.

- 2.5 The merged business will be required to comply with all continuing obligations as if that business were listed in the UK in its own right. This includes the Model Code, which will apply to directors of any operating Board or Committee and relevant employees of the merged businesses, as well as the directors of both listed parent companies. Companies are encouraged to discuss with the UK Listing Authority how compliance with continuing obligations will be achieved at an early stage.
- 2.6 The related party transaction provisions set out in chapter 11 of the Listing Rules will apply to the UK listed parent company, the merged business and the overseas listed parent company. For example, substantial shareholders and directors of the overseas listed parent company and directors of any operating Board or Committee will be considered to be related parties for the purposes of the Listing Rules.
- 2.7 Variations to any shareholders' agreement, governing the operation of the dual headed structure and the relationship between its parent companies, will normally be considered to fall within chapter 11 of the Listing Rules, subject to the de-minimis exemptions set out in chapter 11.
- 2.8 Transactions undertaken by the merged business or either of the listed parents will be subject to the transaction rules set out in Chapter 10. The class tests for the merged business will be calculated by comparing the whole of the target with the whole of the merged business.
- 2.9 Controlling shareholder provisions will apply to any controlling shareholder (30% or more) of either the UK or overseas listed parent companies.
- 2.10 Common accounting policies should be used for the UK listed parent company and the merged business.
- 2.11 Full accounts should be published in accordance with UK or US GAAP or International Accounting Standards for the merged business in addition to such accounts being published for the UK listed parent company. Accounts for the UK and overseas listed parent companies may be published as supplementary information to the full scope information for the merged business.
- 2.12 Equivalent interim financial information on the merged business should be published in addition to, or in conjunction with, the interim financial information for the UK listed parent company.
- 2.13 Where an announcement is required in respect of the merged business, it should be released simultaneously on the exchanges of both the UK and overseas listed parent companies.

General

- 2.14 If the merged business is covered by any of the specialist chapters the usual requirements of those chapters will apply in addition to these criteria.
- 2.15 Unless stated above all Listing Rules will apply in the usual manner.

Effective date

- 3.1 This guidance represents best practice from the date of issue and will continue in effect until the UK Listing Authority otherwise indicates.

These issues and arrangements have been set out as guidance only and may be updated or revised from time to time.

Further Information

Requests for further information or queries about this Guidance Note should be made to the UK Listing Authority Help Desk on 020 7 797 3333 using Option 1.

Related rules

3.6
3.6A
3.12
3.13
Chapters 9 to12

Related documents

None