Bird & Bird & Capital Markets Group: PLC Update

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New premium listing category for Sovereign Controlled Companies

On 8 June 2018, following a consultation process, the Financial Conduct Authority ("**FCA**") amended its 'Handbook' to create a new premium listing category for Sovereign Controlled Companies. The rationale for having a distinct category for these companies was to create a new listing option for companies of a distinct type which may wish to access UK markets and choose the higher standard represented by the premium listing regime rather than that afforded by the standard listing regime. The new rules ensure the regulatory requirements are suitably tailored to Sovereign Controlled Companies in order to recognise the unique relationship between a Sovereign Controlled Company and the controlling State. These rules mean that when a Sovereign Controlled Company lists in the UK, investors can benefit from the protections offered by a premium listing. It also encourages more companies to adopt the UK's high governance standards whilst accommodating the unique characteristics of a Sovereign Controlled Company. The changes came into effect on 1 July 2018.

Eligibility requirements

For a company to be eligible for the new listing category, it must be:

> *'a public company in which a State exercises or controls 30% or more of the votes able to be cast on all or substantially all matters at a general meeting of that company'*.

A "State" is defined as *'the sovereign or other head of State in his or her public capacity",* being the government of a State, a department of a State or an agency or special purpose vehicle of a State, including an agency or special purpose vehicle of any of the above.

It is thought that a passive stake held by a sovereign wealth fund is unlikely to demonstrate the requisite level of State control and is therefore unlikely to be eligible for the Sovereign Controlled Companies Premium Listing category.

The compliance regime for the new listing category is based on the current *'premium listing category for commercial companies*' rules. The FCA diverts from these rules in a number of key areas, namely the requirement:

- for a controlling shareholder relationship agreement to be entered into; and
- to obtain an advance sponsor 'fair and reasonable' opinion and the approval of independent shareholders of all related party transactions of the company with its sovereign controlling shareholder.

Transfer between categories

As mentioned above, for a company to fall within the definition of Sovereign Controlled Company, at least 30% of it must be owned/controlled by a State. In the event that a State ceases to own/control the requisite percentage of the company, it will fail to meet the eligibility requirements for the new premium listing category. In such circumstances, the FCA must be notified and the transfer to a different listing category must be made. Failure to do this would result in a breach of continuing obligations to the FCA and the company may face being suspended and its listing cancelled.

If the company elects to transfer to the current premium listing category, no shareholder vote will be required as the premium listing category affords shareholders a greater level of protection. However, if the company chooses to transfer to the standard listing category or to cancel its listing, it will require the approval of the independent shareholders.

Depositary Receipts

Under the current premium listing category, only equity securities are eligible for listing. Depositary receipts can be admitted to the standard segment, but not the premium segment. The FCA recognised that the ability to list depositary receipts is attractive for foreign incorporated Sovereign Controlled Companies whose shares would not necessarily be eligible for settlement in London's electronic settlement, Euroclear CREST. Depositary receipts will therefore be eligible for listing on the new premium listing categorym, provided certain specified criteria are met.

Free float

Following the introduction of depositary receipts to regulated markets, a Sovereign Controlled Company could fall short of the free float requirement set by the Listing Rules (i.e. at least 25% of the entire class of shares must, by the time of their admission to listing, be held in public hands). The free float issue was a point considered during the consultation exercise on the new listing category which caused particular controversy amongst institutional investors in the UK. The FCA has said that it will judge the free float requirement in respect of depositary receipts on the basis of there being a sufficient number of depositary receipts in public hands to provide liquidity. It should be noted that if a Sovereign Controlled Company does not issue any depositary receipts, the normal free float requirements must be met.

Indexation

Companies listed under the new premium listing category will be eligible for inclusion on the FTSE UK Index Series if they satisfy the eligibility criteria currently in place, i.e. the free float requirements, the nationality test, liquidity etc. However, the FTSE UK Index only allows for equity securities to be included in its indexation. Therefore, where there are depositary receipts in issue, these will not be eligible for inclusion on the Index.

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