

# UKLA Publications

## Procedural note | Eligibility

All new applicants for a premium or standard listing of shares and Global Depositary Receipts (GDRs) should submit an eligibility letter before submitting a new applicant prospectus. For those, applicants seeking a premium listing, the appointed sponsor will need to liaise with the UKLA and should also submit a completed Sponsor's Declaration of Independence at this time.

The eligibility letter for shares or GDR listings should be submitted in time to allow all substantive eligibility requirements to be identified and, to a significant degree, resolved before the prospectus vetting process is started. Eligibility letters should seek to identify any potential eligibility issues upfront, and should also contain a reasonably detailed explanation of the company's business model, corporate structure and corporate history and not merely focus on confirming the rule requirements for the specific listing category. For new applicants applying for a premium listing with complex financial histories, we recommend including a substantive section setting out their financial track record (please see the technical articles in relation to Listing Rule (LR) 6 for further information).

Please note that failing to address key issues at the eligibility stage may result in a hold up in the listing review process. We advocate that any substantive issues that could cause delay to the review process are discussed, clarified and, if necessary, an acceptable approach is agreed upfront with the UKLA. This also ensures that new applicants who do not meet the relevant criteria do not incur substantive vetting and advisor fees unnecessarily.

## Transfers from AIM to the Official List

There is no concessionary route for new applicants to the Official List from AIM. Companies wishing to move from AIM to the Official List should follow the normal new applicant process and allow sufficient time for the resolution of any potential eligibility issues. As AIM companies are often highly acquisitive during their recent financial history, the eligibility process for these companies can at times be quite protracted. So we would recommend that AIM companies seek the advice of a sponsor before announcing an intention to move to a premium listing on the Official List.

## Listing on the back of a passported prospectus for shares

If an issuer requires the official listing of securities that are the subject of a passported document, it must also meet the requirements in LR 3, as well as the eligibility requirements in the LR concerning the issuer and the securities. We have had a small number of cases where an overseas issuer has misunderstood the nature of the passporting regime. In these cases, an overseas issuer has assumed the conditions for listing set out in the LRs do not apply where an issuer 'passports in' a prospectus and that their securities will be automatically listed in the UK when the passport is ►

accepted. Following the requirements for passporting documents into the UK does not in itself result in the official listing or admission to trading of the relevant securities.

The listing and prospectus regimes are separate. An issuer who wishes its securities to be added to the Official List of the UK Listing Authority must apply to the FSA in our capacity as UKLA for the securities to be listed. This is irrespective of which EEA authority is the competent authority for the purposes of the Prospectus Directive (PD). The issuer must then meet whichever set of listing conditions are relevant for the security to be listed.

The conditions for, in particular, a premium listing imposed by the LRs are often not met merely by the fact that a particular disclosure has been made in a prospectus – in many cases, it will depend on the nature of that disclosure. For example, the PD requires an issuer to disclose its historic financials and any further information required by complex financial history principles, whereas LR 6.1.4 (for premium listing (commercial companies)) imposes a separate requirement, as an issuer has to produce financial information that represents at least 75% of its business in each of the last three years. Therefore, complying with the PD does not necessarily mean that the issuer meets the eligibility requirements for listing under the LRs. Even in the case of a standard listing there are a small number of additional requirements.

Applicants seeking a listing on the back of a passported prospectus therefore still need to establish if they are eligible for listing. Advisers should submit an eligibility letter to the UKLA before submitting the prospectus for approval with the competent authority in the relevant home member state. In reviewing the eligibility of the issuer, we will ask to see drafts of the proposed prospectus to verify key aspects of eligibility. To avoid doubt, we do not do this to comment on the issuer's compliance with the PD, as that is a matter for the home state competent authority. We do it to help us verify whether the issuer meets eligibility conditions and whether we should admit the company's shares to the Official List.

## Listing on the back of a passported prospectus for GDRs

We would expect an eligibility letter to be submitted to the UKLA before submitting a prospectus for approval with the competent authority in the relevant home member state. To avoid doubt, we do not do this to comment on the issuer's compliance with the PD, as that is a matter for the home state competent authority. We do it to help us verify whether the issuer meets eligibility conditions and whether we should admit the GDRs to the Official List.

## Listing on the back of a summary document

We have recently received a number of enquiries relating to issuers that wish to list using a summary document produced under the Prospectus Rules (PRs).

PR 1.2.3R(8) provides for an exemption from the requirement to produce a prospectus if the securities are already admitted to trading on another regulated market in the EEA and where certain other conditions are met. The publication of a summary document is one of the conditions that must be met.

The ability of the issuer to seek a listing on the back of a summary document under PR 1.2.3R(8) is a matter of law. It is up to the issuer seeking to use the exemption to decide (on the basis of its own legal advice) whether it meets the conditions. The UKLA will generally not give a view on whether the conditions are met, except to challenge in specific cases.

As the listing and prospectus regimes are separate, an issuer must meet the relevant conditions for an issuer of its type under the LRs. Applicants seeking an initial listing ►

on the back of a summary document submitted under PR 1.2.3R(8) will still need to establish that they are eligible, despite their use of the exemption and preparation of a summary document. This is consistent with the approach we take with issuers that seek a listing on the back of a passported prospectuses (as detailed above).

While we will not formally approve the content of a summary document, we will conduct a review to determine an issuer's general compliance with the content requirements in PR 1.2.3R(8). In cases where an issuer also seeks admission to the Official List, we will look at the content of the summary document to confirm various eligibility conditions under the LRs, and to ensure that there are no issues that may cause the UKLA to consider refusing the listing on the basis that it is seriously detrimental to investors, as set out in section 75(5) of FSMA. A fee is payable for this process, along with that for any accompanying eligibility review.

Please contact the UKLA Helpdesk on 020 7066 8333, Option 2 if you have further queries in relation to the process for Equity Shares, or Option 6 for GDR and debt securities. ■