Acquisitions and Disposals

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# Acquisitions and Disposals

Chapters 10 and 11 of the Listing Rules regulate ‘transactions’ by premium listed companies. They do not apply to companies with a standard listing. The term ‘transaction’ is defined in LR 10.1.3R. The definition refers principally to acquisitions and disposals by the listed company.

## Basic Considerations

Issues a listed company must consider when proposing to enter into a transaction:

1. Structure (asset/ share purchase/ sale)
2. Consideration (cash/ shares/ other)
3. Finance (cash, equity, debt)
4. Due diligence
5. Contractual protection (warranties and indemnities, if shares are public may not provide much protection).

## Listed Company Considerations

### Consideration

If the company is issuing shares as consideration or using equity finance to raise cash to use as consideration for the acquisition, rules on equity finance apply.

### Continuing Disclosure

The general obligation of a listed company, under MAR, Article 17(1), to disclose major new developments in its sphere of activity if the information is not already public knowledge and may lead to substantial movement in its share price.

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Exception

A company does not need to disclose information about matters in the course of negotiation, unless there is a breach of confidence during those negotiations

Rules relevant in ensuring the company discloses the transaction through an RIS in a timely manner.

### Disclosure of Interest in Shares

Obligations:

1. under DTR 5.8.12R, to disclose to the public the information it acquires under Chapter 5 of the DTRs ;
2. under MAR, Article 19, to disclose to the public certain transactions by PDMRs and persons closely associated and;
3. under the Takeover Code, to disclose its interest in shares to the public once its shareholdings exceed a certain level.

### Offences

| Offence type | Offences |
| --- | --- |
| Civil | Market abuse |
| Criminal | Misleading statements, misleading impressions, insider dealing. |

Particularly relevant on an acquisition/ disposal.

### Financial Regulation

Anyone who carries out regulated activities in the process of the transaction must be either authorised, or (less likely) exempt.

### Financial Promotion

Any communication which persuades someone to do something in relation to an investment must comply with the rules of the FSMA 2000 relating to financial promotion.

### Financial Assistance

Check the structure of any share acquisition, to make sure that it does not give rise to financial assistance problems. See Banking and Debt Finance/Secured Lending/Taking Security > Financial Assistance.

## Classifying Transactions

### What is a Transaction

Listing Rule 10.1.3R defines ‘transaction’. Includes all agreements other than:

1. a transaction in the ordinary course of business;
2. an issue of shares, or a transaction to raise finance, which does not involve the acquisition or disposal of any fixed asset of the listed company or subsidiary (rights offer/ open issue);
3. a transaction between a listed company and its wholly-owned subsidiary, or between its wholly-owned subsidiaries (intra-group).

Includes the grant of certain options.

Listing Rule 10.1.4G: Ch 10 Regime intended to cover transactions outside the ordinary course of a company's business and may change a shareholder's economic interest in the company's assets/ liabilities.

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Tip

The regime is focused on the potential impact of the transaction on the company.

### Classification Regime

Chapters 5, 10 and 11 of the Listing Rules contain rules relating to the classification of transactions. Transactions divided into 3 classes, according to the % size of the transaction compared with the size of the listed company (“percentage ratio”). This comparison is made using four calculations referred to as the ‘class tests’, set out at LR 10, Annex 1.

The classification is necessary to protect shareholders. Regulatory requirements scale across the classes.

### Class Tests

![](data:image/png;base64;base64,)

Gross assets test

![](data:image/png;base64;base64,)

Profits test

![](data:image/png;base64;base64,)

Consideration test (!)

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Gross capital test

Only performed for acquisitions, not disposals (para 7R(2)).

Annex 1 to the Listing Rules, Chapter 10 provides further guidance on the application of the class tests.

The ‘listed company’ referred to in the class tests is the premium-listed company that is party to the transaction and which you are advising. If both parties to the transaction, that is, buyer and seller, are listed companies, then the transaction will need to be classified twice. So a transaction may fall into 2 different categories.

#### Different Sellers

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Warning

Remember in share sales the sellers are the shareholders.

A joint venture entered into by a listed company must be classified twice – once for the disposal into the new joint venture company and again for the acquisition of an interest in the joint venture company.

Listing Rule 10, Annex 1, para 10G provides that the FCA can modify the class tests, to substitute other relevant indicators of size, in the event that they produce an anomalous result, or if the calculation is inappropriate to the activities of the listed company.

Listing Rule 10.2.10R provides that, for the purposes of the calculations, the transaction must be aggregated with certain other transactions which took place in the preceding 12 months. The FCA also has discretion to aggregate in other circumstances (LR 10.2.11G).

### Classification of Transactions

Ordinarily, three class tests will be applied for a disposal, and all four on an acquisition. There are three classes of transaction, the first two under Chapter 10 of the Listing Rules and the third under Chapter 5 , namely:

1. Class 1 transaction;
2. Class 2 transaction; and
3. reverse takeovers.

The purpose of classifying a transaction is to determine the level of procedural safeguards which the Listing Rules will impose to protect the shareholders.

### Class 2

If any of the percentage ratios is 5% or more, but each percentage ratio is less than 25%, the transaction will be classified as a Class 2 transaction (LR 10.2.2R(2)).

#### Ch 10 Requirements

Listing Rule 10.4.1R(1) provides that the company must notify an RIS as soon as possible after the terms of any Class 2 transaction are agreed. The announcement (referred to as a ‘Class 2 announcement’) must contain the information prescribed by LR 10.4.1R(2).

If the company later becomes aware that:

1. there has been a significant change which affects any matter in the Class 2 announcement; or
2. a significant new matter has arisen which the company would have been required to mention in the Class 2 announcement if it had arisen at the time it was preparing that announcement,

the company must make a supplementary announcement through an RIS without delay (LR 10.4.2R(1)).

### Class 1

#### % Ratios

If any of the percentage ratios is 25% or more, the transaction will be classified as a Class 1 transaction (LR 10.2.2R(3)).

Where

* the profits test alone produces a result of 25% and
* this is anomalous, and
* the transaction does not amount to a related party transaction, and
* the remaining tests are ,

the profit test can be ignored in classifying the transaction.

#### Ch 10 Requirements

Listing Rule 10.5.1R provides that the company must:

1. comply with the Class 2 requirements, that is, make an announcement through an RIS which complies with LR 10.4.1R(1) (in practice, this is still referred to as a Class 2 announcement, even when it relates to a Class 1 transaction), and make a supplementary announcement, if required;
2. send an explanatory circular, approved by the FCA, to shareholders in the form prescribed by LR 13 (Class 1 circular);
3. obtain the shareholders’ approval of the transaction (by ordinary resolution in general meeting) before completing the transaction (the notice of GM will be sent out with the circular referred to at (b) above); and
4. ensure that, if the agreement is to be entered into before shareholder approval is obtained, completion of the transaction is conditional on shareholder approval being obtained.

These are significant additional procedural steps imposed on the listed company. They will require the calling and holding of a GM if the AGM is not conveniently timed. The requirement for shareholder approval, however, is the best form of protection.

Listing Rule 9.2.21R requires that the **shareholder vote** must only be taken by those shareholders who **own the premium-listed shares** of the company.

Under LR 10.5.2R, if there is a **material change in the terms** of the transaction after shareholder approval has been given but before completion of the transaction, the company must **repeat the requirements** set out in LR 10.5.1R. For example, this would cover an increase of 10% or more in the consideration payable (LR 10.5.3G).

If a **material new matter** arises or there is a material change before the GM but after the circular has been sent out, a **supplementary circular** will need to be sent out to the shareholders and the FCA notified in accordance with LR 10.5.4R.

#### Waiver of the Requirements to Prepare a Circular and Obtain Shareholder Approval

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