

## Chapter 10

# Significant transactions: Premium listing

**10.1 Preliminary**

**Application**

10.1.1 **R** This chapter applies to a *company* that has a *premium listing*.  
Purpose

10.1.2 **G** The purpose of this chapter is to ensure that shareholders of *companies* with *securities listed*:

- (1) are notified of certain transactions entered into by the *listed company*; and
- (2) have the opportunity to vote on larger proposed transactions.

**Meaning of "transaction"**

10.1.3 **R** In this chapter (except where specifically provided to the contrary) a reference to a transaction by a *listed company*:

- (1) (subject to paragraphs (3),(4) and (5)) includes all agreements (including amendments to agreements) entered into by the *listed company* or its *subsidiary undertakings*;
- (2) includes the grant or acquisition of an *option* as if the *option* had been exercised except that, if exercise is solely at the *listed company's* or *subsidiary undertaking's* discretion, the transaction will be classified on exercise and only the consideration (if any) for the *option* will be classified on the grant or acquisition;
- (3) excludes a transaction in the ordinary course of business;
- (4) excludes an issue of *securities*, or a transaction to raise finance, which does not involve the acquisition or disposal of any fixed asset of the *listed company* or of its *subsidiary undertakings*;
- (5) excludes any transaction between the *listed company* and its wholly-owned *subsidiary* undertaking or between its wholly-owned *subsidiary undertakings*; and
- (6) excludes a transaction where the *listed company* purchases its own *equity shares*.

10.1.4 **G** This chapter is intended to cover transactions that are outside the ordinary course of the *listed company's* business and may change a *security holder's* economic interest in the *company's* assets or liabilities (whether or not the change in the assets or liabilities is recognised on the *company's* balance sheet).

- 10.1.5 **G** In assessing whether a transaction is in the ordinary course of a *company's* business under this chapter, the *FCA* will have regard to the size and incidence of similar transactions which the *company* has entered into. The *FCA* may determine that a transaction is not in the ordinary course of business because of its size or incidence.

## 10.2 Classifying transactions

### Classifying transactions

**10.2.1** **G** A transaction is classified by assessing its size relative to that of the *listed company* proposing to make it. The comparison of size is made by using the *percentage ratios* resulting from applying the *class test* calculations to a transaction. The *class tests* are set out in ■ LR 10 Annex 1 (and modified or added to for specialist companies under ■ LR 10.7).

**10.2.2** **R** Except as otherwise provided in this chapter, transactions are classified as follows:

- (1) [deleted]
- (2) *Class 2 transaction*: a transaction where any *percentage ratio* is 5% or more but each is less than 25%; and
- (3) *Class 1 transaction*: a transaction where any *percentage ratio* is 25% or more.
- (4) [deleted]

**10.2.2A** **G** If an *issuer* is proposing to enter into a transaction classified as a *reverse takeover* it should consider ■ LR 5.6.

**10.2.3** **R** [deleted]

### Indemnities and similar arrangements

**10.2.4** **R**

- (1) Any agreement or arrangement with a party (other than a wholly owned *subsidiary undertaking* of the *listed company*):
  - (a) under which a *listed company* agrees to discharge any liabilities for costs, expenses, commissions or losses incurred by or on behalf of that party, whether or not on a contingent basis;
  - (b) which is exceptional; and
  - (c) under which the maximum liability is either unlimited, or is equal to or exceeds an amount equal to 25% of the average of the *listed company's* profits (as calculated for classification purposes) for the last three financial years (losses should be taken as nil profit and included in this average);

is to be treated as a *class 1 transaction*.

- (2) Paragraph (1) does not apply to a *break fee arrangement* (see ■ LR 10.2.6A R, ■ LR 10.2.6B G and ■ LR 10.2.7 R which deal with *break fee arrangements*).

10.2.5 **G** For the purposes of ■ LR 10.2.4R (1), the FCA considers the following indemnities not to be exceptional:

- (1) those customarily given in connection with sale and purchase agreements;
- (2) those customarily given to underwriters or placing agents in an underwriting or placing agreement;
- (3) those given to advisers against liabilities to third parties arising out of providing advisory services; and
- (4) any other indemnity that is specifically permitted to be given to a *director* or auditor under the Companies Act 2006.

10.2.6 **G** If the calculation under ■ LR 10.2.4R (1) produces an anomalous result, the FCA may disregard the calculation and modify that *rule* to substitute other relevant indicators of the size of the indemnity or other arrangement given, for example 1% of market capitalisation.

### Break fee arrangements

10.2.6A **R** An arrangement is a *break fee arrangement* if the purpose of the arrangement is that a compensatory sum will become payable by a *listed company* to another party (or parties) to a proposed transaction if the proposed transaction fails or is materially impeded and there is no independent substantive commercial rationale for the arrangement.

10.2.6B **G**

- (1) The following arrangements will meet the definition of *break fee arrangements* in ■ LR 10.2.6A R (although this list is not intended to be exhaustive): 'no shop' and 'go shop' type provisions, which require payment of a sum to a party in the event the seller finds an alternative purchaser; a requirement to pay another party's wasted costs in the event a transaction fails; non refundable deposits.
- (2) In contrast, payments in the nature of damages (whether liquidated or unliquidated) for a breach of an obligation with an independent substantive commercial rationale, for example the typical business protection covenants that will apply between exchange and completion of a share or asset acquisition agreement or co-operation and information access obligations relating to obtaining merger or other clearances, are not *break fee arrangements*.

10.2.7 **R** (1) Sums payable pursuant to *break fee arrangements* in respect of a transaction are to be treated as a *class 1 transaction* if the total value of those sums exceeds:

- (a) if the *listed company* is being acquired, 1% of the value of the *listed company* calculated by reference to the offer price; and
  - (b) in any other case, 1% of the market capitalisation of the *listed company*.
- (1A) The total value of sums payable pursuant to *break fee arrangements* for the purpose of paragraph (1) is the sum of:
- (a) any amounts paid or payable pursuant to *break fee arrangements* in relation to the same transaction or in relation to the same target assets or business in the 12 months prior to the date the most recent arrangements were agreed unless those arrangements were approved by shareholders; and
  - (b) the aggregate of the maximum amounts payable pursuant to *break fee arrangements* in relation to the transaction;
- save that if the arrangements are such that a particular sum will only become payable in circumstances in which another sum does not, the lower sum may be left out of the calculation of the total value.
- (2) For the purposes of paragraph (1)(a):
- (a) the 1% limit is to be calculated on the basis of the fully diluted *equity share capital* of the *listed company*;
  - (b) any VAT payable is to be taken into account in determining whether the 1% limit would be exceeded (except to the extent that the VAT is recoverable by the *listed company*); and
  - (c) for a securities exchange offer, the value of the *listed company* is to be fixed by reference to the value of the offer at the time the transaction is announced (and is not to be taken as fluctuating as a result of subsequent movements in the price of the consideration securities after the announcement).

**Issues by major subsidiary undertakings**

10.2.8 **R**

If:

- (1) a *major subsidiary undertaking* of a *listed company* issues *equity shares* for cash or in exchange for other *securities* or to reduce indebtedness;
- (2) the issue would dilute the *listed company's* percentage interest in the *major subsidiary undertaking*; and
- (3) the economic effect of the dilution is equivalent to a disposal of 25% or more of the aggregate of the gross assets or profits (after the deduction of all charges except taxation) of the *group*;

the issue is to be treated as a *class 1 transaction*.

10.2.9 **R**

■ LR 10.2.8 R does not apply if the *major subsidiary undertaking* is itself a *listed company*.

### Aggregating transactions

- 10.2.10 **R**
- (1) Transactions completed during the 12 months before the date of the latest transaction must be aggregated with that transaction for the purposes of classification if:
    - (a) they are entered into by the *company* with the same *person* or with *persons* connected with one another;
    - (b) they involve the acquisition or disposal of *securities* or an interest in one particular *company*; or
    - (c) together they lead to substantial involvement in a business activity which did not previously form a significant part of the *company's* principal activities.
  - (2) Paragraph (1) does not apply in relation to a *break fee arrangement* (see **LR 10.2.6A R**, **LR 10.2.6B G** and **LR 10.2.7 R** which deal with *break fee arrangements*).
  - (3) If under this *rule* aggregation of transactions results in a requirement for shareholder approval, then that approval is required only for the latest transaction.
  - (4) Paragraph (1) does not apply to a transaction where:
    - (a) the *listed company* has obtained shareholder approval for it; and
    - (b) it has been completed.

- 10.2.10A **G**
- One effect of **LR 10.2.10R(1)** is that if a transaction is aggregated with a *class 2 transaction* completed during the 12 *months* before the date of the latest transaction, the latest transaction must (depending on the aggregated *percentage ratios*) be classified as either:
- a class 2 transaction*, in which case the *listed company* must comply with the requirements in **LR 10.4** (Class 2 requirements); or
  - a class 1 transaction*, in which case the *listed company* must comply with the requirements in **LR 10.5** (Class 1 requirements).

- 10.2.11 **G**
- The *FCA* may modify these *rules* to require the aggregation of transactions in circumstances other than those specified in **LR 10.2.10 R**.
- Note:** If an *issuer* is proposing to enter into a transaction that could be a *Class 1 transaction* or *reverse takeover* it is required under **LR 8** to obtain the guidance of a *sponsor* to assess the potential application of **LR 10**.

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**10.3**

10.3.1 **R** [deleted]

10.3.2 **R** [deleted]



## 10.4 Class 2 requirements

### Notification of class 2 transactions

10.4.1

**R**

- (1) A *listed company* must notify a *RIS* as soon as possible after the terms of a *class 2 transaction* are agreed.
- (2) The notification must include:
  - (a) details of the transaction, including the name of the other party to the transaction;
  - (b) a description of the business carried on by, or using, the net assets the subject of the transaction;
  - (c) the consideration, and how it is being satisfied (including the terms of any arrangements for deferred consideration);
  - (d) the value of the gross assets the subject of the transaction;
  - (e) the profits attributable to the assets the subject of the transaction;
  - (f) the effect of the transaction on the *listed company* including any benefits which are expected to accrue to the *company* as a result of the transaction;
  - (g) details of any service contracts of proposed *directors* of the *listed company*;
  - (h) for a disposal, the application of the sale proceeds;
  - (i) for a disposal, if *securities* are to form part of the consideration received, a statement whether the *securities* are to be sold or retained; and
  - (j) details of key individuals important to the business or *company* the subject of the transaction.

### Supplementary notification

10.4.2

**R**

- (1) A *listed company* must notify a *RIS* as soon as possible if, after the notification under **LR 10.4.1 R**, it becomes aware that:
  - (a) there has been a significant change affecting any matter contained in that earlier notification; or
  - (b) a significant new matter has arisen which would have been required to be mentioned in that earlier notification if it had arisen at the time of the preparation of that notification.
- (2) The supplementary notification must give details of the change or new matter and also contain a statement that, except as disclosed,

there has been no significant change affecting any matter contained in the earlier notification and no other significant new matter has arisen which would have been required to be mentioned in that earlier notification if it had arisen at the time of the preparation of that notification.

- (3) In paragraphs (1) and (2), significant means significant for the purpose of making an informed assessment of the assets and liabilities, financial position, profits and losses and prospects of the *listed company* and the rights attaching to any *securities* forming part of the consideration. It includes a change in the terms of the transaction that affects the *percentage ratios* and requires the transaction to be reclassified into a higher category.

## 10.5 Class 1 requirements

### Notification and shareholder approval

10.5.1 **R** A listed company must, in relation to a class 1 transaction:

- (1) comply with the requirements of ■ LR 10.4 (Class 2 requirements) for the transaction;
- (2) send an explanatory *circular* to its shareholders and obtain their prior approval in a general meeting for the transaction; and
- (3) ensure that any agreement effecting the transaction is conditional on that approval being obtained.

**Note:** LR 13 sets out requirements for the content and approval of *class 1 circulars*.

### Material change to terms of transaction

10.5.2 **R** If, after obtaining shareholder approval but before the completion of a *class 1 transaction* or a *reverse takeover*, there is a material change to the terms of the transaction, the *listed company* must comply again separately with ■ LR 10.5.1 R in relation to the transaction.

10.5.3 **G** The *FCA* would (amongst other things) generally consider an increase of 10% or more in the consideration payable to be a material change to the terms of the transaction.

### Supplementary circulars

10.5.4 **R**

- (1) If a *listed company* becomes aware of a matter described in (2) after the publication of a *circular* that seeks shareholder approval for a transaction expressly requiring a vote by the *listing rules*, but before the date of a general meeting, it must, as soon as practicable:
  - (a) advise the *FCA* of the matters of which it has become aware; and
  - (b) send a supplementary *circular* to holders of its *listed equity shares* providing an explanation of the matters referred to in (2).
- (2) The matters referred to in (1) are
  - (a) a material change affecting any matter the *listed company* is required to have disclosed in a *circular*; or

(b) a material new matter which the *listed company* would have been required to disclose in the *circular* if it had arisen at the time of its publication.

(3) The *listed company* must have regard to ■ LR 13.3.1R (3) when considering the materiality of any change or new matter under ■ LR 10.5.4R (2).

10.5.5

G

■ LR 13 applies in relation to a supplementary *circular*. It may be necessary to adjourn a convened shareholder meeting if a supplementary *circular* cannot be sent to holders of *listed equity shares* at least 7 days prior to the convened shareholder meeting as required by ■ LR 13.1.9 R.



10.6 [deleted]

10.6.1 **R** [deleted]

10.6.1A **G** [deleted]

10.6.2 **G** [deleted]

10.6.3 **G** [deleted]

## 10.7 Transactions by specialist companies

### Classification of transactions by listed property companies.....

#### 10.7.1

**R**

■ LR 10 Annex 1 is modified as follows in relation to acquisitions or disposals of *property* by a *listed property company*:

- (1) for the purposes of paragraph 2R(1) (the gross assets test), the assets test is calculated by dividing the transaction consideration by the gross assets of the *listed property company* and paragraphs 2R(5) and 2R(6) do not apply;
- (2) for the purposes of paragraph 2R(1) (the gross assets test), if the transaction is an acquisition of land to be developed, the assets test is calculated by dividing the transaction consideration and any financial commitments relating to the development by the gross assets of the *listed property company* and paragraphs 2R(5) and 2R(6) do not apply;
- (3) for the purposes of paragraph 2R(2), the gross assets of a *listed property company* are, at the option of the *company*:
  - (a) the aggregate of the *company's* share capital and reserves (excluding minority interests);
  - (b) the book value of the *company's properties* (excluding those properties classified as current assets in the latest published annual report and accounts); or
  - (c) the published valuation of the *company's properties* (excluding those properties classified as current assets in the latest published annual report and accounts);
- (4) for the purposes of paragraph 4R(1) (the profits test), profits means the *net annual rent*;
- (5) paragraph 5R (the consideration test) does not apply but instead the test in ■ LR 10.7.2 R applies; and
- (6) paragraph 7R (the gross capital test) applies to disposals as well as acquisitions of *property*.

#### 10.7.2

**R**

- (1) In addition to the tests in ■ LR 10 Annex 1, if the transaction is an acquisition of *property* by a *listed property company* and any of the consideration is in the *equity shares* of that *company*, the *listed company* must determine the *percentage ratios* that result from the calculations under the test in (2).

(2) The share capital test is calculated by dividing the number of consideration *shares* to be issued by the number of *equity shares* in issue (excluding *treasury shares*).

**10.7.3** **R** ■ LR 10 does not apply to the acquisition or disposal by a *listed property company* of a *property* in the ordinary course of business which:

(1) for an acquisition, will be classified as a current asset in the *company's* published accounts; or

(2) for a disposal, was so classified in the *company's* published accounts.

**10.7.4** **G** ■ LR 10 may apply to subsequent transfers of *property* assets from current to fixed assets or from fixed to current assets in the accounts of a *property company*.

**Classification of transactions by listed mineral companies**

**10.7.5** **R** (1) In addition to the tests in ■ LR 10 Annex 1, a *listed mineral company* undertaking a transaction involving significant *mineral resources* or rights to significant *mineral resources* must determine the *percentage ratios* that result from the calculations under the test in paragraph (2).

(2) The reserves test is calculated by dividing the volume or amount of the *proven reserves* and *probable reserves* to be acquired or disposed of by the volume or amount of the aggregate *proven reserves* and *probable reserves* of the *mineral company* making the acquisition or disposal.

**10.7.6** **G** If the *mineral resources* are not directly comparable, the *FCA* may modify ■ LR 10.7.5R (2) to permit valuations to be used instead of amounts or volumes.

**10.7.7** **R** When calculating the size of a transaction under ■ LR 10 Annex 1 and ■ LR 10.7.5 R, account must be taken of any associated transactions or loans effected or intended to be effected, and any contingent liabilities or commitments.

**Classification of transactions by listed scientific research based companies**

**10.7.8** **G** A *listed scientific research based company* undertaking a transaction should consult the *FCA* at an early stage to determine whether industry specific tests are required instead of or in addition to the *class tests* in ■ LR 10 Annex 1.

## 10.8 Miscellaneous

### Class 1 disposals by companies in severe financial difficulty.....

- 10
- 10.8.1 **G** (1) A *listed company* in severe financial difficulty may find itself with no alternative but to dispose of a substantial part of its business within a short time frame to meet its ongoing working capital requirements or to reduce its liabilities. Due to time constraints it may not be able to prepare a *circular* and convene an extraordinary general meeting to obtain prior shareholder approval.
- (2) The *FCA* may modify the requirements in ■ LR 10.5 to prepare a *circular* and to obtain shareholder approval for such a disposal, if the *company*:
- (a) can demonstrate that it is in severe financial difficulty; and
- (b) satisfies the conditions in ■ LR 10.8.2 G to ■ LR 10.8.6 G.
- (3) An application to modify ■ LR 10.5 should be brought to the *FCA*'s attention at the earliest available opportunity and at least five clear *business days* before the terms of the disposal are agreed.
- 10.8.2 **G** The *listed company* should demonstrate to the *FCA* that it could not reasonably have entered into negotiations earlier to enable shareholder approval to be sought.
- 10.8.3 **G** The following documents should be provided in writing to the *FCA*:
- (1) confirmation from the *listed company* that:
- (a) negotiation does not allow time for shareholder approval;
- (b) all alternative methods of financing have been exhausted and the only option remaining is to dispose of a substantial part of their business;
- (c) by taking the decision to dispose of part of the business to raise cash, the directors are acting in the best interests of the *company* and shareholders as a whole and that unless the disposal is completed receivers, administrators or liquidators are likely to be appointed; and
- (d) if the disposal is to a *related party*, that the disposal by the company to the *related party* is the only available option in the current circumstances.



- (2) confirmation from the *company's sponsor* that, in its opinion and on the basis of information available to it, the *company* is in severe financial difficulty and that it will not be in a position to meet its obligations as they fall due unless the disposal takes place according to the proposed timetable;
- (3) confirmation from the *persons* providing finance stating that further finance or facilities will not be made available and that unless the disposal is effected immediately, current facilities will be withdrawn; and
- (4) an announcement that complies with ■ LR 10.8.4 G and ■ LR 10.8.5 G.

10.8.4

G

An announcement should be notified to a *RIS* no later than the date the terms of the disposal are agreed and should contain:

- (1) all relevant information required to be notified under ■ LR 10.4.1 R;
- (2) the name of the acquirer and the expected date of completion of the disposal;
- (3) full disclosure about the continuing groups prospects for at least the current financial year;
- (4) a statement that the *directors* believe that the disposal is in the best interests of the *company* and shareholders as a whole. The *directors* should also state that if the disposal is not completed the *company* will be unable to meet its financial commitments as they fall due and consequently will be unable to continue to trade resulting in the appointment of receivers, liquidators or administrators;
- (5) a statement incorporating the details of all the confirmations provided to the *FCA* in ■ LR 10.8.3 G;
- (6) details of any financing arrangements (either current or future) if they are contingent upon the disposal being effected;
- (7) if the disposal is to a *related party*, then a statement as set out in LR 13.6.1R(5) must be given;
- (8) a statement by the *listed company* that in its opinion the working capital available to the continuing group is sufficient for the groups present requirements, that is, for at least 12 months from the date of the announcement, or, if not, how it is proposed to provide the additional working capital thought by the *company* to be necessary.

10.8.5

G

The announcement should contain any further information that the *company* and its *sponsors* consider necessary. This should incorporate historical price sensitive information, which has already been published in relation to the disposal along with any further information required to be disclosed under articles 17 and 18 of the *Market Abuse Regulation*.

10.8.6

G

- (1) The *FCA* will wish to examine the documents referred to in ■ LR 10.8.3 G (including the *RIS* announcement) before it grants the modification and before the announcement is released.

- (2) The documents should ordinarily be lodged with the *FCA*:
  - (a) in draft form at least five clear *business days* before the terms of the transaction are agreed; and
  - (b) in final form on the day on which approval is sought.

10.8.7 **G** In relation to the *listed company's* financial position, articles 17 and 18 of the *Market Abuse Regulation* continue to apply while the *company* is seeking a modification.

10.8.8 **G** The *directors* should also consider whether the *listed company's* financial situation is such that they should request the suspension of its *listing* pending publication of an announcement and clarification of its financial position.

### Joint ventures

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- 10.8.9 **G**
- (1) When a *listed company* enters into a joint venture it should consider how this chapter applies.
  - (2) It is common, when entering into a joint venture, for the partners to include exit provisions in the terms of the agreement. These typically give each partner a combination of rights and obligations to either sell their own holding or to acquire their partner's holding should certain triggering events occur.
  - (3) If the *listed company* does not retain sole discretion over the event which requires them to either purchase the joint venture partner's stake or to sell their own, ■ LR 10.1.3R (2) requires this obligation to be classified at the time it is agreed as though it had been exercised at that time. Further, if the consideration to be paid is to be determined by reference to the future profitability of the joint venture or an independent valuation at the time of exercise, this consideration will be treated as being uncapped. If this is the case, the initial agreement will be classified in accordance with ■ LR 10 Annex 1 5R (3) and (3A) at the time it is entered into.
  - (4) If the *listed company* does retain sole discretion over the triggering event, or if the *listed company* is making a choice to purchase or sell following an event which has been triggered by the joint venture partner, the purchase or sale must be classified when this discretion is exercised or when the choice to purchase or sell is made.
  - (5) Where an *issuer* enters into a joint venture exit arrangement which takes the form of a put or call option and exercise of the option is solely at the discretion of the other party to the arrangement, the transaction should be classified at the time it is agreed as though the option had been exercised at that time.

## The Class Tests

### Class tests

1G This Annex sets out the following *class tests*:

- (1) the gross assets test;
- (2) the profits test;
- (3) the consideration test; and
- (4) the gross capital test.

### The Gross Assets test

- 2R
- (1) The assets test is calculated by dividing the gross assets the subject of the transaction by the gross assets of the *listed company*.
  - (2) The gross assets of the *listed company* means the total non-current assets, plus the total current assets, of the *listed company*.
  - (3) For:
    - (a) an acquisition of an interest in an undertaking which will result in consolidation of the assets of that undertaking in the accounts of the listed company; or
    - (b) a disposal of an interest in an undertaking which will result in the assets of that undertaking no longer being consolidated in the accounts of the *listed company*;the gross assets the subject of the transaction means the value of 100% of that undertakings assets irrespective of what interest is acquired or disposed of.
  - (4) For an acquisition or disposal of an interest in an undertaking which does not fall within paragraph (3), the gross assets the subject of the transaction means:
    - (a) for an acquisition, the consideration together with liabilities assumed (if any); and
    - (b) for a disposal, the assets attributed to that interest in the listed company's accounts.
  - (5) If there is an acquisition of assets other than an interest in an undertaking, the assets the subject of the transaction means the consideration or, if greater, the book value of those assets as they will be included in the *listed company's* balance sheet.
  - (6) If there is a disposal of assets other than an interest in an undertaking, the assets the subject of the transaction means the book value of the assets in the *listed company's* balance sheet.
- 3G The *FCA* may modify paragraph 2R to require, when calculating the assets the subject of the transaction, the inclusion of further amounts if contingent assets or arrangements referred to in LR 10.2.4 R (indemnities and similar arrangements) are involved.

### The Profits test

- 4R
- (1) The profits test is calculated by dividing the profits attributable to the assets the subject of the transaction by the profits of the *listed company*.
  - (2) For the purposes of paragraph (1), profits means:

- (a) profits after deducting all charges except taxation; and
- (b) for an acquisition or disposal of an interest in an undertaking referred to in paragraph 2R (3)(a) or (b) of this Annex, 100% of the profits of the undertaking (irrespective of what interest is acquired or disposed of).
- (3) If the acquisition or disposal of the interest will not result in consolidation or deconsolidation of the *target* then the profits test is not applicable.

4AG The amount of loss is relevant in calculating the impact of a proposed transaction under the profits test. A *listed company* should include the amount of the losses of the *listed company* or *target* i.e. disregard the negative when calculating the test.

#### The Consideration test

- 5R
- (1) The consideration test is calculated by taking the consideration for the transaction as a percentage of the aggregate market value of all the ordinary shares (excluding *treasury shares*) of the *listed company*.
  - (2) For the purposes of paragraph (1):
    - (a) the consideration is the amount paid to the contracting party;
    - (b) if all or part of the consideration is in the form of *securities* to be traded on a market, the consideration attributable to those *securities* is the aggregate market value of those *securities*; and
    - (c) if deferred consideration is or may be payable or receivable by the *listed company* in the future, the consideration is the maximum total consideration payable or receivable under the agreement.
  - (3) If the total consideration is not subject to any maximum (and the other class tests indicate the transaction to be a *class 2 transaction*) the transaction is to be treated as a *class 1 transaction*.
  - (3A) If the total consideration is not subject to any maximum (and the other class tests indicate the transaction to be a transaction where all *percentage ratios* are less than 5%) the transaction is to be treated as a *class 2 transaction*.
  - (4) For the purposes of sub-paragraph (2)(b), the figures used to determine consideration consisting of:
    - (a) *securities* of a *class* already *listed*, must be the aggregate market value of all those *securities* on the last *business day* before the announcement; and
    - (b) a new *class* of *securities* for which an application for *listing* will be made, must be the expected aggregate market value of all those *securities*.
  - (5) For the purposes of paragraph (1), the figure used to determine market capitalisation is the aggregate market value of all the ordinary *shares* (excluding *treasury shares*) of the *listed company* at the close of business on the last *business day* before the announcement.
- 6G The *FCA* may modify paragraph 5R to require the inclusion of further amounts in the calculation of the consideration. For example, if the purchaser agrees to discharge any liabilities, including the repayment of inter-company or third party debt, whether actual or contingent, as part of the terms of the transaction.

#### The Gross Capital test

- 7R
- (1) The gross capital test is calculated by dividing the gross capital of the company or business being acquired by the gross capital of the *listed company*.
  - (2) The test in paragraph (1) is only to be applied for an acquisition of a *company* or business.
  - (3) For the purposes of paragraph (1), the gross capital of the *company* or business being acquired means the aggregate of:

- (a) the consideration (as calculated under paragraph 5R of this Annex);
  - (b) if a *company*, any of its *shares* and *debt securities* which are not being acquired;
  - (c) all other liabilities (other than current liabilities) including for this purpose minority interests and deferred taxation; and
  - (d) any excess of current liabilities over current assets.
- (4) For the purposes of paragraph (1), the gross capital of the *listed company* means the aggregate of:
- (a) the market value of its *shares* (excluding *treasury shares*) and the issue amount of the *debt security*;
  - (b) all other liabilities (other than current liabilities) including for this purpose minority interests and deferred taxation; and
  - (c) any excess of current liabilities over current assets.
- (5) For the purposes of paragraph (1):
- (a) figures used must be, for *shares* and *debt security* aggregated for the purposes of the gross capital percentage ratio, the aggregate market value of all those *shares* (or if not available before the announcement, their nominal value) and the issue amount of the *debt security*; and
  - (b) for *shares* and *debt security* aggregated for the purposes of paragraph (3)(b), any *treasury shares* held by the *company* are not to be taken into account.

**Figures used to classify assets and profits**

- 8R (1) For the purposes of calculating the tests in this Annex, except as otherwise stated in paragraphs (2) to (6), figures used to classify assets and profits, must be the figures shown in the latest published audited consolidated accounts or, if a *listed company* has, or will have, published a preliminary statement of later annual results at the time the terms of a transaction are agreed, the figures shown in that preliminary statement.
- (2) If a balance sheet has been published in a subsequently published interim statement then gross assets and gross capital should be taken from the balance sheet published in the interim statement.
- (3) (a) The figures of the *listed company* must be adjusted to take account of transactions completed during the period to which the figures referred to in (1) or (2) relate, and subsequent completed transactions which have been notified under LR 10.4 or LR 10.5.
- (b) The figures of the target company or business must be adjusted to take account of transactions completed during the period to which the figures referred to in (1) or (2) relate, and subsequent completed transactions which would have been a *class 2 transaction* or greater when classified against the target as a whole.
- (4) Figures on which the auditors are unable to report without modification must be disregarded.
- (5) When applying the *percentage ratios* to an acquisition by a *company* whose assets consist wholly or predominantly of cash or short-dated *securities*, the cash and short-dated *securities* must be excluded in calculating its assets and market capitalisation.
- (6) The principles in this paragraph also apply (to the extent relevant) to calculating the assets and profits of the target company or business.
- 9G The *FCA* may modify paragraph 8R(4) in appropriate cases to permit figures to be taken into account.

**Anomalous results**

- 10G If a calculation under any of the *class tests* produces an anomalous result or if a calculation is inappropriate to the activities of the *listed company*, the *FCA* may modify the relevant *rule* to substitute other relevant indicators of size, including industry specific tests.
- Adjustments to figures**
- 11G Where a *listed company* wishes to make adjustments to the figures used in calculating the class tests pursuant to 10G they should discuss this with the *FCA* before the class tests crystallise.
- The Profits Test: Anomalous Results**
- 12R Paragraph 13R applies to a *company* that has a *premium listing* where:
- (1) the calculation under the profits test produces a *percentage ratio* of 25% or more and this result is anomalous; and
  - (2) the transaction is not a *related party transaction*.
- 13R A *company* that has a *premium listing* may:
- (1) where each of the other applicable *percentage ratios* are less than 5%, disregard the profits test for the purposes of classifying the transaction; or
  - (2) make the following adjustments to the calculation under the profits test:
    - (a) where any of the following costs are genuinely one-off costs, the figures used to classify profits of the *listed company*, or the target company or business, may be adjusted for:
      - (i) costs incurred by the *listed company*, or target company or business, in connection with the *listed company*, or target company or business' initial public offering; or
      - (ii) closure costs incurred by the *listed company*, or target company or business, that are not part of an on-going restructuring that will occur over more than one financial period;
    - (b) where a *listed company*, or target company or business, has completed an initial public offering, the figures used to classify profits of the *listed company*, or target company or business, may be adjusted for interest charges incurred under private ownership prior to completion of the initial public offering provided that these interest charges:
      - (i) have been incurred under facilities that were repaid as part of the initial public offering capital restructuring; and
      - (ii) are substituted in the calculation of the profits test with the interest charges that would have been incurred under the new facilities for the relevant period.
- 14G Any adjustments made in accordance with paragraph 13R(2) should be applied equally to both the *listed company*, and target company or business, where applicable, to ensure a like-for-like comparison is being undertaken.
- 15G A *company* that has a *premium listing* does not have to consult the *FCA* in accordance with paragraph 10G or 11G before relying on paragraph 13R.