

Chapter 10

Significant transactions: Premium listing

10.8 Miscellaneous

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

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- 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

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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

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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

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- (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

- 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.