

Chapter 7

Corporate governance

7.3 Related party transactions

Transaction

7.3.1

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A reference in this section:

- (1) to a transaction or arrangement by an *issuer* includes a transaction or arrangement by its *subsidiary undertaking*; and
- (2) to a transaction is, unless the contrary intention appears, a reference to the entering into of the agreement for the transaction.

[Note: article 9c(7) of the *Shareholder Rights Directive*]

Definition of related party

7.3.2

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In *DTR*, a "related party" has the meaning in *IFRS*.

[Note: article 2(h) of the *Shareholder Rights Directive*]

Definition of related party transaction

7.3.3

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In *DTR*, a "related party transaction" means:

- (1) a transaction (other than a transaction in the ordinary course of business and concluded on normal market terms) between an *issuer* and a *related party*; or
- (2) an arrangement (other than an arrangement in the ordinary course of business and concluded on normal market terms) pursuant to which an *issuer* and a *related party* each invests in, or provides finance to, another undertaking or asset; or
- (3) any other similar transaction or arrangement (other than a transaction or arrangement in the ordinary course of business and concluded on normal market terms) between an *issuer* and any other *person* the purpose and effect of which is to benefit a *related party*.

[Note: article 9c(5) of the *Shareholder Rights Directive*]

7.3.4

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An *issuer* must establish and maintain adequate procedures, systems and controls to enable it to assess whether a transaction or arrangement with a *related party* is in the ordinary course of business and has been concluded on normal market terms. An *issuer* must ensure that the *related party* and any

person who is an *associate*, *director* or *employee* of the *related party* does not take part in any such assessment.

[Note: article 9c(5) of the *Shareholder Rights Directive*]

Transactions to which this section does not apply

7.3.5

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■ DTR 7.3.8R does not apply to any *related party transaction* which is:

- (1) a transaction or arrangement between the *issuer* and its *subsidiary undertaking* provided that:
 - (a) the *subsidiary undertaking* is wholly owned; or
 - (b) no other *related party* of the *issuer* has an interest in the *subsidiary undertaking*; or
- (2) a transaction or arrangement regarding remuneration, or certain elements of remuneration, of a *director* of the *issuer*, where the remuneration to be awarded or due to the *director* is in accordance with the *issuer's* directors' remuneration policy as approved by the shareholders of the *issuer* in accordance with section 439A of the Companies Act 2006 and paid in accordance with section 226B of the Companies Act 2006; or
- (2) a transaction offered to all shareholders of the *issuer* on the same terms where equal treatment of all shareholders and protection of the interests of the *issuer* is ensured.

[Note: article 9c(6) of the *Shareholder Rights Directive*]

Material related party transactions

7.3.6

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Whether a *related party transaction* is a *material related party transaction* is determined by assessing its size relative to that of the *issuer* proposing to make it. The comparison of size is made by using the *percentage ratios* resulting from applying the *related party test* calculations to a transaction or arrangement. The *related party tests* are set out in ■ DTR 7 Annex 1.

[Note: article 9c(1) of the *Shareholder Rights Directive*]

7.3.7

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In *DTR*:

- (1) "*percentage ratio*" means (in relation to a transaction or arrangement) the figure, expressed as a percentage, that results from applying a calculation under a *related party test* to the transaction or arrangement;
- (2) "*related party tests*" means the tests set out in ■ DTR 7 Annex 1, which are used to determine whether a transaction or arrangement is a *material related party transaction*; and
- (3) "*material related party transaction*" means a *related party transaction* where any *percentage ratio* is 5% or more.

[Note: article 9c(1) of the *Shareholder Rights Directive*]

Requirements for material related party transactions

7.3.8

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If an *issuer* enters into a *material related party transaction*, the *issuer* must:

- (1) no later than the time when the terms of the transaction or arrangement are agreed, publish an announcement on a *RIS* which sets out:
 - (a) the nature of the *related party* relationship;
 - (b) the name of the *related party*;
 - (c) the date and the value of the transaction or arrangement; and
 - (d) any other information necessary to assess whether the transaction or arrangement is fair and reasonable from the perspective of the *issuer* and of the shareholders who are not a *related party*, including minority shareholders;
- (2) obtain the approval of its board for the transaction or arrangement before it is entered into; and
- (3) ensure that any *director* who is, or an *associate* of whom is, the *related party*, or who is a *director* of the *related party*, does not take part in the board's consideration of the transaction or arrangement and does not vote on the relevant board resolution.

[Note: article 9c(2) and 9c(4) of the *Shareholder Rights Directive*]

7.3.9

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If, after obtaining board approval but before the completion of a *material related party transaction*, there is a material change to the terms of the transaction or arrangement, the *issuer* must comply again separately with ■ DTR 7.3.8R in relation to the transaction or arrangement.

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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.

7.3.11

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- (1) An *issuer* which complies with ■ LR 11.1.7R (Requirements for related party transactions) in relation to a *material related party transaction* will satisfy the requirements of ■ DTR 7.3.8R in respect of that transaction or arrangement.
- (2) An *issuer* which complies with ■ LR 11.1.10R (Modified requirements for smaller related party transactions) in relation to a *material related party transaction* will satisfy the requirements of ■ DTR 7.3.8R(1) in respect of that transaction or arrangement.
- (3) An *issuer* which complies with ■ LR 11.1.7R as modified by ■ LR 21.5.2R (Transactions with related parties: Equity shares) or ■ LR 21.10.4R (Transactions with related parties: certificates representing shares) in relation to a *material related party transaction* will satisfy the requirements of ■ DTR 7.3.8R(1) in respect of that transaction or arrangement.
- (4) An *issuer* which complies with ■ LR 11.1.10R as modified by ■ LR 21.5.2R or ■ LR 21.10.4R in relation to a *material related party transaction* will

satisfy the requirements of ■ DTR 7.3.8R(1) in respect of that transaction or arrangement.

- 7.3.12 **G** ■ DTR 7.3.8R applies to the variation or novation of an existing agreement between the *issuer* and a *related party* whether or not, at the time the original agreement was entered into, that party was a *related party*.

Aggregation of transactions in any 12-month period

- 7.3.13 **R**
- (1) If an *issuer* enters into transactions or arrangements with the same *related party* (and any of its *associates*) in any 12-month period, and the *issuer* has not been required to comply with ■ DTR 7.3.8R in respect of the transactions or arrangements, the transactions or arrangements must be aggregated.
 - (2) If any *percentage ratio* is 5% or more for the aggregated transactions or arrangements, the *issuer* must comply with ■ DTR 7.3.8R in respect of each of the aggregated transactions or arrangements.

[Note: article 9c(8) of the *Shareholder Rights Directive*]

Compliance with the disclosure requirements

- 7.3.14 **G** An *issuer* should consider its obligations under the *disclosure requirements* in relation to a *related party transaction*.

[Note: article 9c(9) of the *Shareholder Rights Directive*]