Chapter 10

Significant transactions: Premium listing

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

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(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 completedtransactions 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.