

Chapter 11

Related party transactions: Premium listing



11.1 Related party transactions

Application

- 11.1.1 **R** This chapter applies to a *company* that has a *premium listing*.
- 11.1.1A **R** Where a *company* has a *premium listing* and:
- (1) it is not in compliance with:
 - (a) the provisions in **LR 9.2.2AR (2)(a)** ; or
 - (b) **LR 9.2.2G R**; or
 - (2) it becomes aware that a *controlling shareholder* or any of its *associates* is not in compliance with an undertaking in **LR 6.5.4R** or **LR 9.2.2AR (2)(a)**;
 - (3) it becomes aware that a procurement obligation (as set out in **LR 6.5.5R(2)(a)** or **LR 9.2.2BR (2)(a)** contained in an agreement entered into under **LR 6.5.4R** or **LR 9.2.2AR (2)(a)** has not been complied with by a *controlling shareholder*; or
 - (4) an *independent director* declines to support a statement made under **LR 9.8.4R (14)(a)** or **LR 9.8.4R (14)(c)**;
- LR 11.1.1C R** applies.
- 11.1.1B **G** In exceptional circumstances, the *FCA* may consider dispensing with or modifying the application of **LR 11.1.1A R**, in accordance with **LR 1.2.1 R**.
- 11.1.1C **R** The *company* cannot rely on any of the following provisions in relation to a transaction or arrangement with or for the benefit of the relevant *controlling shareholder* or any *associate* of that *controlling shareholder*:
- (1) the concessions specified in **LR 11.1.5R (1)**, **LR 11.1.5R (2)** and **LR 11.1.5R (3)** in relation to transactions or arrangements in the ordinary course of business;
 - (2) **LR 11.1.6 R**; and
 - (3) **LR 11.1.10 R**.

11.1.1D **G** If the *FCA* considers that it would be appropriate to do so, the *FCA* may dispense with or modify the application of **LR 11.1.1CR (1)**, in accordance with **LR 1.2.1 R**.

11.1.1E **R** Where a *company* that has a *premium listing* has been subject to the provisions of **LR 11.1.1A R**, **LR 11.1.1C R** will continue to apply to the *company* until the publication of an annual financial report which:

- (1) contains the statements required under **LR 9.8.4R (14)(a)** and **LR 9.8.4R (14)(c)**; and
- (2) does not contain a statement made under **LR 9.8.4A R**.

Purpose

11.1.2 **G**

- (1) This chapter sets out safeguards that apply to:
 - (a) transactions and arrangements between a *listed company* and a *related party*; and
 - (b) transactions and arrangements between a *listed company* and any other *person* that may benefit a *related party*.
- (2) The safeguards are intended to prevent a *related party* from taking advantage of its position and also to prevent any perception that it may have done so.

Transaction

11.1.3 **R** A reference in this chapter:

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

Definition of “related party”

11.1.4 **R** In *LR*, a “*related party*” means:

- (1) a *person* who is (or was within the 12 months before the date of the transaction or arrangement) a *substantial shareholder*; or
- (2) a *person* who is (or was within the 12 months before the date of the transaction or arrangement) a *director* or *shadow director* of the *listed company* or of any other *company* which is (and, if he has ceased to be such, was while he was a *director* or *shadow director* of such other *company*) its *subsidiary undertaking* or *parent undertaking* or a fellow *subsidiary undertaking* of its *parent undertaking*; or
- (3) [deleted]

- (4) a *person exercising significant influence*; or
- (5) an *associate* of a *related party* referred to in paragraph (1), (2) or (4).

Definition of “substantial shareholder”

11.1.4A

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In *LR*, a “*substantial shareholder*” means any *person* who is entitled to exercise, or to control the exercise of, 10% or more of the votes able to be cast on all or substantially all matters at general meetings of the *company* (or of any *company* which is its *subsidiary undertaking* or *parent undertaking* or of a fellow *subsidiary undertaking* of its *parent undertaking*). For the purposes of calculating voting rights, the following voting rights are to be disregarded:

- (1) any voting rights which such a *person* exercises (or controls the exercise of) independently in its capacity as bare trustee, investment manager, collective investment undertaking or a *long-term insurer* in respect of its linked long-term business if no *associate* of that *person* interferes by giving direct or indirect instructions, or in any other way, in the exercise of such voting rights (except to the extent any such *person* confers or collaborates with such an *associate* which also acts in its capacity as investment manager, collective investment undertaking or *long-term insurer*); or
- (2) any voting rights which a *person* may hold (or control the exercise of) solely in relation to the direct performance, by way of business, of:
 - (a) underwriting the issue or sale of *securities*; or
 - (b) placing *securities*, where the *person* provides a firm commitment to acquire any *securities* which it does not place; or
 - (c) acquiring *securities* from existing shareholders or the *issuer* pursuant to an agreement to procure third-party purchases of *securities*;

and where the conditions in (i) to (iv) are satisfied:

- (i) the activities set out in (2)(a) to (c) are performed in the ordinary course of business;
- (ii) the *securities* to which the voting rights attach are held for a consecutive period of 5 *trading days* or less, beginning with the first *trading day* on which the *securities* are held;
- (iii) the voting rights are not exercised within the period the *securities* are held; and
- (iv) no attempt is made directly or indirectly by the *firm* to intervene in (or attempt to intervene in) or exert (or attempt to exert) influence on the management of the *issuer* within the period the *securities* are held.

Definition of “related party transaction”

11.1.5

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In *LR*, a “*related party transaction*” means:

- (1) a transaction (other than a transaction in the ordinary course of business) between a *listed company* and a *related party*; or

- (2) an arrangement (other than an arrangement in the ordinary course of business) pursuant to which a *listed company* 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 in the ordinary course of business) between a *listed company* and any other *person* the purpose and effect of which is to benefit a *related party*.

11.1.5A **G** In assessing whether a transaction is in the ordinary course of business under this chapter, the *FCA* will have regard to the size and incidence of the transaction and also whether the terms and conditions of the transaction are unusual.

Transactions to which this chapter does not apply

11.1.6 **R** ■ LR 11.1.7 R to ■ LR 11.1.10 R do not apply to a *related party transaction* if it is a transaction or arrangement:

- (1) of a kind referred to in paragraph 1 or 1A of ■ LR 11 Annex 1 (a small transaction or a transaction the terms of which were agreed before a person became a related party); or
- (2) of a kind referred to in paragraphs 2 to 9 of ■ LR 11 Annex 1 and does not have any unusual features.

Note: If an *issuer* is proposing to enter into a transaction that could be a *related party transaction* it is required under ■ LR 8 to obtain the guidance of a *sponsor* to assess the potential application of ■ LR 11.

Requirements for related party transactions

11.1.7 **R** If a *listed company* enters into a *related party transaction*, the *listed company* must:

- (1) make a notification in accordance with ■ LR 10.4.1 R (Notification of class 2 transactions) that contains the details required by that *rule* and also:
 - (a) the name of the *related party*; and
 - (b) details of the nature and extent of the *related party's* interest in the transaction or arrangement;
- (2) send a *circular* to its shareholders containing the information required by ■ LR 13.3 and ■ LR 13.6;
- (3) obtain the approval of its shareholders for the transaction or arrangement either:
 - (a) before it is entered into; or
 - (b) if the transaction or arrangement is expressed to be conditional on that approval, before it is completed; and
- (4) ensure that the *related party*:

- (a) does not vote on the relevant resolution; and
- (b) takes all reasonable steps to ensure that the *related party's associates* do not vote on the relevant resolution.

11.1.7A **R** If, after obtaining shareholder approval but before the completion of a *related party transaction*, there is a material change to the terms of the transaction, the *listed company* must comply again separately with **LR 11.1.7 R** in relation to the transaction.

11.1.7B **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.

11.1.7C **R** A *listed company* must comply with **LR 10.5.4 R** in relation to a *related party transaction*.

11.1.8 **G** If a meeting of the *listed company* has been called to approve a transaction or arrangement and, after the date of the notice of meeting but before the meeting itself, a party to that transaction or arrangement has become a *related party*, then to comply with **LR 11.1.7 R** the *listed company* should:

- (1) ensure that the *related party* concerned does not vote on the relevant resolution and that the *related party* takes all reasonable steps to ensure that its *associates* do not vote on the relevant resolution; and
- (2) send a further *circular*, for receipt by shareholders at least one clear *business day* before the last time for lodging proxies for the meeting, containing any information required by **LR 13.3** (Contents of all circulars) and **LR 13.6** (Related party circulars) that was not contained in the original *circular* with the notice of meeting.

11.1.9 **G** **LR 11.1.7 R** and **LR 11.1.8 G** will apply to the variation or novation of an existing agreement between the *listed company* and a *related party* whether or not, at the time the original agreement was entered into, that party was a *related party*.

Modified requirements for smaller related party transactions

11.1.10 **R**

- (1) This rule applies to a *related party transaction* if each of the *percentage ratios* is less than 5%, but one or more of the *percentage ratios* exceeds 0.25%.
- (2) Where this rule applies, **LR 11.1.7 R** does not apply but instead the *listed company* must:
 - (a) [deleted]
 - (b) before entering into the transaction or arrangement, obtain written confirmation from a *sponsor* that the terms of the proposed transaction or arrangement with the *related party* are fair and reasonable as far as the shareholders of the *listed company* are concerned; and

- (c) as soon as possible upon entering into the transaction or arrangement, make an *RIS* announcement which sets out:
 - (i) the identity of the *related party*;
 - (ii) the value of the consideration for the transaction or arrangement;
 - (iii) a brief description of the transaction or arrangement;
 - (iv) the fact that the transaction or arrangement fell within ■ LR 11.1.10 R; and
 - (v) any other relevant circumstances.

Aggregation of transactions in any 12 month period

11.1.11

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- (1) If a *listed company* enters into transactions or arrangements with the same *related party* (and any of its *associates*) in any 12 month period and the transactions or arrangements have not been approved by shareholders the transactions or arrangements, including transactions or arrangements falling under ■ LR 11.1.10 R, or small *related party transactions* under ■ LR 11 Annex 1.1R (1), must be aggregated.
- (2) If any *percentage ratio* is 5% or more for the aggregated transactions or arrangements, the *listed company* must comply with ■ LR 11.1.7 R in respect of the latest transaction or arrangement.

Note: ■ LR 13.6.1R (8) requires details of each of the transactions or arrangements being aggregated to be included in the circular.

- (3) If transactions or arrangements that are small transactions under ■ LR 11 Annex 1 paragraph 1 are aggregated under paragraph (1) of this *rule* and for the aggregated small transactions each of the *percentage ratios* is less than 5%, but one or more of the *percentage ratios* exceeds 0.25%, the *listed company* must comply with:
 - (a) ■ LR 11.1.10R (2)(b) in respect of the latest small transaction; and
 - (b) ■ LR 11.1.10R (2)(c) in respect of the aggregated small transactions.

Transactions to which related party transaction rules do not apply

Small transaction

1 A transaction or arrangement where each of the applicable *percentage ratios* is equal to or less than 0.25%.

Transaction agreed before person became a related party

1A A transaction the terms of which:

- (1) were agreed at a time when no party to the transaction or person who was to receive the benefit of the transaction was a *related party*; and
- (2) have not been amended, or required the exercise of discretion by the *listed company* under those terms, since the party or person become a *related party*.

Issue of new securities and sale of treasury shares

2

A transaction that consists of:

- (1) the take up by a *related party* of new *securities* or *treasury shares* under its entitlement in a pre-emptive offering;
- (2) an issue of new *securities* made under the exercise of conversion or subscription rights attaching to a listed class of *securities*.

Employees' share schemes and long-term incentive schemes

3

The:

- (1) receipt of any asset (including cash or *securities* of the *listed company* or any of its *subsidiary undertakings*) by a *director* of the *listed company*, its *parent undertaking* or any of its *subsidiary undertakings*; or
- (2) grant of an option or other right to a *director* of the *listed company*, its *parent undertaking*, or any of its *subsidiary undertakings* to acquire (whether or not for consideration) any asset (including cash or new or existing *securities* of the *listed company* or any of its *subsidiary undertakings*); or
- (3) provision of a gift or loan to the trustees of an employee benefit trust to finance the provision of assets as referred to in (1) or (2);

in accordance with the terms of an *employees' share scheme* or a *long-term incentive scheme*.

Credit

4

A grant of credit (including the lending of money or the guaranteeing of a loan):

- (1) to the *related party* on normal commercial terms;
- (2) to a *director* for an amount and on terms no more favourable than those offered to employees of the group generally; or
- (3) by the *related party* on normal commercial terms and on an unsecured basis.

Directors' indemnities and loans

- 5 (1) A transaction that consists of:
- (a) granting an indemnity to a *director* of the *listed company* (or any of its *subsidiary undertakings*) if the terms of the indemnity are in accordance with those specifically permitted to be given to a *director* under the Companies Act 2006;
 - (b) maintaining a contract of insurance if the insurance is in accordance with that specifically permitted to be maintained for a *director* under that the Companies Act 2006 (whether for a *director* of the *listed company* or for a *director* of any of its *subsidiary undertakings*); or
 - (c) a loan or assistance to a *director* by a *listed company* or any of its *subsidiary undertakings* if the terms of the loan or assistance are in accordance with those specifically permitted to be given to a *director* under section 204, 205 or 206 of the Companies Act 2006.
- (2) Paragraph (1) applies to a *listed company* that is not subject to the Companies Act 2006 if the terms of the indemnity or contract of insurance are in accordance with those that would be specifically permitted under that Act (if it applied).

Underwriting

- 6 (1) The underwriting by a *related party* of all or part of an issue of *securities* by the *listed company* (or any of its *subsidiary undertakings*) if the consideration to be paid by the *listed company* (or any of its *subsidiary undertakings*) for the underwriting:
- (a) is no more than the usual commercial underwriting consideration; and
 - (b) is the same as that to be paid to the other underwriters (if any).
- (2) Paragraph (1) does not apply to the extent that a *related party* is underwriting *securities* which it is entitled to take up under an issue of *securities*.

7 [deleted]

Joint investment arrangements

- 8 (1) An arrangement where a *listed company*, or any of its *subsidiary undertakings*, and a *related party* each invests in, or provides finance to, another undertaking or asset if the following conditions are satisfied:
- (a) the amount invested, or provided, by the *related party* is not more than 25% of the amount invested, or provided, by the *listed company* or its *subsidiary undertaking* (as the case may be) and the *listed company* has advised the *FCA* in writing that this condition has been met; and
 - (b) a *sponsor* has provided a written opinion to the *FCA* stating that the terms and circumstances of the investment or provision of finance by the *listed company* or its *subsidiary undertakings* (as the case may be) are no less favourable than those applying to the investment or provision of finance by the *related party*.
- (2) The advice in paragraph (1)(a) and the opinion in paragraph (1)(b) must be provided before the investment is made or the finance is provided.

Insignificant subsidiary undertaking

- 9 (1) A transaction or arrangement where each of the conditions in paragraphs (2) to (6) (as far as applicable) is satisfied.
- (2) The party to the transaction or arrangement is only a *related party* because:
- (a) it is (or was within the 12 months before the date of the transaction or arrangement) a *substantial shareholder* or its *associate*; or

- (b) it is a *person* who is (or was within the 12 months before the date of the transaction or arrangement) a *director* or *shadow director* or his *associate*;
- of a *subsidiary undertaking* or *subsidiary undertakings* of the *listed company* that has, or if there is more than one *subsidiary undertaking* that have in aggregate, contributed less than 10% of the profits of, and represented less than 10% of the assets of, the *listed company* for the relevant period.
- (3) The *subsidiary undertaking* or each of the *subsidiary undertakings* (as the case may be) have been in the *listed company's group* for one full financial year or more.
- (4) In paragraph (2), "relevant period" means:
- (a) if the *subsidiary undertaking* or each of the *subsidiary undertakings* (as the case may be) has been consolidated in the *listed company's group* for one full financial year or more but less than three full financial years, each of the full financial years before the date of the transaction or arrangement for which accounts have been published; and
- (b) if the *subsidiary undertaking* or any of the *subsidiary undertakings* (as the case may be) has been consolidated in the *listed company's group* for three full financial year or more, each of the three full financial years before the date of the transaction or arrangement for which accounts have been published.
- (5) If the *subsidiary undertaking* or any of the *subsidiary undertakings* (as the case may be) are themselves party to the transaction or arrangement or if *securities* in the *subsidiary undertaking* or any of the *subsidiary undertakings* or their assets are the subject of the transaction or arrangement, then the ratio of consideration to market capitalisation of the *listed company* is less than 10%.
- (6) In this *rule*, the figures to be used to calculate profits, assets and consideration to market capitalisation are the same as those used to classify profits, assets and consideration to market capitalisation in LR 10 Annex 1 (as modified or added to by LR 10.7 where applicable).

