

Chapter 7

Equity shares (commercial companies): significant transactions and reverse takeovers

7.2 Classifying transactions

Classifying transactions

7.2.1 **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 using the *percentage ratios* resulting from applying the *class test* calculations to a transaction. The *class tests* are set out in ■ UKLR 7 Annex 1 (and modified or added to for specialist companies under ■ UKLR 7.2.3R to ■ UKLR 7.2.8R).

7.2.2 **G** The *class tests* set out in ■ UKLR 7 Annex 1 are applicable for the purposes of determining whether a transaction is a *significant transaction* or a *reverse takeover*.

Classification of transactions by listed property companies

7.2.3 **R** ■ UKLR 7 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) paragraph 4R(1) (the consideration test) does not apply but instead the test in ■ UKLR 7.2.4R applies; and

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(5) paragraph 6R(1) (the gross capital test) applies to disposals as well as acquisitions of *property*.

(1) In addition to the tests in ■ UKLR 7 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*).

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(1) In addition to the tests in ■ UKLR 7 Annex 1, a *listed property company* must determine the *percentage ratios* that result from the calculation under the test in (2).

(2) The net annual rent test is calculated by dividing the *net annual rent* attributable to the assets the subject of the transaction by the *net annual rent* of the *listed company*.

(3) For the purposes of calculating the *net annual rent* test, except as otherwise stated in (4) to (7), figures used to classify *net annual rent* 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.

(4) (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 (3) relate, and subsequent completed transactions where any *percentage ratio* was 5% or more at the time the terms of the relevant transaction were agreed.

(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 (3) relate, and subsequent completed transactions where any *percentage ratio* would have been 5% or more at the time the terms of the relevant transaction were agreed when classified against the target as a whole.

(5) Figures on which the auditors are unable to report without modification must be disregarded.

(6) The principles in (3) to (5) also apply (to the extent relevant) to calculating the *net annual rent* of the *target company* or business.

(7) The *FCA* may modify (5) in appropriate cases to permit figures to be taken into account.

Classification of transactions by listed mineral companies

- 7.2.6 **R** (1) In addition to the tests in ■ UKLR 7 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.

7.2.7 **G** If the *mineral resources* are not directly comparable, the *FCA* may modify ■ UKLR 7.2.6R(2) to permit valuations to be used instead of amounts or volumes.

7.2.8 **R** When calculating the size of a transaction under ■ UKLR 7 Annex 1 and ■ UKLR 7.2.6R(2), account must be taken of any associated transactions or loans effected or intended to be effected, and any contingent liabilities or commitments.

Classifying joint ventures

7.2.9 **R** When classifying a joint venture under ■ UKLR 7, a *listed company* must classify both sides to a joint venture, so that both the disposal into the joint venture and the acquisition of an interest in the joint venture are classified. The 2 sets of *class tests* must not be aggregated and the highest result from the *class tests* will determine the overall classification of the transaction.

- 7.2.10 **G** (1) 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.
- (2) 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, ■ UKLR 7.1.6R(1)(b) 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 ■ UKLR 7 Annex 1 4R(3) at the time it is entered into.
- (3) 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.

- (4) 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.

Aggregating transactions – significant transactions

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- (1) Subject to paragraph (2), transactions completed during the 12 months before the date of the latest transaction must be aggregated with that transaction for the purposes of classification as a *significant transaction* 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) Transactions completed during the 12-month period in (1) are not required to be aggregated with the latest transaction if they have previously been classified as a *significant transaction* (either individually or collectively).

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If under **█ UKLR 7.2.11R** any of the aggregated *percentage ratios* is 25% or more, the aggregated transactions will be classified as a *significant transaction*, in which case the *listed company* must comply with the requirements in **█ UKLR 7.3** (Significant transactions) in respect of the aggregated transactions, modified as follows:

- (1) Where the aggregated transactions involve the acquisition or disposal of *securities* or an interest in one particular *company*, the requirements in **█ UKLR 7.3** apply to the transactions as a whole.
- (2) If (1) does not apply, the requirements in **█ UKLR 7.3** apply:
- (a) to each individual transaction that has been aggregated where any *percentage ratio* for the individual transaction is 5% or more; or
 - (b) if there are no such individual transactions, to the one that led to the relevant aggregated *percentage ratio* reaching or exceeding 25%.

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- (1) The purpose of **█ UKLR 7.2.12R** is to set out how the requirements in this chapter apply to transactions that are only treated as *significant transactions* on an aggregated basis.
- (2) **█ UKLR 7.2.12R(1)** is intended to support a clearer and more succinct explanation of an acquisition or disposal in a particular *company* by allowing the relevant information to be provided in an aggregated way.

- (3) In other situations, ■ UKLR 7.2.12R(2) ensures that the disclosure requirements apply in a proportionate way so that, while the relevant information must be provided for each transaction, information is not generally required about transactions below a *de minimis* threshold.
- (4) ■ UKLR 7.3.1R(2)(a) requires any notification about a *significant transaction* to state why the transaction is notifiable under ■ UKLR 7. Where a notification relates to aggregated transactions, it should explain why the transactions have been aggregated, having regard to whether ■ UKLR 7.2.11R(1)(a), ■ (b)■ or ■ (c) applies.
- (5) ■ UKLR 7.3.13R sets out where the *listed company* must make a supplementary notification in relation to further transactions entered into after aggregated transactions have been classified as a *significant transaction*.

7.2.14 **G** The *FCA* may modify these *rules* to require the aggregation of transactions in circumstances other than those specified in ■ UKLR 7.2.11R.

Aggregating transactions – reverse takeovers

7.2.15 **R** (1) Subject to paragraph (2), transactions completed during the 12 months before the date of the latest transaction must be aggregated with that transaction for the purposes of classification as a *reverse takeover* 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) Transactions completed during the 12-month period in (1) are not required to be aggregated with the latest transaction if they have previously been classified as a *reverse takeover* (either individually or collectively).

7.2.16 **R** If under ■ UKLR 7.2.15R the aggregation of transactions results in a *reverse takeover*, the *listed company* must comply with the requirements in ■ UKLR 7.5 (Reverse takeovers) in respect of the aggregated transactions as a whole but the requirement for shareholder approval applies only to the latest transaction.

7.2.17 **G** The *FCA* may modify these *rules* to require the aggregation of transactions in circumstances other than those specified in ■ UKLR 7.2.15R.