

Chapter 7

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

7.4 Indemnities and major subsidiary undertakings

Indemnities and similar arrangements

7.4.1

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- (1) Where a *listed company* proposes to enter into any agreement or arrangement with a party (other than a wholly owned *subsidiary undertaking* of the *listed company*):
 - (a) under which a *listed company* agrees to discharge any liabilities for costs, expenses, commissions or losses incurred by or on behalf of that party, whether or not on a contingent basis;
 - (b) which is exceptional; and
 - (c) under which the maximum liability is either unlimited, or is equal to or exceeds an amount equal to 25% of the average of the *listed company's* profits for the last 3 financial years (using the figures shown in the audited consolidated accounts or preliminary statement of later annual results published before the terms are agreed, with losses taken as nil profit and included in the average),

a *listed company* must notify a *RIS* as soon as possible after the terms of any agreement or arrangement have been agreed.
- (2) The notification under (1) must comply with the requirements in ■ UKLR 7.3 (Significant transactions) as applicable.
- (3) Paragraph (1) does not apply to a *break fee arrangement*.
- (4) In (1)(c), 'profits' means profits after deducting all charges except taxation.

7.4.2

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For the purposes of ■ UKLR 7.4.1R(1)(b), the *FCA* considers that the following indemnities are not exceptional:

- (1) those customarily given in connection with sale and purchase agreements;
- (2) those customarily given to underwriters or placing agents in an underwriting or placing agreement;
- (3) those given to advisers against liabilities to third parties arising out of providing advisory services; and
- (4) any other indemnity that is specifically permitted to be given to a *director* or auditor under the Companies Act 2006.

- 7.4.3** **G** If the calculation under ■ UKLR 7.4.1R(1)(c) produces an anomalous result, the FCA may disregard the calculation and modify that *rule* to substitute other relevant indicators of the size of the indemnity or other arrangement given – for example, 1% of market capitalisation.

Issues by major subsidiary undertakings

- 7.4.4** **R** If:
- (1) a *major subsidiary undertaking* of a *listed company* issues *equity shares* for cash or in exchange for other *securities* or to reduce indebtedness;
 - (2) the issue would dilute the *listed company's* percentage interest in the *major subsidiary undertaking*; and
 - (3) the economic effect of the dilution is equivalent to a disposal of 25% or more of the aggregate of the gross assets or profits (after the deduction of all charges except taxation) of the *group*,
- a *listed company* must notify a *RIS* as soon as possible after the terms of the issue have been agreed.

- 7.4.5** **R** The notification required in ■ UKLR 7.4.4R must comply with the requirements set out in ■ UKLR 7.3 (Significant transactions) as applicable.