

## Chapter 7

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



## The class tests

Class tests			
1	G		<p>This annex sets out the following <i>class tests</i>:</p> <p>(1) the gross assets test;</p> <p>(2) the consideration test; and</p> <p>(3) the gross capital test.</p>
The gross assets test			
2	R	(1)	The gross assets test is calculated by dividing the gross assets the subject of the transaction by the gross assets of the <i>listed company</i> .
		(2)	The 'gross assets of the <i>listed company</i> ' means the total non-current assets, plus the total current assets, of the <i>listed company</i> .
		(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 <i>listed company</i> ; 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 <i>listed company</i> ,
			the 'gross assets the subject of the transaction' means the value of 100% of that undertaking's 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 (3), the 'gross assets the subject of the transaction' means:
		(a)	for an acquisition, the consideration together with liabilities assumed (if any); and

The gross assets test		
		(b) for a disposal, the assets attributed to that interest in the <i>listed company's</i> 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 <i>listed company's</i> 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 <i>listed company's</i> balance sheet.
3	G	The FCA may modify UKLR 7 Annex 1 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 UKLR 7.4.1R (Indemnities and similar arrangements) are involved.
The consideration test		
4	R	(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 <i>treasury shares</i> ) of the <i>listed company</i> .
		(2) For the purposes of (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 <i>securities</i> to be traded on a market, the consideration attributable to those <i>securities</i> is the aggregate market value of those <i>securities</i> ; and
		(c) if deferred consideration is or may be payable or receivable by the <i>listed company</i> in the future, the consideration is the maximum total consideration payable or receivable under the agreement.

The consideration test		
		(3) If the total consideration is not subject to any maximum (and any of the other <i>class tests</i> indicate a <i>percentage ratio</i> of at least 5%), the transaction is to be treated as a <i>significant transaction</i> .
		(4) For the purposes of (2)(b), the figures used to determine consideration consisting of: <ul style="list-style-type: none"> <li>(a) <i>securities</i> of a <i>class</i> already <i>listed</i> must be the aggregate market value of all those <i>securities</i> on the last <i>business day</i> before the announcement of the transaction; and</li> <li>(b) a new <i>class</i> of <i>securities</i> for which an application for <i>listing</i> will be made must be the expected aggregate market value of all those <i>securities</i>.</li> </ul>
		(5) For the purposes of (1), the figure used to determine market capitalisation is the aggregate market value of all the ordinary <i>shares</i> (excluding <i>treasury shares</i> ) of the <i>listed company</i> at the close of business on the last <i>business day</i> before the announcement of the transaction.
5	G	The <i>FCA</i> may modify UKLR 7 Annex 1 4R 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		
6	R	(1) The gross capital test is calculated by dividing the gross capital of the <i>company</i> or business being acquired by the gross capital of the <i>listed company</i> .
		(2) The test in (1) is only to be applied for an acquisition of a <i>company</i> or business.
		(3) For the purposes of (1), the 'gross capital of the <i>company</i> or business being acquired' means the aggregate of: <ul style="list-style-type: none"> <li>(a) the consideration (as calculated under UKLR 7 Annex 1 4R);</li> </ul>

The gross capital test		
	(b)	if a <i>company</i> , any of its <i>shares</i> and <i>debt securities</i> 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 (1), the gross capital of the <i>listed company</i> means the aggregate of:
	(a)	the market value of its <i>shares</i> (excluding <i>treasury shares</i> ) and the issue amount of the <i>debt security</i> ;
	(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 (1):
	(a)	figures used must be, for <i>shares</i> and <i>debt security</i> aggregated for the purposes of the gross capital <i>percentage ratio</i> , the aggregate market value of all those <i>shares</i> (or, if not available before the announcement of the transaction, their nominal value) and the issue amount of the <i>debt security</i> ; and

The gross capital test			
		(b)	for <i>shares</i> and <i>debt security</i> aggregated for the purposes of (3)(b), any <i>treasury shares</i> held by the <i>company</i> are not to be taken into account.
Figures used to classify assets			
7	R	(1)	For the purposes of calculating the tests in this annex, except as otherwise stated in (2) to (6), figures used to classify assets must be the figures shown in the latest published audited consolidated accounts or, if a <i>listed company</i> 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 subsequently been published in an interim statement, gross assets and gross capital should be taken from the balance sheet published in the interim statement.
		(3)	(a) The figures of the <i>listed company</i> 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 where any <i>percentage ratio</i> 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 (1) or (2) relate, and subsequent completed transactions where any

Figures used to classify assets		
		percentage ratio was 5% or more at the time the terms of the relevant transaction were agreed.
	(4)	Figures on which the auditors are unable to report without modification must be disregarded.
	(5)	When applying the <i>percentage ratios</i> to an acquisition by a <i>company</i> whose assets consist wholly or predominantly of cash or short-dated <i>securities</i> , the cash and short-dated <i>securities</i> 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 of the target company or business.
8	G	The <i>FCA</i> may modify UKLR 7 Annex 1 7R(4) in appropriate cases to permit figures to be taken into account.
Anomalous results		
9	G	If a calculation under any of the <i>class tests</i> produces an anomalous result or if a calculation is inappropriate to the activities of the <i>listed company</i> , the <i>FCA</i> may modify the relevant <i>rule</i> to substitute other relevant indicators of size, including industry-specific tests.
Adjustments to figures		
10	G	Where a <i>listed company</i> wishes to make adjustments to the figures used in calculating the class tests pursuant to UKLR 7 Annex 1 9G, it should discuss this with the <i>FCA</i> before the class tests crystallise.