

Chapter 8

Equity shares (commercial companies): related party transactions



8.1 Preliminary

Application

8.1.1 **R** This chapter applies to a company that has a *listing* of *equity shares* in the *equity shares (commercial companies)* category.

Purpose

8.1.2 **G** The purpose of this chapter is to set out governance and notification requirements for a *listed company* in relation to *related party transactions*. These requirements are intended to:

- (1) ensure that the shareholders of *companies* with *listed equity shares* are notified of *related party transactions* when they are entered into by the *listed company*, and support engagement between the *listed company* and its shareholders in relation to *related party transactions*; and
- (2) enhance market transparency in relation to *related party transactions*.

8.1.3 **G** These requirements are also intended to prevent a *related party* from taking advantage of its position and prevent any perception that it may have done so.

Sponsors

8.1.4 **G** A *listed company* that is proposing to enter into a *related party transaction* requiring the *listed company* to make a notification under **UKLR 8.2.1R(4)** must comply with the requirement to appoint a *sponsor* under **UKLR 8.2.1R(3)**.

8.1.5 **R** A *listed company* must appoint a *sponsor* where it proposes to make a request to the *FCA* to modify, waive or substitute the operation of **UKLR 8**.

8.1.6 **R** A *listed company* must appoint a *sponsor* where it proposes to make a request to the *FCA* for individual guidance in relation to the *listing rules*, the *disclosure requirements* or the *transparency rules* in connection with a *related party transaction*.

Definition of 'related party transaction'

8.1.7 **R** In *UKLR*, 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*;
- (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 or arrangement 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*.

8.1.8 **G** A *related party transaction* includes the variation or novation of an existing agreement between the *listed company* and a *related party*, regardless of whether the party was a *related party* at the time the original agreement was entered into.

Meaning of 'transaction' or 'arrangement'

8.1.9 **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*;
- (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; and
- (3) to a transaction or arrangement includes a transaction or arrangement which amends or revises the terms of an existing transaction or arrangement.

Transactions to which this chapter does not apply

8.1.10 **R** ■ *UKLR* 8.2.1R to ■ *UKLR* 8.2.5R do not apply to a *related party transaction* if it is a transaction or arrangement:

- (1) of a kind referred to in paragraph 1 of ■ *UKLR* 8 Annex 1 (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 8 of ■ *UKLR* 8 Annex 1 and does not have any unusual features.

8.1.11	R	<p>Definition of ‘related party’</p> <p>In UKLR, a <i>related party</i> means:</p> <ul style="list-style-type: none">(1) a <i>person</i> who is (or was within the 12 months before the date of the transaction or arrangement) a <i>substantial shareholder</i>;(2) a <i>person</i> who is (or was within the 12 months before the date of the transaction or arrangement) a <i>director</i> or <i>shadow director</i> of:<ul style="list-style-type: none">(a) the <i>listed company</i>; or(b) any other <i>company</i> which is one of the following (and, if that <i>person</i> has ceased to a <i>director</i> or <i>shadow director</i>, any other <i>company</i> which was one of the following while that <i>person</i> was a <i>director</i> or <i>shadow director</i> of such other <i>company</i>):<ul style="list-style-type: none">(i) a <i>subsidiary undertaking</i> of the <i>listed company</i>;(ii) a <i>parent undertaking</i> of the <i>listed company</i>; or(iii) a fellow <i>subsidiary undertaking</i> of a <i>parent undertaking</i> of the <i>listed company</i>;(3) a <i>person</i> exercising <i>significant influence</i>; or(4) an <i>associate</i> of a <i>related party</i> referred to in paragraph (1), (2) or (3).
8.1.12	R	<p>Definition of ‘substantial shareholder’</p> <p>In UKLR, a <i>substantial shareholder</i> means any <i>person</i> who is entitled to exercise, or to control the exercise of, 20% or more of the votes able to be cast on all or substantially all matters at general meetings of:</p> <ul style="list-style-type: none">(1) the <i>company</i>; or(2) any <i>company</i> which is:<ul style="list-style-type: none">(a) a <i>subsidiary undertaking</i> of the <i>company</i>;(b) a <i>parent undertaking</i> of the <i>company</i>; or(c) a fellow <i>subsidiary undertaking</i> of a <i>parent undertaking</i> of the <i>company</i>.
8.1.13	G	<p>For the purposes of determining votes that are able to be cast at general meetings of a <i>company</i>, voting rights attached to <i>shares</i> which are not <i>listed shares</i>, including <i>specified weighted voting rights shares</i>, should be taken into consideration.</p>
8.1.14	R	<p>For the purposes of calculating voting rights in ■ UKLR 8.1.12R, the following voting rights are to be disregarded:</p> <ul style="list-style-type: none">(1) any voting rights which such a <i>person</i> exercises (or controls the exercise of) independently in its capacity as:<ul style="list-style-type: none">(a) bare trustee;(b) investment manager;(c) collective investment undertaking; or

(d) 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:

(a) which a *person* may hold (or control the exercise of) solely in relation to the direct performance, by way of business, of:

(i) underwriting the issue or sale of *securities*;

(ii) placing *securities*, where the *person* provides a firm commitment to acquire any *securities* which it does not place; or

(iii) acquiring *securities* from existing shareholders or the *issuer* pursuant to an agreement to procure third-party purchases of *securities*; and

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

(i) the activities set out in (2)(a) 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 in which the *securities* are held; and

(iv) no attempt is made directly or indirectly by the *firm* to intervene in or exert influence on (or attempt to intervene in or exert influence on) the management of the *issuer* within the period the *securities* are held.

Meaning of 'ordinary course of business'

8.1.15

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(1) The assessment of whether a transaction is in the ordinary course of business under this chapter will depend on the specific circumstances of the *listed company*.

(2) Factors that may indicate whether a transaction is in the ordinary course of a *company's* business include:

(a) the size and incidence of similar transactions which the *company* has entered into;

(b) the nature and size of the *company's* existing business and common factors within the industry sector in which it operates;

(c) the *company's* corporate strategy for its business, including in relation to growth and industry focus, as set out in the *company's* latest published *prospectus* or annual financial report;

(d) the existing accounting treatment (for a disposal) or planned accounting treatment (for an acquisition or new arrangement) by the *listed company*; and

- (e) whether its shareholders could reasonably expect the *company* to enter into the transaction, taking into account:
 - (i) the factors in (a) to (d);
 - (ii) any further information that the *company* has already notified to a *RIS*;
 - (iii) the subject matter of the transaction;
 - (iv) the terms of the transaction;
 - (v) the anticipated impact on the *listed company*; and
 - (vi) the associated benefits and risks.

8.1.16

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Transactions that are likely to be in the ordinary course of business include:

- (1) regular trading activities (if the *company* is a trading *company*);
- (2) ongoing commercial arrangements and purchases commonly undertaken as part of the existing business or within the industry sector in which the *company* operates;
- (3) capital expenditure to support and maintain the existing business and its infrastructure;
- (4) capital expenditure to add scale to the existing business in line with the *company's* business strategy as previously notified to a *RIS* (including, for example, within the latest published *prospectus* or annual financial report); or
- (5) in the case of a *listed property company*, where the accounting treatment of a *property* that is acquired or disposed is such that:
 - (a) for an acquisition, the *property* will be classified as a current asset in the *company's* published accounts; or
 - (b) for a disposal, the *property* was classified as a current asset in the *company's* published accounts.

8.1.17

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Transactions that are unlikely to be in the ordinary course of business include:

- (1) mergers with, or acquisitions of, other businesses (whether structured by way of a share or asset acquisition);
- (2) transactions that would lead to a substantial involvement in a business activity that did not previously form a significant part of the *listed company's* principal activities;
- (3) transactions that would lead to the *listed company* no longer having a substantial involvement in a business activity that forms a significant part of its principal activities; or
- (4) transactions which are entered into to alleviate financial difficulty.

8.1.18

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For the purposes of this chapter, a transaction in the ordinary course of business excludes a *reverse takeover*.

8.1.19

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Where a related party transaction is also a significant transaction or other transaction under ■ UKLR 7

Where a *related party transaction* is also a *significant transaction* or is otherwise subject to ■ UKLR 7, the requirements and *guidance* under ■ UKLR 7 also apply, in addition to the requirements under this chapter.

8.2 Requirements for related party transactions

General requirements for related party transactions

8.2.1

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If a *listed company* enters into a *related party transaction* where any *percentage ratio* is 5% or more, the *listed company* must:

- (1) obtain the approval of its board for the transaction or arrangement before it is entered into;
- (2) ensure that any *director* who is, or an *associate* of whom is, the *related party*, or who is a *director* of the *related party*, does not take part in the board's consideration of the transaction or arrangement and does not vote on the relevant board resolution;
- (3) 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 *security* holders of the *listed company* are concerned; and
- (4) notify a *RIS* as soon as possible after the terms of the transaction or arrangement are agreed.

8.2.2

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The notification must include:

- (1) details of the *related party transaction*, including:
 - (a) the name of the *related party*;
 - (b) the value of the consideration for the transaction or arrangement; and
 - (c) a description of the transaction or arrangement;
- (2) the fact that the transaction or arrangement is a *related party transaction* which fell within ■ UKLR 8.2.1R;
- (3) details of the nature and extent of the *related party's* interest in the transaction(s) or arrangement(s);
- (4) a statement by the board that the transaction or arrangement is fair and reasonable as far as the *security* holders of the *company* are concerned and that the *directors* have been so advised by a *sponsor*; and

- (5) the name of the sponsor that provided the written confirmation in ■ UKLR 8.2.1R(3).
- 8.2.3** **R** The notification must also include any further information the *company* considers relevant, having regard to the purpose of this chapter set out in ■ UKLR 8.1.2G.
- 8.2.4** **G** ■ UKLR 8.2.2R(4) does not require the notification to include an explanation of the basis of preparation for the board's conclusion that the transaction is fair and reasonable, or an explanation of the *sponsor's* advice. The *FCA* does not expect the notification to include explanations of the basis of preparation, as this could be seen to limit the validity of the confirmation. Instead, a clean confirmation, tracking the wording used in ■ UKLR 8.2.2R(4), should be given.
- 8.2.5** **R** If, before the completion of a *related party transaction* referred to in ■ UKLR 8.2.1R that has been notified in accordance with this section, there is a material change to the terms of the transaction, the *listed company* must comply again separately with ■ UKLR 8.2.1R to ■ UKLR 8.2.3R in relation to the transaction.
- 8.2.6** **G** The *FCA* would (among 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.
- Aggregation of transactions in any 12-month period**
- 8.2.7** **R**
- (1) Subject to (3), if a *listed company* enters into transactions or arrangements with the same *related party* (and any of its *associates*) in any 12-month period, the transactions or arrangements must be aggregated.
 - (2) If any *percentage ratio* is 5% or more for the aggregated transactions or arrangements, the *listed company*:
 - (a) must comply with ■ UKLR 8.2.1R, in respect of the latest transaction or arrangement; and
 - (b) the notification required by ■ UKLR 8.2.1R(4) must include:
 - (i) all of the information required by ■ UKLR 8.2.2R for the latest transaction or arrangement;
 - (ii) the information required in ■ UKLR 8.2.2R(1) to ■ (3) for the other aggregated transactions or arrangements; and
 - (iii) the information required by ■ UKLR 8.2.3R.
 - (3) Transactions or arrangements completed during the 12-month period in (1) are not required to be aggregated with the latest transaction or arrangement if they were previously classified as a *related party transaction* notifiable (individually or collectively) under ■ UKLR 8.2.1R or ■ UKLR 8.2.7R(2).

8.2.8

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Supplementary notification

- (1) A *listed company* must notify a *RIS* as soon as possible if, after the notification under ■ UKLR 8.2.1R(4), it becomes aware that:
 - (a) there has been a material change affecting any matter contained in that earlier notification (other than a material change to the terms of the transaction to which ■ UKLR 8.2.5R applies); or
 - (b) a material new matter has arisen which would have been required to be mentioned in that earlier notification if it had arisen at the time of the preparation of that notification.
- (2) The supplementary notification must:
 - (a) give details of the change or new matter; and
 - (b) contain a statement that, except as disclosed:
 - (i) there has been no material change affecting any matter contained in the earlier notification; and
 - (ii) no other material new matter has arisen which would have been required to be mentioned in that earlier notification if it had arisen at the time of the preparation of that notification.
- (3) In paragraphs (1) and (2), 'material' means material for the purpose of making an informed assessment of the assets and liabilities, financial position, profits and losses and prospects of the *listed company* and the rights attaching to any *securities* forming part of the consideration.

8.2.9

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Sovereign controlling shareholders

In the case of a *related party* which is a *sovereign controlling shareholder* or an *associate* of a *sovereign controlling shareholder*, where:

- (1) a *listed company* is a *sovereign controlled commercial company* and:
 - (a) has a *sovereign controlling shareholder* which was a *controlling shareholder* on the first occasion on which the *company* made an application for the *admission of equity shares* to the *equity shares (commercial companies)* category;
 - (b) has made a notification in accordance with ■ UKLR 6.4.18R and ■ UKLR 6.4.19R; or
 - (c) made an announcement in accordance with ■ UKLR 21.5.6.R(2) and ■ UKLR 21.5.9R when it transferred the *listing* of its *equity shares* to the *equity shares (commercial companies)* category; and
- (2) the *sovereign controlling shareholder* is either:
 - (a) recognised by the government of the *UK* as a State; or
 - (b) the *UK*,■ UKLR 8.2.1R(2) and ■ (3) and ■ UKLR 8.2.2R(4) and ■ (5) do not apply.

Transactions to which related party transaction rules do not apply

Transaction agreed before person became a related party	
1	<p>The <i>related party transaction</i> rules do not apply to a transaction the terms of which:</p> <ul style="list-style-type: none"> (1) were agreed at a time when no party to the transaction or <i>person</i> who was to receive the benefit of the transaction was a <i>related party</i>; and (2) have not been amended, or which required the exercise of discretion by the <i>listed company</i> under those terms, since the party or <i>person</i> became a <i>related party</i>. <p>Issue of new securities and sale of treasury shares</p>
2	<p>The <i>related party transaction</i> rules do not apply to a transaction that consists of:</p> <ul style="list-style-type: none"> (1) the take-up by a <i>related party</i> of new <i>securities</i> or <i>treasury shares</i> under its entitlement in a pre-emptive offering; or (2) an issue of new <i>securities</i> made under the exercise of conversion or subscription rights attaching to a listed class of <i>securities</i>. <p>Employees' share schemes and long-term incentive schemes</p>
3	<p>The <i>related party transaction</i> rules do not apply to:</p> <ul style="list-style-type: none"> (1) the receipt of any asset (including cash or <i>securities</i> of the <i>listed company</i> or any of its <i>subsidiary undertakings</i>) by a <i>director</i> of the <i>listed company</i>, its <i>parent undertaking</i> or any of its <i>subsidiary undertakings</i>; or (2) the grant of an option or other right to a <i>director</i> of the <i>listed company</i>, its <i>parent undertaking</i> or any of its <i>subsidiary undertakings</i> to acquire (whether or not for consideration) any asset (including cash or new or existing <i>securities</i> of the <i>listed company</i> or any of its <i>subsidiary undertakings</i>); or (3) the 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), <p>in accordance with the terms of an <i>employees' share scheme</i> or a <i>long-term incentive scheme</i>.</p> <p>Credit</p>
4	<p>The <i>related party transaction</i> rules do not apply to a grant of credit (including the lending of money or the guaranteeing of a loan):</p> <ul style="list-style-type: none"> (1) to the <i>related party</i> on normal commercial terms; (2) to a <i>director</i> for an amount and on terms no more favourable than those offered to employees of the group generally; or (3) by the <i>related party</i> on normal commercial terms and on an unsecured basis. <p>Directors' indemnities and loans</p>
5	<ul style="list-style-type: none"> (1) The <i>related party transaction</i> rules do not apply to a transaction that consists of:

Transaction agreed before person became a related party

- (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 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 sections 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 *related party transaction* rules do not apply to 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*.

Joint investment arrangements

- 7 The *related party transaction* rules do not apply to 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:

- (1) 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
- (2) 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*.

Insignificant subsidiary undertaking

Transaction agreed before person became a related party		
8	(1)	The <i>related party transaction</i> rules do not apply to 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 <i>related party</i> because:
	(a)	it is (or was within the 12 months before the date of the transaction or arrangement) a <i>substantial shareholder</i> or its <i>associate</i> ; or
	(b)	it is a <i>person</i> who is (or was within the 12 months before the date of the transaction or arrangement) a <i>director</i> or <i>shadow director</i> or their <i>associate</i> ,
		of a <i>subsidiary undertaking</i> or <i>subsidiary undertakings</i> of the <i>listed company</i> that has, or if there is more than one <i>subsidiary undertaking</i> that have in aggregate, contributed less than 10% of the profits of, and represented less than 10% of the assets of, the <i>listed company</i> for the relevant period.
	(3)	The <i>subsidiary undertaking</i> or each of the <i>subsidiary undertakings</i> (as the case may be) have been in the <i>listed company's group</i> for 1 full financial year or more.
	(4)	In paragraph (2), 'relevant period' means:
	(a)	if the <i>subsidiary undertaking</i> or each of the <i>subsidiary undertakings</i> (as the case may be) has been consolidated in the <i>listed company's group</i> for 1 full financial year or more but less than 3 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 <i>subsidiary undertaking</i> or any of the <i>subsidiary undertakings</i> (as the case may be) has been consolidated in the <i>listed company's group</i> for 3 full financial years or more, each of the 3 full financial years before the date of the transaction or arrangement for which accounts have been published.
	(5)	If the <i>subsidiary undertaking</i> or any of the <i>subsidiary undertakings</i> (as the case may be) are themselves party to the transaction or arrangement or if <i>securities</i> in the <i>subsidiary undertaking</i> or any of the <i>subsidiary undertakings</i> or their assets are the subject of the transaction or arrangement, then the ratio of consideration to market capitalisation of the <i>listed company</i> is less than 10%.
	(6)	In this <i>rule</i> , the figures to be used to calculate assets and consideration to market capitalisation are the same as those used to classify assets and consideration to market capitalisation in UKLR 7 Annex 1 (as modified or added to by UKLR 7.2.3R to UKLR 7.2.8R where applicable).
	(7)	(a) In this <i>rule</i> , for the purposes of calculating profit, except as otherwise stated in paragraphs (b) to (e), figures used to classify profit 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.

Transaction agreed before person became a related party

- (b) 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 (a) relate, and subsequent completed transactions where any *percentage ratio* was 5% or more at the time the terms of the relevant transaction were agreed.
- (c) 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 (a) 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.
- (d) Figures on which the auditors are unable to report without modification must be disregarded.
- (e) The principles in paragraphs (a) to (d) also apply (to the extent relevant) to calculating the *net annual rent* of the *target company* or business.
- (f) The *FCA* may modify paragraph (d) in appropriate cases to permit figures to be taken into account.