

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

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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

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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

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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

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■ 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.

Definition of ‘related party’

8.1.11

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In UKLR, 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*;

- (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:
 - (a) the *listed company*; or
 - (b) any other *company* which is one of the following (and, if that *person* has ceased to a *director* or *shadow director*, any other *company* which was one of the following while that *person* was a *director* or *shadow director* of such other *company*):
 - (i) a *subsidiary undertaking* of the *listed company*;
 - (ii) a *parent undertaking* of the *listed company*; or
 - (iii) a fellow *subsidiary undertaking* of a *parent undertaking* of the *listed company*;
- (3) a *person exercising significant influence*; or
- (4) an *associate* of a *related party* referred to in paragraph (1), (2) or (3).

Definition of 'substantial shareholder'

8.1.12

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In UKLR, a *substantial shareholder* means any *person* 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:

- (1) the *company*; or
- (2) any *company* which is:
 - (a) a *subsidiary undertaking* of the *company*;
 - (b) a *parent undertaking* of the *company*; or
 - (c) a fellow *subsidiary undertaking* of a *parent undertaking* of the *company*.

8.1.13

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For the purposes of determining votes that are able to be cast at general meetings of a *company*, voting rights attached to *shares* which are not *listed shares*, including *specified weighted voting rights shares*, should be taken into consideration.

8.1.14

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For the purposes of calculating voting rights in ■ UKLR 8.1.12R, 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:
 - (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 **G** 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 **G** 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 **R** For the purposes of this chapter, a transaction in the ordinary course of business excludes a *reverse takeover*.

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