

# **CHAPTER 10**

# **TRANSACTIONS**

**CHAPTER 10 - SCOPE OF CHAPTER  
TRANSACTIONS**

This **Chapter** deals with transactions, principally acquisitions and disposals, by a \* listee. It describes how they are classified, what the requirements are for announcements and whether a \* circular and security holder approval is required.

It then considers additional requirements for \* takeovers and mergers.

**Chapter 11** deals with transactions with \* related parties.

The **Appendix 10-1** to this **Chapter** sets out, in a table, certain requirements for the contents of Class 1 \* circulars.

**10.1.1.** References in this **Chapter** to a transaction by a \*listee:

- (a) include a transaction by any \*subsidiary undertaking of the \*listee;
- (b) include the grant or acquisition of an option as if the option had been exercised except that, where exercise is solely at the \*listee's discretion, the transaction will be classified on exercise and only the consideration (if any) for the grant will be classified on such a grant;
- (c) exclude a transaction of a revenue nature in the ordinary course of business; and
- (d) exclude an issue of \*securities or a transaction to raise finance which, in either case, does not involve the acquisition or disposal of any fixed asset of the \*listee or of its \*subsidiary undertakings;

**10.1.2.** Nothing in this **Chapter** affects the obligations of a \*listee under **Chapter 8**.

#### **CLASSIFICATION AND EXPLANATION OF TERMS.**

**10.2.1.** A transaction is classified by assessing its size relative to that of the \*listee proposing to make it.

**10.2.2.** The comparison of size is made by the use of the percentage ratios set out in **Rule 10.3**. The different classifications are:

- (a) Class 2 - a transaction where any percentage ratio is 5% or more but each is less than 25%;
- (b) Class 1 - a transaction where any percentage ratio is 25% or more; and
- (c) Reverse takeover - an acquisition by a \*listee of a business, an unlisted company or assets where any percentage ratio is 100% or more or which would result in a fundamental change in the business or in a change in \*board or voting control of the \*listee.

#### **PERCENTAGE RATIOS.**

**10.3.** The percentage ratios are the figures, expressed as a percentage, resulting from each of the following calculations:

- (a) **Assets** - the \*gross assets the subject of the transaction divided by the \*gross assets of the \*listee;
- (b) **Profits** - the \*profits attributable to the assets the subject of the transaction divided by the \*profits of the \*listee;
- (c) **Turnover** - the turnover attributable to the assets the subject of the transaction divided by the turnover of the \*listee;
- (d) **\*Consideration to market capitalisation** - the \*consideration divided by the aggregate market value of the \*main class of \*securities of the \*listee; and

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- (e) **Capital** - the \*capital of the company or business being acquired divided by the \*capital of the \*listee. This percentage ratio is only to be applied in the case of an acquisition of a company or business.

### FIGURES USED FOR CLASSIFICATION.

**10.4.1.** Except as stated in **Rules 10.4.2, 10.4.3 and 10.4.4**, figures used for classification purposes must be:

- (a) in the case of assets, the figures shown in the latest published annual audited consolidated accounts or, if available, the more recent half yearly consolidated accounts;
- (b) in the case of profits, the figures shown in the latest published annual audited consolidated accounts;
- (c) in the case of consideration in the form of \*securities of a \*class already quoted, the aggregate market value of all those \*securities before the announcement;
- (d) in the case of consideration in the form of a new \*class of \*securities for which an application for admission to \*quotation will be made, the expected aggregate market value of all those \*securities;
- (e) in the case of the \*securities aggregated for the purposes of the gross capital percentage ratio, the aggregate market value of all those \*securities, if available, before the announcement, or their nominal value; and
- (f) in the case of market capitalisation for the purposes of the percentage ratio in **Rule 10.3(d)**, the aggregate market value of the \*main class of \*securities of the \*listee at the close of business on the last \*business day immediately preceding the announcement. In certain circumstances, \*APX may agree to include the market value of other \*classes of the \*listee's \*securities to determine the market capitalisation of the \*listee.

**10.4.2.** The assets of the \*listee may be adjusted:

- (a) to take into account subsequent transactions in respect of which information has already been published in compliance with the \*Listees' Listing Standards; or
- (b) to disregard assets on which the \*auditors are unable to report without qualification or reference to a matter of fundamental uncertainty.

**10.4.3.** When applying the percentage ratios to an acquisition by a \*listee whose assets consist wholly or predominantly of cash or short-dated \*securities, the cash and short-dated \*securities may be excluded by \*APX in calculating its assets and market capitalisation.

**10.4.4.** Where a \*listee has published a balance sheet in its half-yearly report, that balance sheet must be used for classification purposes when calculating the percentages in accordance with **Rules 10.3(a) and (e)**.

### CHANGE IN PERCENTAGE RATIOS.

**10.5.** If any of the percentage ratios change to the extent that the classification of the transaction is altered between the time the transaction is first discussed with \*APX and the announcement, \*APX must be consulted.

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### EXCEPTIONS TO CLASSIFICATION RULES.

**10.6.1.** In the case of a reverse \*takeover, if the following conditions are satisfied, the acquisition will be treated as Class 1:

- (a) the subject of the acquisition is of a similar size to that of the \*listee;
- (b) the business the subject of the acquisition is similar to that of the \*listee;
- (c) the undertaking the subject of the acquisition complies with the conditions for admission to the \*official list set out in **Chapter 4**; and
- (d) there will be no change of \*board or voting control.

**10.6.2.** Special requirements apply in the case of \*property listees (see **Rules 19.2.1** and **19.2.2**).

### INDEMNITIES AND SIMILAR ARRANGEMENTS.

**10.7.** Any agreement or arrangement with a party, not being a member of the \*listee's \*group:

- (a) under which a \*listee 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 would be 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 \*listee's profits (as calculated for classification purposes) for the last three financial years (losses should be taken as nil profit and included in this average);

will be treated as a Class 1 transaction. For the purpose of this **Rule** indemnities such as those customarily given in connection with sale and purchase agreements or to underwriters or placement agents in an underwriting or placement agreement, and indemnities given to advisers against liabilities to third parties arising out of providing advisory services are not "exceptional".

### AGGREGATION OF TRANSACTIONS.

**10.8.1.** The \*APX may require transactions completed during the 12 months prior to the date of the latest transaction to be aggregated with the latest transaction for the purpose of determining the classification to apply to the latest transaction.

**10.8.2.** Without limitation to **Rule 10.8.1**, transactions will normally only be aggregated in accordance with that **Rule** if they:

- (a) are entered into by the \*listee with the same party or with parties connected with one another;
- (b) involve the acquisition or disposal of \*securities or an interest in one particular company; or
- (c) together lead to substantial involvement in a business activity which did not previously form a part of the \*listee's principal activities.

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\* See Chapter 1 for defined terms.

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**10.8.3.** If under **Rule 10.8.1**, aggregation results in a Class 1 requirement for \*security holder approval, then that approval is required only for the latest transaction.

**10.8.4.** Notwithstanding **Rule 10.8.2** where acquisitions are entered into during a period of 12 months which cumulatively exceed 100% in any of the percentage ratios the provisions relating to a reverse \*takeover may apply.

### CLASS 2 REQUIREMENTS.

**10.9.** The \*listee must notify \*APX Announcements Office without delay after the terms of a Class 2 transaction are agreed. The notification must include:

- (a) particulars of the transaction, including the name of any relevant company or business;
- (b) a description of the business or the assets the subject of the transaction;
- (c) the consideration, and how it is being satisfied (including the terms of any arrangements for deferred payment of consideration);
- (d) the value of the net assets that are the subject of the transaction;
- (e) the profits attributable to the net assets that are the subject of the transaction;
- (f) the effect of the transaction on the \*listee including any benefits which are expected to accrue to the \*listee as a result of the transaction;
- (g) details of any service contracts of proposed \*directors of the \*listee;
- (h) in the case of a disposal, the application of the sale proceeds;
- (i) in the case of a disposal, if shares or other \*securities are to form part of the consideration received, a statement whether such \*securities are to be sold or retained; and
- (j) any information that \*APX asks for.

### CLASS 1 REQUIREMENTS.

**10.10.1.** In the case of a Class 1 transaction the \*listee must comply with **Rule 10.9** (the Class 2 requirements). In addition an explanatory \*circular must be dispatched to the \*listee's security holders and the \*listee must obtain the prior approval of its security holders in general meeting, and any agreement effecting the transaction must be conditional upon such approval being obtained.

**10.10.2.** The Class 1 \*circular must comply with the general requirements relating to \*circulars set out in **Chapter 12** and must be submitted to \*APX for approval prior to its publication. It must also comply with the following requirements and include the following information:

- (a) the information given in the notification (see **Rule 10.9**);
- (b) the information required by **Appendix 10-1** to this **Chapter (Rule 10.15.1)**;
- (c) in the case of an acquisition of an interest in an undertaking which will result in consolidation of the net assets of that undertaking or a disposal of an interest in an

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undertaking which will result in the net assets no longer being consolidated, the information required by **Rules 9.28.1 to 9.28.2**;

(d) in the case of a transaction not falling within **Rule 10.10.2(c)**, the financial information requested by \*APX together with confirmation that the \*directors consider that the value to the \*listee justifies the price paid or received by it;

(e) a declaration by its \*directors in the following form (with appropriate modifications):

“The directors of [            ], whose names appear on page [    ], accept responsibility for the information contained in this document. To the best of the knowledge and belief of the directors (who have taken all reasonable care to ensure that such is the case) the information contained in this document is in accordance with the facts and does not omit anything likely to affect the import of such information.”;

(f) a statement of the effect of the acquisition or disposal on the earnings or assets and liabilities of the group; and

(g) where a statement or report attributed to a person as an expert is included in a \*circular which does not comprise \*listing particulars, a statement that it is included, in the form and context in which it is included, with the consent of that person.

**10.10.3.** If \*APX requires, the \*listee must meet the requirements in **Chapters 4 and 6** as if the \*listee were applying for admission to the \*official list.

### **CORRECTIVE ACTION.**

**10.11.1.** A \*listee must take corrective action if \*APX requires it to. The corrective action, at the option of the \*listee, is either of the following contained in **Rules 10.11.2 or 10.11.3**:

**10.11.2.** Cancelling the transaction (or arranging for its cancellation).

**10.11.3.** Seeking the approval of holders of \*ordinary securities to the transaction. If approval is not obtained, the \*listee must cancel the transaction (or arrange for its cancellation).

### **SUSPENSION.**

**10.12.** \*APX may suspend \*quotation of the \*listee’s securities until the \*listee has satisfied the requirements of **Rules 10.11.1 to 10.11.3**.

### **REVERSE TAKEOVER REQUIREMENTS.**

**10.13.** On the announcement of a reverse \*takeover which has been agreed or is in contemplation, \*APX will suspend \*quotation of the \*listee’s securities. The \*listee must prepare a Class 1 \*circular, obtain the prior approval of security holders and, if the \*listee wishes to be listed following completion of the transaction, prepare \*listing particulars as though the \*listee were a new applicant, save that **Rule 4.10.1(a)** (audited accounts for three years) is modified to the extent that the latest accounts of the \*listee may be in respect of a period ended not more than 12 months before the date of the \*listing particulars. Admission to the \*official list will be restored on publication of the \*circular and \*listing particulars.

**NO DISPOSAL OF MAJOR ASSET WITHOUT OFFER, OR APPROVAL FOR NO OFFER.**

**10.14.1.** A \*listee must not \*dispose of a major asset if, at the time of the \*disposal, it is \*aware that the person acquiring the asset intends to issue or offer \*securities with a view to becoming listed. The \*listee must do each of the following if one of its \*subsidiary undertakings holds the major asset:

- (a) it must not sell \*securities in the \*subsidiary undertaking with a view to the \*subsidiary undertaking becoming listed; or
- (b) it must make sure that the \*subsidiary undertaking does not issue \*securities with a view to becoming listed.

**10.14.2.** Rule 10.14.1 does not apply in either of the following cases:

- (a) The \*securities, except those to be retained by the \*listee or \*subsidiary undertaking, are offered pro rata to holders of \*ordinary securities in the \*listee, or in another way that, in \*APX's opinion, is fair in all the circumstances; or
- (b) Holders of \*ordinary securities in the \*listee approve of the \*disposal without the offer referred to in **Rule 10.14.2(a)** being made. The notice of meeting must include a \*voting exclusion statement.

**CONTENTS OF CLASS 1 CIRCULAR.**

**10.15.1.** In addition to the requirements of **Rule 10.10.2**, a Class 1 \*circular must include the information required by the table set out in the **Appendix 10-1** to this **Chapter**. Where the \*circular is accompanied by or includes \*listing particulars which themselves contain the information required, such information need not be repeated.

**10.15.2.** The information required by **Appendix 10-1** to this **Chapter** must be presented on the following basis save where \*APX otherwise agrees:

- (a) the information required by **Rule 6.14(h)** (litigation) and **Rule 6.15(d)** (significant changes):
  - (i) in the case of an acquisition, in separate statements for the \*listee and its subsidiary undertakings and for the undertaking, business or assets to be acquired; or
  - (ii) in the case of a disposal, in separate statements for the \*listee and its subsidiary undertakings (on the basis that the disposal has taken place), and for the undertaking, business or assets to be disposed of;
- (b) the information required by **Rule 6.15(g)** (working capital statement):
  - (i) in the case of an acquisition, in a single statement for the \*listee and its subsidiary undertakings (on the basis that the acquisition has taken place); or
  - (ii) in the case of a disposal, in a single statement for the \*listee and its subsidiary undertakings (on the basis that the disposal has taken place); and
- (d) for a profit forecast:

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- (i) in the case of an acquisition, either in a single statement for the \*listee and its subsidiary undertakings (on the basis that the acquisition has taken place) or in separate statements for the \*listee and its subsidiary undertakings and for the undertaking, business or assets to be acquired; or
- (ii) in the case of a disposal, either in a single statement for the \*listee and its subsidiary undertakings (on the basis that the disposal has taken place) or in separate statements for the \*listee and its subsidiary undertakings and for the undertaking, business or assets to be disposed of.

**10.15.3.** The information required by **Appendix 10-1** to this **Chapter** is subject to the following modifications:

- (a) where the \*listee is issuing \*securities for which admission to \*quotation is sought, the information regarding major interests in **securities (Rule 6.13(j))** and \*directors' interests in \*securities (**Rule 6.16(d)**) must be given in relation to the share capital both as existing and the share capital as enlarged by the \*securities for which admission to the \*official list is sought; and
- (b) information required by **Rule 6.16(e)** (\*directors' interests in transactions) and **Rule 6.16(j)** (\*directors' service contracts) need not be given if it has already been published prior to the dispatch of the \*circular.

**10.15.4.** Where a \*circular is required by this **Chapter** and \*listing particulars are required by **Chapter 6**, the \*circular may include \*listing particulars.