

Chapter 10

Transactions with persons in a position of influence

Table of contents

The main headings in this chapter	Rules
Acquisition and disposal of assets	10.1 - 10.10
Acquisition of securities in the entity	10.11 - 10.16
Payments to directors	10.17
Termination benefits	10.18

Explanatory note

This chapter deals with transactions between an entity (including its +child entities) and persons in a position to influence the entity. Transactions covered by this chapter include +acquiring and +disposing of substantial assets by the entity, and +acquiring +securities in the entity.

The chapter also deals with participation by directors (and persons associated with directors) in +employee incentive schemes and in underwriting +dividend or distribution plans, payments to directors and termination benefits.

Acquisition and disposal of assets

Approval required if test met

10.1 An entity (in the case of a trust, the responsible entity) must ensure that neither it, nor any of its +child entities, +acquires a substantial asset from, or +disposes of a substantial asset to, any of the following +persons without the approval of holders of the entity's +ordinary securities.

10.1.1 A +related party.

10.1.2 A subsidiary.

+ See chapter 19 for defined terms.

Chapter 10

Transactions with persons in a position of influence

10.1.3 A ⁺substantial holder, if the person and the person's associates have a relevant interest, or had a relevant interest at any time in the 6 months before the transaction, in at least 10% of the total votes attached to the voting ⁺securities.

Note: The relevant interpretation of "associate" for the purposes of this rule is the interpretation in section 12 of the Corporations Act.

10.1.4 An associate of a ⁺person referred to in rules 10.1.1 to 10.1.3.

Note: The relevant interpretation of "associate" for the purposes of this rule is the interpretation in section 11 and sections 13 to 17 of the Corporations Act. Section 13 is to be applied as if it was not confined to associate references occurring in Chapter 7.

10.1.5 A ⁺person whose relationship to the entity or a ⁺person referred to in rules 10.1.1 to 10.1.4 is such that, in ASX's opinion, the transaction should be approved by ⁺security holders.

If an entity breaks this rule, ASX may require it to take the corrective action set out in rule 10.9.

Introduced 1/7/96. Origin: Listing Rules 3J(3)(a), (b). Amended 1/7/98, 13/3/2000, 30/9/2001.

Cross reference: Rule 10.7 deals with classified assets. Rule 10.8 deals with getting ASX's opinion about the application of rule 10.1. Rule 10.9 deals with corrective action. This remedy is in addition to any other that ASX has for a breach of the listing rules.

What is a substantial asset?

10.2 An asset is substantial if its value, or the value of the consideration for it is, or in ASX's opinion is, 5% or more of the ⁺equity interests of the entity as set out in the latest ⁺accounts given to ASX under the listing rules.

Introduced 1/7/96. Origin: Listing Rules 3J(3)(a), (b). Amended 1/7/2000.

Note: The entity's equity interests are consolidated equity interests, if applicable.

Cross reference: chapter 4, which deals with periodic disclosure and rule 19.11A.

10.2.1 In calculating the value, each of the following rules applies.

- Intangibles will be included.
- Provisions for depreciation and amortisation will be deducted.
- Liabilities acquired as part of an ⁺acquisition will not be deducted.
- Separate transactions will be aggregated if, in ASX's opinion, they form part of the same commercial transaction.

⁺ See chapter 19 for defined terms.

Exceptions to rule 10.1

10.3 Rule 10.1 does not apply to any of the following.

- A transaction between the entity and a wholly owned subsidiary.
Introduced 1/7/96.
- A transaction between wholly owned subsidiaries of the entity.
Introduced 1/7/96.
- An issue of +securities by the entity for cash.
Introduced 1/7/96. Origin: Listing Rules 3J(3)(h).
- In the case of a trust, a transaction involving a substantial asset that was not beneficially held for the trust before the transaction and is not beneficially held for the trust after the transaction.
Introduced 1/7/96.
- A transaction between the entity and a person who is a related party by reason only of the transaction and the application to it of section 228(6).
Introduced 1/7/97. Amended 13/3/2000.
Note: As at 13/3/2000, section 228(6) of the Corporations Act says that a person is a related party if the entity believes, or has reasonable grounds to believe, that the person is likely to become a related party.

Application of rule 10.1 to put and call options

Consideration paid for an option

10.4 In the case of an +acquisition or +disposal by the grant or exercise of an option, the consideration for the +acquisition or +disposal is the total of the issue price of the option and its exercise price.

Introduced 1/7/96. Origin: Listing Rule 3J(3)(c)(i).

Approval before getting an option

10.5 An entity must obtain the approval of holders of its +ordinary securities before the option is issued, or the issue must be subject to that approval. If the option is issued subject to approval, that approval must be obtained as soon as practicable after the option is issued.

Introduced 1/7/96. Origin: Listing Rule 3J(3)(c)(i). Amended 1/7/97

⁺ See chapter 19 for defined terms.

Approval before exercising an option

- 10.6 An entity must obtain the approval of holders of its +ordinary securities before the option is exercised. If approval has been given in accordance with rule 10.5, further approval is not required at the time of exercise.

Introduced 1/7/96. Origin: Listing Rule 3J(3)(c)(i).

Example: When issued, the issue price and exercise price of the option did not exceed 5% of equity interests. Approval is not required. At the time of exercise, the issue price and exercise price of the option does exceed 5% of equity interests. Approval is then required before the option is exercised.

Classified assets

- 10.7 If an +acquisition to which rule 10.1 applies is of a +classified asset, the consideration must be +restricted securities. This requirement does not apply if the consideration is reimbursement of expenditure incurred in developing the +classified asset.

Introduced 1/7/96. Origin: Listing Rules 3J(37), 3J(3)(e).

Note: If restricted securities are issued as consideration for the acquisition or disposal the entity must comply with Chapter 9.

Cross reference: Appendix 9B.

Entity may consult ASX on the application of rule 10.1

- 10.8 Before +acquiring or +disposing of an asset, an entity may seek the written opinion of ASX on whether approval is required under rule 10.1. The entity must give ASX complete details of the transaction. ASX will only be bound by its written opinion if the details given to it remain materially unchanged at the time of the transaction.

- 10.8.1 If an entity does not have a written opinion from ASX that approval is not required under rule 10.1, ASX may require the entity to take the corrective action set out in rule 10.9.

Introduced 1/7/96. Origin: Listing Rules 3J(3)(g)(i), 3J(3)(g)(ii).

Note: This rule allows an entity to ensure that it does not breach rule 10.1 and will not be required to take the corrective action set out in rule 10.9.

Corrective action

- 10.9 An entity must take corrective action if ASX requires it to. The corrective action, at the option of the entity, is either of the following.

- 10.9.1 Cancelling the transaction (or arranging for its cancellation).

- 10.9.2 Seeking the approval of holders of +ordinary securities to the transaction. If approval is not obtained, the entity must cancel the transaction (or arrange for its cancellation).

⁺ See chapter 19 for defined terms.

Introduced 1/7/96. Origin: Listing Rule 3J(3)(g)(ii).

Requirements for the notice of meeting under rules 10.1 or 10.9

10.10 The notice of meeting under rule 10.1 or 10.9.2 must include each of the following.

10.10.1 A +voting exclusion statement.

Introduced 1/7/96. Origin: Listing Rule 3J(3)(d).

10.10.2 A report on the transaction from an independent expert. The report must state whether the transaction is fair and reasonable to holders of the entity's +ordinary securities whose votes are not to be disregarded. Unless the opinion is that the transaction is fair and reasonable, the opinion must be displayed prominently in the notice of meeting and on the covering page of any accompanying documents.

Introduced 1/7/96. Origin: Listing Rule 3J(3)(c)(ii).

Acquisition of securities in the entity

Approval required for an issue of securities

10.11 Unless one of the exceptions in rule 10.12 applies, an entity must not issue or agree to issue +equity securities to any of the following +persons without the approval of holders of +ordinary securities.

10.11.1 A +related party.

10.11.2 A +person whose relationship with the entity or a +related party is, in ASX's opinion, such that approval should be obtained.

Introduced 1/7/96. Origin: Listing Rules 3E(8)(a), 3E(8)(a)c. Amended 1/7/2000, 30/9/2001.

Exceptions to rule 10.11

10.12 The exceptions referred to in rule 10.11 are as follows.

Exception 1 The +person receives the +securities under a +pro rata issue.

Introduced 1/7/96. Origin: Listing Rule 3E(8)(a).

Note: An issue is still treated as a pro rata issue under this rule if offers are not sent to overseas security holders under rule 7.7.

⁺ See chapter 19 for defined terms.

Chapter 10

Transactions with persons in a position of influence

Exception 2 The +person receives the +securities under an underwriting agreement in relation to a +pro rata issue, and the terms of the underwriting were included in offer documents sent to holders of +ordinary securities.

Introduced 1/7/96. Origin: Listing Rule 3E(8)(a)b.

Exception 3 The +person receives the +securities under a +dividend or distribution plan. Exception 3 is only available where the +dividend or distribution plan does not impose a limit on participation.

Introduced 1/7/96. Origin: Listing Rules 3E(8)(a)e., 3E(8)(b)(ii). Amended 11/3/2002, 31/3/2004.

Note: Exception 3 only applies where there is no limit on participation under the dividend or distribution plan and security holders are able to elect to receive all of their dividend or distribution as securities. For example, Exception 7 would not apply in the following circumstances:

- The company has set a cap which may be a specified dollar amount e.g. securityholders can participate to a maximum value of \$x in respect of their entitlement.
- The company has specified a maximum number of securities e.g. securityholders can only receive securities in lieu of dividend payable for x number of securities.

Cross reference: rule 10.16.

Exception 4 The +person is a person referred to in rule 10.14 and receives the +securities under an +employee incentive scheme with approval under that rule.

Introduced 1/7/96. Origin: Listing Rule 3E(8)(a)d.

Exception 5 The +person receives the +securities under an off-market bid that was required to comply with the Corporations Act, or as part of a merger by way of scheme of arrangement under Part 5.1 of the Corporations Act.

Introduced 1/7/96. Origin: Listing Rule 3E(8)(a)f. Amended 1/7/97, 13/3/2000, 30/9/2001.

Exception 6 The +person is a +related party by reason only of the transaction which is the reason for the issue of the +securities and the application to it of section 228(6).

Introduced 1/7/97. Amended 13/3/2000, 30/9/2001.

Note: At 13/3/2000, section 228(6) of the Corporations Act says that a person is a related party if the entity believes, or has reasonable grounds to believe, that the person is likely to become a related party.

Exception 7 The +person receives the +securities on the +conversion of +convertible securities. The entity must have issued the +convertible securities before it was listed or complied with the listing rules when it issued the +convertible securities.

Introduced 1/7/98.

Note: The definition of convertible securities includes options.

⁺ See chapter 19 for defined terms.

Exception 8 An issue of +securities under a security purchase plan, excluding an issue to the plan's underwriters, making offers not exceeding \$5,000 in value to existing security holders which do not require the issue of a disclosure document or Product Disclosure Statement in accordance with relief granted by +ASIC. Exception 8 is only available once in any 12 month period and both of the following must apply.

- The number of +securities to be issued is not greater than 30% of the number of fully paid +ordinary securities already on issue.
- The issue price of the +securities is at least 80% of the average +market price for +securities in that +class. The average is calculated over the last 5 days on which sales in the +securities were recorded before the day on which the issue was announced, or the day on which the issue was made.

Introduced 1/7/2000. Amended 31/3/2004.

Note: See ASIC instrument IR 02/17 which discusses ASIC policy in relation to small offers to existing security holders by listed entities.

Exception 9 An issue under an agreement to issue +securities. The entity must have complied with the listing rules when it entered into the agreement to issue the +securities.

Introduced 30/9/2001.

Exception 10 An agreement to issue +equity securities that is conditional on holders of +ordinary securities approving the issue before the issue is made. If an entity relies on this exception it must not issue the +equity securities without approval.

Introduced 30/9/2001.

Requirements for the notice of meeting under rule 10.11

10.13 The notice of meeting to approve the issue of +securities must include each of the following.

10.13.1 The name of the +person.

10.13.2 The maximum number of +securities to be issued (if known) or the formula for calculating the number of securities to be +issued to the +person.

10.13.3 The date by which the entity will issue the +securities, which must not be more than 1 month after the date of the meeting.

⁺ See chapter 19 for defined terms.

10.13.4 If the +person is not a director (in the case of a trust, the responsible entity), a statement of the relationship between the +person and the director (or responsible entity) that requires the approval to be obtained.

10.13.5 The issue price of the +securities and a statement of the terms of the issue.

10.13.6 A +voting exclusion statement.

10.13.6A The intended use of the funds raised.

Introduced 1/7/96. Origin: Listing Rule 3E(8)(a)c. Amended 1/7/98, 1/7/2000, 30/9/2001, 24/10/2005.

Cross reference: rule 7.2 exception 14, which requires an additional statement in the notice of meeting in order to rely on that exception.

Approval required to acquire securities under an employee incentive scheme

10.14 An entity must not permit any of the following +persons to +acquire +securities under an +employee incentive scheme without the approval of holders of +ordinary securities of the +acquisition. The notice of meeting to obtain approval must comply with either rule 10.15 or 10.15A. This rule does not apply to securities purchased on market under the +terms of a scheme that provides for purchase of +securities by or on behalf of employees or directors.

Note: The definition of "on market" for the purposes of this rule is the definition in section 9 of the Corporations Act and is intended to exclude special crossings, crossings during the pre-open phase, the enquire phase, the after hours adjust phase and trades during the enquire phase.

10.14.1 A director of the entity.

10.14.2 An associate of the director.

Note: The relevant interpretation of "associate" for the purposes of this rule is the interpretation in section 11 and sections 13 to 17 of the Corporations Act. Section 13 is to be applied as if it was not confined to associate references occurring in Chapter 7.

10.14.3 A +person whose relationship with the entity or a +person referred to in rules 10.14.1 or 10.14.2 is, in ASX's opinion, such that approval should be obtained.

Introduced 1/7/96. Origin: Listing Rules 3E(8)(a)d., 3W(10). Amended 1/7/2000, 30/9/2001, 24/10/2005.

Example: An acquisition of securities by a director's private company is caught by this rule.

Note: Where a single person who fits into a category of persons covered by the rule is to participate in a scheme which is an employee incentive scheme for the purposes of the rule, the entity must seek approval under this rule.

The issue of shares following the exercise of options which have been issued under an employee incentive scheme is not regarded as the acquisition of securities under the scheme.

Requirements for the notice of meeting under rule 10.14

⁺ See chapter 19 for defined terms.

- 10.15 The notice of meeting to approve the +acquisition of +securities must include each of the following.
- 10.15.1 If the +person is not a director, a statement of the relationship between the +person and the director that requires the approval to be obtained.
- 10.15.2 The maximum number of +securities that may be +acquired by all +persons for whom approval is required, including the formula (if one is used) for calculating the number of +securities to be issued.
Introduced 1/7/96. Origin: Listing Rules 3E(8)(a)d.(ii), 3W(10)(ii). Amended 30/9/2001.
- 10.15.3 The price (including a statement whether the price will be, or be based on, the +market price), or the formula for calculating the price, for each +security to be +acquired under the scheme.
Introduced 1/7/96. Origin: Listing Rules 3E(8)(a)d.(iii), 3W(10)(iii).
- 10.15.4 The names of all +persons referred to in rule 10.14 who received +securities under the scheme since the last approval, the number of the +securities received, and +acquisition price for each +security.
Introduced 1/7/96. Origin: Listing Rules 3E(8)(a)d.(iv), 3W(10)(iv).
- 10.15.4A The names of all +persons referred to in rule 10.14 entitled to participate in the scheme.
Introduced 30/9/2001.
- 10.15.5 A +voting exclusion statement.
Introduced 1/7/96. Origin: Listing Rules 3E(8)(a)d.(v) and 3W(10)(vi).
Note: Approval allows acquisitions of securities by a director or directors, and persons connected with them, up to the maximum number specified in the notice of meeting.
- 10.15.6 The terms of any loan in relation to the +acquisition.
Introduced 1/7/96. Origin: Listing Rule 3W(10)(v).
- 10.15.7 The date by which the entity will issue the +securities, which must be no later than 12 months after the meeting.
Introduced 30/9/2001.
Note: Approval obtained in accordance with a notice of meeting under this rule is only available if there has been no material change to the circumstances set out in the notice of meeting.
- 10.15A The notice of meeting to approve the +acquisition of +securities must include each of the following.
- 10.15A.1 If the +person is not a director, a statement of the relationship between the +person and the director that requires the approval to be obtained.

⁺ See chapter 19 for defined terms.

Chapter 10

Transactions with persons in a position of influence

- 10.15A.2 The maximum number of +securities that may be +acquired by all +persons for whom approval is required, including the formula (if one is used) for calculating the number of +securities to be issued.
- 10.15A.3 The price (including a statement whether the price will be, or be based on, the +market price), or the formula for calculating the price, for each +security to be +acquired under the scheme.
- 10.15A.4 The names of all +persons referred to in rule 10.14 who received +securities under the scheme since the last approval, the number of the +securities received, and +acquisition price for each +security.
- 10.15A.5 The names of all +persons referred to in rule 10.14 entitled to participate in the scheme.
- 10.15A.6 A +voting exclusion statement.
- 10.15A.7 The terms of any loan in relation to the +acquisition.
- 10.15A.8 A statement to the following effect.
- Details of any +securities issued under the +employee incentive scheme will be published in each annual report of the entity relating to a period in which +securities have been issued, and that approval for the issue of +securities was obtained under listing rule 10.14.
 - Any additional +persons who become entitled to participate in the +employee incentive scheme after the resolution was approved and who were not named in the notice of meeting will not participate until approval is obtained under listing rule 10.14.
- 10.15A.9 The date by which the entity will issue the +securities, which must be no later than 3 years after the meeting.

Introduced 30/9/2001.

Note: Approval obtained in accordance with a notice of meeting under this rule is only available if there has been no material change to the circumstances set out in the notice of meeting.

No underwriting by directors and associates

- 10.16 An entity must not permit any of the following persons to underwrite a +dividend or distribution plan.
- 10.16.1 A director of the entity (in the case of a trust, the responsible entity).

⁺ See chapter 19 for defined terms.

10.16.2 An associate of a director of the entity (in the case of a trust, of the responsible entity).

Note: The relevant interpretation of “associate” for the purposes of this rule is the interpretation in section 11 and sections 13 to 17 of the Corporations Act. Section 13 is to be applied as if it was not confined to associate references occurring in Chapter 7.

10.16.3 A +person whose relationship with the entity or a +person referred to in rules 10.16.1 or 10.16.2 is, in ASX’s opinion, such that the +person should not underwrite the plan.

Introduced 1/7/96. Origin: Listing Rule 3E(8)(b). Amended 1/7/98, 30/9/2001.

Payments to directors

10.17 An entity must not increase the total amount of directors’ fees payable by it or any of its +child entities without the approval of holders of its +ordinary securities. This rule does not apply to the salary of an executive director. However, an executive director’s salary or director’s fees must not include a commission on, or percentage of, operating revenue.

10.17.1 The notice of meeting must include the amount of the increase, the maximum amount that may be paid to the directors as a whole, and a +voting exclusion statement.

10.17.2 If a non-executive director is paid, he or she must be paid a fixed sum.

Introduced 1/7/96. Origin: Listing Rule 3L(7).

Example: The amount must not be calculated as a commission on, or percentage of, profits or operating revenue.

Termination benefits

10.18 An entity must ensure that no officer of the entity or of any of its +child entities will be entitled to +termination benefits (or any increase in them) if a change occurs in the shareholding or control of the listed entity or +child entity.

Introduced 1/7/96. Origin: Listing Rule 3J(16)(a).

10.19 Without the approval of holders of +ordinary securities, an entity must ensure that no officer of the entity or any of its +child entities will be, or may be, entitled to +termination benefits if the value of those benefits and the +termination benefits that are or may become payable to all officers together exceed 5% of the +equity interests of the entity as set out in the latest +accounts given to ASX under the listing rules. The notice of meeting must include a +voting exclusion statement.

Introduced 1/7/96. Origin: Listing Rule 3J(16)(b). Amended 1/7/2000.

Cross reference: rule 19.11A.

⁺ See chapter 19 for defined terms.