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STATUTORY INSTRUMENTS

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**1987 No. 1991**

**COMPANIES**

**The Companies (Mergers and Divisions) Regulations 1987**

*Made* - - - - 23rd November 1987

*Coming into force* - - 1st January 1988

Whereas a draft of these Regulations has been approved by each House of Parliament in pursuance of paragraph 2(2) of Schedule 2 to the European Communities Act 1972<sup>(1)</sup>.

Now, therefore, the Secretary of State, being a Minister designated for the purposes of section 2(2) of that Act in relation to matters relating to mergers and divisions involving public companies<sup>(2)</sup>, in exercise of the powers conferred by that section hereby makes the following Regulations—

**Citation and Commencement**

1. These Regulations may be cited as the Companies (Mergers and Divisions) Regulations 1987, and shall come into force on 1st January 1988.

**Amendment of Companies Act 1985**

2. The Companies Act 1985<sup>(3)</sup> shall be amended as follows—

- (a) by the insertion after section 427 of the new section 427A contained in Part I of the Schedule hereto;
- (b) by adding at the end of section 711(1) the following paragraphs—
  - “(s) any copy of a draft of the terms of a scheme delivered to the registrar of companies under paragraph 2(1) of Schedule 15A,
  - (t) any copy of an order under section 425(2) or section 427 in respect of a compromise or arrangement to which section 427A(1) applies.”;
- (c) by the insertion after Schedule 15 of the new Schedule 15A contained in Part II of the Schedule hereto.

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(1) 1972 c. 68.  
(2) S.I.1985/749.  
(3) 1985 c. 6.

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23rd November 1987

*Francis Maude*  
Parliamentary Under Secretary of State,  
Department of Trade and Industry

## SCHEDULE

Regulation 2

### PROVISIONS TO BE INSERTED INTO THE COMPANIES ACT 1985

#### PART I

##### New section 427A to be inserted after section 427

##### **Application of ss.425—427 to mergers and divisions of public companies.**

###### **427A.—(1) Where—**

- (a) a compromise or arrangement is proposed between a public company and any such persons as are mentioned in section 425(1) for the purposes of, or in connection with, a scheme for the reconstruction of any company or companies or the amalgamation of any two or more companies,
- (b) the circumstances are as specified in any of the Cases described in subsection (2), and
- (c) the consideration for the transfer or each of the transfers envisaged in the Case in question is to be shares in the transferee company or any of the transferee companies receivable by members of the transferor company or transferor companies, with or without any cash payment to members,

sections 425 to 427 shall, as regards that compromise or arrangement, have effect subject to the provisions of this section and Schedule 15A.

###### (2) The Cases referred to in subsection (1) are as follows—

###### *Case 1*

Where under the scheme the undertaking, property and liabilities of the company in respect of which the compromise or arrangement in question is proposed are to be transferred to another public company, other than one formed for the purpose of, or in connection with, the scheme.

###### *Case 2*

Where under the scheme the undertaking, property and liabilities of each of two or more public companies concerned in the scheme, including the company in respect of which the compromise or arrangement in question is proposed, are to be transferred to a company (whether or not a public company) formed for the purpose of, or in connection with, the scheme.

###### *Case 3*

Where under the scheme the undertaking, property and liabilities of the company in respect of which the compromise or arrangement in question is proposed are to be divided among and transferred to two or more companies each of which is either—

- (a) a public company, or
- (b) a company (whether or not a public company) formed for the purposes of, or in connection with, the scheme.

(3) Before sanctioning any compromise or arrangement under section 425(2) the court may, on the application of any pre-existing transferee company or any member or creditor of it or, an administration order being in force in relation to the company, the administrator, order a meeting of the members of the company or any class of them or of the creditors of the company or any class of them to be summoned in such manner as the court directs.

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(4) This section does not apply where the company in respect of which the compromise or arrangement is proposed is being wound up.

(5) This section does not apply to compromises or arrangements in respect of which an application has been made to the court for an order under section 425(1) before 1st January 1988.

(6) Where section 427 would apply in the case of a scheme but for the fact that the transferee company or any of the transferee companies is a company within the meaning of Article 3 of the Companies (Northern Ireland) Order 1986 (and thus not within the definition of “company” in subsection (6) of section 427), section 427 shall apply notwithstanding that fact.

(7) In the case of a scheme mentioned in subsection (1), for a company within the meaning of Article 3 of the Companies (Northern Ireland) Order 1986, the reference in section 427(5) to the registrar of companies shall have effect as a reference to the registrar as defined in Article 2 of that Order.

(8) In this section and Schedule 15A—

“transferor company” means a company whose undertaking, property and liabilities are to be transferred by means of a transfer envisaged in any of the Cases specified in subsection (2);

“transferee company” means a company to which a transfer envisaged in any of those Cases is to be made;

“pre-existing transferee company” means a transferee company other than one formed for the purpose of, or in connection with, the scheme;

“compromise or arrangement” means a compromise or arrangement to which subsection (1) applies;

“the scheme” means the scheme mentioned in subsection (1)(a);

“company” includes only a company as defined in section 735(1) except that, in the case of a transferee company, it also includes a company as defined in Article 3 of the Companies (Northern Ireland) Order 1986 (referred to in these definitions as a “Northern Ireland company”);

“public company” means, in relation to a transferee company which is a Northern Ireland company, a public company within the meaning of Article 12 of the Companies (Northern Ireland) Order 1986;

“the registrar of companies” means, in relation to a transferee company which is a Northern Ireland company, the registrar as defined in Article 2 of the Companies (Northern Ireland) Order 1986;

“the Gazette” means, in relation to a transferee company which is a Northern Ireland company, the Belfast Gazette;

“Case 1 Scheme”, “Case 2 Scheme” and “Case 3 Scheme” mean a scheme of the kind described in Cases 1, 2 and 3 of subsection (2) respectively;

“property” and “liabilities” have the same meaning as in section 427.

## PART II

### New schedule 15A to be inserted after schedule 15

#### “SCHEDULE 15A

Section 427A

#### PROVISIONS SUBJECT TO WHICH SS. 425—427 HAVE EFFECT IN THEIR APPLICATION TO MERGERS AND DIVISIONS OF PUBLIC COMPANIES

##### **Meeting of transferee company**

1. Subject to paragraphs 10(1), 12(4) and 14(2), the court shall not sanction a compromise or arrangement under section 425(2) unless a majority in number representing three-fourths in value of each class of members of every pre-existing transferee company concerned in the scheme, present and voting either in person or by proxy at a meeting, agree to the scheme.

##### **Draft terms of merger**

2.—(1) The court shall not sanction the compromise or arrangement under section 425(2) unless—

- (a) a draft of the proposed terms of the scheme (from here on referred to as the “draft terms”) has been drawn up and adopted by the directors of all the transferor and pre-existing transferee companies concerned in the scheme,
- (b) subject to paragraph 11(3), in the case of each of those companies the directors have delivered a copy of the draft terms to the registrar of companies and the registrar has published in the Gazette notice of receipt by him of a copy of the draft terms from that company, and
- (c) subject to paragraphs 10 to 14, that notice was so published at least one month before the date of any meeting of that company summoned under section 425(1) or for the purposes of paragraph 1.

2) Subject to paragraph 12(2), the draft terms shall give particulars of at least the following matters—

- (a) in respect of each transferor company and transferee company concerned in the scheme, its name, the address of its registered office and whether it is a company limited by shares or a company limited by guarantee and having a share capital;
- (b) the number of shares in any transferee company to be allotted to members of any transferor company for a given number of their shares (from here on referred to as the “share exchange ratio”) and the amount of any cash payment;
- (c) the terms relating to the allotment of shares in any transferee company;
- (d) the date from which the holding of shares in a transferee company will entitle the holders to participate in profits, and any special conditions affecting that entitlement;
- (e) the date from which the transactions of any transferor company are to be treated for accounting purposes as being those of any transferee company;
- (f) any rights or restrictions attaching to shares or other securities in any transferee company to be allotted under the scheme to the holders of shares to which any special rights or restrictions attach, or of other securities, in any transferor company, or the measures proposed concerning them;

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- (g) any amount or benefit paid or given or intended to be paid or given to any of the experts referred to in paragraph 5 or to any director of a transferor company or pre-existing transferee company, and the consideration for the payment of benefit.
- 3) Where the scheme is a Case 3 Scheme the draft terms shall also—
  - (a) give particulars of the property and liabilities to be transferred (to the extent these are known to the transferor company) and their allocation among the transferee companies;
  - (b) make provision for the allocation among and transfer to the transferee companies of any other property and liabilities which the transferor company has or may subsequently acquire; and
  - (c) specify the allocation to members of the transferor company of shares in the transferee companies and the criteria upon which that allocation is based.

#### **Documents and information to be made available**

3. Subject to paragraphs 10 to 14, the court shall not sanction the compromise or arrangement under section 425(2) unless—
- (a) in the case of each transferor company and each pre-existing transferee company the directors have drawn up and adopted a report complying with paragraph 4 (from here on referred to as a “directors' report”);
  - (b) where the scheme is a Case 3 Scheme, the directors of the transferor company have reported to every meeting of the members or any class of members of that company summoned under section 425(1), and to the directors of each transferee company, any material changes in the property and liabilities of the transferor company between the date when the draft terms were adopted and the date of the meeting in question;
  - (c) where the directors of a transferor company have reported to the directors of a transferee company such a change as is mentioned in sub-paragraph (b) above, the latter have reported that change to every meeting of the members or any class of members of that transferee company summoned for the purposes of paragraph 1, or have sent a report of that change to every member who would have been entitled to receive a notice of such a meeting;
  - (d) a report complying with paragraph 5 has been drawn up on behalf of each transferor company and pre-existing transferee company (from here on referred to as an “expert's report”);
  - (e) the members of any transferor company or transferee company were able to inspect at the registered office of that company copies of the documents listed in paragraph 6(1) in relation to every transferor company and pre-existing transferee company concerned in the scheme during a period beginning one month before, and ending on, the date of the first meeting of the members or any class of members of the first-mentioned transferor or transferee company summoned either under section 425(1) or for the purposes of paragraph 1 and those members were able to obtain copies of those documents or any part of them on request during that period free of charge; and
  - (f) the memorandum and articles of association of any transferee company which is not a pre-existing transferee company, or a draft thereof, has been approved by ordinary resolution of every transferor company concerned in the scheme.

#### **Directors' report**

- 4.—(1) The directors' report shall consist of—
- (a) the statement required by section 426, and

(b) insofar as that statement does not contain the following matters, a further statement—

- (i) setting out the legal and economic grounds for the draft terms, and in particular for the share exchange ratio, and, where the scheme is a Case 3 Scheme, for the criteria upon which the allocation to the members of the transferor company of shares in the transferee companies was based, and
- (ii) specifying any special valuation difficulties.

(2) Where the scheme is a Case 3 Scheme the directors' report shall also state whether a report has been made to the transferee company under section 103 (non-cash consideration to be valued before allotment) and, if so, whether that report has been delivered to the registrar of companies.

### **Expert's report**

5.—(1) Except where a joint expert is appointed under sub-paragraph (2) below, an expert's report shall consist of a separate written report on the draft terms to the members of one transferor company or pre-existing transferee company concerned in the scheme drawn up by a separate expert appointed on behalf of that company.

(2) The court may, on the joint application of all the transferor companies and pre-existing transferee companies concerned in the scheme, approve the appointment of a joint expert to draw up a single report on behalf of all those companies.

(3) An expert shall be independent of any of the companies concerned in the scheme, that is to say a person qualified at the time of the report to be appointed, or to continue to be, an auditor of those companies.

(4) However, where it appears to an expert that a valuation is reasonably necessary to enable him to draw up the report, and it appears to him to be reasonable for that valuation, or part of it, to be made (or for him to accept such a valuation) by another person who—

- (a) appears to him to have the requisite knowledge and experience to make the valuation or that part of it; and
- (b) is not an officer or servant of any of the companies concerned in the scheme or any other body corporate which is one of those companies' subsidiary or holding company or a subsidiary of one of those companies' holding company or a partner or employee of such an officer or servant,

he may arrange for or accept such a valuation, together with a report which will enable him to make his own report under this paragraph.

(5) The reference in sub-paragraph (4) above to an officer or servant does not include an auditor.

(6) Where any valuation is made by a person other than the expert himself, the latter's report shall state that fact and shall also—

- (a) state the former's name and what knowledge and experience he has to carry out the valuation, and
- (b) describe so much of the undertaking, property and liabilities as were valued by the other person, and the method used to value them, and specify the date of the valuation.

(7) An expert's report shall—

- (a) indicate the method or methods used to arrive at the share exchange ratio proposed;
- (b) give an opinion as to whether the method or methods used are reasonable in all the circumstances of the case, indicate the values arrived at using each such method and (if there is more than one method) give an opinion on the relative importance attributed to such methods in arriving at the value decided on;
- (c) describe any special valuation difficulties which have arisen;

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- (d) state whether in the expert's opinion the share exchange ratio is reasonable; and
  - (e) in the case of a valuation made by a person other than himself, state that it appeared to himself reasonable to arrange for it to be so made or to accept a valuation so made.
- (8) Each expert has the right of access to all such documents of all the transferor companies and pre-existing transferee companies concerned in the scheme, and the right to require from the companies' officers all such information, as he thinks necessary for the purpose of making his report.

### **Inspection of documents**

- 6.—(1) The documents referred to in paragraph 3(e) are, in relation to any company,—
- (a) the draft terms;
  - (b) the directors' report;
  - (c) the expert's report;
  - (d) the company's accounts within the meaning of section 239 for the last three complete financial years ending on or before a date one month earlier than the first meeting of the company summoned either under section 425(1) or for the purposes of paragraph 1 (in this paragraph referred to as the "relevant date");
  - (e) if the last complete financial year in respect of which accounts were prepared for the company ended more than 6 months before the relevant date, an accounting statement in the form described in the following sub-paragraph.
- (2) The accounting statement shall consist of—
- (a) a balance sheet dealing with the state of affairs of the company, and;
  - (b) where the company has subsidiaries and section 229 would apply if the relevant date were the end of the company's financial year, a further balance sheet or balance sheets dealing with the state of affairs of the company and the subsidiaries.
- (3) Subject to sub-paragraph (4) below, any balance sheet required by sub-paragraph (2)(a) or (b) above shall comply with section 228 or section 230 (as appropriate) and with all other requirements of this Act as to the matters to be included in a company's balance sheet or in notes thereto (applying those sections and Schedule 4 and those other requirements with such modifications as are necessary because the balance sheet is prepared otherwise than as at the last day of the financial year) and must be signed in accordance with section 238.
- (4) Notwithstanding sub-paragraph (3) above, any balance sheet required by sub-paragraph (2) (a) or (b) above shall deal with the state of affairs of the company or subsidiaries as at a date not earlier than the first day of the third month preceding the date when the draft terms were adopted by the directors, and the requirement in section 228 to give a true and fair view shall for the purposes of this paragraph have effect as a requirement to give a true and fair view of the state of affairs of the company as at the first-mentioned date.
- (5) In sub-paragraphs (1) to (4) above, references to sections 228, 229, 230, 238 and 239 and Schedule 4 shall, in the case of a company within the meaning of Article 3 of the Companies (Northern Ireland) Order 1986, have effect as references to Articles 236, 237, 238, 246 and 247 and Schedule 4 of that Order respectively, and references to the requirements of this Act shall have effect as references to the requirements of that Order.

### **Transferor company holding its own shares**

7. The court shall not sanction under section 425(2) a compromise or arrangement under which any shares in a transferee company are to be allotted to a transferor company or its nominee in respect of shares in that transferor company held by it or its nominee.



### **Securities other than shares to which special rights are attached**

8.—(1) Where any security of a transferor company to which special rights are attached is held by a person other than as a member or creditor of the company, the court shall not sanction a compromise or arrangement under section 425(2) unless under the scheme that person is to receive rights in a transferee company of equivalent value.

(2) Sub-paragraph (1) above shall not apply in the case of any such security where—

- (a) the holder has agreed otherwise; or
- (b) the holder is, or under the scheme is to be, entitled to have the security purchased by a transferee company involved in the scheme on terms which the court considers reasonable.

### **Date and consequences of the compromise or arrangement**

9.—(1) The following provisions of this paragraph shall apply where the court sanctions a compromise or arrangement.

(2) The court shall in the order sanctioning the compromise or arrangement or in a subsequent order under section 427 fix a date on which the transfer or transfers to the transferee company or transferee companies of the undertaking, property and liabilities of the transferor company shall take place; and any such order which provide for the dissolution of the transferor company shall fix the same date for the dissolution.

(3) If it is necessary for the transferor company to take any steps to ensure that the undertaking, property and liabilities are fully transferred, the court shall fix a date, not later than six months after the date fixed under sub-paragraph (2) above, by which such steps must be taken and for that purpose may postpone the dissolution of the transferor company until that date.

(4) The court may postpone or further postpone the date fixed under sub-paragraph (3) above if it is satisfied that the steps there mentioned cannot be completed by the date (or latest date) fixed under that sub-paragraph.

### **Exceptions**

10.—(1) The court may sanction a compromise or arrangement under section 425(2) notwithstanding that—

- (a) any meeting otherwise required by paragraph 1 has not been summoned by a pre-existing transferee company (“the relevant company”), and
- (b) paragraphs 2(1)(c) and 3(e) have not been complied with in respect of that company,

if the court is satisfied that the conditions specified in sub-paragraph (2) below have been complied with.

(2) Subject to paragraphs 11(3) and 12(3), the conditions mentioned in sub-paragraph (1) above are—

- (a) that the publication of notice of receipt of the draft terms by the registrar of companies referred to in paragraph 2(1)(b) took place in respect of the relevant company at least one month before the date of any meeting of members of any transferor company concerned in the scheme summoned under section 425(1);
- (b) that the members of the relevant company were able to inspect at the registered office of that company the documents listed in paragraph 6(1) in relation to every transferor company and transferee company concerned in the scheme during a period (“the relevant period”) beginning one month before, and ending on, the date of any such meeting, and that they were able to obtain copies of those documents or any part of them on request during that period free of charge; and

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- (c) that one or more members of the relevant company, who together held not less than five per cent. of the paid-up capital of that company which carried the right to vote at general meetings of the company, would have been able during the relevant period to require that a meeting of each class of members be called for the purpose of deciding whether or not to agree to the scheme but that no such requisition had been made.

**11.—**(1) The following sub-paragraphs apply where the scheme is a Case 3 Scheme.

(2) Sub-paragraphs (a) to (d) of paragraph 3 shall not apply and sub-paragraph (e) of that paragraph shall not apply as regards the documents listed in paragraph 6(1)(b), (c) and (e), if all members holding shares in, and all persons holding other securities of, any of the transferor companies and pre-existing transferee companies concerned in the scheme on the date of the application to the court under section 425(1), being shares or securities which as at that date carry the right to vote in general meetings of the company, so agree.

(3) The court may by order direct in respect of any transferor company or pre-existing transferee company that the requirements relating to—

- (a) delivering copies of the draft terms and publication of notice of receipt of the draft terms under paragraph 2(1)(b) and (c), or
- (b) inspection under paragraph 3(e),

shall not apply, and may by order direct that paragraph 10 shall apply to any pre-existing transferee company with the omission of sub-paragraph (2)(a) and (b) of that paragraph.

(4) The court shall not make any order under sub-paragraph (3) above unless it is satisfied that the following conditions will be fulfilled—

- (a) that the members of the company will have received or will have been able to obtain free of charge copies of the documents listed in paragraph 6(1) in time to examine them before the date of the first meeting of the members or any class of members of the company summoned under section 425(1) or for the purposes of paragraph 1;
- (b) in the case of a pre-existing transferee company, where in the circumstances described in paragraph 10 no meeting is held, that the members of that company will have received or will have been able to obtain free of charge copies of those documents in time to require a meeting under paragraph 10(2)(c);
- (c) that the creditors of the company will have received or will have been able to obtain free of charge copies of the draft terms in time to examine them before the date of the meeting of the members or any class of members of the company, or, in the circumstances referred to in paragraph (b) above, at the same time as the members of the company; and
- (d) that no prejudice would be caused to the members or creditors of any transferor company or transferee company concerned in the scheme by making the order in question.

#### **Transferee company or companies holding shares in the transferor company**

**12.—**(1) Where the scheme is a Case 1 Scheme and in the case of every transferor company concerned—

- (a) the shares in that company, and
- (b) such securities of that company (other than shares) as carry the right to vote at general meetings of that company,

are all held by or on behalf of the transferee company, section 427A and this Schedule shall apply subject to the following sub-paragraphs.

(2) The draft terms need not give particulars of the matters mentioned in paragraph 2(2)(b), (c) or (d).

(3) Section 426 and sub-paragraphs (a) and (d) of paragraph 3 shall not apply, and sub-paragraph (e) of that paragraph shall not apply as regards the documents listed in paragraph 6(1) (b) and (c).

(4) The court may sanction the compromise or arrangement under section 425(2) notwithstanding that—

(a) any meeting otherwise required by section 425 or paragraph 1 has not been summoned by any company concerned in the scheme, and

(b) paragraphs 2(1)(c) and 3(e) have not been complied with in respect of that company,

if it is satisfied that the conditions specified in the following sub-paragraphs have been complied with.

(5) The conditions mentioned in the previous sub-paragraph are—

(a) that the publication of notice of receipt of the draft terms by the registrar of companies referred to in paragraph 2(1)(b) took place in respect of every transferor company and transferee company concerned in the scheme at least one month before the date of the order under section 425(2) (“the relevant date”);

(b) that the members of the transferee company were able to inspect at the registered office of that company copies of the documents listed in paragraphs 6(1)(a), (d) and (e) in relation to every transferor company or transferee company concerned in the scheme during a period (“the relevant period”) beginning one month before, and ending on, the relevant date and that they were able to obtain copies of those documents or any part of them on request during that period free of charge; and

(c) that one or more members of the transferee company who together held not less than five per cent. of the paid-up capital of the company which carried the right to vote at general meetings of the company would have been able during the relevant period to require that a meeting of each class of members be called for the purpose of deciding whether or not to agree to the scheme but that no such requisition has been made.

**13.—**(1) Where the scheme is a Case 3 Scheme and—

(a) the shares in the transferor company, and

(b) such securities of that company (other than shares) as carry the right to vote at general meetings of that company,

are all held by or on behalf of one or more transferee companies, section 427A and this Schedule shall apply subject to the following sub-paragraphs.

(2) The court may sanction a compromise or arrangement under section 425(2) notwithstanding that—

(a) any meeting otherwise required by section 425 has not been summoned by the transferor company, and

(b) paragraphs 2(1)(c) and 3(b) and (e) have not been complied with in respect of that company,

if it is satisfied that the conditions specified in the following sub-paragraph have been complied with.

(3) The conditions referred to in the previous sub-paragraph are—

(a) the conditions set out in paragraph 12(5)(a) and (c);

(b) that the members of the transferor company and every transferee company concerned in the scheme were able to inspect at the registered office of the company of which they were members copies of the documents listed in paragraph 6(1) in relation to every such company during a period beginning one month before, and ending on, the date of the order

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under section 425(2) (“the relevant date”), and that they were able to obtain copies of those documents or any part of them on request during that period free of charge; and

- (c) that the directors of the transferor company have sent to every member who would have been entitled to receive a notice of the meeting (had it been called), and to the directors of each transferee company, a report of any material changes in the property and liabilities of the transferor company between the date when the draft terms were adopted and a date one month before the relevant date.

**14.—**(1) Where the scheme is a Case 1 Scheme and in the case of every transferor company concerned ninety per cent. or more (but not all) of—

- (a) the shares in that company, and
- (b) such securities of that company (other than shares) as carry the right to vote at general meetings of that company,

are held by or on behalf of the transferee company, section 427A and this Schedule shall apply subject to the following sub-paragraphs.

(2) The court may sanction a compromise or arrangement under section 425(2) notwithstanding that—

- (a) any meeting otherwise required by paragraph 1 has not been summoned by the transferee company, and
- (b) paragraphs 2(1)(c) and 3(e) have not been complied with in respect of that company,

if the court is satisfied that the conditions specified in the following sub-paragraph have been complied with.

(3) The conditions referred to in the previous sub-paragraph are the same conditions as those specified in paragraph 10(2), save that for this purpose the condition contained in paragraph 10(2)(b) shall be treated as referring only to the documents listed in paragraph 6(1)(a), (d) and (e). Liability of transferee companies for the default of another

**15.—**(1) Where the scheme is a Case 3 Scheme, each transferee company shall be jointly and severally liable, subject to sub-paragraph (2) below, for any liability transferred to any other transferee company under the scheme to the extent that that other company has made default in satisfying that liability, but so that no transferee company shall be so liable for an amount greater than the amount arrived at by calculating the value at the time of the transfer of the property transferred to it under the scheme less the amount at that date of the liabilities so transferred.

(2) If a majority in number representing three-fourths in value of the creditors or any class of creditors of the transferor company present and voting either in person or by proxy at a meeting summoned under section 425(1) so agree, sub-paragraph (1) above shall not apply in respect of the liabilities of the creditors or that class of creditors.”

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations implement Council Directive No. [78/855/EEC](#) concerning mergers of public limited liability companies (OJ No. L295, 20.10.1978, p. 36) and Council Directive No. [82/891/EEC](#) concerning the division of public limited liability companies (OJ No. L378, 31.12.1982, p. 47). The mergers and divisions in question involve the transfer of the undertaking, property and liabilities of public companies (“transferor companies”) to other public companies or, in some cases, companies (whether or not public) formed for the purpose of the merger or division (“transferee companies”) in exchange for shares in the transferee companies receivable by shareholders of the transferor companies with or without an additional cash payment. These mergers and divisions may take place in the United Kingdom by means of compromises or arrangements governed by sections 425 to 427 of the Companies Act 1985. These Regulations amend the Companies Act 1985 by inserting a new section 427A and a new Schedule 15A. The new section provides that in the case of the mergers and divisions described in it sections 425 to 427 shall have effect subject to the provisions of that section and of Schedule 15A.

Schedule 15A provides, in particular, that the court may only sanction a compromise or arrangement under section 425 if—

- (i) three-quarters of each class of the shareholders of the transferee companies involved present at a meeting agree (section 425 already provides that three-quarters of the shareholders of the transferor companies must so agree) (paragraph 1);
- (ii) the draft terms of the merger or division were drawn up by the directors of the companies involved and published by the registrar of companies (paragraph 2);
- (iii) directors' reports containing specified information were drawn up (paragraphs 3 and 4);
- (iv) expert's reports containing specified information were drawn up by independent experts (paragraphs 3 and 5); and
- (v) the above documents, the relevant company accounts and, if no recent accounts are available, accounting statements, were made available to shareholders (paragraphs 3 and 6).

Paragraph 9 provides that the court must fix a date on which the transfer of the undertaking and, if the transferor company is to be dissolved, its dissolution will take place and paragraphs 10 to 14 provide for a variety of circumstances in which some of the requirements as to meetings and preparation of documents may be dispensed with. Paragraph 15 provides for the liability up to a limit of transferee companies involved in a division for liabilities transferred to but defaulted on by other transferee companies.

The provisions of section 427A and Schedule 15A do not apply where the company in respect of which the compromise or arrangement is proposed is being wound up nor to compromises or arrangements in respect of which applications to the court were made before the Regulations came into operation (section 427A(4) and (5)). They do apply where any of the transferee companies is a company within the meaning of Article 3 of the Companies (Northern Ireland) Order 1986 (section 427A(7)).