



Companies Act 2006

2006 CHAPTER 46

PART 27

MERGERS AND DIVISIONS OF PUBLIC COMPANIES

CHAPTER 2

MERGER

Introductory

904 Mergers and merging companies

- (1) The scheme involves a merger where under the scheme—
 - (a) the undertaking, property and liabilities of one or more public companies, including the company in respect of which the compromise or arrangement is proposed, are to be transferred to another existing public company (a “merger by absorption”), or
 - (b) the undertaking, property and liabilities of two or more public companies, including the company in respect of which the compromise or arrangement is proposed, are to be transferred to a new company, whether or not a public company, (a “merger by formation of a new company”).
- (2) References in this Part to “the merging companies” are—
 - (a) in relation to a merger by absorption, to the transferor and transferee companies;
 - (b) in relation to a merger by formation of a new company, to the transferor companies.

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Requirements applicable to merger

905 Draft terms of scheme (merger)

- (1) A draft of the proposed terms of the scheme must be drawn up and adopted by the directors of the merging companies.
- (2) The draft terms must give particulars of at least the following matters—
 - (a) in respect of each transferor company and the transferee company—
 - (i) its name,
 - (ii) the address of its registered office, and
 - (iii) 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 the transferee company to be allotted to members of a transferor company for a given number of their shares (the “share exchange ratio”) and the amount of any cash payment;
 - (c) the terms relating to the allotment of shares in the transferee company;
 - (d) the date from which the holding of shares in the 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 a transferor company are to be treated for accounting purposes as being those of the transferee company;
 - (f) any rights or restrictions attaching to shares or other securities in the transferee company to be allotted under the scheme to the holders of shares or other securities in a transferor company to which any special rights or restrictions attach, or the measures proposed concerning them;
 - (g) any amount of benefit paid or given or intended to be paid or given—
 - (i) to any of the experts referred to in section 909 (expert’s report), or
 - (ii) to any director of a merging company,and the consideration for the payment of benefit.
- (3) The requirements in subsection (2)(b), (c) and (d) are subject to section 915 (circumstances in which certain particulars not required).

906 Publication of draft terms (merger)

- (1) The directors of each of the merging companies must deliver a copy of the draft terms to the registrar.
- (2) The registrar must publish in the Gazette notice of receipt by him from that company of a copy of the draft terms.
- (3) That notice must be published at least one month before the date of any meeting of that company summoned for the purpose of approving the scheme.

907 Approval of members of merging companies

- (1) The scheme must be approved by a majority in number, representing 75% in value, of each class of members of each of the merging companies, present and voting either in person or by proxy at a meeting.

- (2) This requirement is subject to sections 916, 917 and 918 (circumstances in which meetings of members not required).

908 Directors' explanatory report (merger)

- (1) The directors of each of the merging companies must draw up and adopt a report.
- (2) The report must consist of—
- (a) the statement required by section 897 (statement explaining effect of compromise or arrangement), and
 - (b) insofar as that statement does not deal with 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
 - (ii) specifying any special valuation difficulties.
- (3) The requirement in this section is subject to section 915 (circumstances in which reports not required).

909 Expert's report (merger)

- (1) An expert's report must be drawn up on behalf of each of the merging companies.
- (2) The report required is a written report on the draft terms to the members of the company.
- (3) The court may on the joint application of all the merging companies approve the appointment of a joint expert to draw up a single report on behalf of all those companies.

If no such appointment is made, there must be a separate expert's report to the members of each merging company drawn up by a separate expert appointed on behalf of that company.

- (4) The expert must be a person who—
- (a) is eligible for appointment as a statutory auditor (see section 1212), and
 - (b) meets the independence requirement in section 936.
- (5) The expert's report must—
- (a) indicate the method or methods used to arrive at the share exchange ratio;
 - (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 that have arisen;
 - (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 (see section 935), state that it appeared to him reasonable to arrange for it to be so made or to accept a valuation so made.
- (6) The expert (or each of them) has—

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- (a) the right of access to all such documents of all the merging companies, and
- (b) the right to require from the companies' officers all such information, as he thinks necessary for the purposes of making his report.

(7) The requirement in this section is subject to section 915 (circumstances in which reports not required).

910 Supplementary accounting statement (merger)

- (1) If the last annual accounts of any of the merging companies relate to a financial year ending more than seven months before the first meeting of the company summoned for the purposes of approving the scheme, the directors of that company must prepare a supplementary accounting statement.
- (2) That statement must consist of—
 - (a) a balance sheet dealing with the state of affairs of the company as at a date not more than three months before the draft terms were adopted by the directors, and
 - (b) where the company would be required under section 399 to prepare group accounts if that date were the last day of a financial year, a consolidated balance sheet dealing with the state of affairs of the company and the undertakings that would be included in such a consolidation.
- (3) The requirements of this Act (and where relevant Article 4 of the IAS Regulation) as to the balance sheet forming part of a company's annual accounts, and the matters to be included in notes to it, apply to the balance sheet required for an accounting statement under this section, with such modifications as are necessary by reason of its being prepared otherwise than as at the last day of a financial year.
- (4) The provisions of section 414 as to the approval and signing of accounts apply to the balance sheet required for an accounting statement under this section.

911 Inspection of documents (merger)

- (1) The members of each of the merging companies must be able, during the period specified below—
 - (a) to inspect at the registered office of that company copies of the documents listed below relating to that company and every other merging company, and
 - (b) to obtain copies of those documents or any part of them on request free of charge.
- (2) The period referred to above is the period—
 - (a) beginning one month before, and
 - (b) ending on the date of,the first meeting of the members, or any class of members, of the company for the purposes of approving the scheme.
- (3) The documents referred to above are—
 - (a) the draft terms;
 - (b) the directors' explanatory report;
 - (c) the expert's report;

- (d) the company's annual accounts and reports for the last three financial years ending on or before the first meeting of the members, or any class of members, of the company summoned for the purposes of approving the scheme; and
 - (e) any supplementary accounting statement required by section 910.
- (4) The requirements of subsection (3)(b) and (c) are subject to section 915 (circumstances in which reports not required).

912 Approval of articles of new transferee company (merger)

In the case of a merger by formation of a new company, the articles of the transferee company, or a draft of them, must be approved by ordinary resolution of the transferor company or, as the case may be, each of the transferor companies.

913 Protection of holders of securities to which special rights attached (merger)

- (1) The scheme must provide that where any securities of a transferor company (other than shares) to which special rights are attached are held by a person otherwise than as a member or creditor of the company, that person is to receive rights in the transferee company of equivalent value.
- (2) Subsection (1) does not apply if—
- (a) the holder has agreed otherwise, or
 - (b) the holder is, or under the scheme is to be, entitled to have the securities purchased by the transferee company on terms that the court considers reasonable.

914 No allotment of shares to transferor company or its nominee (merger)

The scheme must not provide for shares in the transferee company to be allotted to a transferor company (or its nominee) in respect of shares in the transferor company held by it (or its nominee).

Exceptions where shares of transferor company held by transferee company

915 Circumstances in which certain particulars and reports not required (merger)

- (1) This section applies in the case of a merger by absorption where all of the relevant securities of the transferor company (or, if there is more than one transferor company, of each of them) are held by or on behalf of the transferee company.
- (2) The draft terms of the scheme need not give the particulars mentioned in section 905(2) (b), (c) or (d) (particulars relating to allotment of shares to members of transferor company).
- (3) Section 897 (explanatory statement to be circulated or made available) does not apply.
- (4) The requirements of the following sections do not apply—
- section 908 (directors' explanatory report),
 - section 909 (expert's report).

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- (5) The requirements of section 911 (inspection of documents) so far as relating to any document required to be drawn up under the provisions mentioned in subsection (4) above do not apply.
- (6) In this section “relevant securities”, in relation to a company, means shares or other securities carrying the right to vote at general meetings of the company.

916 Circumstances in which meeting of members of transferee company not required (merger)

- (1) This section applies in the case of a merger by absorption where 90% or more (but not all) of the relevant securities of the transferor company (or, if there is more than one transferor company, of each of them) are held by or on behalf of the transferee company.
- (2) It is not necessary for the scheme to be approved at a meeting of the members, or any class of members, of the transferee company if the court is satisfied that the following conditions have been complied with.
- (3) The first condition is that publication of notice of receipt of the draft terms by the registrar took place in respect of the transferee company at least one month before the date of the first meeting of members, or any class of members, of the transferor company summoned for the purpose of agreeing to the scheme.
- (4) The second condition is that the members of the transferee company were able during the period beginning one month before, and ending on, that date—
 - (a) to inspect at the registered office of the transferee company copies of the documents listed in section 911(3)(a), (d) and (e) relating to that company and the transferor company (or, if there is more than one transferor company, each of them), and
 - (b) to obtain copies of those documents or any part of them on request free of charge.
- (5) The third condition is that—
 - (a) one or more members of the transferee company, who together held not less than 5% of the paid-up capital of the company which carried the right to vote at general meetings of the company (excluding any shares in the company held as treasury shares) would have been able, during that period, to require a meeting of each class of members to be called for the purpose of deciding whether or not to agree to the scheme, and
 - (b) no such requirement was made.
- (6) In this section “relevant securities”, in relation to a company, means shares or other securities carrying the right to vote at general meetings of the company.

917 Circumstances in which no meetings required (merger)

- (1) This section applies in the case of a merger by absorption where all of the relevant securities of the transferor company (or, if there is more than one transferor company, of each of them) are held by or on behalf of the transferee company.

- (2) It is not necessary for the scheme to be approved at a meeting of the members, or any class of members, of any of the merging companies if the court is satisfied that the following conditions have been complied with.
- (3) The first condition is that publication of notice of receipt of the draft terms by the registrar took place in respect of all the merging companies at least one month before the date of the court's order.
- (4) The second condition is that the members of the transferee company were able during the period beginning one month before, and ending on, that date—
 - (a) to inspect at the registered office of that company copies of the documents listed in section 911(3) relating to that company and the transferor company (or, if there is more than one transferor company, each of them), and
 - (b) to obtain copies of those documents or any part of them on request free of charge.
- (5) The third condition is that—
 - (a) one or more members of the transferee company, who together held not less than 5% of the paid-up capital of the company which carried the right to vote at general meetings of the company (excluding any shares in the company held as treasury shares) would have been able, during that period, to require a meeting of each class of members to be called for the purpose of deciding whether or not to agree to the scheme, and
 - (b) no such requirement was made.
- (6) In this section “relevant securities”, in relation to a company, means shares or other securities carrying the right to vote at general meetings of the company.

Other exceptions

918 Other circumstances in which meeting of members of transferee company not required (merger)

- (1) In the case of any merger by absorption, it is not necessary for the scheme to be approved by the members of the transferee company if the court is satisfied that the following conditions have been complied with.
- (2) The first condition is that publication of notice of receipt of the draft terms by the registrar took place in respect of that company at least one month before the date of the first meeting of members, or any class of members, of the transferor company (or, if there is more than one transferor company, any of them) summoned for the purposes of agreeing to the scheme.
- (3) The second condition is that the members of that company were able during the period beginning one month before, and ending on, the date of any such meeting—
 - (a) to inspect at the registered office of that company copies of the documents specified in section 911(3) relating to that company and the transferor company (or, if there is more than one transferor company, each of them), and
 - (b) to obtain copies of those documents or any part of them on request free of charge.
- (4) The third condition is that—

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- (a) one or more members of that company, who together held not less than 5% of the paid-up capital of the company which carried the right to vote at general meetings of the company (excluding any shares in the company held as treasury shares) would have been able, during that period, to require a meeting of each class of members to be called for the purpose of deciding whether or not to agree to the scheme, and
- (b) no such requirement was made.