

## EXPLANATORY TEXT

### DRAFT COMPANIES (REPORTING REQUIREMENTS IN MERGERS AND DIVISIONS) REGULATIONS 2011

### IMPLEMENTATION OF DIRECTIVE AMENDING THE THIRD AND SIXTH DIRECTIVES

#### SUMMARY

1. The Department has published on its website for information and comment draft regulations to implement EU Directive 2009/109/EC (“the amending directive”), which makes various deregulatory amendments to four earlier EU Directives: the Second, Third and Sixth Company Law Directives, and the Cross-Border Merger Directive.
2. The purpose of the following note is to give a brief explanation of the content of the amending directive and the draft Regulations. As well as changes that have to be implemented, there are a number of relatively minor issues on which there are Member State options, and the note explains our approach to these.
3. The deadline for implementing the amending directive is 30 June 2011. If you have any comments or questions on the draft regulations, please send them by 13 March 2011 to

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#### INTRODUCTION

4. EU Directive 2009/109/EC<sup>1</sup> (“the amending directive”) is principally aimed at simplifying the processes involved in the Third Company Law Directive<sup>2</sup> on public company mergers, and the Sixth Company Law

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<sup>1</sup> Directive 2009/109/EC of 16 September 2009,  
[eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:259:0014:01:EN:HTML](http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:259:0014:01:EN:HTML)

<sup>2</sup> Directive 78/855/EEC of 9 October 1978,  
[eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31978L0855:EN:NOT](http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31978L0855:EN:NOT)

Directive<sup>3</sup> dealing with divisions of public companies. It also contains a small number of amendments to the Second Company Law Directive<sup>4</sup> on formation and capital of public companies, and to the Cross-Border Mergers Directive<sup>5</sup>.

5. The changes made by the amending directive fall into three broad categories:

- Enabling companies to take advantage of new technology
- Removing over-regulation
- Protecting creditors.

6. The draft regulations propose to make amendments to Parts 17 (A company's share capital) and 27 (Mergers and divisions of public companies) of the Companies Act 2006, and to the Cross-Border Merger Regulations<sup>6</sup>.

7. Most of the changes are necessary consequences of the amending directive. There are a number of detailed Member State options, and our proposed approach is where possible to take advantage of those that reduce the administrative burden on merging or dividing companies.

8. To make it easier to see the impact of the draft Regulations on existing law, the annex contains versions of Chapter 6 of Parts 17 and Part 27 of the Companies Act 2006 showing the changes.

## **NEW TECHNOLOGY**

9. The amending directive changes the Third, Sixth and Cross-Border Merger Directives to enable companies to take advantage of new technology in two broad ways:

- certain requirements to send out or publish information, or to make it available at the company's registered office, can now be met by publishing the information on a website, and
- certain obligations to send out information can in certain circumstances now be met by email.

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<sup>3</sup> Directive 82/891/EEC of 17 December 1982,  
[eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31982L0891:EN:NOT](http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31982L0891:EN:NOT)

<sup>4</sup> Directive 77/91/EEC of 13 December 1976,  
[eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31977L0091:EN:NOT](http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31977L0091:EN:NOT)

<sup>5</sup> Directive 2005/56/EC of 26 October 2005,  
[eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32005L0056:EN:NOT](http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32005L0056:EN:NOT)

<sup>6</sup> The Companies (Cross-Border Mergers) Regulations 2007 (SI 2007/2974),  
[www.legislation.gov.uk/uksi/2007/2974/contents/made](http://www.legislation.gov.uk/uksi/2007/2974/contents/made)

<b>New technology</b>				
	Affected directive			
	2nd	3rd	6th	CBM
Article(s) in amending directive		2.2, 2.3, 2.5, 2.9	3.1, 3.2, 3.3, 3.5	4.1
Article(s) in affected directive		6, 8, 11	4, 6, 7, 9	6
Regulation(s) in draft Regulations		4, 5, 9, 10, 28	17, 18, 22, 23, 28	

### **Member state options**

The amending directive provides three types of Member States options in relation to the use of websites for publication:

- a) to require the publication to be on a central website rather than on the company's website. The Department is not proposing to take up these options.
- b) to require publication on a website to be continued for a period after the general meeting to which it relates. The Department is not proposing to take up these options
- c) to make provisions on the consequences of disruption of the website. The Department is proposing to take advantage of these options to make provisions similar to those relating to existing UK website requirements in paragraph 14(2) of Schedule 5 to the Companies Act 2006. This is reflected in regulation 28.

### **REMOVING OVER-REGULATION**

10. The amending directive makes many detailed changes to the requirements that have to be met with the aim of removing unnecessary burdens. Very broadly it expands the range of circumstances in which a company is able to dispense with certain of the hoops that it has to go through for a merger or division. These hoops include the requirements for: an experts' report on the restructuring, a statement by directors justifying the restructuring, an update of the company's accounts, approval by general meeting, and updates of any changes since the restructuring was proposed.

11. The directive strengthens the obligation on Member States to provide companies with relief from requirements in two particular scenarios:

- when a holding company with 90% or more of the shares in a subsidiary that is merging offers all the minority shareholders the right to be bought out as part of the restructuring, and
- when a company is dividing into two new companies and the shares in the new companies are being distributed to all shareholders in the original company in proportion to their original holdings.

## Experts' report

12. The amending directive makes minor deregulatory changes in the circumstances under which a company is required to have an expert's report produced.

Experts' report				
	2 <sup>nd</sup>	3 <sup>rd</sup>	6 <sup>th</sup>	CBM
Article(s) in amending directive	1.2, 1.3	2.7	3.4, 3.8	4.2
Article(s) in affected directive	10,27	23	8, 22	15
Regulation(s) in draft Regulations	2	7, 16	20	30-32

## Member state options

13. The amendment of the Second Directive enables Member States to waive the requirement for an experts' report on non-cash considerations in formation of a new company if that new company was formed by a Third Directive merger or a Sixth Directive division. The Department proposes to take advantage of this option, and this is reflected in the draft Regulations.

14. The amendment of the Second Directive also enables Member States to waive the requirement for an experts' report on allotment of new shares for non-cash consideration if an experts' report is already being drawn up under implementation of the Third or Sixth directive in relation to the same operation. The Department proposes to take advantage of this option, and this is reflected in the draft Regulations.

## Directors' explanatory report

15. The amending directive makes minor deregulatory changes in the circumstances under which directors are required to produce an explanatory report.

Directors' explanatory report				
	2 <sup>nd</sup>	3 <sup>rd</sup>	6 <sup>th</sup>	CBM
Article(s) in amending directive		2.4	3.4	
Article(s) in affected directive		9	8	
Regulation(s) in draft Regulations		6	19	

## Member state options

16. The amending directive enables Member States to provide an exemption from producing a directors' explanatory report if all members of the company unanimously so agree. The Department proposes to take advantage of this option, and this is reflected in the draft Regulations.

## Supplementary accounting statement

17. The amending directive makes minor deregulatory changes in the circumstances under which a company has to produce a supplementary accounting statement, broadly relieving them of the obligation if they have produced audited half-yearly accounts.

Supplementary accounting statement				
	2 <sup>nd</sup>	3 <sup>rd</sup>	6 <sup>th</sup>	CBM
Article(s) in amending directive		2.5	3.5	
Article(s) in affected directive		11	9	
Regulation(s) in draft Regulations		8	21	

## Member state options

18. The amending directive enables Member States to provide an exemption from producing a supplementary accounting statement if all members of the company unanimously so agree. The Department proposes to take advantage of this option, and this is reflected in the draft Regulations.

## General meetings

19. The amending directive makes minor deregulatory changes in the circumstances under which a company has to hold a general meeting to approve the merger or division.

General meetings				
	2 <sup>nd</sup>	3 <sup>rd</sup>	6 <sup>th</sup>	CBM
Article(s) in amending directive		2.9, 2.10	3.7	
Article(s) in affected directive		25, 27	20	
Regulation(s) in draft Regulations		13, 14, 15	25, 26	

## Report on material changes

20. The amending directive makes minor deregulatory changes in the circumstances under which directors have to provide an update on any material changes that have taken place since the draft terms of the merger or division were published.

Report on material changes				
	2 <sup>nd</sup>	3 <sup>rd</sup>	6 <sup>th</sup>	CBM
Article(s) in amending directive		2.4	check	
Article(s) in affected directive		9		
Regulation(s) in draft Regulations		11	24	

### Member state options

21. The amending directive enables Member States to provide an exemption from producing a report on material changes if all members of the company unanimously so agree. The Department proposes to take advantage of this option, and this is reflected in the draft Regulations.

### Right to sell out

22. The amending directive changes the Third Directive so that Member States must provide a lighter regime when a holding company is merging with a subsidiary of which it owns 90% or more of the shares, if the holding company offers all the minority shareholders in the subsidiary the right to be bought out as part of the restructuring. This was formerly a Member State option.

Right to sell out				
	2nd	3 <sup>rd</sup>	6th	CBM
Article(s) in amending directive		2.11		
Article(s) in affected directive		28		
Regulation(s) in draft Regulations		12		

### Member state options

23. There is a Member State option not to provide the option of this lighter regime if the Member State's laws already enable a company to buy out minority shareholders, in the absence of a public takeover offer. As UK company law does not provide such a general buy-out right, this option is not relevant here.

### Proportional rights

24. The amending directive requires Member States to provide a lighter regime for divisions when the division is into two or more new companies and all of the shares in the new companies are being distributed to all shareholders in the original company in proportion to their original holdings. This was formerly a Member State option.

Proportional rights				
	2nd	3 <sup>rd</sup>	6th	CBM
Article(s) in amending directive			3.8	
Article(s) in affected directive			22	
Regulation(s) in draft Regulations			27	

## **CREDITOR PROTECTION**

25. The amending directive strengthens the obligation on Member States to ensure that creditors of merging or dividing companies have the right to have their position safeguarded and a method for enforcing those rights. We believe that the existing UK implementation already meets the recast requirements, and so the draft Regulations include no changes for this purpose.

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**COMPANIES ACT 2006, Part 17**

**Chapter 6**

**Public Companies: Independent Valuation of Non-Cash Consideration**

**Non-cash consideration for shares**

**593 Public company: valuation of non-cash consideration for shares**

(1) A public company must not allot shares as fully or partly paid up (as to their nominal value or any premium on them) otherwise than in cash unless—

(a) the consideration for the allotment has been independently valued in accordance with the provisions of this Chapter,

(b) the valuer's report has been made to the company during the six months immediately preceding the allotment of the shares, and

(c) a copy of the report has been sent to the proposed allottee.

(2) For this purpose the application of an amount standing to the credit of—

(a) any of a company's reserve accounts, or

(b) its profit and loss account,

in paying up (to any extent) shares allotted to members of the company, or premiums on shares so allotted, does not count as consideration for the allotment.

Accordingly, subsection (1) does not apply in that case.

(3) If a company allots shares in contravention of subsection (1) and either—

(a) the allottee has not received the valuer's report required to be sent to him, or

(b) there has been some other contravention of the requirements of this section or section 596 that the allottee knew or ought to have known amounted to a contravention,

the allottee is liable to pay the company an amount equal to the aggregate of the nominal value of the shares and the whole of any premium (or, if the case so requires, so much of that aggregate as is treated as paid up by the consideration), with interest at the appropriate rate.

(4) This section has effect subject to—

section 594 (exception to valuation requirement: arrangement with another company), and

section 595 (exception to valuation requirement: merger or division).

#### **594 Exception to valuation requirement: arrangement with another company**

(1) Section 593 (valuation of non-cash consideration) does not apply to the allotment of shares by a company (“company A”) in connection with an arrangement to which this section applies.

(2) This section applies to an arrangement for the allotment of shares in company A on terms that the whole or part of the consideration for the shares allotted is to be provided by—

(a) the transfer to that company, or

(b) the cancellation,

of all or some of the shares, or of all or some of the shares of a particular class, in another company (“company B”).

(3) It is immaterial whether the arrangement provides for the issue to company A of shares, or shares of any particular class, in company B.

(4) This section applies to an arrangement only if under the arrangement it is open to all the holders of the shares in company B (or, where the arrangement applies only to shares of a particular class, to all the holders of shares of that class) to take part in the arrangement.

(5) In determining whether that is the case, the following shall be disregarded—

- (a) shares held by or by a nominee of company A;
- (b) shares held by or by a nominee of a company which is—
  - (i) the holding company, or a subsidiary, of company A, or
  - (ii) a subsidiary of such a holding company;
- (c) shares held as treasury shares by company B.

(6) In this section—

- (a) “arrangement” means any agreement, scheme or arrangement (including an arrangement sanctioned in accordance with—
  - (i) Part 26 (arrangements and reconstructions), or
  - (ii) section 110 of the Insolvency Act 1986 (c 45) or Article 96 of the Insolvency (Northern Ireland) Order 1989 (SI 1989/2405 (NI 19)) (liquidator in winding up accepting shares as consideration for sale of company property)), and
- (b) “company”, except in reference to company A, includes any body corporate.

### **595 Exception to valuation requirement: merger or division**

(1) Section 593 (valuation of non-cash consideration) does not apply to the allotment of shares by a company ~~in connection with a proposed merger with another company~~ as part of a scheme to which Part 27 (mergers and divisions of public companies) applies if—

(a) in the case of a scheme involving a merger, an expert’s report is drawn up as required by section 909, or

(b) in the case of a scheme involving a division, an expert’s report is drawn up as required by section 924.

(2) and (3) OMIT

### **596 Non-cash consideration for shares: requirements as to valuation and report**

(1) The provisions of sections 1150 to 1153 (general provisions as to independent valuation and report) apply to the valuation and report required by section 593 (public company: valuation of non-cash consideration for shares).

(2) The valuer's report must state—

(a) the nominal value of the shares to be wholly or partly paid for by the consideration in question;

(b) the amount of any premium payable on the shares;

(c) the description of the consideration and, as respects so much of the consideration as he himself has valued, a description of that part of the consideration, the method used to value it and the date of the valuation;

(d) the extent to which the nominal value of the shares and any premium are to be treated as paid up—

(i) by the consideration;

(ii) in cash.

(3) The valuer's report must contain or be accompanied by a note by him—

(a) in the case of a valuation made by a person other than himself, that it appeared to himself reasonable to arrange for it to be so made or to accept a valuation so made,

(b) whoever made the valuation, that the method of valuation was reasonable in all the circumstances,

(c) that it appears to the valuer that there has been no material change in the value of the consideration in question since the valuation, and

(d) that, on the basis of the valuation, the value of the consideration, together with any cash by which the nominal value of the shares or any premium payable on them is to be paid up, is not less than so much of the aggregate of the nominal value and the whole of any such premium as is treated as paid up by the consideration and any such cash.

(4) Where the consideration to be valued is accepted partly in payment up of the nominal value of the shares and any premium and partly for some other consideration given by the company, section 593 and the preceding provisions of this section apply as if references to the consideration accepted by the company included the proportion of that consideration that is properly attributable to the payment up of that value and any premium.

(5) In such a case—

(a) the valuer must carry out, or arrange for, such other valuations as will enable him to determine that proportion, and

(b) his report must state what valuations have been made under this subsection and also the reason for, and method and date of, any such valuation and any other matters which may be relevant to that determination

## **COMPANIES ACT 2006 PART 27**

### **Mergers and Divisions of Public Companies**

#### **Chapter 1 Introductory**

##### **902 Application of this Part**

(1) This Part applies where—

(a) a compromise or arrangement is proposed between a public company and—

(i) its creditors or any class of them, or

(ii) its members or any class of them,

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 scheme involves—

(i) a merger (as defined in section 904), or

(ii) a division (as defined in section 919), and

(c) the consideration for the transfer (or each of the transfers) envisaged is to be shares in the transferee company (or one or more of the transferee companies) receivable by members of the transferor company (or transferor companies), with or without any cash payment to members.

(2) In this Part—

(a) a “new company” means a company formed for the purposes of, or in connection with, the scheme, and

(b) an “existing company” means a company other than one formed for the purposes of, or in connection with, the scheme.

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

##### **903 Relationship of this Part to Part 26**

(1) The court must not sanction the compromise or arrangement under Part 26 (arrangements and reconstructions) unless the relevant requirements of this Part have been complied with.

(2) The requirements applicable to a merger are specified in sections 905 to 914. Certain of those requirements, and certain general requirements of Part 26, are modified or excluded by the provisions of sections 915 to 918<sup>A</sup>.

(3) The requirements applicable to a division are specified in sections 920 to 930. Certain of those requirements, and certain general requirements of Part 26, are modified or excluded by the provisions of sections 931 to 934.

## **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.

#### **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) by registrar**

- (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.

(4) The requirements in this section are subject to section 906A (publication of draft terms on company website).

**906A Publication of draft terms on company website (merger)**

- (1) Section 906 does not apply in respect of a company if the conditions in subsections (2) to (6) are met.
- (2) The first condition is that the draft terms are made available on a website which—
  - (a) is maintained by or on behalf of the company, and
  - (b) identifies the company.

(3) The second condition is that neither access to the draft terms on the website nor the supply of a hard copy of them from the website is conditional on payment of a fee or otherwise restricted.

(4) The third condition is that the directors of the company deliver to the registrar a notice giving details of the website.

(5) The fourth condition is that the registrar publishes the notice in the Gazette at least one month before the date of any meeting of the company summoned for the purpose of approving the scheme.

(6) The fifth condition is that the draft terms remain available on the website throughout the period of one month ending with the date of any such meeting.”.

### **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), section 915A (other circumstances in which reports and inspection not required) and section 918A (agreement to dispense with reports etc).

### **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—

(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), [section 915A \(other circumstances in which reports and inspection not required\)](#) and section 918A (agreement to dispense with expert's report).

### **910 Supplementary accounting statement (merger)**

[\(1\) This section applies if—](#)

[\(a\) the last annual accounts of any of the merging companies relate to a financial year ending before the date seven months before the first meeting of the company summoned for the purposes of approving the scheme, and](#)

(b) that company has not made public a half-yearly financial report relating to a period ending on or after that date.

(1A) The directors of that company must prepare a supplementary accounting statement.

~~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.

(5) In this section “half-yearly financial report” means a report of that description required to be made public by rules under section 89A of the Financial Services and Markets Act 2000 (transparency rules).

(6) The requirement in this section is subject to section 915A (other circumstances in which reports and inspection not required) and section 918A (agreement to dispense with reports etc).

### **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“; and~~

~~(f) if no statement is required by section 910 because the company has made public a recent half-yearly financial report (see subsection (1)(b) of that section), that report.~~

(3A) The requirement in subsection (1)(a) is subject to section 911A(1) (publication of documents on company website).

(4) The requirements of subsection (3)(b) and (c) are subject to section 915 (circumstances in which reports not required) and section 918A (agreement to dispense with reports etc).

(5) Section 1150 (right to hard copy) does not apply to a document sent or supplied in accordance with subsection (1)(b) to a member who has consented to information being sent or supplied by the company by electronic means [and has not revoked that consent].

(6) Part 4 of Schedule 5 (communications by means of a website) does not apply for the purposes of subsection (1)(b) (but see section 911A(5)).

(7) The requirements in this section are subject to section 915A (other circumstances in which reports and inspection not required).

### **911A Publication of documents on company website (merger)**

(1) Section 911(1)(a) does not apply to a document if the conditions in subsections (2) to (4) are met in relation to that document.

This is subject to subsection (6).

(2) The first condition is that the document is made available on a website which—

(a) is maintained by or on behalf of the company, and

(b) identifies the company.

(3) The second condition is that access to the document on the website is not conditional on payment of a fee or otherwise restricted.

(4) The third condition is that the document remains available on the website throughout the period of one month ending with the date of any meeting of the company summoned for the purpose of approving the scheme.

(5) A person is able to obtain a copy of a document as required by section 911(1)(b) if—

(a) the conditions in subsections (2) and (3) are met in relation to that document, and

(b) the person is able, throughout the period specified in subsection (4), to obtain a hard copy of the document from the website.

(6) Where members of a company are able to obtain copies of a document only from a website as mentioned in subsection (5), section 911(1)(a) applies to that document even if the conditions in subsections (2) to (4) are met.

### **911B Report on material changes of assets of merging companies**

(1) The directors of each of the merging companies must report—

(a) to every meeting of the members, or any class of members, of that company summoned for the purpose of agreeing to the scheme, and

(b) to the directors of every other merging company,

any material changes in the property and liabilities of that company between the date when the draft terms were adopted and the date of the meeting in question.

(2) The directors of each of the other merging companies must in turn—

(a) report those matters to every meeting of the members, or any class of members, of that company summoned for the purpose of agreeing to the scheme, or

(b) send a report of those matters to every member entitled to receive notice of such a meeting.

(3) The requirement in this section is subject to section 915A (other circumstances in which reports and inspection not required) and section 918A (agreement to dispense with reports etc).

### **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 transferee company (merger)**

The scheme must not provide for any shares in the transferee company to be allotted to—

- (a) a transferor company (or its nominee) in respect of shares in the transferor company held by the transferor company itself (or its nominee); or
- (b) the transferee company (or its nominee) in respect of shares in a transferor company held by the transferee company (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).
- (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 (3) 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.

**915A Other circumstances in which reports and inspection 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) If the conditions in subsections (3) and (4) are met, the requirements of the following sections do not apply—

(a) section 908 (directors' explanatory report),

(b) section 909 (expert's report),

(c) section 910 (supplementary accounting statement),

(d) section 911 (inspection of documents), and

(e) section 911B (report on material changes of assets of merging company).

(3) The first condition is that the scheme provides that every other holder of relevant securities has the right to require the transferee company to acquire those securities.

(4) The second condition is that, if a holder of securities exercises that right, the consideration to be given for those securities is fair and reasonable.

(5) The powers of the court under section 900(2) (power to facilitate reconstruction or amalgamation) include the power to determine, or make provision for the determination of, the consideration to be given for securities acquired under this section.

(6) In this section—

“other holder” means a person who holds securities of the transferor company otherwise than on behalf of the transferee company (and does not include the transferee company itself);

“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 either subsection (3A) or subsection (3B) is satisfied.

(3A) This subsection is satisfied if 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.

(3B) This subsection is satisfied if, in a case where the conditions in section 906A are met in respect of the transferee company—

(a) publication of the notice mentioned in subsection (4) of that section took place 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, and

(b) the draft terms remained available on the website throughout the period of one month ending with that date.”. 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 subsections (4A) and (4B) are satisfied for the documents listed in the applicable paragraphs of section 911(3)(a) to (e) relating to the transferee company and the transferor company (or, if there is more than one transferor company, each of them).

(4A) This subsection is satisfied for a document if—

(a) the members of the transferee company were able during the period beginning one month before, and ending on, the date mentioned in subsection (3) to inspect that document at the registered office of that company, or

(b) the conditions in section 911A(2) to (4) have been met in relation that document.

(4B) This subsection is satisfied for a document if the members of the transferee company were able during the period beginning one month before, and ending on, that date to obtain copies of that document or any part of it on request free of charge.

(4C) For the purposes of subsection (4B)—

(a) section 911A(5) applies as it applies for the purposes of section 911(1)(b), and

(b) Part 4 of Schedule 5 (communications by means of a website) does not apply.”.

(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. (3) The first condition is that either subsection (3A) or subsection (3B) is satisfied.

(3A) This subsection is satisfied if 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.

(3B) This subsection is satisfied if, in a case where the conditions in section 906A are met in respect of each of the merging companies—

(a) publication of the notice mentioned in subsection (4) of that section took place at least one month before the date of the court's order, and

(b) the draft terms remained available on the website throughout the period of one month ending with that date.

(4) The second condition is that subsections (4A) and (4B) are satisfied for the documents listed in the applicable paragraphs of section 911(3)(a) to (e) relating to the transferee company and the transferor company (or, if there is more than one transferor company, each of them).

(4A) This subsection is satisfied for a document if—

(a) the members of the transferee company were able during the period beginning one month before, and ending on, the date mentioned in subsection (3) to inspect that document at the registered office of that company, or

(b) the conditions in section 911A(2) to (4) have been met in relation that document.

(4B) This subsection is satisfied for a document if the members of the transferee company were able during the period beginning one month before, and ending on, that date to obtain copies of that document or any part of it on request free of charge.

(4C) For the purposes of subsection (4B)—

(a) section 911A(5) applies as it applies for the purposes of section 911(1)(b), and

(b) Part 4 of Schedule 5 (communications by means of a website) does not apply.

~~(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.~~

~~(2) The first condition is that either subsection (2A) or subsection (2B) is satisfied.~~

(2A) This subsection is satisfied if 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 (or, if there is more than one transferor company, any of them) summoned for the purposes of agreeing to the scheme.

(2B) This subsection is satisfied if, in a case where the conditions in section 906A are met in respect of the transferee company—

- (a) publication of the notice mentioned in subsection (4) of that section took place 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, and
- (b) the draft terms remained available on the website throughout the period of one month ending with that date.

~~(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.~~

(3) The second condition is that subsections (3A) and (3B) are satisfied for the documents listed in the applicable paragraphs of section 911(3) relating to the transferee company and the transferor company (or, if there is more than one transferor company, each of them).

(3A) This subsection is satisfied for a document if—

- (a) the members of the transferee company were able during the period beginning one month before, and ending on, the date of any such meeting as is mentioned in subsection (2) to inspect that document at the registered office of that company, or
- (b) the conditions in section 911A(2) to (4) have been met in relation that document.

(3B) This subsection is satisfied for a document if the members of the transferee company were able during the period beginning one month before, and ending on, the date of any such meeting to obtain copies of that document or any part of it on request free of charge.

(3C) For the purposes of subsection (3B)—

- (a) section 911A(5) applies as it applies for the purposes of section 911(1)(b), and
- (b) Part 4 of Schedule 5 (communications by means of a website) does not apply.

(4) The third condition is that—

- (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.

**918A Agreement to dispense with ~~expert's report reports etc~~ (merger)**

(1) If all members holding shares in, and all persons holding other securities of, ~~the companies involved in the merger~~the merging companies, being shares or securities that carry a right to vote in general meetings of the company in question, so agree, ~~the requirement of section 909 (expert's report) does not apply.~~ the following requirements do not apply.

(1A) The requirements that may be dispensed with under this section are—

(a) the requirements of—

(i) section 908 (directors' explanatory report),

(ii) section 909 (expert's report),

(iii) section 910 (supplementary accounting statement), and

(iv) section 911B (report on material changes of assets of merging company);  
and

(b) 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 paragraph (a)(i), (ii) or (iii) above.”.

(2) For the purposes of this section—

(a) the members, or holders of other securities, of a company, and

(b) whether shares or other securities carry a right to vote in general meetings of the company,

are determined as at the date of the application to the court under section 896.

**Chapter 3**

**Division**

**Introductory**

**919 Divisions and companies involved in a division**

(1) The scheme involves a division where under the scheme the undertaking, property and liabilities of the company in respect of which the compromise or arrangement is proposed are to be divided among and transferred to two or more companies each of which is either—

(a) an existing public company, or

(b) a new company (whether or not a public company).

(2) References in this Part to the companies involved in the division are to the transferor company and any existing transferee companies.

**Requirements to be complied with in case of division**

**920 Draft terms of scheme (division)**

- (1) A draft of the proposed terms of the scheme must be drawn up and adopted by the directors of each of the companies involved in the division.
- (2) The draft terms must give particulars of at least the following matters—
  - (a) in respect of the transferor company and each 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 a transferee company to be allotted to members of the 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 a 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 the transferor company are to be treated for accounting purposes as being those of a transferee company;
  - (f) any rights or restrictions attaching to shares or other securities in a transferee company to be allotted under the scheme to the holders of shares or other securities in the 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 924 (expert's report), or
    - (ii) to any director of a company involved in the division,and the consideration for the payment of benefit.
- (3) The draft terms must also—
  - (a) give particulars of the property and liabilities to be transferred (to the extent that 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 that the transferor company has acquired 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.

**921 Publication of draft terms (division) by registrar**

(1) The directors of each company involved in the division 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 purposes of approving the scheme.

(4) The requirements in this section are subject to section 921A (publication of draft terms on company website) and section 934 (power of court to exclude certain requirements).

**921A Publication of draft terms on company website (division)**

(1) Section 921 does not apply in respect of a company if the conditions in subsections (2) to (6) are met.

(2) The first condition is that the draft terms are made available on a website which—  
(a) is maintained by or on behalf of the company, and

(b) identifies the company.

(3) The second condition is that neither access to the draft terms on the website nor the supply of a hard copy of them from the website is conditional on payment of a fee or otherwise restricted.

(4) The third condition is that the directors of the company deliver to the registrar a notice giving details of the website.

(5) The fourth condition is that the registrar publishes the notice in the Gazette at least one month before the date of any meeting of the company summoned for the purpose of approving the scheme.

(6) The fifth condition is that the draft terms remain available on the website throughout the period of one month ending with the date of any such meeting

**922 Approval of members of companies involved in the division**

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

(2) This requirement is subject to sections 931 and 932 (circumstances in which meeting of members not required).

### **923 Directors' explanatory report (division)**

- (1) The directors of the transferor and each existing transferee company 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 for the criteria on 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.
- (3) The report must also state—
  - (a) whether a report has been made to any transferee company under section 593 (valuation of non-cash consideration for shares), and
  - (b) if so, whether that report has been delivered to the registrar of companies.
- (4) The requirement in this section is subject to section 933 (agreement to dispense with reports etc) and section 933A (certain requirements excluded where shareholders given proportional rights).

### **924 Expert's report (division)**

- (1) An expert's report must be drawn up on behalf of each company involved in the division.
- (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 the companies involved in the division 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 company involved in the division 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—
  - (a) the right of access to all such documents of the companies involved in the division, 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 933 (agreement to dispense with reports etc) and section 933A (certain requirements excluded where shareholders given proportional rights).

### **925 Supplementary accounting statement (division)**

- (1) This section applies if—
  - (a) the last annual accounts of a company involved in the division relate to a financial year ending before the date seven months before the first meeting of the company summoned for the purposes of approving the scheme, and
  - (b) that company has not made public a half-yearly financial report relating to a period ending on or after that date.
- ~~(1A) The directors of that company must prepare a supplementary accounting statement. If the last annual accounts of a company involved in the division 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.

“(4A) In this section “half-yearly financial report” means a report of that description required to be made public by rules under section 89A of the Financial Services and Markets Act 2000 (transparency rules).”.

- (5) The requirement in this section is subject to section 933 (agreement to dispense with reports etc) and section 933A (certain requirements excluded where shareholders given proportional rights).

### **926 Inspection of documents (division)**

(1) The members of each company involved in the division 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 company involved in the division, 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 925); and~~

~~(f) if no statement is required by section 925 because the company has made public a recent half-yearly financial report (see subsection (1)(b) of that section), that report.~~

(3A) The requirement in subsection (1)(a) is subject to section 926A(1) (publication of documents on company website).

(4) The requirements in subsection (3)(b), (c) and (e) are subject to section 933 (agreement to dispense with reports etc), section 933A (certain requirements excluded where shareholders given proportional rights) and section 934 (power of court to exclude certain requirements).

~~(5) Section 1150 (right to hard copy) does not apply to a document sent or supplied in accordance with subsection (1)(b) to a member who has consented to information being sent or supplied by the company by electronic means and has not revoked that consent.~~

~~(6) Part 4 of Schedule 5 (communications by means of a website) does not apply for the purposes of subsection (1)(b) (but see section 926A(5)).~~

### **926A Publication of documents on company website (division)**

~~(1) Section 926(1)(a) does not apply to a document if the conditions in subsections (2) to (4) are met in relation to that document.~~

~~This is subject to subsection (6).~~

~~(2) The first condition is that the document is made available on a website which—~~

~~(a) is maintained by or on behalf of the company, and~~

~~(b) identifies the company.~~

~~(3) The second condition is that access to the document on the website is not conditional on payment of a fee or otherwise restricted.~~

~~(4) The third condition is that the document remains available on the website throughout the period of one month ending with the date of any meeting of the company summoned for the purpose of approving the scheme.~~

~~(5) A person is able to obtain a copy of a document as required by section 926(1)(b) if—~~

(a) the conditions in subsections (2) and (3) are met in relation to that document, and  
(b) the person is able, throughout the period specified in subsection (4), to obtain a hard copy of the document from the website.

(6) Where members of a company are able to obtain copies of a document only from a website as mentioned in subsection (5), section 926(1)(a) applies to that document even if the conditions in subsections (2) to (4) are met.

### **927 Report on material changes of assets of transferor company (division)**

(1) The directors of the transferor company must report—

(a) to every meeting of the members, or any class of members, of that company summoned for the purpose of agreeing to the scheme, and

(b) to the directors of each existing 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.

(2) The directors of each existing transferee company must in turn—

(a) report those matters to every meeting of the members, or any class of members, of that company summoned for the purpose of agreeing to the scheme, or

(b) send a report of those matters to every member entitled to receive notice of such a meeting.

(3) The requirement in this section is subject to section 933 (agreement to dispense with reports etc) and section 933A (certain requirements excluded where shareholders given proportional rights).

### **928 Approval of articles of new transferee company (division)**

The articles of every new transferee company, or a draft of them, must be approved by ordinary resolution of the transferor company.

### **929 Protection of holders of securities to which special rights attached (division)**

(1) The scheme must provide that where any securities of the 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 a 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 a transferee company on terms that the court considers reasonable.

**930 No allotment of shares to transferor company or to transferee company (division)**

The scheme must not provide for any shares in a transferee company to be allotted to—

- (a) the transferor company (or its nominee) in respect of shares in the transferor company held by the transferor company itself (or its nominee); or
- (b) a transferee company (or its nominee) in respect of shares in the transferor company held by the transferee company (or its nominee).

**Exceptions where shares of transferor company held by transferee company**

**931 Circumstances in which meeting of members of transferor company not required (division)**

(1) This section applies in the case of a division where all of the shares or other securities of the transferor company carrying the right to vote at general meetings of the company are held by or on behalf of one or more existing transferee companies.

(2) It is not necessary for the scheme to be approved by a meeting of the members, or any class of members, of the transferor 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 all the companies involved in the division at least one month before the date of the court's order(3) The first condition is that either subsection (3A) or subsection (3B) is satisfied.

(3A) This subsection is satisfied if publication of notice of receipt of the draft terms by the registrar took place in respect of all the companies involved in the division at least one month before the date of the court's order.

(3B) This subsection is satisfied if, in a case where the conditions in section 921A are met in respect of each of the companies involved in the division—

(a) publication of the notice mentioned in subsection (4) of that section took place at least one month before the date of the court's order, and

(b) the draft terms remained available on the website throughout the period of one month ending with that date.

~~(4) The second condition is that the members of every company involved in the division were able during the period beginning one month before, and ending on, that date—~~

~~(a) to inspect at the registered office of their company copies of the documents listed in section 926(3) relating to every company involved in the division, and~~

~~(b) to obtain copies of those documents or any part of them on request free of charge.~~

(4) The second condition is that subsections (4A) and (4B) are satisfied for the documents listed in the applicable paragraphs of section 926(3) relating to every company involved in the division.

(4A) This subsection is satisfied for a document if—

(a) the members of every company involved in the division were able during the period beginning one month before, and ending on, the date mentioned in subsection (3) to inspect that document at the registered office of their company, or

(b) the conditions in section 926A(2) to (4) have been met in relation that document.

(4B) This subsection is satisfied for a document if the members of every company involved in the division were able during the period beginning one month before, and ending on, that date to obtain copies of that document or any part of it on request free of charge.

(4C) For the purposes of subsection (4B)—

(a) section 926A(5) applies as it applies for the purposes of section 926(1)(b), and

(b) Part 4 of Schedule 5 (communications by means of a website) does not apply.

~~(5) The third condition is that—~~

~~(a) one or more members of the transferor company, who together held not less than 5% of the paid-up capital 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) The ~~fourth~~third condition is that the directors of the transferor company have sent—

(a) to every member who would have been entitled to receive notice of a meeting to agree to the scheme (had any such meeting been called), and

(b) to the directors of every existing transferee company,

a report of any material change in the property and liabilities of the transferor company between the date when the terms were adopted by the directors and the date one month before the date of the court's order.

### **Other exceptions**

#### **932 Circumstances in which meeting of members of transferee company not required (division)**

(1) In the case of a division, it is not necessary for the scheme to be approved by the members of a transferee company if the court is satisfied that the following conditions have been complied with in relation to that company.

~~(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 of the transferor company summoned for the purposes of agreeing to the scheme.~~

~~(2) The first condition is that either subsection (2A) or subsection (2B) is satisfied.~~

~~(2A) This subsection is satisfied if 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 of the transferor company summoned for the purposes of agreeing to the scheme.~~

~~(2B) This subsection is satisfied if, in a case where the conditions in section 921A are met in respect of the transferee company—~~

~~(a) publication of the notice mentioned in subsection (4) of that section took place at least one month before the date of the first meeting of members of the transferor company summoned for the purposes of agreeing to the scheme, and~~

~~(b) the draft terms remained available on the website throughout the period of one month ending with that date.~~

~~(3) The second condition is that subsections (3A) and (3B) are satisfied for the documents listed in the applicable paragraphs of section 926(3) relating to the transferee company and every other company involved in the division.~~

~~(3A) This subsection is satisfied for a document if—~~

~~(a) the members of the transferee company were able during the period beginning one month before, and ending on, the date of the meeting mentioned in subsection (2) to inspect that document at the registered office of that company, or~~

~~(b) the conditions in section 926A(2) to (4) have been met in relation that document.~~

~~(3B) This subsection is satisfied for a document if the members of the transferee company were able during the period beginning one month before, and ending on, that date to obtain copies of that document or any part of it on request free of charge.~~

~~(3C) For the purposes of subsection (3B)—~~

~~(a) section 926A(5) applies as it applies for the purposes of section 926(1)(b), and~~

~~(b) Part 4 of Schedule 5 (communications by means of a website) does not apply.~~

~~The second condition is that the members of that 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 specified in section 926(3) relating to that company and every other company involved in the division, and~~

~~(b) to obtain copies of those documents or any part of them on request free of charge.~~

(4) The third condition is that—

(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.

(5) The first and second conditions above are subject to section 934 (power of court to exclude certain requirements).

### **933 Agreement to dispense with reports etc (division)**

(1) If all members holding shares in, and all persons holding other securities of, the companies involved in the division, being shares or securities that carry a right to vote in general meetings of the company in question, so agree, the following requirements do not apply.

(2) The requirements that may be dispensed with under this section are—

(a) the requirements of—

(i) section 923 (directors' explanatory report),

(ii) section 924 (expert's report),

(iii) section 925 (supplementary accounting statement), and

(iv) section 927 (report on material changes in assets of transferor company); and

(b) the requirements of section 926 (inspection of documents) so far as relating to any document required to be drawn up under the provisions mentioned in paragraph (a)(i), (ii) or (iii) above.

(3) For the purposes of this section—

(a) the members, or holders of other securities, of a company, and

(b) whether shares or other securities carry a right to vote in general meetings of the company,

are determined as at the date of the application to the court under section 896.

### **933A Certain requirements excluded where shareholders given proportional rights (division)**

**(1) This section applies in the case of a division where each of the transferee companies is a new company.**

(2) If all the shares in each of the transferee companies are to be allotted to the members of the transferor company in proportion to their rights in the allotted share capital of the transferor company, the following requirements do not apply.

(3) The requirements which do not apply are—

(a) the requirements of—

(i) section 923 (directors' explanatory report),

(ii) section 924 (expert's report),

(iii) section 925 (supplementary accounting statement), and

(iv) section 927 (report on material changes in assets of transferor company); and

(b) the requirements of section 926 (inspection of documents) so far as relating to any document required to be drawn up under the provisions mentioned in paragraph

(a)(i), (ii) or (iii) above.

### **934 Power of court to exclude certain requirements (division)**

(1) In the case of a division, the court may by order direct that—

(a) in relation to any company involved in the division, the requirements of—

(i) section 921 (publication of draft terms), and

(ii) section 926 (inspection of documents),

do not apply, and

(b) in relation to an existing transferee company, section 932 (circumstances in which meeting of members of transferee company not required) has effect with the omission of the first and second conditions specified in that section,

if the court is satisfied that the following conditions will be fulfilled in relation to that company.

(2) The first condition is that the members of that company will have received, or will have been able to obtain free of charge, copies of the documents listed in section 926—

(a) in time to examine them before the date of the first meeting of the members, or any class of members, of that company summoned for the purposes of agreeing to the scheme, or

(b) in the case of an existing transferee company where in the circumstances described in section 932 no meeting is held, in time to require a meeting as mentioned in subsection (4) of that section.

(3) The second condition is that the creditors of that company will have received or will have been able to obtain free of charge copies of the draft terms in time to examine them—

(a) before the date of the first meeting of the members, or any class of members, of the company summoned for the purposes of agreeing to the scheme, or

(b) in the circumstances mentioned in subsection (2)(b) above, at the same time as the members of the company.

(4) The third condition is that no prejudice would be caused to the members or creditors of the transferor company or any transferee company by making the order in question.

## **Chapter 4**

### **Supplementary Provisions**

#### **Expert's report and related matters**

##### **935 Expert's report: valuation by another person**

(1) Where it appears to an expert—

(a) that a valuation is reasonably necessary to enable him to draw up his report, and

(b) that it is reasonable for that valuation, or part of it, to be made by (or for him to accept a valuation made by) another person who—

(i) appears to him to have the requisite knowledge and experience to make the valuation or that part of it, and

(ii) meets the independence requirement in section 936,

he may arrange for or accept such a valuation, together with a report which will enable him to make his own report under section 909 or 924.

(2) Where any valuation is made by a person other than the expert himself, the latter's report must state that fact and must 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 was valued by the other person, and the method used to value them, and specify the date of the valuation.

##### **936 Experts and valuers: independence requirement**

(1) A person meets the independence requirement for the purposes of section 909 or 924 (expert's report) or section 935 (valuation by another person) only if—

(a) he is not—

(i) an officer or employee of any of the companies concerned in the scheme, or

(ii) a partner or employee of such a person, or a partnership of which such a person is a partner;

- (b) he is not—
  - (i) an officer or employee of an associated undertaking of any of the companies concerned in the scheme, or
  - (ii) a partner or employee of such a person, or a partnership of which such a person is a partner; and
- (c) there does not exist between—
  - (i) the person or an associate of his, and
  - (ii) any of the companies concerned in the scheme or an associated undertaking of such a company,

a connection of any such description as may be specified by regulations made by the Secretary of State.

- (2) An auditor of a company is not regarded as an officer or employee of the company for this purpose.
- (3) For the purposes of this section—
  - (a) the “companies concerned in the scheme” means every transferor and existing transferee company;
  - (b) “associated undertaking”, in relation to a company, means—
    - (i) a parent undertaking or subsidiary undertaking of the company, or
    - (ii) a subsidiary undertaking of a parent undertaking of the company; and
  - (c) “associate” has the meaning given by section 937.
- (4) Regulations under this section are subject to negative resolution procedure.

**937 Experts and valuers: meaning of “associate”**

- (1) This section defines “associate” for the purposes of section 936 (experts and valuers: independence requirement).
- (2) In relation to an individual, “associate” means—
  - (a) that individual's spouse or civil partner or minor child or step-child,
  - (b) any body corporate of which that individual is a director, and
  - (c) any employee or partner of that individual.

- (3) In relation to a body corporate, “associate” means—
- (a) any body corporate of which that body is a director,
  - (b) any body corporate in the same group as that body, and
  - (c) any employee or partner of that body or of any body corporate in the same group.
- (4) In relation to a partnership that is a legal person under the law by which it is governed, “associate” means—
- (a) any body corporate of which that partnership is a director,
  - (b) any employee of or partner in that partnership, and
  - (c) any person who is an associate of a partner in that partnership.
- (5) In relation to a partnership that is not a legal person under the law by which it is governed, “associate” means any person who is an associate of any of the partners.
- (6) In this section, in relation to a limited liability partnership, for “director” read “member”.

### **Powers of the court**

#### **938 Power of court to summon meeting of members or creditors of existing transferee company**

- (1) The court may order a meeting of—
- (a) the members of an existing transferee company, or any class of them, or
  - (b) the creditors of an existing transferee company, or any class of them, to be summoned in such manner as the court directs.
- (2) An application for such an order may be made by—
- (a) the company concerned,
  - (b) a member or creditor of the company, or
  - (c) if the company is being wound up, the liquidator, or
  - (d) if the company is in administration, the administrator.
- (3) Section 323 (representation of corporations at meetings) applies to a meeting of creditors under this section as to a meeting of the company (references to a member being read as references to a creditor).

### **939 Court to fix date for transfer of undertaking etc of transferor company**

(1) Where the court sanctions the compromise or arrangement, it must—

(a) in the order sanctioning the compromise or arrangement, or

(b) in a subsequent order under section 900 (powers of court to facilitate reconstruction or amalgamation),

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 is (or are) to take place.

(2) Any such order that provides for the dissolution of the transferor company must fix the same date for the dissolution.

(3) If it is necessary for the transferor company to take steps to ensure that the undertaking, property and liabilities are fully transferred, the court must fix a date, not later than six months after the date fixed under subsection (1), by which such steps must be taken.

(4) In that case, the court may postpone the dissolution of the transferor company until that date.

(5) The court may postpone or further postpone the date fixed under subsection (3) if it is satisfied that the steps mentioned cannot be completed by the date (or latest date) fixed under that subsection.

### **Liability of transferee companies**

#### **940 Liability of transferee companies for each other's defaults**

(1) In the case of a division, each transferee company is jointly and severally liable for any liability transferred to any other transferee company under the scheme to the extent that the other company has made default in satisfying that liability.

This is subject to the following provisions.

(2) If a majority in number representing 75% 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 for the purposes of agreeing to the scheme, so agree, subsection (1) does not apply in relation to the liabilities owed to the creditors or that class of creditors.

(3) A transferee company is not liable under this section for an amount greater than the net value transferred to it under the scheme.

The “net value transferred” is 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.

### **Disruption of websites**

**940A Disregard of website failures beyond control of company**

(1) A failure to make information or a document available on the website throughout a period specified in any of the provisions mentioned in subsection (2) is to be disregarded if—

- (a) it is made available on the website for part of that period, and
- (b) the failure to make it available throughout that period is wholly attributable to circumstances that it would not be reasonable to have expected the company to prevent or avoid.

(2) The provisions referred to above are—

- (a) section 906A(6),
- (b) section 911A(4),
- (c) section 916(3B),
- (d) section 917(3B),
- (e) section 918(2B),
- (f) section 921A(6),
- (g) section 926A(4),
- (h) section 931(3B), and
- (i) section 932(2B).

**Interpretation**

**941 Meaning of “liabilities” and “property”**

In this Part—

“liabilities” includes duties;

“property” includes property, rights and powers of every description.