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DRAFT STATUTORY INSTRUMENTS

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**2009 No.**

**The Limited Liability Partnerships (Application  
of Companies Act 2006) Regulations 2009**

**PART 10**

**ARRANGEMENTS, RECONSTRUCTIONS AND CROSS-BORDER MERGERS**

**Arrangements and reconstructions**

**45.**—(1) Sections 895 to 900(1) apply to LLPs, modified so that they read as follows—

**“Application of this Part**

**895.** The provisions of this Part apply where a compromise or arrangement is proposed between an LLP and—

- (a) its creditors, or any class of them, or
- (b) its members, or any class of them.

**Court order for holding of meeting**

**896.**—(1) The court may, on an application under this section, order a meeting of the creditors or class of creditors, or of the members of the LLP or class of members (as the case may be), to be summoned in such manner as the court directs.

(2) An application under this section may be made by—

- (a) the LLP,
- (b) any creditor or member of the LLP,
- (c) if the LLP is being wound up, the liquidator, or
- (d) if the LLP is in administration, the administrator.

**Statement to be circulated or made available**

**897.**—(1) Where a meeting is summoned under section 896—

- (a) every notice summoning the meeting that is sent to a creditor or member must be accompanied by a statement complying with this section, and
- (b) every notice summoning the meeting that is given by advertisement must either—
  - (i) include such a statement, or
  - (ii) state where and how creditors or members entitled to attend the meeting may obtain copies of such a statement.

- (2) The statement must—
- (a) explain the effect of the compromise or arrangement, and
  - (b) in particular, state—
    - (i) any material interests of the members of the LLP (whether as members or as creditors of the LLP or otherwise), and
    - (ii) the effect on those interests of the compromise or arrangement, in so far as it is different from the effect on the like interests of other persons.

(3) Where the compromise or arrangement affects the rights of debenture holders of the LLP, the statement must give the like explanation as respects the trustees of any deed for securing the issue of the debentures as it is required to give as respects the LLP's members.

(4) Where a notice given by advertisement states that copies of an explanatory statement can be obtained by creditors or members entitled to attend the meeting, every such creditor or member is entitled, on making application in the manner indicated by the notice, to be provided by the LLP with a copy of the statement free of charge.

(5) If an LLP makes default in complying with any requirement of this section, an offence is committed by—

- (a) the LLP, and
- (b) every member of the LLP who is in default.

This is subject to subsection (7) below.

(6) For this purpose the following are treated as members of the LLP—

- (a) a liquidator or administrator of the LLP, and
- (b) a trustee of a deed for securing the issue of debentures of the LLP.

(7) A person is not guilty of an offence under this section if he shows that the default was due to the refusal of a member or trustee for debenture holders to supply the necessary particulars of his interests.

(8) A person guilty of an offence under this section is liable—

- (a) on conviction on indictment, to a fine;
- (b) on summary conviction, to a fine not exceeding the statutory maximum.

### **Duty of members and trustees to provide information**

**898.**—(1) It is the duty of—

- (a) any member of the LLP, and
- (b) any trustee for its debenture holders,

to give notice to the LLP of such matters relating to himself as may be necessary for the purposes of section 897 (explanatory statement to be circulated or made available).

(2) Any person who makes default in complying with this section commits an offence.

(3) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

### **Court sanction for compromise or arrangement**

**899.**—(1) If a majority in number representing 75% in value of the creditors or class of creditors or members or class of members (as the case may be), present and voting either in person or by proxy at the meeting summoned under section 896, agree a compromise or

arrangement, the court may, on an application under this section, sanction the compromise or arrangement.

- (2) An application under this section may be made by—
  - (a) the LLP,
  - (b) any creditor or member of the LLP,
  - (c) if the LLP is being wound up, the liquidator, or
  - (d) if the LLP is in administration, the administrator.
- (3) A compromise or agreement sanctioned by the court is binding on—
  - (a) all creditors or the class of creditors or on the members or class of members (as the case may be), and
  - (b) the LLP or, in the case of an LLP in the course of being wound up, the liquidator and contributories of the LLP.
- (4) The court's order has no effect until a copy of it has been delivered to the registrar.

#### **Powers of court to facilitate reconstruction or amalgamation**

**900.**—(1) This section applies where application is made to the court under section 899 to sanction a compromise or arrangement and it is shown that—

- (a) the compromise or arrangement is proposed for the purposes of, or in connection with, a scheme for the reconstruction of any LLP or LLPs, or the amalgamation of any two or more relevant bodies corporate (where one or more of them is an LLP), and
- (b) under the scheme the whole or any part of the undertaking or the property of any LLP concerned in the scheme (“a transferor LLP”) is to be transferred to another relevant body corporate (“the transferee body corporate”).

(2) The court may, either by the order sanctioning the compromise or arrangement or by a subsequent order, make provision for all or any of the following matters—

- (a) the transfer to the transferee body corporate of the whole or any part of the undertaking and of the property or liabilities of any transferor LLP;
- (b) the allotting or appropriation by the transferee body corporate of any shares, debentures, policies or other like interests in that body corporate which under the compromise or arrangement are to be allotted or appropriated by that body corporate to or for any person;
- (c) the continuation by or against the transferee body corporate of any legal proceedings pending by or against any transferor LLP;
- (d) the dissolution, without winding up, of any transferor LLP;
- (e) the provision to be made for any persons who, within such time and in such manner as the court directs, dissent from the compromise or arrangement;
- (f) such incidental, consequential and supplemental matters as are necessary to secure that the reconstruction or amalgamation is fully and effectively carried out.

(3) If an order under this section provides for the transfer of property or liabilities—

- (a) the property is by virtue of the order transferred to, and vests in, the transferee body corporate, and
- (b) the liabilities are, by virtue of the order, transferred to and become liabilities of that body corporate.

(4) The property (if the order so directs) vests freed from any charge that is by virtue of the compromise or arrangement to cease to have effect.

(5) In this section—

“relevant body corporate” means an LLP or a company;

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

“liabilities” includes duties.

(6) Every body corporate in relation to which an order is made under this section must cause a copy of the order to be delivered to the registrar within seven days after its making.

(7) If default is made in complying with subsection (6) an offence is committed by—

(a) the LLP, and every member of the LLP who is in default, and

(b) the company, and every officer of the company who is in default.

(8) A person guilty of an offence under subsection (7) is liable on summary conviction to a fine not exceeding level 3 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 3 on the standard scale.”

(2) Section 323 of the Companies Act 2006 (representation of corporations at meetings) applies to a meeting of creditors of the LLP under section 896 or 899 of that Act.

### Cross-border mergers

**46.**—(1) Parts 1 to 3 and 5 of the Companies (Cross-Border Mergers) Regulations 2007(2) apply to LLPs with the following modifications.

(2) The modifications are—

(a) for references to a company substitute references to an LLP (or other EEA body corporate);

(b) for references to a UK company, substitute references to a UK LLP;

(c) for references to an EEA company substitute references to an EEA body corporate;

(d) references to a transferor or transferee LLP include references to an EEA body corporate which is the transferor or transferee in a cross-border merger with a UK LLP;

(e) for references to the directors or officers of a company substitute references to the members of an LLP;

(f) for “share exchange ratio” substitute “the rights to be given to transferor members”;

(g) in regulation 2 (meaning of “cross-border merger”)—

(i) for paragraph (2)(f) substitute—

“(f) the consideration for the transfer is—

(i) members of the transferor LLP becoming members of the transferee LLP, and

(ii) if so agreed, a cash payment receivable by members of the transferor LLP.”,

(ii) for paragraph (3)(a) to (c) substitute—

“(a) there is one transferor LLP, of which the only member is an existing transferee LLP;”,

(iii) for paragraph (4)(c) substitute—

“(c) the consideration for the transfer is—

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(2) [S.I. 2007/2974](#), as amended by [S.I. 2008/583](#).

- (i) members of the transferor LLP becoming members of the transferee LLP, and
  - (ii) if so agreed, a cash payment receivable by members of the transferor LLP.”;
- (h) in regulation 3(1) (interpretation)—
  - (i) for the definitions of “EEA company”, “member” and “members’ report” substitute respectively—
    - ““EEA body corporate” means a body corporate governed by the law of an EEA State other than the United Kingdom;”
    - ““member”, in relation to a UK LLP, has the same meaning as in section 4 of the Limited Liability Partnerships Act 2000 (c. 12);”
    - ““members’ report” means a report prepared and adopted in accordance with regulation 8 (members’ report);”
  - (ii) omit the definitions of “the 1996 Act”, “the Appeal Tribunal”, “the CAC”, “director”, “dismissed” and “dismissal”, “employee”, “employee participation”, “employee representatives”, “share exchange ratio”, “standard rules of employee participation”, “treasury shares”, “UK employee” and “UK members of the special negotiating body”,
  - (iii) for the definition of “UK company” substitute—
    - ““UK LLP” means a limited liability partnership registered and incorporated under the Limited Liability Partnerships Act 2000 other than a limited liability partnership which is being wound up;”;
- (i) omit regulation 5 (unregistered companies);
- (j) in regulation 7 (draft terms of merger)—
  - (i) omit paragraphs (2)(c), (g) and (j) and (4),
  - (ii) for paragraph (2)(e) substitute—
    - “(e) the date from which being a member of the transferee LLP will entitle the member to participate in profits, and any special conditions affecting that entitlement;”, and
  - (iii) paragraph (2)(i) only applies where the transferee body corporate is a company;
- (k) in regulation 8 (members’ report)—
  - (i) in paragraph (2)(b)(ii), omit “or as members”, and
  - (ii) omit paragraphs (5) and (6);
- (l) in regulation 9 (independent expert’s report)—
  - (i) in paragraph (1)(b) for “90% or more (but not all) of the relevant securities” substitute “90% or more (but not all) of the voting rights at meetings of members”,
  - (ii) omit paragraph (9);
- (m) in regulation 10 (inspection of documents)—
  - (i) in paragraph (1), omit “and its employee representatives (or if there are no such representatives, the employees)”, and
  - (ii) in paragraph (2), omit “, or any class of members;”;
- (n) in regulation 11 (power of court to summon meeting of members or creditors), in paragraphs (1)(a) and (2)(b) omit “or a class of members”;
- (o) in regulation 12 (public notice of receipt of registered documents)—

- (i) omit paragraph (1)(c)(v),
- (ii) in paragraph (1)(c)(vi) omit “other”;
- (p) in regulation 13 (approval of members in meeting)—
  - (i) in paragraph (1), for “75% in value, of each class of members of the UK merging company” substitute “75% of the voting rights of the members of the UK merging LLP”;
  - (ii) omit paragraph (2),
  - (iii) in paragraph (4)(c)(i)—
    - (aa) for “the paid up capital of the company which carried the right to vote at general meetings of the company (excluding any shares held as treasury shares)” substitute “the voting rights at meetings of members of the LLP”,  
and
    - (bb) omit “each class of members”;
- (q) in regulation 16 (court approval of cross-border merger), omit paragraph (1)(f);
- (r) omit regulation 19(2)(b) and the word “other” in regulation 19(2)(c);
- (s) omit regulation 20 (obligations of transferee company with respect to articles etc);
- (t) omit regulation 21(1)(a) and in regulation 21(1)(b) the word “other”.