



# Companies Act 2006

## 2006 CHAPTER 46

### PART 27

#### MERGERS AND DIVISIONS OF PUBLIC COMPANIES

##### Modifications etc. (not altering text)

- C1** Pts. 1-39 (except for Pt. 7 and ss. 662-669), 45-47 extended (12.5.2011) by [The Companies Act 2006 \(Consequential Amendments and Transitional Provisions\) Order 2011 \(S.I. 2011/1265\)](#), art. 5(1), **Sch. 1 para. 2**
- C2** Pt. 27 applied (6.4.2008) by [S.I. 2001/1228](#), Sch. 6 paras. 5, 6 (as amended by [The Companies Act 2006 \(Consequential Amendments etc\) Order 2008 \(S.I. 2008/948\)](#), art. 3(1), **Sch. 1 para. 223(4)** (with arts. 6, 11, 12))
- C3** Pt. 27 applied (6.4.2008) by [2000 c. 8, s. 105\(5\)](#) (as substituted by [The Companies Act 2006 \(Consequential Amendments etc\) Order 2008 \(S.I. 2008/948\)](#), art. 3(1), **Sch. 1 para. 211(1)** (with arts. 6, 11, 12))

### 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—

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- (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 [F1918A].
- (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.

#### Textual Amendments

- F1** Words in s. 903(2) substituted (1.8.2011 with application in accordance with reg. 1(2)) by [The Companies \(Reporting Requirements in Mergers and Divisions\) Regulations 2011 \(S.I. 2011/1606\)](#), [reg. 4](#)

## 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

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- (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 [<sup>F2</sup>by registrar](merger)**

- (1) The directors of each of the merging companies must deliver a copy of the draft terms to the registrar.

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- (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.
- [<sup>F3</sup>(4) The requirements in this section are subject to section 906A (publication of draft terms on company website).]

#### Textual Amendments

- F2** S. 906: words in heading inserted (1.8.2011 with application in accordance with reg. 1(2)) by [The Companies \(Reporting Requirements in Mergers and Divisions\) Regulations 2011 \(S.I. 2011/1606\)](#), [reg. 5\(2\)](#)
- F3** S. 906(4) inserted (1.8.2011 with application in accordance with reg. 1(2)) by [The Companies \(Reporting Requirements in Mergers and Divisions\) Regulations 2011 \(S.I. 2011/1606\)](#), [reg. 5\(1\)](#)

#### [<sup>F4</sup>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 beginning one month before, and ending on, the date of any such meeting.]

#### Textual Amendments

- F4** S. 906A inserted (1.8.2011 with application in accordance with reg. 1(2)) by [The Companies \(Reporting Requirements in Mergers and Divisions\) Regulations 2011 \(S.I. 2011/1606\)](#), [reg. 6](#)

#### 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.

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- (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) [F5, section 915A (other circumstances in which reports and inspection not required) and section 918A (agreement to dispense with reports etc)].

#### **Textual Amendments**

- F5** Words in s. 908(3) added (1.8.2011 with application in accordance with reg. 1(2)) by [The Companies \(Reporting Requirements in Mergers and Divisions\) Regulations 2011 \(S.I. 2011/1606\)](#), [reg. 7](#)

### **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;

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- (d) state whether in the expert's opinion the share exchange ratio is reasonable; and
  - (e) in the case of a valuation made by a person other than himself (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) [<sup>F6</sup>, section 915A (other circumstances in which reports and inspection not required)] [<sup>F7</sup> and section 918A (agreement to dispense with expert's report)] .

#### Textual Amendments

- F6** Words in s. 909(7) inserted (1.8.2011 with application in accordance with reg. 1(2)) by [The Companies \(Reporting Requirements in Mergers and Divisions\) Regulations 2011 \(S.I. 2011/1606\)](#), **reg. 8**
- F7** Words in s. 909(7) inserted (6.4.2008) by [The Companies \(Mergers and Divisions of Public Companies\) \(Amendment\) Regulations 2008 \(S.I. 2008/690\)](#), **reg. 2(1)**

### 910 Supplementary accounting statement (merger)

- [<sup>F8</sup>(1) This section applies if the last annual accounts of any of the merging companies relate to a financial year ending before—
- (a) the date seven months before the first meeting of the company summoned for the purposes of approving the scheme, or
  - (b) if no meeting of the company is required (by virtue of any of sections 916 to 918), the date six months before the directors of the company adopt the draft terms of the scheme.
- (1A) If the company has not made public a half-yearly financial report relating to a period ending on or after the date mentioned in subsection (1), the directors of the 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.

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- (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.
- [<sup>F9</sup>(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 <sup>F10</sup> (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).]

#### Textual Amendments

- F8** S. 910(1)(1A) substituted (1.8.2011 with application in accordance with reg. 1(2)) for s. 190(1) by [The Companies \(Reporting Requirements in Mergers and Divisions\) Regulations 2011 \(S.I. 2011/1606\)](#), [reg. 9\(2\)](#)
- F9** S. 910(5)(6) added (1.8.2011 with application in accordance with reg. 1(2)) by [The Companies \(Reporting Requirements in Mergers and Divisions\) Regulations 2011 \(S.I. 2011/1606\)](#), {reg. 9(3)}
- F10** 2000 c.8. Section 89A was inserted by section 1266 of the Companies Act 2006.

### 911 Inspection of documents (merger)

- (1) The members of each of the merging companies must be able, during the period specified below—
- 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
  - 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—
- beginning one month before, and
  - 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—
- the draft terms;
  - the directors' explanatory report;
  - the expert's report;
  - 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; <sup>F11</sup> . . .
  - any supplementary accounting statement required by section 910. [<sup>F12</sup>; and
  - if no statement is required by section 910 because the company has made public a recent half-yearly financial report (see subsection (1A) of that section), that report. ]
- [<sup>F13</sup>(3A) The requirement in subsection (1)(a) is subject to section 911A(1) (publication of documents on company website).]

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- (4) The requirements of subsection (3)(b) and (c) are subject to section 915 (circumstances in which reports not required)<sup>[F14]</sup> and section 918A (agreement to dispense with reports etc)].
- <sup>[F15]</sup>(5) Section 1145 (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).]

#### Textual Amendments

- F11** Word in s. 911(3)(d) omitted (1.8.2011 with application in accordance with reg. 1(2)) by virtue of [The Companies \(Reporting Requirements in Mergers and Divisions\) Regulations 2011 \(S.I. 2011/1606\)](#), [reg. 10\(2\)](#)
- F12** S. 911(3)(f) and preceding word inserted (1.8.2011 with application in accordance with reg. 1(2)) by [The Companies \(Reporting Requirements in Mergers and Divisions\) Regulations 2011 \(S.I. 2011/1606\)](#), [reg. 10\(2\)](#)
- F13** S. 911(3A) inserted (1.8.2011 with application in accordance with reg. 1(2)) by [The Companies \(Reporting Requirements in Mergers and Divisions\) Regulations 2011 \(S.I. 2011/1606\)](#), [reg. 10\(3\)](#)
- F14** Words in s. 911(4) inserted (1.8.2011 with application in accordance with reg. 1(2)) by [The Companies \(Reporting Requirements in Mergers and Divisions\) Regulations 2011 \(S.I. 2011/1606\)](#), [reg. 10\(4\)](#)
- F15** S. 911(5)(6)(7) inserted (1.8.2011 with application in accordance with reg. 1(2)) by [The Companies \(Reporting Requirements in Mergers and Divisions\) Regulations 2011 \(S.I. 2011/1606\)](#), [reg. 10\(5\)](#)

#### <sup>[F16]</sup>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 beginning one month before, and ending on, 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)—
    - (i) to retain a copy of the document as made available on the website, and
    - (ii) to produce a hard copy of it.



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

#### Textual Amendments

**F16** S. 911A inserted (1.8.2011 with application in accordance with reg. 1(2)) by [The Companies \(Reporting Requirements in Mergers and Divisions\) Regulations 2011 \(S.I. 2011/1606\)](#), [reg. 11](#)

### [<sup>F17</sup>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).]

#### Textual Amendments

**F17** S. 911B inserted (1.8.2011 with application in accordance with reg. 1(2)) by [The Companies \(Reporting Requirements in Mergers and Divisions\) Regulations 2011 \(S.I. 2011/1606\)](#), [reg. 12](#)

### 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 <sup>F18</sup>. . . each of the transferor companies.

#### Textual Amendments

**F18** Words in s. 912 omitted (1.8.2011 with application in accordance with reg. 1(2)) by virtue of [The Companies \(Reporting Requirements in Mergers and Divisions\) Regulations 2011 \(S.I. 2011/1606\)](#), [reg. 13](#)

*Status: Point in time view as at 01/08/2011.*

*Changes to legislation: There are currently no known outstanding effects for the Companies Act 2006, Part 27. (See end of Document for details)*

### **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.

### **[<sup>F19</sup>914 No allotment of shares to transferor company or its nominee (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).]

#### **Textual Amendments**

**F19** S. 914 substituted (6.4.2008) by [The Companies \(Mergers and Divisions of Public Companies\) \(Amendment\) Regulations 2008 \(S.I. 2008/690\)](#), [reg. 3](#)

*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 [<sup>F20</sup>subsection (4)] above do not apply.
- (6) In this section “relevant securities”, in relation to a company, means shares or other securities carrying the right to vote at general meetings of the company.

*Status: Point in time view as at 01/08/2011.*

*Changes to legislation: There are currently no known outstanding effects for the Companies Act 2006, Part 27. (See end of Document for details)*

#### Textual Amendments

**F20** Word in s. 915(5) substituted (12.5.2011) by [The Companies Act 2006 \(Consequential Amendments and Transitional Provisions\) Order 2011 \(S.I. 2011/1265\)](#), **art. 28(4)**

### [<sup>F21</sup>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.]

#### Textual Amendments

**F21** S. 915A inserted (1.8.2011 with application in accordance with reg. 1(2)) by [The Companies \(Reporting Requirements in Mergers and Divisions\) Regulations 2011 \(S.I. 2011/1606\)](#), **reg. 14**

### 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.

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- (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.
- [<sup>F22</sup>(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—
- (a) the conditions in section 906A(2) to (4) are met in respect of the transferee company,
  - (b) the registrar published the notice mentioned in subsection (4) of that section in the Gazette 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
  - (c) the draft terms remained available on the website throughout the period beginning one month before, and ending on, that date.]
- [<sup>F23</sup>(4) The second condition is that subsection (4A) or (4B) is satisfied for each of the documents listed in the applicable paragraphs of section 911(3)(a) to (f) 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 the members of the transferee company were able during the period beginning one month before, and ending on, the date mentioned in subsection (3A) to inspect that document at the registered office of that company.
- (4B) This subsection is satisfied for a document if—
- (a) the document is made available on a website which is maintained by or on behalf of the transferee company and identifies the company,
  - (b) access to the document on the website is not conditional on the payment of a fee or otherwise restricted, and
  - (c) the document remains available on the website throughout the period beginning one month before, and ending on, the date mentioned in subsection (3A).
- (4C) The third condition is that the members of the transferee company were able to obtain copies of the documents mentioned in subsection (4), or any part of those documents, on request and free of charge, throughout the period beginning one month before, and ending on, the date mentioned in subsection (3A).
- (4D) For the purposes of subsection (4C)—
- (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.]
- (5) The [<sup>F24</sup>fourth] 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

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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.

#### **Textual Amendments**

- F22** S. 916(3)(3A)(3B) substituted (1.8.2011 with application in accordance with reg. 1(2)) for s. 916(3) by [The Companies \(Reporting Requirements in Mergers and Divisions\) Regulations 2011 \(S.I. 2011/1606\)](#), [reg. 15\(2\)](#)
- F23** S. 916(4A)-(4D) substituted (1.8.2011 with application in accordance with reg. 1(2)) for s. 916(4) by [The Companies \(Reporting Requirements in Mergers and Divisions\) Regulations 2011 \(S.I. 2011/1606\)](#), [reg. 15\(3\)](#)
- F24** Word in s. 916(5) substituted (1.8.2011 with application in accordance with reg. 1(2)) by [The Companies \(Reporting Requirements in Mergers and Divisions\) Regulations 2011 \(S.I. 2011/1606\)](#), [reg. 15\(4\)](#)

### **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.

[<sup>F25</sup>(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—

- (a) the conditions in section 906A(2) to (4) are met in respect of each of the merging companies,
- (b) in each case, the registrar published the notice mentioned in subsection (4) of that section in the Gazette at least one month before the date of the court's order, and
- (c) the draft terms remained available on the website throughout the period beginning one month before, and ending on, that date.]

[<sup>F26</sup>(4) The second condition is that subsection (4A) or (4B) is satisfied for each of the documents listed in the applicable paragraphs of section 911(3)(a) to (f) 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 the members of the transferee company were able during the period beginning one month before, and ending on, the date mentioned in subsection (3A) to inspect that document at the registered office of that company.

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- (4B) This subsection is satisfied for a document if—
- (a) the document is made available on a website which is maintained by or on behalf of the transferee company and identifies the company,
  - (b) access to the document on the website is not conditional on the payment of a fee or otherwise restricted, and
  - (c) the document remains available on the website throughout the period beginning one month before, and ending on, the date mentioned in subsection (3A).
- (4C) The third condition is that the members of the transferee company were able to obtain copies of the documents mentioned in subsection (4), or any part of those documents, on request and free of charge, throughout the period beginning one month before, and ending on, the date mentioned in subsection (3A).
- (4D) For the purposes of subsection (4C)—
- (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.]
- (5) The [<sup>F27</sup>fourth] 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.

#### **Textual Amendments**

- F25** S. 917(3)-(3B) substituted (1.8.2011 with application in accordance with reg. 1(2)) for s. 917(3) by [The Companies \(Reporting Requirements in Mergers and Divisions\) Regulations 2011 \(S.I. 2011/1606\)](#), [reg. 16\(2\)](#)
- F26** S. 917(4)-(4D) substituted (1.8.2011 with application in accordance with reg. 1(2)) for s. 917(4) by [The Companies \(Reporting Requirements in Mergers and Divisions\) Regulations 2011 \(S.I. 2011/1606\)](#), [reg. 16\(3\)](#)
- F27** Word in s. 917(5) substituted (1.8.2011 with application in accordance with reg. 1(2)) by [The Companies \(Reporting Requirements in Mergers and Divisions\) Regulations 2011 \(S.I. 2011/1606\)](#), [reg. 16\(4\)](#)

#### *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.

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- [<sup>F28</sup>(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—
- (a) the conditions in section 906A(2) to (4) are met in respect of the transferee company,
  - (b) the registrar published the notice mentioned in subsection (4) of that section in the Gazette 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
  - (c) the draft terms remained available on the website throughout the period beginning one month before, and ending on, that date.]

[<sup>F29</sup>(3) The second condition is that subsection (3A) or (3B) is satisfied for each of 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 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 (2A) to inspect that document at the registered office of that company.

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

    - (a) the document is made available on a website which is maintained by or on behalf of the transferee company and identifies the company,
    - (b) access to the document on the website is not conditional on the payment of a fee or otherwise restricted, and
    - (c) the document remains available on the website throughout the period beginning one month before, and ending on, the date of any such meeting as is mentioned in subsection (2A).

(3C) The third condition is that the members of the transferee company were able to obtain copies of the documents mentioned in subsection (3), or any part of those documents, on request and free of charge, throughout the period beginning one month before, and ending on, the date of any such meeting as is mentioned in subsection (2A).

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

    - (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 [<sup>F30</sup>fourth] 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

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- 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.

#### Textual Amendments

- F28** S. 918(2)-(2B) substituted (1.8.2011 with application in accordance with reg. 1(2)) for s. 918(2) by [The Companies \(Reporting Requirements in Mergers and Divisions\) Regulations 2011 \(S.I. 2011/1606\)](#), [reg. 17\(2\)](#)
- F29** S. 918(3)-(3D) substituted (1.8.2011 with application in accordance with reg. 1(2)) for s. 918(3) by [The Companies \(Reporting Requirements in Mergers and Divisions\) Regulations 2011 \(S.I. 2011/1606\)](#), [reg. 17\(3\)](#)
- F30** Word in s. 918(4) substituted (1.8.2011 with application in accordance with reg. 1(2)) by [The Companies \(Reporting Requirements in Mergers and Divisions\) Regulations 2011 \(S.I. 2011/1606\)](#), [reg. 17\(4\)](#)

#### [<sup>F31</sup>918A Agreement to dispense with [<sup>F32</sup>reports etc](merger)

- (1) If all members holding shares in, and all persons holding other securities of, [<sup>F33</sup>the merging companies], being shares or securities that carry a right to vote in general meetings of the company in question, so agree, [<sup>F34</sup>the following requirements do not apply].

[ The requirements that may be dispensed with under this section are—

- <sup>F35</sup>(1A) (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 sections 908, 909 or 910.]
- (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.]

#### Textual Amendments

- F31** S. 918A inserted (6.4.2008) by [The Companies \(Mergers and Divisions of Public Companies\) \(Amendment\) Regulations 2008 \(S.I. 2008/690\)](#), [reg. 2\(2\)](#)
- F32** S. 918A: words in heading substituted (1.8.2011 with application in accordance with reg. 1(2)) by [The Companies \(Reporting Requirements in Mergers and Divisions\) Regulations 2011 \(S.I. 2011/1606\)](#), [reg. 18\(4\)](#)
- F33** Words in s. 918A(1) substituted (1.8.2011 with application in accordance with reg. 1(2)) by [The Companies \(Reporting Requirements in Mergers and Divisions\) Regulations 2011 \(S.I. 2011/1606\)](#), [reg. 18\(2\)](#)



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- F34** Words in s. 918A(1) substituted (1.8.2011 with application in accordance with reg. 1(2)) by The Companies (Reporting Requirements in Mergers and Divisions) Regulations 2011 (S.I. 2011/1606), **reg. 18(2)**
- F35** S. 918A(1A) inserted (1.8.2011 with application in accordance with reg. 1(2)) by The Companies (Reporting Requirements in Mergers and Divisions) Regulations 2011 (S.I. 2011/1606), **reg. 18(3)**

## 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—
- an existing public company, or
  - 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—
- in respect of the transferor company and each transferee company—
    - its name,
    - the address of its registered office, and
    - whether it is a company limited by shares or a company limited by guarantee and having a share capital;
  - 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;
  - the terms relating to the allotment of shares in a transferee company;
  - 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;
  - the date from which the transactions of the transferor company are to be treated for accounting purposes as being those of a transferee company;
  - 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

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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 [<sup>F36</sup>by registrar](division)**

- (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 [<sup>F37</sup>section 921A (publication of draft terms on company website) and] section 934 (power of court to exclude certain requirements).

#### **Textual Amendments**

**F36** S. 921: words in heading inserted (1.8.2011 with application in accordance with reg. 1(2)) by [The Companies \(Reporting Requirements in Mergers and Divisions\) Regulations 2011 \(S.I. 2011/1606\), reg. 19\(2\)](#)

**F37** Words in s. 921(4) inserted (1.8.2011 with application in accordance with reg. 1(2)) by [The Companies \(Reporting Requirements in Mergers and Divisions\) Regulations 2011 \(S.I. 2011/1606\), reg. 19\(1\)](#)

#### **[<sup>F38</sup>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.

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- (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 beginning one month before, and ending on, the date of any such meeting.]

#### Textual Amendments

**F38** S. 921A inserted (1.8.2011 with application in accordance with reg. 1(2)) by [The Companies \(Reporting Requirements in Mergers and Divisions\) Regulations 2011 \(S.I. 2011/1606\)](#), **reg. 20**

### 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) [<sup>F39</sup>and section 933A (certain requirements excluded where shareholders given proportional rights)].

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*Changes to legislation: There are currently no known outstanding effects for the Companies Act 2006, Part 27. (See end of Document for details)*

### Textual Amendments

**F39** Words in s. 923(4) inserted (1.8.2011 with application in accordance with reg. 1(2)) by [The Companies \(Reporting Requirements in Mergers and Divisions\) Regulations 2011 \(S.I. 2011/1606\)](#), [reg. 21](#)

### Commencement Information

**II** [S. 923](#) wholly in force at 6.4.2008; [s. 923](#) not in force at Royal Assent see [s. 1300](#); [s. 923](#) in force at 6.4.2008 by [S.I. 2007/3495](#), [art. 3\(1\)\(m\)](#) (with savings in [arts. 7, 12](#) and subject to [Sch. 1 para. 21](#))

## 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) [<sup>F40</sup>and section 933A (certain requirements excluded where shareholders given proportional rights)].

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#### Textual Amendments

**F40** Words in s. 924(7) inserted (1.8.2011 with application in accordance with reg. 1(2)) by [The Companies \(Reporting Requirements in Mergers and Divisions\) Regulations 2011 \(S.I. 2011/1606\)](#), [reg. 22](#)

### 925 Supplementary accounting statement (division)

[<sup>F41</sup>(1) This section applies if the last annual accounts of a company involved in the division relate to a financial year ending before—

- (a) the date seven months before the first meeting of the company summoned for the purposes of approving the scheme, or
- (b) if no meeting of the company is required (by virtue of section 931 or 932), the date six months before the directors of the company adopt the draft terms of the scheme.

(1A) If the company has not made public a half-yearly financial report relating to a period ending on or after the date mentioned in subsection (1), the directors of the 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.

[<sup>F42</sup>(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) [<sup>F43</sup>and section 933A (certain requirements excluded where shareholders given proportional rights)].

#### Textual Amendments

**F41** S. 925(1)(1A) substituted (1.8.2011 with application in accordance with reg. 1(2)) for s. 925(1) by [The Companies \(Reporting Requirements in Mergers and Divisions\) Regulations 2011 \(S.I. 2011/1606\)](#), [reg. 23\(2\)](#)

**F42** S. 925(4A) inserted (1.8.2011 with application in accordance with reg. 1(2)) by [The Companies \(Reporting Requirements in Mergers and Divisions\) Regulations 2011 \(S.I. 2011/1606\)](#), [reg. 23\(3\)](#)

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*Changes to legislation: There are currently no known outstanding effects for the Companies Act 2006, Part 27. (See end of Document for details)*

**F43** Words in s. 925(5) inserted (1.8.2011 with application in accordance with reg. 1(2)) by [The Companies \(Reporting Requirements in Mergers and Divisions\) Regulations 2011 \(S.I. 2011/1606\)](#), [reg. 23\(4\)](#)

## 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;<sup>F44</sup> . . .
  - (e) any supplementary accounting statement required by section 925<sup>F45</sup>; and
  - (f) if no statement is required by section 925 because the company has made public a recent half-yearly financial report (see subsection (1A) of that section), that report. ]

<sup>F46</sup>(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) <sup>F47</sup>, section 933A (certain requirements excluded where shareholders given proportional rights)] and section 934 (power of court to exclude certain requirements).

<sup>F48</sup>(5) Section 1145 (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)).]

### Textual Amendments

**F44** Word in s. 926(3)(d) omitted (1.8.2011 with application in accordance with reg. 1(2)) by virtue of [The Companies \(Reporting Requirements in Mergers and Divisions\) Regulations 2011 \(S.I. 2011/1606\)](#), [reg. 24\(2\)](#)

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*Changes to legislation: There are currently no known outstanding effects for the Companies Act 2006, Part 27. (See end of Document for details)*

- F45** S. 926(3)(f) and preceding word inserted (1.8.2011 with application in accordance with reg. 1(2)) by [The Companies \(Reporting Requirements in Mergers and Divisions\) Regulations 2011 \(S.I. 2011/1606\)](#), [reg. 24\(2\)](#)
- F46** S. 926(3A) inserted (1.8.2011 with application in accordance with reg. 1(2)) by [The Companies \(Reporting Requirements in Mergers and Divisions\) Regulations 2011 \(S.I. 2011/1606\)](#), [reg. 24\(3\)](#)
- F47** Words in s. 926(4) inserted (1.8.2011 with application in accordance with reg. 1(2)) by [The Companies \(Reporting Requirements in Mergers and Divisions\) Regulations 2011 \(S.I. 2011/1606\)](#), [reg. 24\(4\)](#)
- F48** S. 926(5)(6) inserted (1.8.2011 with application in accordance with reg. 1(2)) by [The Companies \(Reporting Requirements in Mergers and Divisions\) Regulations 2011 \(S.I. 2011/1606\)](#), [reg. 24\(5\)](#)

#### [<sup>F49</sup>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 beginning one month before, and ending on, 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)—
    - (i) to retain a copy of the document as made available on the website, and
    - (ii) to produce a hard copy of it.
- (6) Where members of a company are able to obtain copies of a document only as mentioned in subsection (5), section 926(1)(a) applies to that document even if the conditions in subsections (2) to (4) are met.]

#### Textual Amendments

- F49** S. 926A inserted (1.8.2011 with application in accordance with reg. 1(2)) by [The Companies \(Reporting Requirements in Mergers and Divisions\) Regulations 2011 \(S.I. 2011/1606\)](#), [reg. 25](#)

#### 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.

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*Changes to legislation: There are currently no known outstanding effects for the Companies Act 2006, Part 27. (See end of Document for details)*

- (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) [<sup>F50</sup>and section 933A (certain requirements excluded where shareholders given proportional rights)].

#### Textual Amendments

**F50** Words in s. 927(3) inserted (1.8.2011 with application in accordance with reg. 1(2)) by [The Companies \(Reporting Requirements in Mergers and Divisions\) Regulations 2011 \(S.I. 2011/1606\)](#), **reg. 26**

### 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.

### [<sup>F51</sup>930 No allotment of shares to transferor company or its nominee (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).]

#### Textual Amendments

**F51** S. 930 substituted (6.4.2008) by [The Companies \(Mergers and Divisions of Public Companies\) \(Amendment\) Regulations 2008 \(S.I. 2008/690\)](#), **reg. 4**



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*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.
- [<sup>F52</sup>(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—
  - (a) the conditions in section 921A(2) to (4) are met in respect of each of the companies involved in the division,
  - (b) in each case, the registrar published the notice mentioned in subsection (4) of that section in the Gazette at least one month before the date of the court's order, and
  - (c) the draft terms remained available on the website throughout the period beginning one month before, and ending on, that date.]
  - [<sup>F53</sup>(4) The second condition is that subsection (4A) or (4B) is satisfied for each of 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 the members of every company involved in the division were able during the period beginning one month before, and ending on, the date of the court's order to inspect that document at the registered office of their company.
  - (4B) This subsection is satisfied for a document if—
    - (a) the document is made available on a website which is maintained by or on behalf of the company to which it relates and identifies the company,
    - (b) access to the document on the website is not conditional on payment of a fee or otherwise restricted, and
    - (c) the document remains available on the website throughout the period beginning one month before, and ending on, the date of the court's order.
  - (4C) The third condition is that the members of every company involved in the division were able to obtain copies of the documents mentioned in subsection (4), or any part of those documents, on request and free of charge, throughout the period beginning one month before, and ending on, the date of the court's order.
  - (4D) For the purposes of subsection (4C)—
    - (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) <sup>F54</sup> .....

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- (6) The fourth 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.

#### **Textual Amendments**

- F52** S. 931(3)(3A)(3B) substituted (1.8.2011 with application in accordance with reg. 1(2)) for s. 931(3) by *The Companies (Reporting Requirements in Mergers and Divisions) Regulations 2011* (S.I. 2011/1606), **reg. 27(2)**
- F53** S. 931(4)-(4D) substituted (1.8.2011 with application in accordance with reg. 1(2)) for s. 931(4) by *The Companies (Reporting Requirements in Mergers and Divisions) Regulations 2011* (S.I. 2011/1606), **reg. 27(3)**
- F54** S. 931(5) omitted (1.8.2011 with application in accordance with reg. 1(2)) by virtue of *The Companies (Reporting Requirements in Mergers and Divisions) Regulations 2011* (S.I. 2011/1606), **reg. 27(4)**

#### *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.
- [<sup>F55</sup>(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—
- (a) the conditions in section 921A(2) to (4) are met in respect of the transferee company,
  - (b) the registrar published the notice mentioned in subsection (4) of that section in the Gazette 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
  - (c) the draft terms remained available on the website throughout the period beginning one month before, and ending on, that date.]

[<sup>F56</sup>(3) The second condition is that subsection (3A) or (3B) is satisfied for each of 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 the members of the transferee company were able during the period beginning one month before, and ending on, the date

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mentioned in subsection (2A) to inspect that document at the registered office of that company.

- (3B) This subsection is satisfied for a document if—
- (a) the document is made available on a website which is maintained by or on behalf of the transferee company and identifies the company,
  - (b) access to the document on the website is not conditional on payment of a fee or otherwise restricted, and
  - (c) the document remains available on the website throughout the period beginning one month before, and ending on, the date mentioned in subsection (2A).
- (3C) The third condition is that the members of the transferee company were able to obtain copies of the documents mentioned in subsection (3), or any part of those documents, on request and free of charge, throughout the period beginning one month before, and ending on, the date mentioned in subsection (2A).
- (3D) For the purposes of subsection (3C)—
- (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.]
- (4) The [<sup>F57</sup>fourth] 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 [<sup>F58</sup>first, second and third] conditions above are subject to section 934 (power of court to exclude certain requirements).

#### Textual Amendments

- F55** S. 932(2)(2A)(2B) substituted 1.8.2011 with application in accordance with reg. 1(2)) for s. 932(2) by [The Companies \(Reporting Requirements in Mergers and Divisions\) Regulations 2011 \(S.I. 2011/1606\)](#), [reg. 28\(2\)](#)
- F56** S. 932(3)-(3D) substituted (1.8.2011 with application in accordance with reg. 1(2)) for s. 932(3) by [The Companies \(Reporting Requirements in Mergers and Divisions\) Regulations 2011 \(S.I. 2011/1606\)](#), [reg. 28\(3\)](#)
- F57** Words in s. 932(4) substituted (1.8.2011 with application in accordance with reg. 1(2)) by [The Companies \(Reporting Requirements in Mergers and Divisions\) Regulations 2011 \(S.I. 2011/1606\)](#), [reg. 28\(4\)](#)
- F58** Words in s. 932(5) substituted (1.8.2011 with application in accordance with reg. 1(2)) by [The Companies \(Reporting Requirements in Mergers and Divisions\) Regulations 2011 \(S.I. 2011/1606\)](#), [reg. 28\(5\)](#)

### 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

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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.

**[<sup>F59</sup>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.]

**Textual Amendments**

**F59** S. 933A inserted (1.8.2011 with application in accordance with reg. 1(2)) by [The Companies \(Reporting Requirements in Mergers and Divisions\) Regulations 2011 \(S.I. 2011/1606\)](#), [reg. 29](#)

**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—

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- (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 [<sup>F60</sup>first, second and third] 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.

#### Textual Amendments

**F60** Words in s. 934(1)(b) substituted (1.8.2011 with application in accordance with reg. 1(2)) by [The Companies \(Reporting Requirements in Mergers and Divisions\) Regulations 2011 \(S.I. 2011/1606\)](#), reg. 30

## 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—

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- (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.

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### Commencement Information

- I2** S. 936 wholly in force at 6.4.2008; s. 936 not in force at Royal Assent, see s. 1300; s. 936 in force for specified purposes at 20.1.2007 by S.I. 2006/3428, **art. 3(3)** (subject to **art. 5, Sch. 1** and with **arts. 6, 8, Sch. 5**); s. 936 in force at 6.4.2008 by S.I. 2007/3495, **art. 3(1)(m)** (with savings in **arts. 7, 12** and subject to **Sch. 1 para. 21**)

### 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
  - [<sup>F61</sup>(c) if the company is being wound up, the liquidator, or
  - (d) if the company is in administration, the administrator.]

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[<sup>F62</sup>(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).]

#### Textual Amendments

- F61** S. 938(2)(c)(d) substituted for s. 938(2)(c) (1.10.2009) by [The Companies Act 2006 \(Consequential Amendments, Transitional Provisions and Savings\) Order 2009 \(S.I. 2009/1941\)](#), art. 2(1), **Sch. 1 para. 260(5)** (with art. 10)
- F62** S. 938(3) added (6.4.2008) by [The Companies Act 2006 \(Consequential Amendments etc\) Order 2008 \(S.I. 2008/948\)](#), art. 3(1), **Sch. 1 para. 251** (with arts. 6, 11, 12)

### 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.



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- (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.

### *[<sup>F63</sup>Disruption of websites*

#### **Textual Amendments**

**F63** S. 940A and cross-heading inserted (1.8.2011 with application in accordance with reg. 1(2)) by [The Companies \(Reporting Requirements in Mergers and Divisions\) Regulations 2011 \(S.I. 2011/1606\)](#), [reg. 31](#)

#### **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) and (4B),
  - (d) section 917(3B) and (4B),
  - (e) section 918(2B) and (3B),
  - (f) section 921A(6),
  - (g) section 926A(4),
  - (h) section 931(3B) and (4B), and
  - (i) section 932(2B) and (3B).]

### *Interpretation*

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

In this Part—

“liabilities” includes duties;

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

**Status:**

Point in time view as at 01/08/2011.

**Changes to legislation:**

There are currently no known outstanding effects for the Companies Act 2006, Part 27.