
STATUTORY INSTRUMENTS

2007 No. 2974

The Companies (Cross-Border Mergers) Regulations 2007

PART 3

COURT APPROVAL OF CROSS-BORDER MERGER

Court approval of cross-border merger

16.—(1) The court may, on the joint application of all the merging companies, make an order approving the completion of the cross-border merger for the purposes of Article 11 of the Directive (scrutiny of completion of merger) if—

- (a) the transferee company is a UK company;
- (b) an order has been made under regulation 6 (court approval of pre-merger requirements) in relation to each UK merging company;
- (c) an order has been made by a competent authority of another EEA State for the purposes of Article 10.2 of the Directive (issue of pre-merger certificate) in relation to each merging company which is an EEA company;
- (d) the application is made to the court on a date not more than 6 months after the making of any order referred to in sub-paragraph (b) or (c);
- (e) the draft terms of merger approved by every order referred to in sub-paragraphs (b) and (c) are the same; and
- (f) where appropriate, any arrangements for employee participation in the transferee company have been determined in accordance with Part 4 of these Regulations (employee participation).

(2) Where the court makes such an order—

- (a) it must in the order fix a date on which the consequences of the cross-border merger (see regulation 17) are to have effect; and
- (b) that date must be not less than 21 days after the date on which the order is made.

(3) After the consequences of the cross-border merger have taken effect (see regulation 17), an order made under this regulation is conclusive evidence that—

- (a) the conditions set out in paragraph (1) have been satisfied; and
- (b) the requirements of regulations 7 to 10 and 12 to 15 (pre-merger requirements) have been complied with.

Consequences of a cross-border merger

17.—(1) The consequences of a cross-border merger are that—

- (a) the assets and liabilities of the transferor companies are transferred to the transferee company;

- (b) the rights and obligations arising from the contracts of employment of the transferor companies are transferred to the transferee company;
 - (c) the transferor companies are dissolved; and
 - (d) in the case of a merger by absorption or a merger by formation of a new company, the members of the transferor companies except the transferee company (if it is a member of a transferor company) become members of the transferee company.
- (2) The consequences take effect—
- (a) where an order has been made under regulation 16 (court approval of merger), on the date fixed in that order; or
 - (b) where an order has been made by a competent authority of another EEA State for the purposes of Article 11 of the Directive (scrutiny of completion of merger), on the date fixed in accordance with the law of that State.
- (3) The transferee company must take such steps as are required by law (including by the law of another EEA State) for the transfer of the assets and liabilities of the transferor companies to be effective in relation to other persons.

Copy of order to be provided to members

18.—(1) Where an order is made under regulation 16 (court approval of merger) approving the completion of a cross-border merger, the UK transferee company must, on request by any member, send to him a copy of the order.

(2) If a company makes default in complying with this regulation, an offence is committed by every officer of the company who is in default.

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

Copy of order to be delivered to the registrar of companies

19.—(1) Where an order is made under regulation 16 (court approval of merger)—

- (a) the UK transferee company, and
- (b) every UK transferor company,

must deliver the documents and particulars specified in paragraph (2) to the registrar of companies for registration not more than 7 days after the date on which it was made.

(2) The documents and particulars referred to in paragraph (1) are—

- (a) a copy of the order made under regulation 16 (court approval of merger);
- (b) in the case of a transferor company which is an EEA company to which the First Company Law Directive applies, particulars of the register in which the company file mentioned in Article 3 of that Directive (file for each registered company to be kept in national register) is kept (including details of the relevant State) and its registration number in that register;
- (c) in the case of any other transferor company which is a EEA company, particulars, if any, of the register in which it is entered (including details of the relevant State) and its registration number in that register.

(3) Where an order is made by a competent authority of another EEA State approving the completion of a cross-border merger for the purposes of Article 11 of the Directive (scrutiny of completion of merger), every transferor company which is a UK company must deliver a copy of the order to the registrar of companies for registration not more than 14 days after the date on which it was made.

(4) The following provisions of the Companies Act 2006(1) apply to an order delivered to the registrar in accordance with paragraph (1) or (2) in the same way as they apply to documents subject to the Directive disclosure requirements (as defined in section 1078(1) of that Act)—

- (a) section 1068 (registrar’s requirements as to form, authentication and manner of delivery);
- (b) section 1077 (public notice of receipt of certain documents);
- (c) section 1079 (effect of failure to give public notice);
- (d) section 1080 (the register);
- (e) section 1086 (right to copy of material on the register);
- (f) section 1089 (form of application for inspection or copy);
- (g) section 1090 (form and manner in which copies to be provided);
- (h) section 1091 (certification of copies as accurate); and
- (i) section 1098 (public notice of removal of certain material from register).

(5) If a UK merging company makes default in complying with paragraph (1) or (2), an offence is committed by—

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

(6) A person guilty of an offence under this regulation 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.

Obligations of transferee company with respect to articles etc

20.—(1) If an order made under regulation 16 (court approval of merger) amends—

- (a) the articles of association of the UK transferee company, or
- (b) any resolution or agreement in relation to the UK transferee company to which Chapter 3 of Part 3 of the Companies Act 2006 (resolutions and agreements affecting a company’s constitution) applies,

the copy of the order delivered to the registrar of companies by the UK transferee company under regulation 19 (copy of order to be delivered to the registrar of companies) must be accompanied by a copy of the company’s articles, or the resolution or agreement in question, as amended.

(2) Every copy of the company’s articles issued by the company after the order is made must be accompanied by a copy of the order, unless the effect of the order has been incorporated into the articles by amendment.

(3) In this regulation—

- (a) references to the effect of the order include the effect of the cross-border merger to which the order relates; and
- (b) in the case of a company not having articles, references to its articles shall be read as references to the instrument constituting the company or defining its constitution.

(4) If a UK transferee company makes default in complying with this regulation, an offence is committed by—

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

(1) 2006 c.46.

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

Notification of registration

21.—(1) Where the registrar of companies receives a copy of an order made under regulation 16 (court approval of merger) approving the completion of a cross-border merger, he must—

- (a) without undue delay, in relation to each transferor company which is an EEA company to which the First Company Law Directive applies, give notice of that order to the register in which the company file mentioned in Article 3 of the First Company Law Directive (file for each registered company to be kept in national register) is kept;
- (b) without undue delay, in relation to any other transferor company which is a EEA company, give notice of the order to the register, if any, in which it is entered; and
- (c) on or without undue delay after the date fixed in the order for the purposes of regulation 16(2) (court approval of merger), take the steps specified in paragraph (3) in relation to every UK transferor company.

(2) Where the registrar of companies receives from the registry of another EEA State notice for the purposes of Article 13 of the Directive (notification of registries in other Member States) of an order approving the completion of a cross-border merger, he must on or without undue delay after the date fixed for the purposes of Article 12 of the Directive (entry into effect of the cross-border merger) take the steps specified in paragraph (3) in relation to every UK transferor company.

(3) The steps referred to in paragraphs (1)(c) and (2) are—

- (a) striking the name of the UK transferor company from the UK register, and
- (b) placing a note in the register stating that as from the date on which the consequences of the cross-border merger had effect (see regulation 16(2) and Article 12 of the Directive), the assets and liabilities of the UK transferor company were transferred to the transferee company.