



Companies Act 2006

2006 CHAPTER 46

PART 27

MERGERS AND DIVISIONS OF PUBLIC COMPANIES

CHAPTER 4

SUPPLEMENTARY PROVISIONS

Expert's report and related matters

935 Expert's report: valuation by another person

- (1) Where it appears to an expert—
 - (a) that a valuation is reasonably necessary to enable him to draw up his report, and
 - (b) that it is reasonable for that valuation, or part of it, to be made by (or for him to accept a valuation made by) another person who—
 - (i) appears to him to have the requisite knowledge and experience to make the valuation or that part of it, and
 - (ii) meets the independence requirement in section 936,he may arrange for or accept such a valuation, together with a report which will enable him to make his own report under section 909 or 924.
- (2) Where any valuation is made by a person other than the expert himself, the latter's report must state that fact and must also—
 - (a) state the former's name and what knowledge and experience he has to carry out the valuation, and
 - (b) describe so much of the undertaking, property and liabilities as was valued by the other person, and the method used to value them, and specify the date of the valuation.

Status: Point in time view as at 01/04/2014.

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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.

Commencement Information

- II** [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.

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- (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
 - [^{F1}(c) if the company is being wound up, the liquidator, or
 - (d) if the company is in administration, the administrator.]

[^{F2}(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

F1 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)

F2 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

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- (b) in a subsequent order under section 900 (powers of court to facilitate reconstruction or amalgamation),
 fix a date on which the transfer (or transfers) to the transferee company (or transferee companies) of the undertaking, property and liabilities of the transferor company is (or are) to take place.
- (2) Any such order that provides for the dissolution of the transferor company must fix the same date for the dissolution.
- (3) If it is necessary for the transferor company to take steps to ensure that the undertaking, property and liabilities are fully transferred, the court must fix a date, not later than six months after the date fixed under subsection (1), by which such steps must be taken.
- (4) In that case, the court may postpone the dissolution of the transferor company until that date.
- (5) The court may postpone or further postpone the date fixed under subsection (3) if it is satisfied that the steps mentioned cannot be completed by the date (or latest date) fixed under that subsection.

Liability of transferee companies

940 Liability of transferee companies for each other's defaults

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

This is subject to the following provisions.

- (2) If a majority in number representing 75% in value of the creditors or any class of creditors of the transferor company, present and voting either in person or by proxy at a meeting summoned for the purposes of agreeing to the scheme, so agree, subsection (1) does not apply in relation to the liabilities owed to the creditors or that class of creditors.
- (3) A transferee company is not liable under this section for an amount greater than the net value transferred to it under the scheme.

The “net value transferred” is the value at the time of the transfer of the property transferred to it under the scheme less the amount at that date of the liabilities so transferred.

^{F3}Disruption of websites

Textual Amendments

- F3** 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

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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.

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