
EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations implement Council Directive No. [78/855/EEC](#) concerning mergers of public limited liability companies (OJ No. L295, 20.10.1978, p. 36) and Council Directive No. [82/891/EEC](#) concerning the division of public limited liability companies (OJ No. L378, 31.12.1982, p. 47). The mergers and divisions in question involve the transfer of the undertaking, property and liabilities of public companies (“transferor companies”) to other public companies or, in some cases, companies (whether or not public) formed for the purpose of the merger or division (“transferee companies”) in exchange for shares in the transferee companies receivable by shareholders of the transferor companies with or without an additional cash payment. These mergers and divisions may take place in the United Kingdom by means of compromises or arrangements governed by sections 425 to 427 of the Companies Act 1985. These Regulations amend the Companies Act 1985 by inserting a new section 427A and a new Schedule 15A. The new section provides that in the case of the mergers and divisions described in it sections 425 to 427 shall have effect subject to the provisions of that section and of Schedule 15A.

Schedule 15A provides, in particular, that the court may only sanction a compromise or arrangement under section 425 if—

- (i) three-quarters of each class of the shareholders of the transferee companies involved present at a meeting agree (section 425 already provides that three-quarters of the shareholders of the transferor companies must so agree) (paragraph 1);
- (ii) the draft terms of the merger or division were drawn up by the directors of the companies involved and published by the registrar of companies (paragraph 2);
- (iii) directors' reports containing specified information were drawn up (paragraphs 3 and 4);
- (iv) expert's reports containing specified information were drawn up by independent experts (paragraphs 3 and 5); and
- (v) the above documents, the relevant company accounts and, if no recent accounts are available, accounting statements, were made available to shareholders (paragraphs 3 and 6).

Paragraph 9 provides that the court must fix a date on which the transfer of the undertaking and, if the transferor company is to be dissolved, its dissolution will take place and paragraphs 10 to 14 provide for a variety of circumstances in which some of the requirements as to meetings and preparation of documents may be dispensed with. Paragraph 15 provides for the liability up to a limit of transferee companies involved in a division for liabilities transferred to but defaulted on by other transferee companies.

The provisions of section 427A and Schedule 15A do not apply where the company in respect of which the compromise or arrangement is proposed is being wound up nor to compromises or arrangements in respect of which applications to the court were made before the Regulations came into operation (section 427A(4) and (5)). They do apply where any of the transferee companies is a company within the meaning of Article 3 of the Companies (Northern Ireland) Order 1986 (section 427A(7)).