

**2008 No. 690**

**COMPANIES**

**The Companies (Mergers and Divisions of Public Companies)  
(Amendment) Regulations 2008**

<i>Made</i>	- - - -	<i>7th March 2008</i>
<i>Laid before Parliament</i>		<i>13th March 2008</i>
<i>Coming into force</i>	- -	<i>6th April 2008</i>

The Secretary of State is a Minister designated for the purposes of section 2(2) of the European Communities Act 1972(a) in relation to the creation, operation, regulation or dissolution of companies and other forms of business organisation(b).

In exercise of the powers conferred by section 2(2) of that Act the Secretary of State makes the following Regulations:

**Citation and commencement**

1. These Regulations may be cited as the Companies (Mergers and Divisions of Public Companies) (Amendment) Regulations 2008 and shall come into force on 6th April 2008.

**Agreement to dispense with expert's report**

2.—(1) At the end of section 909(7) of the Companies Act 2006(c) (expert's report) insert "and section 918A (agreement to dispense with expert's report)".

(2) After section 918 of the Companies Act 2006 (other circumstances in which meeting of members of transferee company not required) insert—

**"Agreement to dispense with expert's report (merger)**

**918A.**—(1) If all members holding shares in, and all persons holding other securities of, the companies involved in the merger, being shares or securities that carry a right to vote in general meetings of the company in question, so agree, the requirement of section 909 (expert's report) does not apply.

(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,

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(a) 1972 c.68.  
(b) S.I. 2007/193.  
(c) 2006 c.46.

are determined as at the date of the application to the court under section 896.”.

**Allotment of shares (merger)**

3. For section 914 of the Companies Act 2006 (no allotment of shares to transferor company or its nominee (merger)) substitute—

**“No allotment of shares to transferor company or transferee company (merger)**

**914.** 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).”.

**Allotment of shares (division)**

4. For section 930 of the Companies Act 2006 (no allotment of shares to transferor company or its nominee) substitute—

**“No allotment of shares to transferor company or to transferee company (division)**

**930.** 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).”.

7th March 2008

*Gareth Thomas*  
Parliamentary Under Secretary of State for Trade and Consumer Affairs,  
Department for Business, Enterprise and Regulatory Reform

## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

The Regulations are made under section 2(2) of the European Communities Act 1972 and come into force on 6th April 2008.

Regulation 2 amends section 909 of the Companies Act 2006<sup>(a)</sup> and inserts a new section 918A into that Act. It provides an exception to the requirement for producing an independent expert's report for a merger of a public company if all the shareholders and the holders of other securities giving the right to vote of each of the companies involved in the merger have agreed to dispense with the report. This implements Directive 2007/63/EC amending Council Directives 78/855/EEC and 82/891/EEC as regards the requirement of an independent expert's report on the occasion of merger or division of public limited liability companies<sup>(b)</sup>.

Regulations 3 and 4 amend sections 914 and 930 of the Companies Act 2006. The amendments bar transferor and transferee companies from being allotted any shares in a transferee company in the course of a merger or division. These provisions amend the implementation in the Companies Act 2006 of Directive 78/855/EEC concerning mergers of public limited liability companies<sup>(c)</sup> and Directive 82/891/EEC concerning the division of public limited liability companies<sup>(d)</sup>.

A Transposition Note and an Impact Assessment are available from the Company Law and Governance Directorate, Department for Business, Enterprise and Regulatory Reform, Bay 565, 1 Victoria Street, London, SW1H 0ET or on [www.berr.gov.uk](http://www.berr.gov.uk). Copies have also been placed in the libraries of both Houses of Parliament.

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<sup>(a)</sup> 2006 c.46.

<sup>(b)</sup> OJ L 300, 17.11.2007, p. 47.

<sup>(c)</sup> OJ L 295, 20.10.1978, p. 36.

<sup>(d)</sup> OJ L 378, 31.12.1982, p. 47.

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STATUTORY INSTRUMENTS

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