
EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made under section 2(2) of the European Communities Act 1972 (c.68) to implement the provisions of Directive 2009/109/EC of the European Parliament and of the Council of 16 September 2009 (OJ L259, 2.10.2009, p.14) (“the 2009 Directive”).

This Directive amends—

- Council Directive 77/91/EEC (OJ L26, 31.1.1977, p.1) (“the Second Directive”) on the coordination of safeguards which, for the protection of the interests of members and others, are required by Member States of companies within the meaning of the second paragraph of Article 58 of the Treaty in respect of the formation of public limited liability companies and the maintenance and alteration of their capital,
- Council Directive 78/855/EEC (OJ L295, 20.10.1978, p.36) (“the Third Directive”) concerning mergers of public limited liability companies,
- Council Directive 82/891/EEC (OJ L378, 31.12.1982, p.47) (“the Sixth Directive”) concerning the division of public limited liability companies, and
- Directive 2005/56/EC of the European Parliament and of the Council (OJ L310, 25.11.2005, p.1) (“the Cross-Border Mergers Directive”) concerning cross-border mergers of limited liability companies.

The amendments made by the 2009 Directive relate to reporting and other requirements in the case of mergers and divisions carried out in accordance with the provisions of the Third, Sixth and Cross-Border Mergers Directives.

These Regulations implement the 2009 Directive by amending provisions of the Companies Act 2006 (c.46) and the Companies (Cross-Border Mergers) Regulations 2007 (S.I. 2007/2974), which implement the above Directives.

Regulation 2 amends section 595 of the Companies Act 2006 (“the Act”) to provide that a report by an expert on the valuation of non-cash consideration for the allotment of shares is not required in the case of scheme involving a merger or division where a report on the draft terms of the merger or division is prepared by an expert in accordance with sections 909 (merger) or 924 (division).

Regulations 6 (merger) and 20 (division) respectively, insert sections 906A and 921A into the Act. These provide for publication of the draft terms of merger or division on a company’s website. There are consequential amendments in regulations 5, 15(2), 16(2), and 17(2) to sections 906, 916, 917 and 918, and in regulations 19, 27(2) and 28(2) to sections 921, 931 and 932. Regulation 37 makes a similar amendment to the Companies (Cross-Border Mergers) Regulations 2007 by inserting new regulation 12A, and regulation 36 makes a consequential amendment to regulation 12 of those Regulations.

Regulations 9 (merger) and 23 (division) respectively, amend sections 910 and 925 to provide for a supplementary accounting statement to be prepared by the directors in certain circumstances. Consequential amendments are made in regulation 10(2), 18(3) and 24(2) to sections 911, 918A and 926.

Regulations 10 (merger) and 24 (division) amend respectively, sections 911 and 926, and regulations 11 (merger) and 25 (division) insert new sections 911A and 926A. Provision is made for a member to consent to obtain documents electronically, and for the company to provide for inspection of documents by placing them on the company’s website as an alternative to inspection

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at the registered office. Consequential amendments are made in regulations 15(3), 16(3), 17(3) to sections 916, 917 and 918 and in 27(3) and 28(3) to sections 931 and 932.

Regulation 12 inserts section 911B to provide that the directors must make a report to the members of the companies involved in the merger of any material changes in the property and liabilities of the company between the date when they adopted the draft terms of the merger and the meeting of members to approve the merger.

Regulation 14 inserts section 915A to provide that reports and inspection of documents are not required in the case of a merger by absorption where minority shareholders have a right to sell out.

Regulation 29 inserts section 933A to provide for the exclusion of certain requirements where shareholders are allotted to them in proportion to their rights in the share capital of the company.

Regulation 31 inserts section 940A to make provision in those sections which permit use of company websites for website failures beyond the control of the company.

Other regulations contain minor consequential amendments to the Companies Act 2006 arising out of amendments made elsewhere in these Regulations.

A full regulatory impact assessment of the effect that these Regulations will have on the cost of business and the voluntary sector is available from the Department for Business, Innovation and Skills, 1 Victoria Street, London SW1H 0ET or on the BIS website www.bis.gov.uk, and is annexed along with a Transposition Note, to the Explanatory Memorandum which is published alongside the instrument on www.legislation.gov.uk.

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