

## Expert's report

1133. (1) Subject to subsections (2), (13) and (14), there shall, in accordance with this section, be appointed one or more persons to—

(a) examine the common draft terms of merger; and

(b) make a report on those terms to the shareholders of the merging companies.

(2) Subsection (1) shall not apply where the merger is a merger by absorption.

(3) The functions referred to in subsection (1)(a) and (b) shall be performed either—

(a) in relation to each merging company, by one or more persons appointed for that purpose in relation to the particular company by its directors and—

(i) no person may be appointed under this paragraph unless the person's appointment has first been approved by the court on the application to it of the company concerned;

(ii) the directors of each company may appoint the same person or persons for that purpose;

or

(b) in relation to all the merging companies, by one or more persons appointed for that purpose by the court, on the application to it of all of the merging companies.

(4) The person so appointed, or each person so appointed, is referred to in this Chapter as an “expert” and a reference in this Chapter to a report of an expert or other action (including an opinion) of an expert shall, in a case where there are 2 or more experts, be read as reference to a joint report or joint other action (including an opinion) of or by them.

(5) A person shall not be appointed an expert unless the person is a qualified person.

(6) A person is a qualified person for the purposes of this section if the person—

(a) is a statutory auditor; and

(b) is not—

(i) a person who is or, within the period of 12 months before the date of the common draft terms of merger has been, an officer or employee of any of the merging companies;

(ii) except with the leave of the court, a parent, spouse, civil partner, brother, sister or child of an

officer of any of the merging companies (and a reference in this subparagraph to a child of an officer shall be deemed to include a child of the officer's civil partner who is ordinarily resident with the officer and the civil partner); or

(iii) a person who is a partner, or in the employment, of an officer or employee of any of the merging companies.

(7) The report of the expert shall be in writing and shall—

(a) state the method or methods used to arrive at the proposed share exchange ratio;

(b) give the opinion of the expert as to whether the proposed share exchange ratio is fair and reasonable;

(c) give the opinion of the expert as to the adequacy of the method or methods used in the case in question;

(d) indicate the values arrived at using each such method;

(e) give the opinion of the expert as to the relative importance attributed to such methods in arriving at the values decided on; and

(f) specify any special valuation difficulties which have arisen.

(8) The expert may—

(a) require each of the merging companies and their officers to give to the expert such information and explanations (whether oral or in writing); and

(b) make such enquiries;

as the expert thinks necessary for the purposes of making the report.

(9) If a merging company fails to give to the expert any information or explanation in the power, possession or procurement of that company, on a requirement being made of it under subsection (8)(a) by the expert, that company and any officer of it who is in default shall be guilty of a category 2 offence.

(10) If a merging company makes a statement (whether orally or in writing), or provides a document, to the expert that conveys or purports to convey any information or explanation the subject of a requirement made of it under subsection (8)(a) by the expert and—

(a) that information is false or misleading in a material particular, and

(b) the company knows it to be so false or misleading or is reckless as to whether it is so false or misleading,

the company and any officer of it who is in default shall be guilty of a category 2 offence.

(11) If a person appointed an expert under subsection (3)(a) or (b) ceases to be a qualified person, that person—

(a) shall immediately cease to hold office, and

(b) shall give notice in writing of the fact of the person's ceasing to be a qualified person to each merging company and (in the case of an appointment under subsection (3)(b)) to the court within 14 days after the date of that cessation,

but without prejudice to the validity of any acts done by the person under this Chapter before that cessation.

(12) A person who purports to perform the functions of an expert (in respect of the merger concerned) under this Chapter after ceasing to be a qualified person (in respect of that merger) shall be guilty of a category 2 offence.

(13) This section is subject to section 1137 (11) (which provides for an exemption from its requirements in relation to a particular type of merger operation).

(14) This section shall not apply if the following condition is, or (as appropriate) the following 2 conditions are, satisfied:

(a) other than in a case falling within paragraph (b), all of the holders of shares conferring the right to vote at general meetings of each of the merging companies have agreed that this section shall not apply; or

(b) where a requirement for the taking effect of a vote (whether a vote generally or of the type to which this subsection applies) by holders of shares of any of the merging companies is that a holder of securities of the company has consented thereto—

(i) the agreement mentioned in paragraph (a) exists; and

(ii) all of the holders of securities of the company or companies in respect of which the requirement mentioned in this paragraph operates have agreed that this section shall not apply.