

Civil liability of directors and experts

1147. (1) Subject to subsection (5), any shareholder of any of the merging companies who has suffered loss or damage by reason of misconduct in the preparation or implementation of the merger by a director of any such company or by the expert, if any, who has made a report under section 1133 shall be entitled to have such loss or damage made good to him or her by—

(a) in the case of misconduct by a person who was a director of that company at the date of the common draft terms of merger — that person;

(b) in the case of misconduct by any expert who made a report under section 1133 in respect of any of the merging companies — that person.

(2) Without prejudice to the generality of subsection (1), any shareholder of any of the merging companies who has suffered loss or damage arising from the inclusion of any untrue statement in any of the following, namely:

(a) the common draft terms of merger;

(b) the explanatory report, if any, referred to in section 1132;

(c) the expert's report, if any, under section 1133;

(d) the merger financial statement, if any, prepared under section 1134;

shall, subject to subsections (3) to (5), be entitled to have such loss or damage made good to him or her—

(i) in the case of the document or report referred to in paragraph (a), (b) or (d) — by every person who was a director of that company at the date of the common draft terms of merger; or

(ii) in the case of the report referred to in paragraph (c) — by the person who made that report in relation to that company.

(3) A director of a company shall not be liable under subsection (2) if he or she proves—

(a) that the document or report referred to in subsection (2)(a), (b) or (d), as the case may be, was issued without his or her knowledge or consent and that, on becoming aware of its issue, he or she forthwith informed the shareholders of that company that it was issued without his or her knowledge or consent; or

(b) that as regards every untrue statement he or she had reasonable grounds, having exercised all reasonable care and skill, for believing and did, up to the time the merger took effect, believe that the statement was true.

(4) A person who makes a report under section 1133 in relation to a company shall not be liable in the case of any untrue statement in the report if he or she proves—

(a) that, on becoming aware of the statement, he or she forthwith informed that company and its shareholders of the untruth; or

(b) that he or she was competent to make the statement and that he or she had reasonable grounds for believing and did up to the time the merger took effect believe that the statement was true.

(5) This section shall not apply to a merger by absorption.