

Expert's report on non-cash assets acquired from subscribers, etc.

1034. (1) A PLC shall not, unless the conditions specified in subsection (3) have been satisfied, enter into an agreement with a relevant person for the transfer by him or her, during the initial period, of one or more non-cash assets to the PLC or another for a consideration to be given by the PLC equal in value at the time of the agreement to at least one-tenth of the nominal value of the PLC's share capital issued at that time.

(2) In this section—

(a) in relation to a company formed as a PLC—

(i) “relevant person” means any subscriber to the memorandum of the company; and

(ii) “initial period” means the period of 2 years beginning after the date on which the company is issued with a certificate under section 1010 that it is entitled to do business;

(b) in relation to a company re-registered or registered in accordance with Part 20 or 22 as a PLC—

(i) “relevant person” means any person who was a member of the company on the date of the re-registration or registration; and

(ii) “initial period” means the period of 2 years beginning after that date.

(3) The conditions referred to in subsection (1) are that—

(a) the consideration to be received by the PLC (that is to say, the asset to be transferred to the PLC or the advantage to the PLC of its transfer to another person) and any consideration other than cash to be given by the PLC have been valued under the following provisions of this section to 1030);

(b) a report with respect to the consideration to be so received and given has been made to the PLC in accordance with those provisions during the 6 months immediately preceding the date of the agreement;

(c) the terms of the agreement have been approved by an ordinary resolution of the PLC; and

(d) not later than—

(i) the date of the giving of the notice of the meeting at which the resolution is proposed; or

(ii) where the means under section 193 (unanimous written resolutions) for passing the resolution is used, 21 days before the date of the signing of the resolution by the last member to sign;

copies of the resolution and report have been circulated to the members of the PLC entitled to receive

that notice or sign the resolution and, if the relevant person is not then such a member, to that person, but, in a case falling within subparagraph (ii), compliance with this paragraph may be waived in writing by such members and the relevant person.

(4) Subsection (1) shall not apply to the following agreements for the transfer of an asset for a consideration to be given by the PLC, that is to say—

(a) where it is part of the ordinary business of the PLC to acquire or arrange for other persons to acquire assets of a particular description, an agreement entered into by the PLC in the ordinary course of its business for the transfer of an asset of that description to it or such a person, as the case may be; or

(b) an agreement entered into by the PLC under the supervision of the court, or an officer authorised by the court for the purpose, for the transfer of an asset to the PLC or to another.

(5) Subsections (5), (6) and (10) of section 1028 shall apply to a valuation and report of any consideration under this section as those subsections apply to a valuation of and report on any consideration under subsection (1) of section 1028.

(6) The report of the independent person under this section shall—

(a) state the consideration to be received by the PLC, describing the asset in question, specifying the amount to be received in cash and the consideration to be given by the PLC, specifying the amount to be given in cash;

(b) state the method and date of valuation;

(c) contain a note by the independent person, or be accompanied by such a note, as to the matters mentioned in section 1028 (11)(a) to (c); and

(d) contain a note by the independent person, or be accompanied by such a note, that, on the basis of the valuation, the value of the consideration to be received by the PLC is not less than the value of the consideration to be given by it.

(7) If a PLC enters into an agreement with any relevant person in contravention of subsection (1) and either the relevant person has not received a report under this section or there has been some other contravention of this section or section 1028 (5), (6) or (10) which he or she knew or ought to have known amounted to a contravention, then, subject to subsection (8)—

(a) the PLC shall be entitled to recover from the relevant person, any consideration given by the PLC under the agreement or an amount equivalent to its value at the time of the agreement; and

(b) the agreement, so far as not carried out, shall be void.

(8) Where a PLC enters into an agreement in contravention of subsection (1) and that agreement is or includes an agreement for the allotment of shares in that PLC, then whether or not the agreement also

contravenes section 1028—

(a) subsection (7) shall not apply to the agreement in so far as it is an agreement for the allotment of shares; and

(b) sections 1025 (3) and 1029 (2) shall apply in relation to the shares as if they had been allotted in contravention of section 1028.

(9) Where a PLC contravenes any of the provisions of this section, the PLC and any officer of it who is in default shall be guilty of a category 3 offence.