

Company having a restricted person may not acquire certain non-cash assets from subscribers, etc., unless particular conditions satisfied

828. (1) A company that has a restricted person 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 of one or more non-cash assets to the company or another for a consideration to be given by the company equal in value at the time of the agreement to at least one-tenth of the nominal value of the company's share capital issued at that time.

(2) In this section—

“non-cash asset” means any property or interest in property other than cash (including foreign currency);

“relevant person”, in relation to a company, means any subscriber to the constitution, any director or any person involved in the promotion or formation of the company.

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

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

(b) a report with respect to the consideration to be so received and given has been made to the company 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 company, and

(d) not later than the giving of the notice of the meeting at which the resolution is proposed, copies of the resolution and report have been circulated to the members of the company entitled to receive that notice and, if the relevant person is not then such a member, to that 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 company, that is to say—

(a) where it is part of the ordinary business of the company to acquire or arrange for other persons to acquire assets of a particular description, an agreement entered into by the company 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 company under the supervision of the court or an officer authorised by the court for the purpose, for the transfer of an asset to the company or to another.

(5) Subject to subsection (6), the valuation and report required by subsection (3) shall be made by an independent person, that is to say, a person qualified at the time of the report to be appointed or to continue to be statutory auditor of the company.

(6) Where it appears to the independent person referred to in subsection (5) to be reasonable for the valuation of the consideration, or a valuation of part of the consideration, to be made, or to accept such a valuation made, by any person who—

(a) appears to that independent person to have the requisite knowledge and experience to value the consideration or that part of the consideration, and

(b) is not—

(i) an officer or employee of the company or any other body corporate which is that company's subsidiary or holding company or a subsidiary of that company's holding company, or

(ii) a partner or employee of an officer or employee referred to in subparagraph (i);

that independent person may arrange for or accept such a valuation, together with a report which will enable the independent person to make his or her own report under subsection (3) and provide a note in accordance with subsection (7).

(7) The report of the independent person under subsection (3) shall—

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

(i) in the case of a valuation made by another person, that it appeared to the independent person reasonable to arrange for it to be so made, or to accept a valuation so made,

(ii) whoever made the valuation, that the method of valuation was reasonable in all the circumstances, and

(iii) that it appears to the independent person that there has been no material change in the value of the consideration in question since the valuation,

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 company is not less than the value of the

consideration to be given by it.

(8) Where any consideration is valued under this section by a person other than the independent person, the latter's report under subsection (3) shall state that fact and shall also—

(a) state the former's name and what knowledge and experience that other person has to carry out the valuation, and

(b) describe so much of the consideration as was valued by that other person, the method used to value it and state the date of valuation.

(9) If a company 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 which he or she knew or ought to have known amounted to a contravention, then, subject to subsection (10)—

(a) the company shall be entitled to recover from the relevant person any consideration given by the company 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.

(10) Where a company enters into an agreement in contravention of subsection (1) and that agreement is or includes an agreement for the allotment of shares in that company—

(a) subsection (9) shall not apply to the agreement in so far as it is an agreement for the allotment of shares, and

(b) the following provisions shall apply in relation to the shares as if they had been allotted in contravention of section 1028.

(11) The provisions referred to in subsection (10)(b) are as follows:

(a) the allottee of the shares concerned shall be liable to pay the company an amount equal to the nominal value of the shares, together with the whole of any premium or, if the case so requires, such proportion of that amount as is treated as paid up by the consideration, and shall be liable to pay interest at the appropriate rate on the amount payable under this paragraph; and

(b) where any person becomes a holder of any shares in respect of which—

(i) there has been a contravention of this section, and

(ii) by virtue of that contravention, another is liable to pay any amount under this subsection;

the first-mentioned person in this paragraph also shall be liable to pay that amount (jointly and severally with any other person so liable) unless either that first-mentioned person is a purchaser for value

and, at the time of the purchase, he or she did not have actual notice of the contravention or he or she derived title to the shares (directly or indirectly) from a person who became a holder of them after the contravention and was not so liable.