

Power of liquidator to accept shares as consideration for sale of property of company

601. (1) This section applies where a company is proposed to be, or is in course of being, wound up as a members' voluntary winding up, and the whole or part of its business or property is proposed to be transferred or sold to another company, whether a company registered under this Act, an existing company or any other type of company or undertaking (in this section referred to as the "transferee company").

(2) Where this section applies, the liquidator of the first-mentioned company in subsection (1) (in this section referred to as the "transferor company") may, subject to subsection (3)—

(a) in compensation or part compensation for the foregoing transfer or sale, receive shares, policies or other like interests in the transferee company for distribution among the members of the transferor company, or

(b) enter into any other arrangement whereby the members of the transferor company may, in lieu of receiving cash, shares, policies or other like interests, or in addition to them, participate in the profits of, or receive any other benefit from, the transferee company.

(3) The powers of the liquidator under subsection (2) are not exercisable unless a special resolution of the company sanctions the exercise of those powers by the liquidator, whether generally or with regard to the particular arrangement concerned, but this subsection is without prejudice to subsections (5) and (8).

(4) Any sale or arrangement in pursuance of this section shall be binding on the members of the transferor company.

(5) If—

(a) the voting rights conferred by any shares in the transferor company were not cast in favour of the resolution concerned referred to in subsection (3) conferring the sanction there mentioned on the liquidator, and

(b) the holder of those shares expresses his or her dissent from such sanction in writing addressed to the liquidator and left at the registered office of the company within 7 days after the date of passing of the resolution,

that holder may require the liquidator either to—

(i) abstain from carrying the resolution into effect, or

(ii) purchase that part of his or her interest which those shares represent at a price to be determined by agreement, or by arbitration in accordance with subsections (9) and (10).

(6) If the liquidator elects to purchase that holder's interest, the purchase money shall be paid before

the company is dissolved and, unless otherwise provided for, shall be deemed to be, and shall be paid as part of, the costs, charges and expenses of the winding up.

(7) A resolution referred to in subsection (3) shall not be invalid for the purposes of this section by reason that it was obtained before or concurrently—

(a) with the passing of—

(i) the special resolution referred to in section 202 (1)(a)(i) — in a case where the Summary Approval Procedure is employed, or

(ii) the resolution referred to in section 580 (1) — where the procedure there mentioned is employed,

or

(b) with the passing of a resolution for appointing a liquidator or liquidators in that winding up.

(8) However a resolution referred to in subsection (3) shall not be effective to confer the sanction there mentioned if an order is made, within a year after the date of the resolution's passing, for winding up the company by the court, unless the resolution is confirmed by the court.

(9) An arbitration referred to in subsection (5)(ii) shall be conducted by a single arbitrator appointed by agreement in writing between the holder of shares referred to in subsection (5) and the liquidator or, in the absence of such agreement, by 2 arbitrators, one of whom shall be appointed in writing by each party to the arbitration.

(10) The provisions of the Arbitration Act 2010 applicable to arbitrations referred to in section 29 of that Act shall apply to an arbitration referred to in subsection (5).