

Expert's report on non-cash consideration before allotment of shares

1028. (1) Subject to subsection (2) and sections 1029 and 1031 to 1033, a PLC shall not allot shares as fully or partly paid up (as to their nominal value or any premium payable on them) otherwise than in cash unless—

(a) the consideration for the allotment has been valued in accordance with the following provisions of this section;

(b) a report with respect to its value has been made to the PLC by a person appointed by the PLC in accordance with those provisions during the 6 months immediately preceding the date of the allotment of the shares; and

(c) a copy of the report has been sent to the proposed allottee of the shares.

(2) Subject to subsection (3), subsection (1) shall not apply to the allotment of shares by a PLC in connection with an arrangement providing for the allotment of shares in that PLC on terms that the whole or part of the consideration for the shares allotted is to be provided by the transfer to that PLC or the cancellation of all or some of the shares, or of all or some of the shares of a particular class, in another company (with or without the issue to that PLC of shares, or of shares of any particular class, in that other company).

(3) Subsection (2) does not exclude the application of subsection (1) to the allotment of shares by a PLC in connection with any such arrangement as is there mentioned unless the following condition is satisfied, namely, it is open to all the holders of the shares in the other company in question or, where the arrangement applies only to shares of a particular class, to all the holders of shares in that other company of that class, to take part in the arrangement.

(4) In determining whether the foregoing condition is satisfied, shares held by, or by a nominee of, the PLC proposing to allot the shares in connection with the arrangement, or by, or by a nominee of, a company which is that PLC's holding company or subsidiary or a company which is a subsidiary of that PLC's holding company, shall be disregarded.

(5) Subject to subsections (6) and (7), the valuation and report required by subsection (1) 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 the statutory auditor of the PLC.

(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 PLC or any other body corporate which is that PLC's subsidiary or holding company or a subsidiary of that PLC's holding company;

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

(iii) a person otherwise connected as adapted by section 1029 (7)) with 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 (1) and provide a note in accordance with subsection (11).

(7) Where the allotment of shares by a PLC is in connection with—

(a) a proposed merger, where that company was formed as a successor company for the purpose of the proposed merger, the merger being a merger by formation of a new company within the meaning of Chapter 16 or the European Communities (Cross-Border Mergers) Regulations 2008);

(b) a proposed merger of that company with another company; or

(c) a proposed division of that company;

the valuation and report required by subsection (1) may be made by the person appointed pursuant to section 1133 or 1155 or an expert within the meaning of Regulation 7 of the foregoing Regulations, in which case the person so appointed shall be deemed to be an independent person for the purposes of subsection (5).

(8) For the purposes of subsection (7) there is a proposed merger of a PLC with a company when one of them proposes to acquire all the assets and liabilities of the other in exchange for the issue of shares or other securities in that one to shareholders of the other, with or without any cash payment to those shareholders.

(9) The report of the independent person under subsection (1) shall state—

(a) the nominal value of the shares to be wholly or partly paid for by the consideration in question;

(b) the amount of any premium payable on those shares;

(c) the description of the consideration and, as respects so much of the consideration as the independent person himself or herself has valued, a description of that part of the consideration, the method used to value it and the date of the valuation; and

(d) the extent to which the nominal value of the shares and any premium are to be treated as paid up—

(i) by the consideration;

(ii) in cash.

(10) Where any consideration is valued under this section by a person other than the independent person, the latter's report under subsection (1) 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.

(11) The report of the independent person made under subsection (1) shall contain a note by the independent person, or be accompanied by such a note—

(a) 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;

(b) irrespective of whether the valuation has been by that person or the independent person, that the method of valuation was reasonable in all the circumstances;

(c) 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) that on the basis of the valuation the value of the consideration, together with any cash by which the nominal value of the shares or any premium payable on them is to be paid up, is not less than so much of the aggregate of the nominal value and the whole of any such premium as is treated as paid up by the consideration and any such cash.