

Confirmation order

1144. (1) Where an application is made under section 1141 to the court for an order confirming a merger this section applies.

(2) The court, on being satisfied that—

(a) the requirements of this Chapter have been complied with;

(b) proper provision has been made for—

(i) any shareholder in any of the merging companies who has made a request under section 1140; and

(ii) any creditor of any of the merging companies who objects to the merger in accordance with section 1142;

(c) the rights of holders of securities other than shares in any of the companies being acquired are safeguarded in accordance with section 1143; and

(d) where applicable, the relevant provisions referred to in section 1139 (2) on the variation of the rights attached to any class of shares in any of the merging companies have been complied with;

may make an order confirming the merger with effect from such date as the court appoints (the “effective date”).

(3) The order of the court confirming the merger shall, from the effective date, have the following effects:

(a) all the assets and liabilities of the company or companies being acquired are transferred to the successor company;

(b) in the case of a merger by acquisition or a merger by formation of a new company, where no request has been made by shareholders under section 1140, all remaining members of the transferor company or companies except the successor company (if it is a member of a transferor company) become members of the successor company;

(c) the transferor company or companies is or are dissolved;

(d) all legal proceedings pending by or against any transferor company shall be continued with the substitution, for the transferor company, of the successor company as a party;

(e) the successor company is obliged to make to the members of the transferor company or companies any cash payment required by the common draft terms of merger;

(f) every contract, agreement or instrument to which a transferor company is a party shall, notwithstanding anything to the contrary contained in that contract, agreement or instrument, be read and have effect as if—

(i) the successor company had been a party thereto instead of the transferor company;

(ii) for any reference (however worded and whether express or implied) to the transferor company there were substituted a reference to the successor company; and

(iii) any reference (however worded and whether express or implied) to the directors, officers, representatives or employees of the transferor company, or any of them—

(I) were, respectively, a reference to the directors, officers, representatives or employees of the successor company or to such director, officer, representative or employee of the successor company as the successor company nominates for that purpose; or

(II) in default of such nomination, were, respectively, a reference to the director, officer, representative or employee of the successor company who corresponds as nearly as may be to the first-mentioned director, officer, representative or employee;

(g) every contract, agreement or instrument to which a transferor company is a party becomes a contract, agreement or instrument between the successor company and the counterparty with the same rights, and subject to the same obligations, liabilities and incidents (including rights of set-off), as would have been applicable thereto if that contract, agreement or instrument had continued in force between the transferor company and the counterparty;

(h) any money due and owing (or payable) by or to a transferor company under or by virtue of any such contract, agreement or instrument as is mentioned in paragraph (g) shall become due and owing (or payable) by or to the successor company instead of the transferor company; and

(i) an offer or invitation to treat made to or by a transferor company before the effective date shall be read and have effect, respectively, as an offer or invitation to treat made to or by the successor company.

(4) The following provisions have effect for the purposes of subsection (3)—

(a) “instrument” in that subsection includes—

(i) a lease, conveyance, transfer or charge or any other instrument relating to real property (including chattels real); and

(ii) an instrument relating to personalty;

(b) paragraph (f)(ii) of that subsection applies in the case of references to the transferor company and its successors and assigns as it applies in the case of references to the transferor company personally;

(c) paragraph (g) of that subsection applies in the case of rights, obligations and liabilities mentioned in that paragraph whether they are expressed in the contract, agreement or instrument concerned to be personal to the transferor company or to benefit or bind (as appropriate) the transferor company and its successors and assigns.

(5) Without prejudice to subsections (6) and (7), the successor company shall comply with registration requirements and any other special formalities required by law and as directed by the court for the transfer of the assets and liabilities of the transferor company or companies to be effective in relation to other persons.

(6) There shall be entered by the keeper of any register in the State—

(a) upon production of a certified copy of the order under subsection (2); and

(b) without the necessity of there being produced any other document (and, accordingly, any provision requiring such production shall, if it would otherwise apply, not apply),

the name of the successor company in place of any transferor company in respect of the information, act, ownership or other matter in that register and any document kept in that register.

(7) Without prejudice to the generality of subsection (6), the Property Registration Authority, as respects any deed of the Registration of Deeds and Title Act 2006) registered by that Authority or produced for registration by it, shall, upon production of the document referred to in subsection (6)(a) but without the necessity of there being produced that which is referred to in subsection (6)(b), enter the name of the successor company in place of any transferor company in respect of such deed.

(8) Without prejudice to the application of subsection (6) to any other type of register in the State, each of the following shall be deemed to be a register in the State for the purposes of that subsection:

(a) the register of members of a company referred to in section 169;

(b) the register of holders of debentures of a public limited company kept pursuant to section 1121;

(c) the register kept by a public limited company for the purposes of sections 1048 to 1053;

(d) the register of charges kept by the Registrar pursuant to section 414;

(e) the Land Registry;

(f) any register of shipping kept under the Mercantile Marine Act 1955 .

(9) The court may, either by the order confirming the merger or by a separate order, make provision for such matters as the court considers necessary to secure that the merger shall be fully and effectively carried out.

(10) If the taking effect of the merger would fall at a time (being the time ascertained by reference to the general law and without regard to this subsection) on the particular date appointed under subsection (2) that is a time that would not, in the opinion of the court, be suitable having regard to the need of the parties to co-ordinate various transactions, the court may, in appointing a date under subsection (2) with respect to when the merger takes effect, specify a time, different from the foregoing, on that date when the merger takes effect and, where such a time is so specified—

(a) the merger takes effect on that time of the date concerned; and

(b) references in this section to the effective date shall be read accordingly.