

General meetings of merging companies

1137. (1) In this section a reference to a general meeting, without qualification, is a reference to a general meeting referred to in subsection (2).

(2) Subject to subsection (7) and without prejudice to section 1139, the subsequent steps under this Chapter in relation to the merger shall not be taken unless the common draft terms of merger have been approved by a special resolution passed at a general meeting of each of the merging companies.

(3) In addition, where the merger is a merger by formation of a new company, those subsequent steps shall not be taken unless the constitution or draft constitution of the new company has been approved by a special resolution of each of the companies being acquired.

(4) Subject to section 1138 (2), the notice convening the general meeting referred to in subsection (2) shall contain a statement of every shareholder's entitlement to obtain on request, free of charge, full or, if so desired, partial copies of the documents referred to in section 1136 (1) (and, accordingly, every shareholder has, subject to the foregoing provision, that entitlement).

(5) The directors of each of the companies involved in a merger shall inform—

(a) the general meeting of that company; and

(b) the directors of each of the other companies involved in the merger;

of any material change in the assets and liabilities of that company that occurs between the date of the common draft terms of merger and the date of such general meeting.

(6) On being so informed of them, the directors of each such other company involved in the merger shall inform the general meeting of that company of the matters referred to in subsection (5).

(7) Where the merger is—

(a) a merger by acquisition (not falling within paragraph (b)); or

(b) a merger by acquisition carried out by a company which holds 90 per cent or more, but not all, of the shares conferring the right to vote at general meetings (excluding any shares held as treasury shares) of the company or companies being acquired; or

(c) a merger by absorption;

approval, by means of a special resolution, of the common draft terms of merger is not required in the case of the successor company if the conditions specified in subsection (8) are satisfied.

(8) The conditions referred to in subsection (7) are the following:

(a) the provisions of sections 1135 and 1136 are complied with at least 30 days before the date of the general meeting of each of the companies being acquired; and

(b) the right, conferred by subsection (9), to requisition a general meeting has not been exercised during that period of 30 days.

(9) One or more members of the successor company who hold or together hold not less than 5 per cent of the paid-up capital of the company which carries the right to vote at general meetings of the company (excluding any shares held as treasury shares) may require the convening of a general meeting of the company to consider the common draft terms of merger, and section 178 (3) to (7) apply, with any necessary modifications, in relation to the requisition.

(10) The reference in subsection (7)(b) to a percentage of shares (the “specified percentage”) being held by the company carrying out the acquisition includes a reference to either of the following cases:

(a) a case where the specified percentage of shares are held by other persons in their own names but on behalf of that company;

(b) a case where the percentages of—

(i) shares held by that company; and

(ii) shares held by other persons in the manner referred to in paragraph (a);

amount, in aggregate, to the specified percentage.

(11) Sections 1132, 1133 and 1136 shall not apply to an operation referred to in subsection (7)(b) if—

(a) any shareholder in any of the merging companies indicates to the successor company that the shareholder will not vote in favour of the special resolution concerning the common draft terms of merger and requests, in writing, that company to purchase his or her shares in the company concerned for cash (which request such a shareholder is empowered by this subsection to make), and

(b) within 15 days after the date of that request, the successor company purchases those shares of that shareholder at the market sale price.