

Dispensation from section 1028 — consideration for allotment other than securities and money-market instruments referred to in section 1031

1032. (1) In this section—

“non-securities based consideration” means consideration other than that falling within the definition of “securities based consideration” in section 1031 (1);

“relevant assets” means assets other than those falling within that definition of “securities based consideration”.

(2) Where this section applies then either—

(a) the requirements of section 1028 do not apply; or

(b) those requirements only apply if—

(i) the contingency specified in subsection (4)(e) arises; or

(ii) a request of the kind referred to in subsection (6) is made by one or more members of the PLC, being a request that, as provided therein, must be acceded to by the PLC.

(3) This section applies where the consideration for the allotment of the shares consists wholly, or together with cash consideration, of non-securities based consideration and—

(a) the conditions specified in subsection (4) are satisfied with respect to the non-securities based consideration; and

(b) the value of the non-securities based consideration is not less than the value of the relevant assets as determined in accordance with paragraph (a) of that subsection.

(4) The following are the conditions with respect to the non-securities based consideration:

(a) the relevant assets are valued by reference to an opinion as to their fair value by an expert who, in the opinion of the PLC, possesses the requisite degree of independence from the interests concerned in the transaction and holds an appropriate qualification;

(b) that fair value was determined for a date not more than 6 months before the date on which the relevant assets are treated as consideration given for the allotment of the shares in question;

(c) that valuation as to fair value has been performed in accordance with generally accepted valuation standards and principles in the State (or such standards and principles in another Member State as are equivalent to them) and, in either case, which are applicable to the class of assets concerned;

(d) the giving of such consideration is approved—

(i) by ordinary resolution of the PLC; or

(ii) following 14 days' notice by the board of directors (of the PLC's intention to give that consideration) to the members, by a resolution of the board of directors of the PLC,

and, in either case, that approval is granted not more than 30 days before the date on which the agreement to allot the shares in question is entered into or, where such agreement is subject to conditions that required fulfilment before the agreement can be carried into effect, on the date of those conditions' fulfilment;

(e) no exceptional circumstances arise that would significantly change the fair value of the asset at the date secondly referred to in paragraph (b); and

(f) in a case where paragraph (d)(ii) applies, the resolution there referred to includes a statement by the board of directors that they are satisfied that there are no exceptional circumstances known to them that, in their opinion, have significantly changed the fair value of the assets at the date secondly referred to in paragraph (b).

(5) If either—

(a) exceptional circumstances as mentioned in paragraph (e) of subsection (4) arise; or

(b) notwithstanding that the conditions specified in that subsection are satisfied, a request of the kind referred to in subsection (6) is made by one or more members of the PLC, being a request that, as provided therein, must be acceded to by the PLC;

a valuation under section 1028 of the relevant assets shall be caused to be carried out by the PLC and the relevant provisions of sections 1028 to 1030 shall apply accordingly.

(6) One or more members who hold, or together hold, not less than 5 per cent of the issued shares of the PLC on the date of the passing of the ordinary resolution or the notification by the directors, as the case may be, referred to in subsection (4)(d) may, by notice in writing served on the PLC before the date secondly referred to in subsection (4)(b), request a valuation under section 1028 of the relevant assets to be carried out; unless, on the date of service of that notice, the percentage of the issued shares of the PLC held by the requester or, as appropriate, the requesters has fallen below 5 per cent, the request shall be acceded to by the PLC.

(7) Where this section applies and shares are proposed to be allotted by a PLC without a report of an independent expert as otherwise required by sections 1028 to 1030, the PLC shall, no later than the earliest of the dates specified in subsection (8), deliver, in the prescribed form, notice of the proposed allotment to the Registrar, which notice shall contain—

(a) a description of the consideration other than in cash at issue;

(b) the value of that consideration, the source of its valuation and, where appropriate, the method of valuation; and

(c) a statement whether the value arrived at corresponds at least to the number and nominal value of, and (where appropriate) to the premium on, the shares to be issued for that consideration.

(8) The dates referred to in subsection (7) are—

(a) the date of the allotment;

(b) where the allotment is to be authorised by ordinary resolution, as appropriate—

(i) the date of the notice of the general meeting at which the ordinary resolution is to be passed; or

(ii) where the ordinary resolution is to be passed by written resolution, the date on which the written resolution is deemed to be passed;

(c) where the allotment is to be authorised by the board of directors only, the date of the notification by the directors referred to in subsection (4)(d).

(9) Where shares have been allotted as mentioned in subsection (7), the notice of the allotment delivered under section 1021 (9) to the Registrar in respect of those shares shall—

(a) contain—

(i) a description of the consideration other than in cash at issue;

(ii) the value of that consideration, the source of its valuation and, where appropriate, the method of valuation; and

(iii) a statement whether the value arrived at corresponds at least to the number and nominal value of, and (where appropriate) to the premium on, the shares issued for that consideration;

which may be by reference to the particulars delivered in accordance with subsection (7); and

(b) contain a statement that no exceptional circumstances with regard to the original valuation arose prior to the allotment.