1987 No. 442

COMPANIES

Companies (Mergers and Divisions) Regulations (Northern Ireland) 1987

Made	*2nd December 1987*
Coming into operation . .	*1st January 1988*

The Department of Economic Development, being a Department designated(**a**) for the purposes of section 2(2) of the European Communities Act 1972(**b**) in relation to mergers and divisions involving public companies, in exercise of the powers conferred upon it by that section and of every other power enabling it in that behalf, hereby makes the following Regulations:—

Citation and commencement

1. These Regulations may be cited as the Companies (Mergers and Divisions) Regulations (Northern Ireland) 1987 and shall come into operation on 1st January 1988.

Interpretation

2. The Interpretation Act (Northern Ireland) 1954(**c**) shall apply to these Regulations as it applies to a Measure of the Northern Ireland Assembly.

Amendment of the Companies (Northern Ireland) Order 1986

3. The Companies (Northern Ireland) Order 1986(**d**) shall be amended as follows—

(*a*) after Article 420 there shall be inserted the new Article 420A set out in Part I of the Schedule;

(*b*) at the end of Article 660(1) there shall be added the following sub-paragraphs—

"(*s*) any copy of a draft of the terms of a scheme delivered to the registrar under paragraph 2(1) of Schedule 15A,

(*t*) any copy of an order under Article 418(2) or Article 420 in respect of a compromise or arrangement to which Article 420A(1) applies.";

(*c*) after Schedule 15 there shall be inserted the new Schedule 15A set out in Part II of the Schedule.

(**a**) S.I. 1985/749
(**b**) 1972 c. 68
(**c**) 1954 c. 33 (N.I.)
(**d**) S.I. 1986/1032 (N.I. 6)

Sealed with the Official Seal of the Department of Economic Development on 2nd December 1987.

(L.S.) *R. G. Smartt*
Assistant Secretary

SCHEDULE Regulation 3

PROVISIONS TO BE INSERTED INTO THE COMPANIES (NORTHERN IRELAND) ORDER 1986

PART I

NEW ARTICLE 420A TO BE INSERTED AFTER ARTICLE 420

Application of Articles 418 to 420 to mergers and divisions of public companies

420A.—(1) Where —

(*a*) a compromise or arrangement is proposed between a public company and any such persons as are mentioned in Article 418(1) for the purposes of, or in connection with, a scheme for the reconstruction of any company or companies or the amalgamation of any two or more companies,

(*b*) the circumstances are as specified in any of the Cases described in paragraph (2), and

(*c*) the consideration for the transfer or each of the transfers envisaged in the Case in question is to be shares in the transferee company or any of the transferee companies receivable by members of the transferor company or transferor companies, with or without any cash payment to members,

Articles 418 to 420 shall, as regards that compromise or arrangement, have effect subject to the provisions of this Article and Schedule 15A.

(2) The cases referred to in paragraph (1) are as follows—

Case 1

Where under the scheme the undertaking, property and liabilities of the company in respect of which the compromise or arrangement in question is proposed are to be transferred to another public company, other than one formed for the purpose of, or in connection with, the scheme.

Case 2

Where under the scheme the undertaking, property and liabilities of each of two or more public companies concerned in the scheme, including the company in respect of which the compromise or arrangement in question is proposed, are to be transferred to a company (whether or not a public company) formed for the purpose of, or in connection with, the scheme.

Case 3

Where under the scheme the undertaking, property and liabilities of the company in respect of which the compromise or arrangement in question is proposed are to be divided among and transferred to two or more companies each of which is either—

(*a*) a public company, or

(*b*) a company (whether or not a public company) formed for the purposes of, or in connection with, the scheme.

(3) Before sanctioning any compromise or arrangement under Article 418(2) the court may, on the application of any pre-existing transferee company or any member or creditor of it or, an administration order being in force in relation to the company, the administrator, order a meeting of the members of the company or any class of them or of the creditors of the company or any class of them to be summoned in such manner as the court directs.

(4) This Article does not apply where the company in respect of which the compromise or arrangement is proposed is being wound-up.

(5) This Article does not apply to compromises or arrangements in respect of which an application has been made to the court for an order under Article 418(1) before 1st January 1988.

(6) Where Article 420 would apply in the case of a scheme but for the fact that the transferee company or any of the transferee companies is a company within the meaning of section 735(1) of the Companies Act 1985(**a**) (and thus not within the definition of "company" in Article 420(6)), Article 420 shall apply notwithstanding that fact.

(7) In the case of a scheme mentioned in paragraph (1), for a company within the meaning of section 735(1) of the Companies Act 1985, the reference in Article 420(5) to the registrar shall have effect as a reference to the registrar of companies as defined in section 744 of that Act.

(8) In this Article and Schedule 15A—

"transferor company" means a company whose undertaking, property and liabilities are to be transferred by means of a transfer envisaged in any of the Cases specified in paragraph (2);

"transferee company" means a company to which a transfer envisaged in any of those Cases is to be made;

"pre-existing transferee company" means a transferee company other than one formed for the purpose of, or in connection with, the scheme;

"compromise or arrangement" means a compromise or arrangement to which paragraph (1) applies;

"the scheme" means the scheme mentioned in paragraph (1)(*a*);

"company" includes only a company as defined in Article 3(1) except that, in the case of a transferee company, it also includes a company as defined in section 735(1) of the Companies Act 1985 (referred to in these definitions as a "Great Britain company");

"public company" means, in relation to a transferee company which is a Great Britain company, a public company within the meaning of section 1(3) of the Companies Act 1985;

"the registrar" means, in relation to a transferee company which is a Great Britain company, the registrar of companies as defined in section 744 of the Companies Act 1985;

"the Gazette" means the Belfast Gazette or, in relation to a transferee company which is a Great Britain company, the Gazette as defined in section 744 of the Companies Act 1985;

"Case 1 Scheme", "Case 2 Scheme" and "Case 3 Scheme" mean a scheme of the kind described in Cases 1, 2 and 3 of paragraph (2) respectively;

"property" and "liabilities" have the same meaning as in Article 420;

"administrator" means a person appointed as defined in section 8(2) of the Insolvency Act 1986(**b**); and

"administration order" means an order of the court under section 8 of that Act.

(a) 1985 c. 6
(b) 1986 c. 45

PART II

NEW SCHEDULE 15A TO BE INSERTED AFTER SCHEDULE 15

SCHEDULE 15A Article 420A

PROVISIONS SUBJECT TO WHICH ARTICLES 418 TO 420 HAVE EFFECT IN THEIR APPLICATION TO MERGERS AND DIVISIONS OF PUBLIC COMPANIES

Meeting of transferee company

1. Subject to paragraphs 10(1), 12(4) and 14(2), the court shall not sanction a compromise or arrangement under Article 418(2) unless a majority in number representing three-fourths in value of each class of members of every pre-existing transferee company concerned in the scheme, present and voting either in person or by proxy at a meeting, agree to the scheme.

Draft terms of merger

2.—(1) The court shall not sanction the compromise or arrangement under Article 418(2) unless—

(*a*) a draft of the proposed terms of the scheme (from here on referred to as the "draft terms") has been drawn up and adopted by the directors of all the transferor and pre-existing transferee companies concerned in the scheme,

(*b*) subject to paragraph 11(3), in the case of each of those companies the directors have delivered a copy of the draft terms to the registrar and the registrar has published in the Gazette notice of receipt by him of a copy of the draft terms from that company, and

(*c*) subject to paragraphs 10 to 14, that notice was so published at least one month before the date of any meeting of that company summoned under Article 418(1) or for the purposes of paragraph 1.

(2) Subject to paragraph 12(2), the draft terms shall give particulars of at least the following matters—

(*a*) in respect of each transferor company and transferee company concerned in the scheme, its name, the address of its registered office and whether it is a company limited by shares or a company limited by guarantee and having a share capital;

(*b*) the number of shares in any transferee company to be allotted to members of any transferor company for a given number of their shares (from here on referred to as the "share exchange ratio") and the amount of any cash payment;

(*c*) the terms relating to the allotment of shares in any transferee company;

(*d*) the date from which the holding of shares in a transferee company will entitle the holders to participate in profits, and any special conditions affecting that entitlement;

(*e*) the date from which the transactions of any transferor company are to be treated for accounting purposes as being those of any transferee company;

(*f*) any rights or restrictions attaching to shares or other securities in any transferee company to be allotted under the scheme to the holders of shares to which any special rights or restrictions attach, or of other securities, in any transferor company, or the measures proposed concerning them;

(*g*) any amount of benefit paid or given or intended to be paid or given to any of the experts referred to in paragraph 5 or to any director of a transferor company or pre-existing transferee company, and the consideration for the payment of benefit.