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**Reorganisations, Acquisitions,  
Mergers and Divisions:  
Part 9 of the Companies Bill**

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## **Part 9 – Reorganisations, Acquisitions, Mergers and Divisions**

- Part 9 contains 59 sections divided into four chapters:
  - Schemes of Arrangement
  - Acquisitions
  - Mergers
  - Divisions

## Part 9, Chapter 1: Schemes of Arrangement

- **Section 450 (Interpretation)** includes new defined terms such as “debenture trustees” (in place of “trustee for debenture holders”), “new company”, “old company”, “scheme circular” (in place of “statement”), “scheme meeting”, “scheme order” and “special majority”
- A reference to a compromise or arrangement proposed between a company and its creditors or its members (or any class of either) includes a reference to a compromise or arrangement proposed between a company and both its creditors and its members (or any class of either) (s 450(2))

## **Part 9, Chapter 1: Schemes of Arrangement (continued)**

- **Section 451 (Scheme Meetings)**
- Directors may convene appropriate scheme meetings (s 451(1)). Where they do not do so, the company, any member or creditor or (in the case of a company being wound up) the liquidator may apply for court order to convene scheme meeting(s) (ss 451(3) and (4))
- Proposed wording contains some clarification on what is meant by “appropriate scheme meetings” (s 451(2))
- Court may “in its discretion, where it considers just and convenient to do so, give directions as to what are the appropriate scheme meetings to be held...” (s 451(5))

## Part 9, Chapter 1: Schemes of Arrangement (continued)

- **Section 452** Court may stay all proceedings or restrain further proceedings against the company as to the court seems fit on application from the company, directors, any member or creditor or (in the case of a company being wound up) the liquidator
- **Section 453** Information to be included in scheme circular to creditors or members. Directors (including shadow and *de facto* directors) and debenture trustees to provide relevant information to company in writing (s 453(3)). If company fails to comply, company and officer(s) in default guilty of category 3 offence (s 453(4))

## Part 9, Chapter 1: Schemes of Arrangement (continued)

- **Section 454** Conditions for compromise or arrangement to become binding:
  - Approval by special majority at scheme meeting(s);
  - Notice of (i) passing of resolution and (ii) application to court advertised in at least two daily newspapers circulating in relevant district; and
  - Compromise or arrangement sanctioned by Court
- Where State authority is a creditor, may accept proposals under this section notwithstanding (i) that any claim of such authority as a creditor would be impaired under the proposals; or (ii) any other enactment (s 454(4))

## **Part 9, Chapter 1: Schemes of Arrangement (continued)**

- **Section 455 (Supplemental Provisions)**
  - Scheme order to be delivered to Registrar within 21 days and will take effect immediately upon delivery (s 455(1))
  - Copy of order to be attached to every copy of constitution of company issued thereafter (s 455(2))
  - Default in complying with section 455(1) or (2) is category 3 offence for company and any officer in default (s 455(3))

## **Part 9, Chapter 1: Schemes of Arrangement (continued)**

- **Section 456 (Provisions to facilitate reconstruction or amalgamation)**
- Court may make provision for certain matters where satisfied that: compromise or arrangement has been proposed for purposes of or in connection with a scheme for the reconstruction or amalgamation of any two or more companies; and under the scheme the whole or any part of the undertaking and assets or liabilities of one company (oldco) is to be transferred to another (newco) (s 456(1))
- S 456(4) specifies what companies are to be notified
- S 456(5): default is category 3 offence for company and officers in default

## **Part 9, Chapter 1: Schemes of Arrangement (continued)**

- **Section 456 (Provisions to facilitate reconstruction or amalgamation) (continued)**
- Matters for which the court may make provision include:
  - transfer to newco of whole/part of undertaking and assets/liabilities of oldco;
  - allotting or appropriation by newco of shares, debentures, policies etc to any other person;
  - continuation of legal proceedings by or against newco;
  - dissolution (with or without winding up) of oldco;

## **Part 9, Chapter 1: Schemes of Arrangement (continued)**

- **Section 456 (Provisions to facilitate reconstruction or amalgamation) (continued)**
  - provision for person(s) who dissent from the compromise or arrangement; and
  - such incidental, consequential and supplemental matters as are necessary for reconstruction or amalgamation to be full and effectively carried out (s 456(2))

## Part 9, Chapter 2: Acquisitions

- **Section 457 (Interpretation)** defines terms such as “call notice”, “group company”, “information notice”, “offeree company” (instead of “transferor”), “offeror” (for “transferee”), and “relevant scheme, contract or offer”
- **Section 458(1)-(3)** where a *person*\* offers to buy the beneficial ownership of all shares in a company and the offer becomes binding/accepted/approved in respect of not less than 80% in value of the shares affected within 4 months after the date of publication of the offer/contract/scheme, the person will be entitled to buy-out the remaining shares on the same terms (unless court orders otherwise on the application of a dissenting shareholder)

\* can be an individual person; need not be a body corporate

## Part 9, Chapter 2: Acquisitions (continued)

- **S.458(4)** conditions for acquisition of remaining shares:
  - Notice to dissenting shareholder(s) within six months of date of publication of terms of scheme/contract/offer; and
  - 30 days pass without application to court under s.460(4)(a) by dissenting shareholder or following such application the court approves the acquisition of the shares or such an application to court is made but withdrawn
- **S.458(6)** Within 30 days of scheme/offer/contract becoming binding/approved/accepted, information notice must be given to dissenting shareholder(s)

## Part 9, Chapter 2: Acquisitions (continued)

- **S.458(7)** Dissenting shareholder may (within three months of information notice) require offeror to acquire his/her shares
- **S.458(8)** Where consideration for acquisition of shares under s 458 paid wholly or partly in cash by way of cheque, specific requirements as to account upon which cheque is drawn
- **Section 459** Where 20% in value of shares in the offeree company already in beneficial ownership of offeror or *any group company/companies of it*, approval by not less than 50% in number of holders of shares also required (as well as 80% in value of shares)

## Part 9, Chapter 2: Acquisitions (continued)

- **Section 460(1)** Call notice and information notice must be signed by or on behalf of the offeror (with some exceptions in the case of several like call notices or information notices – s 460(2)) Also provisions relating to delivery of notices to shareholder(s)
- **Section 460(3)** Circumstances in which such notices are deemed to be correctly given where joint holders of shares, persons entitled to shares in consequence of death or bankruptcy and shareholders at addresses in jurisdictions whose laws regulate the communication into those jurisdictions of such schemes/contracts/offers (in the latter case, publication in the CRO Gazette is required)

## Part 9, Chapter 2: Acquisitions (continued)

- **Section 460(4)** Dissenting shareholder may apply to court: (i) for an order permitting him to retain his shares or vary the terms of the scheme/contract /offer (following receipt of a call notice); or (ii) for an order varying the terms of the scheme, contract or offer (where the offeror is bound to acquire his shares under s 458(7)) and court may make order it thinks fit (such as requiring payment to dissenting shareholder of cash consideration)
- **Section 460(5)** Documents to be delivered by offeror to the offeree company when the offeror becomes bound to acquire the shares of the dissenting shareholder(s)

## Part 9, Chapter 2: Acquisitions (continued)

- **Section 460(6)** Supplementary provisions including provision to deal with unclaimed consideration in respect of shares compulsorily acquired. Such amounts are to be held on trust for 7 years, and then transferred to the Minister for Finance who shall indemnify the company against any future claims in respect of such sums
- **Section 460(7)** Applies where contract/offer/scheme becomes binding on a shareholder in respect of part only of the shares held by him/her
- **Section 461(1)** Where there are two or more classes of shares in the share capital of a company, references in Chapter 2 to the shares are to shares of a particular class

## Part 9, Chapter 2: Acquisitions (continued)

- **Section 461(2)** Shares in the beneficial ownership of a group company of the offeror are deemed to be within the beneficial ownership of the offeror and the acquisition of shares by a group company is deemed to be the acquisition of beneficial ownership by the offeror
- **Section 461(3)** Where a person agrees to acquire shares in an offeree company, deemed to have acquired beneficial ownership
- **Section 461(4)** Shares are not to be treated as not in the beneficial ownership of offeror just because (i) subject to a charge in favour of another person or (ii) subject of a revocable or irrevocable undertaking on the part of their holder to accept the offer.

## Part 9, Chapter 3: Mergers

- Applies to domestic mergers of Irish private companies limited by shares (Pillar B will deal with other types of Irish companies)
- Existing Cross-border Merger Regime will continue to apply separately to Cross-border Mergers within the EEA
- Essentially Part 9 Chapter 3 is a combination of elements of the EC (Mergers and Division of Companies) Regulations 1987 (SI 137/1987) and the EC (Cross-Border Mergers) Regulations 2008 (SI 157/2008)

## Part 9, Chapter 3: Mergers (continued)

- **Section 463 (Requirements for Chapter to apply)** Part 9 Chapter 3 applies only if: none of the merging companies is a plc; and one, at least, of the merging companies is a private company limited by shares
- **Section 462 (Interpretation)** Relevant definitions
- **S.462(1)** "Merger" means merger by acquisition, merger by absorption or merger by formation of a new company
- **Definitions of types of merger** follow 2008 Regs except "merger by acquisition" definition does not refer to the company *not* having been formed for that purpose (s 464) and reference to "shares" rather than "securities"
- **S.464(4)** Application to companies being wound up

## Part 9, Chapter 3: Mergers (continued)

- **Section 465(1)** Two ways of effecting merger: Summary Approval Procedure (set out in relevant sections of Chapter 3 of Part 9 and Chapter 7 of Part 4); or Court approval process (Chapter 3 of Part 9)
- **Section 465(3)** requirements of other enactments or Community acts will continue to apply
- **Section 466** Chapter 1 (SoA) and Chapter 3 (Mergers) of Part 9 are mutually exclusive ways of effecting merger
- **Section 467** Directors to draw up common draft terms (CDTs) of merger and approve them in writing.
- **Section 467(1)-(4)** Information to be included in CDTs (combination of 1987 and 2008 Regs)

## Part 9, Chapter 3: Mergers (continued)

- **Section 467(5)** Date of CDTs = date approved by boards of merging companies, or, if different dates, latest date on which CDTs are approved by such a board
- **Section 468** Directors to prepare **explanatory report** (to be approved by board) giving details of and explaining the CDTs and legal and economic grounds for and implications of CDTs, in particular proposed share exchange ratio, organisation and management structure, future commercial activities and financial interests of holders of shares and other securities in the company
- **Section 469(1) Expert** to examine CDTs and make a written **report** on them to shareholders of merging companies

## Part 9, Chapter 3: Mergers (continued)

- **Section 469(2)** Expert Report not required where:
  - Merger is merger by absorption;
  - Successor company holds 90% or more (but not all) of the shares carrying right to vote at GMs of transferor company/companies; or
  - Every member of every merging company agrees
- **Section 469(3)** Expert to be appointed by board of each merging company or court on application of all companies
- **Section 469(6)** Persons “qualified” to be appointed Expert
- **Section 469(7)** Matters to be included in Expert Report (to be made available at least 30 days before passing of relevant resolution)

## Part 9, Chapter 3: Mergers (continued)

- **Section 469(8)** Powers of Expert to require information and explanations and make enquiries
- **Section 469(9)** Failure to provide such information etc category 2 offence of company and any officer in default
- **Section 469(10)** If company makes a statement/provides a document to Expert that is false or misleading in a material particular and company knows /is reckless as to whether it is false or misleading, company and any officer in default guilty of category 2 offence
- **Section 469(11)** Expert ceasing to be “qualified”
- **Section 469(12)** Category 2 Offence for purporting to perform functions of Expert after ceasing to be “qualified”

## Part 9, Chapter 3: Mergers (continued)

- **Section 470 Merger Financial Statement (MFS)** required where (i) the latest statutory financial statements relate to financial year ended more than 6 months before date of CDTs, (ii) Summary Approval Procedure not being employed and (iii) company is availing of exemption from requirement to hold general meeting under S.474(5)
- **Section 470(2)-(5)** Preparation/format etc of MFS
- **Section 471 Registration** (using notice in the prescribed form) **and publication of documents** (by Registrar, in the CRO Gazette and by each merging company, in one national daily newspaper) at least 30 days before date of passing of relevant resolutions

## Part 9, Chapter 3: Mergers (continued)

- **Section 472 Inspection of specified documents** free of charge by any member of the company for period of 30 days before the date of passing of relevant resolution
- **Section 473** Certain provisions of Part 9 Chapter 3 not applicable where Summary Approval Procedure is used
- **Section 474** General Meetings of merging companies to approve CDTs within 30 days of publication of notice
- **Section 474(5) and (6)** Circumstances in which approval by special resolution of CDTs not required
- **Section 474(7)** Member(s) of successor company who (together) hold  $\geq 5\%$  of paid up share capital of the company carrying right to vote at GMs (excluding treasury shares) may require convening of GM to consider CDTs

## Part 9, Chapter 3: Mergers (continued)

- **Section 476** Meetings of **classes of shareholders**
- **Section 477 Purchase of minority shares** Where SRs passed under s 474 minority SH may within 15 days request successor company to acquire shares in cash (to be purchased at price determined in accordance with SER, such shares to be held by company as treasury shares)
- **Section 478 Application to Court for confirmation of merger** jointly by all merging companies including details any minority SH who has made request under s 477
- **Section 479 Creditor** of any merging company **entitled to be heard** in relation to the Court confirmation
- **Section 480 Preservation of rights of certain holders of securities** (other than shares) with some exceptions

## Part 9, Chapter 3: Mergers (continued)

- **Section 481 Confirmation Order** once Court is satisfied requirements in S.481(2) have been complied with
- **Section 481(3) Effect of Court Order** including transfer of assets and liabilities to successor company, (where relevant) members becoming members of successor co, dissolution of transferor co/cos, continuation of legal proceedings, cash payment in accordance with CDTs, transfer of contracts/agreements/instruments etc
- **Section 481(4) Other registration requirements** for transfer of assets or liabilities to be complied with
- **Section 481(5)** Court may appoint different time/date when merger will take effect

## Part 9, Chapter 3: Mergers (continued)

- **Section 482** Court may in confirmation order permit financial assistance or reduction of capital
- **Section 483 Registration and publication** of confirmation of merger
- **Section 484 Civil liability of directors and experts** to shareholder(s) who suffered loss or damage by reason of misconduct in preparation or implementation of merger
- **Section 484(3) and (4)** Defences to above civil liability
- **Section 485 Criminal liability for untrue statements in merger documents** – category 2 offence for director(s) and/or any person who authorised the issue of relevant document and/or expert unless, having exercised all reasonable care and skill, had reasonable grounds for believing and believed statement was true

## Part 9, Chapter 4: Divisions

- **Section 487 (Requirements for Chapter to apply)** Part 9 Chapter 4 applies only if: none of the companies involved in the division is a plc; and one, at least, of the merging companies is a private company limited by shares
- **Very similar to the regime for mergers under Chapter 3** with changes as appropriate where different considerations apply in case of division
- Summary Approval Procedure does not apply to divisions

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*This document contains a general summary of developments and is neither a complete nor definitive statement of the law. Specific legal advice should be obtained before taking action.*

# Thank You.

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