

Talking Companies

Schemes of Arrangement in terms of the Companies Act 2008 (“the Act”)

The Board of a company (“the Board”) may propose an arrangement between the company and the holders of any class of its securities by way of, among other things:

- A consolidation of securities of different classes;
- A division of securities into different classes;
- An expropriation of securities from the holders;
- Exchanging any of its securities for other securities;
- A re-acquisition by the company of any class of its securities.

The company must retain an independent expert to prepare a report to the Board concerning the proposed arrangement.

The independent expert must be:

- Qualified and have the competence and experience necessary to:
 - understand the type of arrangement proposed;
 - evaluate the consequences of the arrangement;
 - assess the effects of the arrangement on: the value of any effected securities; and the rights and interests of a holder of any affected securities or a creditor of the company;
- Able to express an opinion, exercise judgment and make decisions impartially;

The independent expert must not have any relationship with the company or any proponent of the arrangement, such as would lead a reasonable and informed third party to conclude that the integrity, impartiality or objectivity of the independent expert is compromised.

The report prepared by the independent expert must, at a minimum:

- State all prescribed information relevant to the value of the securities affected by the proposed arrangement;
- Identify every type and class of holders of the company’s securities affected by the proposed arrangement;
- Describe the material effects that the proposed arrangements will have on the rights and interests of the holders of the company’s securities;
- Evaluate any material adverse effects of the proposed arrangement against:
 - the compensation that any



- person will receive in terms of the arrangement;
- any reasonably probable beneficial and significant effect of the arrangement on the business and prospects of the company;
- State any material interest of any director of the company or any trustee for security holders in any proposed arrangement and the effect of the proposed arrangement on that interest or person;
- Include a copy of the provisions of section 115 (Required Approval for Certain Transactions) and section 164 (Dissenting Shareholder Appraisal Rights) of the Act.

The company must distribute the report of the independent expert to all holders of the company’s securities.

When the proposed arrangement involves a re-acquisition by the company of its previously issued securities:

- The directors must also be satisfied that the company meets the solvency and liquidity test;
- The company cannot acquire its own shares if as a result of the acquisition there would no longer be any shares of the company in issue other than:
 - shares held by one or more subsidiaries of that company; or
 - convertible or redeemable shares;
- The shares that are re-acquired have the same status as shares that have been authorised but not issued by the company.

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