

PART 19

UNLIMITED COMPANIES

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PART 19
UNLIMITED COMPANIES

Chapter 1
Preliminary and definitions

Interpretation (Part 19).

[12241224]. In this Part -

“constitution” shall be read in accordance with *section [12271230] or [12281231]*, as the case may be;

“PUC” shall be read in accordance with *section [12221225](1)(b)*;

“PULC” shall be read in accordance with *section [12221225](1)(c)*;

“ULC” shall be read in accordance with *section [12221225](1)(a)*.

Three types of unlimited company and uniform words to be affixed to name.

[12221225]. (1) This Part makes provision for, and there is permitted to be formed and registered under this Part, the following 3 types of unlimited company –

- (a) a private unlimited company - referred to in this Part as a “ULC”;
- (b) a public unlimited company - referred to in this Part as a “PUC”; and
- (c) a public unlimited company that has no share capital - referred to in this Part as a “PULC”.

(2) Irrespective of the type of unlimited company that the particular company constitutes, the name of any such company shall, as provided under *section [12311234]* and subject to *section [12401243]*, end with the words “unlimited company” or “cuideachta neamhtheoranta”.

References to unlimited company to mean ULC, PUC or PULC.

[12231226]. A reference in this Part to an unlimited company shall, unless expressly provided otherwise, be read as a reference to any of the 3 types of unlimited company referred to in *section [12221225]*.

Application of Parts 1 to 14 to unlimited companies.

[12241227]. (1) The provisions of *Parts 1 to 14* apply to an unlimited company except to the extent that they are disapplied or modified by –

- (a) this section; or
- (b) any other provision of this Part.

(2) For the purposes of that application, *section 10* shall have effect as if it read :

“Unless expressly provided otherwise, a reference in *Parts 2 to 14* to a company is a reference to an unlimited company.”.

(3) Any of *Parts 1 to 14* that makes provision by reference to -

(a) membership arising by virtue of a shareholding; or

(b) right or incidents of membership, including the right to vote or receive a distribution, arising by virtue of a shareholding,

shall be read, in the case of a PULC, as making such provision in the analogous context in which membership, or rights or incidents of membership, may arise in the case of a PULC.

(4) *Subsection (3)* is without prejudice to the generality of the application and adaptation of *Parts 1 to 14* provided by *subsections (1)* and *(2)* or any specific adaptation provided by a subsequent section of this Part.

(5) The provisions of this Act specified in *Part 1* of the Table to this section shall not apply to an ULC.

(6) The provisions of this Act specified in *Part 2* of the Table to this section shall not apply to a PUC.

(7) The provisions of this Act specified in *Part 3* of the Table to this section shall not apply to a PULC.

(8) The specification in the foregoing Table of a provision (a “specified provision”) of *Parts 1 to 14* also operates to disapply to the particular type of unlimited company concerned any other provision of those Parts (notwithstanding that it is not specified in that Table) that makes consequential, incidental or supplemental provision on, or in relation to, the specified provision.

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| Company to carry on activity in the State <u>and prohibition of certain activities</u> ³⁴ | <i>Section 18</i> |
| Form of the constitution | <i>Section 19</i> |
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| Provisions as to names of companies | <i>Section 26(1) to (4)</i> |
| Trading under a misleading name | <i>Section 27</i> |
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| Capacity of private company limited by shares | <i>Section 38</i> |

³⁴ Inserted by point 137 of Committee Amendments

| | |
|---|--|
| Security for costs | <i>Section 53</i> |
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| Subject matter | Provision disappplied |
|---|--|
| Way of forming a private company limited by shares | <i>Section 17</i> |
| Company to carry on activity in the State [and prohibition of certain activities] ³⁷ | <i>Section 18</i> |
| Form of the constitution | <i>Section 19</i> |
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Part 3

Provisions disappplied to PULCs

| Subject matter | Provision disappplied |
|--|-----------------------|
| Way of forming a private company limited by shares | <i>Section 17</i> |

³⁵ [Inserted by point 138 of Committee Amendments](#)

³⁶ [Inserted by point 139 of Committee Amendments](#)

³⁷ [Inserted by point 140 of Committee Amendments](#)

³⁸ [Inserted by point 141 of Committee Amendments](#)

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| | |
|---|--|
| Company to carry on activity in the State [and prohibition of certain activities] ⁴⁰ | <i>Section 18</i> |
| Form of the constitution | <i>Section 19</i> |
| Effect of registration | <i>Section 25</i> |
| Provisions as to names of companies | <i>Section 26(1) to (4)</i> |
| Trading under a misleading name | <i>Section 27</i> |
| Amendment of constitution by special resolution | <i>Section 32(1)</i> |
| Capacity of private company limited by shares | <i>Section 38</i> |
| Security for costs | <i>Section 53</i> |
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| Exclusions, exemptions and special arrangements with regard to public disclosure of financial information | <i>Chapter 14 of Part 6</i> |
| Audit exemption | <i>Chapter 15 of Part 6</i> |
| Special audit exemption for dormant companies | <i>Chapter 16 of Part 6</i> |
| Small and medium companies | <i>Section 378</i> |
| Acquisition of shares | <i>Chapter 2 of Part 9</i> |
| Liability as contributories of past and present members | <i>Section 656</i> |
| Payment of debts due by contributory to the company and extent to which set-off allowed | <i>Section 660</i> |

Chapter 2

Incorporation and consequential matters

Way of forming an unlimited company.

[\[12251228\]](#). (1) An unlimited company may be formed for any lawful purpose by any person or persons subscribing to a constitution and complying with the relevant provisions of –

- (a) *Chapter 2 of Part 2*, as applied by this Part; and

⁴⁰ [Inserted by point 143 of Committee Amendments](#)

⁴¹ [Inserted by point 144 of Committee Amendments](#)

(b) this Part,

in relation to registration of an unlimited company.

(2) Without prejudice to the means by which an unlimited company may be formed under the relevant provisions referred to in *subsection (1)*, a company may be registered as an unlimited company by means of -

- (a) the re-registration, or registration, as an unlimited company of a body corporate pursuant to *Part 20* or *22*;
- (b) the merger of 2 or more companies pursuant to *Chapter 3 of Part 9*;
- (c) the division of a company pursuant to *Chapter 4 of Part 9*; or
- (d) the merger operation provided for by the European Communities (Cross-Border Mergers) Regulations 2008 (S.I. No. 157 of 2008).

Unlimited company to carry on activity in the State.

[12261229]. An unlimited company shall not be formed and registered unless it appears to the Registrar that the company, when registered, will carry on an activity in the State, being an activity that is mentioned in its memorandum.

The form of the constitution of an ULC or PUC.

[12271230]. (1) Subject to *subsection (3)*, the constitution of an ULC or PUC shall be in the form of a memorandum of association and articles of association which together are referred to in this Part as a “constitution”.

(2) The memorandum of association of an ULC or PUC shall state—

- (a) its name;
- (b) that it is, as the case may be, a private unlimited company or public unlimited company registered under this Part;
- (c) its objects;
- (d) the amount of share capital with which the company proposes to be registered and the division thereof into shares of a fixed amount; and
- (e) the fact that its members have unlimited liability.

(3) The constitution of an ULC or PUC shall—

- (a) in addition to the matters specified in *subsection (2)*, state the number of shares (which shall not be less than one) taken by each subscriber to the

⁴² Inserted by point 145 of Committee Amendments

constitution;

(b) be in accordance with the form set out in –

(i) *Schedule 11* - in the case of an ULC; or

(ii) *Schedule 12* - in the case of a PUC,

or, in either case, as near thereto as circumstances permit;

(c) be printed in an entire format, that is to say the memorandum and articles

shall be contained in the one document, being a document either in legible form or (as long as it is capable of being reproduced in legible form) in non-legible form; and

(d) either –

(i) be signed by each subscriber in the presence of at least one witness who shall attest the signature;

or

(ii) be authenticated in the manner referred to in *section 889*.

The form of the constitution of a PULC.

[42281231]. (1) Subject to *subsection (3)*, the constitution of a PULC shall be in the form of a memorandum of association and articles of association which together are referred to in this Part as a “constitution”.

(2) The memorandum of association of a PULC shall state—

(a) its name;

(b) that it is a public unlimited company, that has no share capital, registered under this Part;

(c) its objects; and

(d) the fact that its members have unlimited liability.

(3) The constitution of a PULC shall—

(a) be in accordance with the form set out in *Schedule 13* or as near thereto as circumstances permit;

(b) be printed in an entire format, that is to say the memorandum and articles

shall be contained in the one document, being a document either in legible form or (as long as it is capable of being reproduced in legible form) in non-legible form; and

(c) either –

(i) be signed by each subscriber in the presence of at least one witness who shall attest the signature;

or

(ii) be authenticated in the manner referred to in *section 889*.

Supplemental provisions in relation to constitution referred to in section ~~[12271230]~~ or ~~[12281231]~~ and continuance in force of existing memorandum and articles.

~~[12291232]~~. (1) This section –

- (a) contains provisions as to the articles of an unlimited company;
- (b) provides that, in certain circumstances, a default position shall obtain in relation to the articles of an unlimited company; and
- (c) continues in force the memorandum and articles of an unlimited company registered under the prior Companies Acts.

(2) In this section –

“mandatory provision” means a provision of any of *Parts 1 to 14* (as applied by this Part) or of this Part that is not an optional provision;

“optional provision” means a provision of any of *Parts 1 to 14* (as applied by this Part) or of this Part that –

- (a) contains a statement to the effect, or is governed by provision elsewhere to the effect, that the provision applies save to the extent that the constitution provides otherwise or unless the constitution states otherwise; or
- (b) is otherwise of such import.

(3) The articles of an unlimited company may contain regulations in relation to the company.

(4) So far as the articles of an unlimited company do not exclude or modify an optional provision, that optional provision shall apply in relation to the company.

(5) Articles, instead of containing any regulations in relation to the unlimited company, may consist solely of a statement to the effect that the provisions of the *Companies Act 2012* are adopted and, if the articles consist solely of such a statement, *subsection (4)* shall apply.

(6) The memorandum and articles of an unlimited company registered before the commencement of this section shall, save to the extent that they are inconsistent with a mandatory provision, continue in force but may be altered or added to under and in accordance with the conditions under which memorandums or articles, whenever registered, are permitted by this Act to be altered or added to.

(7) References in the provisions of a memorandum or articles so continued in force to any provision of the prior Companies Acts shall be read as references to the corresponding provision of this Act.

(8) To the extent that an unlimited company registered before the commencement of this section was, immediately before that commencement, governed by –

- (a) the regulations of Part II or III of Table E in the First Schedule to the Act of 1963; or
- (b) the regulations of any Table referred to in section 3(9)(b), (c) or (d) of the Act of 1963,

it shall, after that commencement, continue to be governed by those regulations but -

- (i) this is save to the extent that those regulations are inconsistent with a mandatory provision;
- (ii) those regulations may be altered or added to under and in accordance with the conditions under which articles, whenever registered, are permitted by this Act to be altered or added to; and
- (iii) references in the regulations to any provision of the prior Companies Acts shall be read as references to the corresponding provision of this Act.

Effect of registration.

[12301233]. (1) On the registration of the constitution of an unlimited company, the Registrar shall certify in writing that the company is incorporated and shall issue to the company a certificate of incorporation in respect of it.

(2) From the date of incorporation mentioned in the certificate of incorporation, the subscriber or subscribers to the constitution, together with such other persons as may from time to time become members of the unlimited company, shall be a body corporate with the name contained in the constitution, having perpetual succession and a common seal, but with such liability on the part of the members to contribute to the assets of the company in the event of its being wound up as is mentioned in this Part.

(3) The certificate of incorporation issued under *subsection (1)* shall state that the company is –

- (a) a private unlimited company;
- (b) a public unlimited company; or
- (c) a public unlimited company that has no share capital,

as the case may be.

(4) A certificate of incorporation issued under *subsection (1)* shall be conclusive evidence that the requirements of *section 21* and of this Chapter have been complied with, and that the unlimited company is duly registered under this Act.

(5) The persons who are specified in the statement required to be delivered to the Registrar by *section 21(1)(a)* as the directors, secretary or joint secretaries or assistant or deputy secretary or secretaries of the unlimited company to which the statement refers shall, on the incorporation of the company, be deemed to have been appointed as the first directors, secretary or joint secretaries or assistant or deputy secretary or secretaries, as the case may be, of the company.

(6) Any indication in the constitution, as delivered under *section 21* for registration, specifying a person as a director or secretary (including any assistant or deputy secretary) of a company shall be void unless such person is specified as a director or as secretary (or, as the case may be, assistant or deputy secretary) in the foregoing statement.

(7) *Subsection (5)* does not operate to deem a person appointed as a director or secretary (including any assistant or deputy secretary) of an unlimited company where –

- (a) he or she is disqualified under this Act from being appointed a director, secretary, assistant or deputy secretary, as the case may be, of a company; or
- (b) in the case of a director or secretary, a provision of this Act provides that the person's appointment as such in the circumstances is void.

Provisions as to names of unlimited companies.

[12341234]. (1) The name of an unlimited company shall end with one of the following:

- unlimited company;
- cuideachta neamhtheoranta.

(2) The words “unlimited company” may be abbreviated to “u.c.” or “uc” (including either such abbreviation in capitalised form) in any usage after the company's registration by any person including the unlimited company.

(3) The words “cuideachta neamhtheoranta” may be abbreviated to “c.n.” or “cn” (including either such abbreviation in capitalised form) in any usage after the company's registration by any person including the unlimited company.

(4) An unlimited company carrying on business under a name other than its corporate name shall register in the manner directed by law for the registration of business names but the use of the abbreviations set out in *subsection (2)* or *(3)* shall not of itself render such registration necessary.

(5) This section is subject to *section [12401243]* (which makes transitional provision for an existing unlimited company as regards its name).

Trading under a misleading name.

[12321235]. (1) Subject to *subsection (6)*, neither a body that is not an unlimited company nor an individual shall carry on any trade, profession or business under a name which includes, as its last part, the words “unlimited company”, or “cuideachta neamhtheoranta” or abbreviations of those words.

(2) If a body or individual contravenes *subsection (1)*, the body or individual and, in the case of a body, any officer of it who is in default, shall be guilty of a category 3 offence.

(3) An unlimited company shall not, in the following circumstances, use a name which may reasonably be expected to give the impression that it is any type of a company other than an unlimited company or that it is any other form of body corporate.

(4) Those circumstances are circumstances in which the fact that it is an unlimited company is likely to be material to any person.

(5) If an unlimited company contravenes *subsection (3)*, the unlimited company and any officer of it who is in default shall be guilty of a category 3 offence.

(6) *Subsection (1)* shall not apply to any company -

(a) to which *Part 21* applies; and

(b) which has provisions in its constitution that would entitle it to rank as an unlimited company if it had been registered in the State.

Capacity of an unlimited company.

[12331236]. (1) An unlimited company shall have the capacity to do any act or thing stated in the objects set out in its memorandum.

(2) For the purposes of *subsection (1)* -

(a) the reference in it to an object includes a reference to anything stated in the memorandum to be a power to do any act or thing (whether the word “power” is used or not);

(b) if an object is stated in the unlimited company’s memorandum without the following also being stated in relation to it, the capacity of the unlimited company extends to doing any act or thing that appears to it to be requisite, advantageous or incidental to, or to facilitate, the attainment of that object and that is not inconsistent with any enactment,

and a subsequent reference in this Part to an object of an unlimited company shall be read accordingly.

Capacity not limited by the constitution of an unlimited company.

[12341237]. (1) The validity of an act done by an unlimited company shall not be called into question on the ground of lack of capacity by reason of anything contained in the company’s objects.

(2) A member of an unlimited company may bring proceedings to restrain the doing of an act which, but for *subsection (1)*, would be beyond the company's capacity but no such proceedings shall lie in respect of any act to be done in fulfilment of a legal obligation arising from a previous act of the company.

(3) Notwithstanding the enactment of *subsection (1)*, it remains the duty of the directors to observe any limitations on their powers flowing from the unlimited company's objects and action by the directors which, but for *subsection (1)*, would be beyond the unlimited company's capacity may only be ratified by the company by special resolution.

(4) A resolution ratifying such action shall not affect any liability incurred by the directors or any other person; if relief from any such liability is to be conferred by the unlimited company it must be agreed to separately by a special resolution of it.

(5) A party to a transaction with an unlimited company is not bound to enquire as to whether it is permitted by the company's objects.

Alteration of objects clause by special resolution.

[12351238]. (1) Subject to *subsection (2)*, an unlimited company may, by special resolution, alter the provisions of its memorandum of association by abandoning, restricting or amending any existing object or by adopting a new object and any alteration so made shall be as valid as if originally contained therein, and be subject to alteration in like manner.

(2) If an application is made to the court in accordance with this section for the alteration to be cancelled, it shall not have effect except in so far as it is confirmed by the court.

(3) Subject to *subsection (4)*, an application under this section may be made—

(a) in the case of –

(i) an ULC or a PUC by the holders of not less, in the aggregate, than 15 per cent in nominal value of the ULC's or PUC's issued share capital or any class thereof; or

(ii) in the case of any type of unlimited company, by not less than 15 per cent of the company's members; or

(b) in any case, by the holders of not less than 15 percent of the unlimited company's debentures, entitling the holders to object to alterations of its objects.

(4) An application shall not be made under this section by any person who has consented to or voted in favour of the alteration.

(5) An application under this section shall be made within 21 days after the date on which the resolution altering the unlimited company's objects was passed and may be made on behalf of the persons entitled to make the application by such one or more of their number as they may appoint in writing for the purpose.

(6) On an application under this section, the court may –

- (a) make an order cancelling the alteration or confirming the alteration, either wholly or in part, and on such terms and conditions as it thinks fit; and
- (b) if it thinks fit, adjourn the proceedings in order that an arrangement may be made to the satisfaction of the court for the purchase of the interests of dissenting members and may give such directions and make such orders as it may think expedient for facilitating or carrying into effect any such arrangement.

(7) An order under this section may, if the court thinks fit, provide for the purchase by the unlimited company of the shares of any members of the company and for the reduction accordingly of its company capital and may make such alterations in the constitution of the company as may be required in consequence of that provision.

Supplemental provisions in relation to section ~~[1235]1238~~.

~~[1236]1239~~. (1) Where an order under section ~~[1235]1238~~ requires the unlimited company not to make any, or any specified, alteration in its constitution, then, notwithstanding anything in this Act, but subject to the provisions of the order, the unlimited company shall not have power, without the leave of the court, to make any such alteration in contravention of that requirement.

(2) Any alteration in the constitution of an unlimited company made by virtue of an order under section ~~[1235]1238~~, other than one made by resolution of the company, shall be of the same effect as if duly made by resolution of the company and the provisions of this Act shall apply to the constitution as so altered accordingly.

(3) Notice of the meeting at which the special resolution altering an unlimited company's objects is intended to be proposed shall be given to any holders of the company's debentures that entitle the holders to object to alterations of its objects; that notice shall be the same as that given to members of the company, so however that not less than 10 days' notice shall be given to the holders of any such debentures.

(4) If the written resolution procedure is used in the matter, notice, which shall not be less than 10 days, of the proposed use of that procedure shall, together with a copy of the proposed text of the resolution, be given to the debenture holders referred to in subsection (3).

(5) In default of any provisions in the unlimited company's constitution regulating the giving to the foregoing debenture holders of notice referred to in subsection (3) or (4), the provisions of Part 4 or, as the case may be, of the unlimited company's constitution regulating the giving of notice to members shall apply.

(6) Where an unlimited company passes a resolution altering its objects—

- (a) if no application is made under *section [1235]238* with respect to the alteration, it shall, within 15 days after the end of the period for making such an application, deliver to the Registrar a copy of its memorandum of association as altered; and
- (b) if such an application is made, it shall—
- (i) forthwith give notice of that fact to the Registrar; and
 - (ii) within 15 days after the date of any order cancelling or confirming the alteration, deliver to the Registrar a certified copy of the order and, in the case of an order confirming the alteration, a copy of the memorandum as altered.

(7) The court may, by order, at any time extend the time for delivery of documents to the Registrar under *subsection (6)(b)* for such period as the court may think proper.

(8) If an unlimited company makes default in giving notice or delivering any document to the Registrar as required by *subsection (6)*, the unlimited company and any officer of it who is in default shall be guilty of a category 4 offence.

Alteration of articles by special resolution.

[1237]240. (1) Subject to the provisions of this Act and to the conditions contained in its memorandum, an unlimited company may, by special resolution, alter or add to its articles.

(2) Any alteration or addition so made in the articles shall, subject to the provisions of this Act, be as valid as if originally contained therein and be subject in like manner to alteration by special resolution.

Power to alter provisions in memorandum which could have been contained in articles.

[1238]241. (1) Subject to *subsection (2)*, *sections 32(4)* and *(5)* and *213*, any provision contained in an unlimited company's memorandum which could lawfully have been contained in articles instead of in the memorandum may, subject to the provisions of this section, be altered by the unlimited company by special resolution.

(2) If an application is made to the court for the alteration to be cancelled, it shall not have effect except in so far as it is confirmed by the court.

(3) This section shall not apply where the memorandum itself provides for or prohibits the alteration of all or any of the foregoing provisions, and shall not authorise any variation or abrogation of the special rights of any class of members.

(4) Section ~~[12351238]~~(3) to (7) (other than *subsection (3)(b)*) and section ~~[12361239]~~ (other than *subsections (3) to (5)*) shall apply in relation to any alteration and to any application made under this section as they apply in relation to alterations and to applications made under those sections.

Status of existing unlimited company.

~~[12391242]~~. (1) In this section “existing unlimited company” means an unlimited company, whether it is a private or public such company having a share capital, or a public such one not having a share capital, which -

- (a) was incorporated under any former enactment relating to companies (within the meaning of *section 5*);
and
- (b) is in existence immediately before the commencement of this section.

(2) An existing unlimited company shall, on and from the commencement of this section, continue in existence and be deemed to be –

- (a) if it was a private unlimited company having a share capital before such commencement – an ULC to which this Part applies;
- (b) if it was a public unlimited company having a share capital before such commencement – a PUC to which this Part applies; and
- (c) if it was a public unlimited company not having a share capital before such commencement – a PULC to which this Part applies.

(3) Section ~~[12401243]~~ contains provisions –

- (a) for enabling such a company to omit, for a limited period, “unlimited company” or “cuideachta neamhtheoranta” from its name despite the foregoing status that it has assumed; and
- (b) deeming the name of such a company, after a specified period and in default of its having changed its name in that fashion, to be altered by the addition of –
 - (i) “unlimited company” at the end thereof; or
 - (ii) “cuideachta neamhtheoranta” at the end thereof,as the case may be.

(4) Reference, express or implied, in this Act to the date of registration of a company mentioned in a preceding subsection shall be read as a reference to the date on which the company was registered under the Joint Stock Companies Act 1862, the Companies (Consolidation) Act 1908 or the prior Companies Acts, as the case may be.

Transitional provision - omission of “unlimited company” or “cuideachta neamhtheoranta” by existing unlimited company.

~~[12401243]~~. (1) In this section –

“existing unlimited company” has the same meaning as it has in *section [12391242]*;

“new provisions” means the provisions of this Part (and the relevant provisions of *Part 2* as applied by this Part) relating to the use of either of the required sets of words (or their abbreviations) set out in *subsection (2)*;

“transition period” means the period of 18 months beginning after the commencement of this section.

(2) For the purposes of this section, each of the following is a required set of words –

- (a) unlimited company;
- (b) cuideachta neamhtheoranta.

(3) During –

- (a) the transition period; or
- (b) if before the expiry of that period the company has changed its name to include either of the required sets of words, the period preceding the making of that change,

an existing unlimited company may omit the words “unlimited company or “cuideachta neamhtheoranta” from its name.

(4) On and from –

- (a) the expiry of the transition period; or
- (b) the company changing its name to include either of the required sets of words,

whichever happens first, the new provisions shall apply as respects the name of an existing unlimited company.

(5) Without prejudice to the generality of *subsection (4)*, on the expiry of the transition period (and the company has not changed its name before then to include either of the required sets of words), the name of an existing unlimited company, as set out in its memorandum, shall be deemed to be altered by the addition of –

- (a) “unlimited” at the end thereof; or
- (b) “cuideachta neamhtheoranta” at the end thereof,

as the case may be.

(6) Where an existing unlimited company’s name, as set out in its memorandum, is altered by virtue of *subsection (5)*, the Registrar shall issue to the company a fresh certificate of incorporation in respect of it, being a certificate of incorporation that is altered to meet the circumstances of the case.

Chapter 3

Share capital

Application of *section 69* to PUCs and PULCs.

[12411244]. Section 69 shall apply to a PUC and a PULC as if the following subsection were substituted for *subsection (2)*:

“(2) A company shall –

- (a) neither apply to have securities (or interests in them) admitted to trading or to be listed on; nor
- (b) have securities (or interests in them) admitted to trading or listed on,

any market, whether a regulated market or not, in the State or elsewhere; however nothing in this subsection prohibits the admission to trading or listing (or an application being made therefor) on any market of debentures (or interests in them) for the purposes of any of *paragraphs (a) to (e) of subsection (3)*.”

Authority to allot and pre-emption rights in the case of a PUC.

[12421245]. Sections ~~[10191021]~~ to ~~[10211023]~~ shall apply to a PUC.

Variation of rights attached to special classes of shares.

[12431246]. Section ~~[983985]~~ shall apply to a PUC and an ULC as if –

- (a) each reference in it to a DAC were a reference to a PUC or an ULC, as the case may be; and
- (b) in the case of a PUC, the reference in *subsection (3)(c)* to the giving, variation, revocation or renewal of an authority for the purposes of *section 70(1)* were a reference to the giving, variation, revocation or renewal of an authority for the purposes of *section ~~[10191021]~~(1)*.

Variation of company capital.

[12441247]. Section 84 shall apply to a ULC and a PUC with the following modifications –

- (a) “special resolution” shall be substituted for “ordinary resolution” in *subsection (1)*; and
- (b) in *subsection (1)(b)*, the following shall be omitted :

“, so however, that in the subdivision the proportion between the amount paid and the amount, if any, unpaid on each reduced share shall be the same as it was in the case of the share from which the reduced share is derived”.

Reduction of company capital.

[12451248]. (1) Save to the extent that its constitution otherwise provides, an ULC or PUC may, by special resolution, reduce its company capital in any way it thinks expedient and, without prejudice to the generality of the foregoing, may thereby –

- (a) extinguish or reduce the liability on any of its shares in respect of share capital not paid up;
- (b) either with or without extinguishing or reducing liability on any of its shares, cancel any paid up company capital which is lost or unrepresented by available assets; or
- (c) either with or without extinguishing or reducing liability on any of its shares, pay off any paid up company capital which is in excess of the wants of the company.

(2) A resolution shall not be valid for the purposes of *subsection (1)* if it would have the effect that the ULC or PUC no longer has any members.

Application of *section 115* in relation to PULCs.

[12461249]. In its application to this Part, *section 115* shall apply as if each reference in it to the acquisition and holding of shares in a company included, in a case where the holding company is a PULC, a reference to becoming, and being, a member of the company otherwise than by means of acquiring and holding shares.

Making of distributions unrestricted in the case of unlimited companies.

[12471250]. Neither the provisions of *Chapter 7 of Part 3* nor any rule of law on the making of distributions out of a company's assets shall apply in relation to an unlimited company.

Uncertificated transfer of securities.

[12481251]. *Section [10851086]* shall apply to securities of a PUC or a PULC as it applies to securities of a PLC.

Chapter 4

Corporate governance

Directors.

[12491252]. An unlimited company shall have at least 2 directors.

Limitation on number of directorships.

[12501253]. For the purposes of this Part *section 143* shall apply as if the following subsection were substituted for *subsection (1)* :

“(1) A person shall not, at a particular time, be a director of more than –

(a) 25 unlimited companies (of whatever type); or

(b) 25 companies, one, or more than one, of which is an unlimited company (of whatever type) and one, or more than one, of which is any other type of company capable of being wound up under this Act.”.

Membership of a PULC.

[12511254]. (1) The subscribers to the memorandum of association of a PULC shall be deemed to have agreed to become members of the PULC, and, on its registration, shall be entered as members in its register of members.

(2) Such other persons as the directors admit to membership, and whose names are entered in its register of members, shall be members of the PULC.

(3) The articles of a PULC shall state the number of members with which the company proposes to be registered.

(4) Where a PULC has increased the number of its members beyond the registered number, it shall, within 15 days after date on which the increase was resolved on or took place, deliver particulars of the increase to the Registrar.

(5) If default is made in complying with *subsection (4)*, the PULC and any officer of it who is in default shall be guilty of a category 4 offence.

(6) The articles of a PULC may state the maximum number of persons who may be members of the PULC, subject to the power of the directors to register an increase in the number of members.

(7) A member may resign his or her membership by serving notice to that effect upon the directors at the registered office of the PULC, such notice to expire no earlier than the date of service of the notice of resignation.

(8) Save where the constitution of a PULC provides otherwise, the directors may require a member to resign his or her membership by serving notice upon the member terminating his or her membership to expire no earlier than the date of service of the notice of termination.

(9) Save where the constitution of a PULC provides otherwise, every member shall have one vote.

(10) The death of a member shall terminate his or her membership.

Personation of member: offence.

[12521255]. If any person falsely and deceitfully personates any member of a PULC and thereby –

- (a) receives or endeavours to receive any money due to any such member; or
- (b) votes at any meeting as if the person were the true and lawful member,

he or she shall be guilty of a category 2 offence.

Register of members.

[12531256]. *Section 170* shall apply to a PULC with the following modifications :

- (a) the following paragraph shall be substituted, in *subsection (1)*, for *paragraph (a)* :
“(a) the names and addresses of the members;” and
- (b) *subsection (5)* shall be omitted.

Unlimited company may not dispense with holding of a.g.m.

[12541257]. Section 176(3) and (4) (which relate to dispensing with the holding of an annual general meeting) shall not apply to an unlimited company.

Application of section 194 in relation to an unlimited company.

[12551258]. Section 194 shall apply to an unlimited company as if, in *subsection (1)*, after “Notwithstanding any provision to the contrary in this Part or in *Parts 1 to 3 or 5 to 14*”, there were inserted “and unless the constitution provides otherwise”.

Chapter 5

Financial statements, annual return and audit

Definitions (Chapter 5).

[12561259]. In this Chapter -

“designated ULC” has the meaning assigned to it by *section [12651268]*;

“non-designated ULC” means a ULC that is not a designated ULC.

Non-application of Part 6 to unlimited companies that are credit institutions or insurance undertakings.

[12571260]. Part 6 shall not apply to an unlimited company that is a credit institution or an insurance undertaking -

- (a) to the extent provided by regulations made under section 3 of the European Communities Act 1972 to give effect to Community acts on accounts of credit institutions and insurance undertakings, respectively; or
- (b) to the extent provided by any other enactment.

Requirement for corporate governance statement and modification of certain provisions of Parts 5 and 6 as they apply to PUCs and PULCs.

[12581261]. Chapter 3 of Part 23 has effect in relation to, amongst other companies, a PUC and a PULC that have debentures admitted to trading on a regulated market in an EEA state.

Application of section 298 to a PULC.

[12591262]. Section 298 shall apply to a PULC as if the following paragraph were substituted for *paragraph (a) of subsection (8)*:

“(a) any debentures or other debt securities of the company or any shares, debentures or other debt securities of a subsidiary undertaking have been admitted to trading on a regulated market in an EEA state; or”.

Disclosures by unlimited company that is a licensed bank.

[12601263]. In addition to its having effect in relation to a public limited company, *section [1151118]* shall have effect in relation to an unlimited company.

Disclosure of membership changes in PULC’s financial statements.

~~[12611264]~~. *Section 319* (details of authorised share capital, allotted share capital and movements) shall not apply in relation to the financial statements of a PULC but where there are changes in the interests of members of a PULC in the financial year to which the financial statements of the PULC relate then particulars of those changes shall be given in the notes to those financial statements.

Disapplication of sections 326(1)(c) and 330 to a PULC.

~~[12621265]~~. [~~Sections-Section~~ ⁴³326(1)(c) and 330 shall not apply to a PULC.

Application of section 363 to an ULC and obligation on other unlimited companies to have their financial statements audited.

~~[12631266]~~. (1) *Section 363* shall apply to an ULC as if the words “(in so far as applicable to a private company limited by shares)”, in each place where they occur, were omitted and the cases specified in that section in which the audit exemption, as referred to in *section 359(1)* or (2), as the case may be, is not available to a company, or a holding company and its subsidiary undertakings, included a case in which the company or holding company, as appropriate, is a credit institution or an insurance undertaking.

(2) The directors of a PUC shall arrange for the statutory financial statements of the PUC for a financial year to be audited by statutory auditors.

(3) The directors of a PULC shall arrange for the statutory financial statements of the PULC for a financial year to be audited by statutory auditors.

Qualification of section 339 in the case of a PULC.

~~[12641267]~~. *Section 339* (circulation of statutory financial statements) shall apply to a PULC with the following modifications :

(a) in *subsection (1)(a)*, there shall be substituted “(but only if that person is entitled to receive notices of general meetings of the company)” for “(whether that person is or is not entitled to receive notices of general meetings of the company)”;

(b) in *subsection (1)(b)*, there shall be substituted “(but only if that person is so entitled)” for “(whether that person is or is not so entitled)”.

No requirement to deliver financial statements, etc. with annual return in the case of certain ULCs.

~~[12651268]~~. (1) Other than in the case of a designated ULC, *sections 348* and *349* (which require documents to be annexed to annual return) shall not apply to an ULC.

⁴³ Correction of typographical error from Bill as initiated

(2) In this section “designated ULC” means –

(a) an ULC all of the members of which are –

(i) companies registered under this Act limited by shares or guarantee or existing such companies;

(ii) bodies not governed by the law of the State but equivalent to those referred to in *subparagraph (i)*; or

(iii) any combination of the types of bodies referred to in *subparagraphs (i) and (ii)*;

or

(b) an ULC all of the members of which are –

(i) unlimited companies –

(I) the membership of each of which is comprised only of bodies falling within *paragraph (a)(i), (ii) or (iii)*;

and

(II) that are governed by the laws of one or more Member States;

(ii) partnerships, all the partners of which are bodies that –

(I) fall within *paragraph (a)(i), (ii) or (iii)*; and

(II) are governed by the laws of one or more Member States;

(iii) bodies governed by the laws of one or more Member States that are of a form comparable to those referred to

in *subparagraph (i) or (ii)*;

or

(iv) any combination of the types of bodies referred to in the preceding subparagraphs of this paragraph and

subparagraphs (i) and (ii) of paragraph (a).

Application of section 393 to a PULC.

[12661269]. Section 393 (report to Registrar and Director: accounting records) shall apply to a PULC with the substitution, in *subsection (6)*, of “its members” for “its shareholders”.

Application of section 394 to a PULC.

[12671270]. Section 394 (report to Registrar and Director: category 1 and 2 offences) shall apply to a PULC with the substitution, in *subsection (4)*, of “its members” for “its shareholders”.

Documents to be annexed to annual return of non-designated ULC.

[12681271]. (1) The statutory auditors of a non-designated ULC shall prepare, and furnish to the directors of the company, a separate report which –

- (a) confirms that the statutory auditors audited the financial statements of the company for the relevant financial year; and
- (b) includes within it the report made by them to the members of the company pursuant to *section 392* on those financial statements.

(2) Where a report is prepared in accordance with *subsection (1)* there shall be attached to the annual return of the non-designated ULC a copy of the report that satisfies the following conditions –

- (a) it is a true copy of the original save for the difference that the signature or signatures on the original shall appear in typeset, and not written, form on the copy; and
- (b) it is accompanied by a certificate of a director and the secretary of the non-designated ULC, that bears the signature of the director and the secretary in electronic or written form, stating that the copy is a true copy of the original (and the foregoing statement need not be qualified on account of the difference permitted by *paragraph (a)* as to the form of a signature).

(3) In *subsection (4)* –

“electronic means” means those provided for under the Electronic Commerce Act 2000 and effected in compliance with any requirements of the Registrar of the kind referred to in sections 12(2)(b) and 13(2)(a) of that Act;

“required documents” means the copy of the report referred to in *paragraph (a)* of *subsection (2)*, accompanied by the certificate referred to in *paragraph (b)* of that subsection;

“required period” means the period referred to in *section 344(2)* or *(3)*, as the case may be, or, where that period stands extended in accordance with *section 344(5)* and *(6)*, that period as it stands so extended.

(4) Where a non-designated ULC makes its annual return by electronic means to the Registrar within the required period then, notwithstanding that the required documents have not been attached to the annual return, the annual return shall be deemed to have been delivered to the Registrar within the required period with the foregoing documents attached to it if those documents are delivered to the Registrar within 28 days after the date on which the annual return has been delivered to the Registrar by electronic means.

(5) This section shall not apply if the non-designated ULC is entitled to, and has availed itself of, the audit exemption conferred by *Chapter 15* or *16* of *Part 6* in the financial year concerned.”

Chapter 6

Winding up

Liability as contributories of past and present members.

[12691272]. (1) *Subject to subsection (2)*, in the event of an unlimited company being wound up, every present and past member shall be liable to contribute to the assets of the unlimited company to an amount sufficient for payment of its debts and liabilities, and the costs, charges and expenses of the winding up, and for the adjustment of the rights of the contributories among themselves.

(2) The following qualifications apply in relation to *subsection (1)*:

- (a) a past member shall not be liable to contribute if he or she has ceased to be a member for one year or more before the commencement of the winding up;
- (b) a past member shall not be liable to contribute in respect of any debt or liability of the unlimited company contracted after he or she ceased to be a member;
- (c) a past member shall not be liable to contribute unless it appears to the court that the existing members are unable to satisfy the contributions required to be made by them in pursuance of this Act;
- (d) nothing in this Act shall invalidate any provision contained in any policy of insurance or other contract whereby the liability of individual members on the policy or contract is restricted, or whereby the funds of the unlimited company are alone made liable in respect of the policy or contract;
- (e) a sum due to any member of the unlimited company, in his or her character of a member, by way of distributions, profits or otherwise, shall not be deemed to be a debt of the company, payable to that member in a case of competition between himself or herself and any other creditor not a member of the unlimited company, but any such sum may be taken into account for the purpose of the final adjustment of the rights of the contributories among themselves.

Payment of debts due by contributory to the unlimited company and extent to which set-off allowed.

[12701273]. (1) The court may make an order requiring any contributory for the time being on the list of contributories to pay, in a manner directed by the order, any money due from him or her or from the estate of the person whom he or she represents to the unlimited company, exclusive of any money payable by him or her or the estate by virtue of any call in pursuance of this Act.

(2) The court in making any such order may allow to the contributory by way of set-off any sum due to the contributory or to the estate which the contributory represents from the unlimited company on any independent dealing or contract with the company, but not any money due to him or her as a member of the company in respect of any dividend or profit.

(3) When all the creditors are paid in full, any money due on any account whatever to a contributory from the unlimited company may be allowed to him or her by way of set-off against any subsequent call.

Examinerships

Petitions for examinerships.

[12711274]. *Section 511* shall apply to an unlimited company as if the following subsections were substituted for *subsections (2) and (3)*:

“(2) Where the company referred to in *section 510* is an insurer or the holding company of an insurer, a petition may be presented only by the Central Bank, and *subsection (1)* shall not apply to the company.

(3) Where the company referred to in *section 510* is –

(a) a licensed bank or the holding company of a licensed bank;

(b) a company which one or more trustee savings banks have been reorganised into pursuant to an order under *section 57* of the Trustee Savings Banks Act 1989; or

(c) a company which a building society has converted itself into under Part XI of the Building Societies Act 1989, a petition may be presented only by the Central Bank, and *subsection (1)* shall not apply to the company.”.

Chapter 8

Investigations

Application of *section 748(2)* to PUCs and PULCs.

[12721275]. (1) *Section 748(2)* shall apply to a PUC as if the following paragraph were substituted for *paragraph (b)* :

“(b) not less than 100 members of the company;”.

(2) *Section 748(2)* shall apply to a PULC as if -

(a) the following paragraph were substituted for *paragraph (b)* :

“(b) not less than 100 members of the company;”;

(b) *paragraph (c)* were omitted therefrom.

Chapter 9

Public offers of securities, market abuse, etc.

Application of *Chapters 1, 2 and 4 of Part 23* to PUCs and PULCs.

[12731276]. *Chapters 1, 2 and 4 of Part 23*, so far as they are applicable to companies other than public limited companies, shall apply to a PUC and a PULC.

