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**BILLE NA gCUIDEACHTAÍ, 2012**  
**COMPANIES BILL 2012**

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*Mar a tionscnaíodh*  
*As initiated*

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**ARRANGEMENT OF SECTIONS**

**PART 1**

**PRELIMINARY AND GENERAL**

Section

1. Short title and commencement.
2. Interpretation generally.
3. Periods of time.
4. Repeals and revocations.
5. Savings and transitional provisions.
6. Construction of references in other Acts to companies registered under Companies (Consolidation) Act 1908 and Act of 1963.
7. Definition of “subsidiary”.
8. Definitions of “holding company”, “wholly owned subsidiary” and “group of companies”.
9. Act structured to facilitate its use in relation to most common type of company.
10. Reference in *Parts 2 to 14* to company to mean private company limited by shares.
11. Construction of references to directors, board of directors and interpretation of certain other plural forms.
12. Regulations and orders.
13. Authentication of certain official documents.
14. Expenses.

[No. 116 of 2012]



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**BILLE NA gCUIDEACHTAÍ, 2012**  
**COMPANIES BILL 2012**

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# **BILL**

*entitled*

5 AN ACT TO CONSOLIDATE, WITH AMENDMENTS, CER-  
TAIN ENACTMENTS RELATING TO COMPANIES AND  
TO PROVIDE FOR RELATED MATTERS.

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

## PART 1

10 PRELIMINARY AND GENERAL

1.—(1) This Act may be cited as the Companies Act 2012.

Short title and  
commencement.

(2) This Act shall come into operation on such day or days as the  
Minister may appoint by order or orders either generally or with  
reference to any particular purpose or provision and different days  
15 may be so appointed for different purposes or different provisions.

(3) Without prejudice to the generality of *subsection (2)*, an order  
or orders under that subsection may appoint different days for the  
coming into operation of *section 4* or *1315* so as to effect the repeal  
or revocation provided by *section 4* or *1315* of—

20 (a) an enactment specified in *Part 1* or *Part 2* of *Schedule 2* or  
in *Schedule 15*, as the case may be, on different days for  
different purposes; or

(b) different provisions of an enactment specified in *Part 1* or  
*Part 2* of *Schedule 2* or in *Schedule 15*, as the case may  
25 be, on different days.

2.—(1) In this Act—

Interpretation  
generally.

“Acting Director” means a person appointed under *section 950* as  
the Acting Director of Corporate Enforcement;

“Act of 1963” means the Companies Act 1963;

“Act of 1990” means the Companies Act 1990;

“agent” does not include a person’s counsel acting as such;

“amendment”, in relation to a constitution, includes an alteration and a deletion;

“annual general meeting” means the meeting provided for in *section 176*; 5

“annual return” has the meaning given to it by *section 343*;

“annual return date” has the meaning given to it by *section 344*;

“appropriate rate”, in relation to interest, means

(a) subject to *paragraph (b)*, 5 per cent per annum; or 10

(b) such other rate as may be specified by order made by the Minister under *subsection (7)*;

“articles” means articles of association;

“assignee in bankruptcy” means the Official Assignee (within the meaning of the Bankruptcy Act 1988) or a creditors’ assignee (within 15 the meaning of that Act);

“authorised market operator” means a market operator (within the meaning of Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004) who, for the time being, is authorised under— 20

(a) the European Communities (Markets in Financial Instruments) Regulations 2007 (S.I. No.60 of 2007); or

(b) the measures adopted by another Member State to implement that Directive,

to operate the business of a regulated market (within the meaning 25 of that Directive);

“Bankruptcy Acts” means the Bankruptcy Act 1988 and any enactment amending or extending that Act;

“book and paper” and “book or paper” includes deeds, writings and documents and, where not separately mentioned in the provision 30 concerned, accounting records;

“books and documents” and “books or documents” includes deeds, writings and records made in any other manner and, where not separately mentioned in the provision concerned, accounting records;

“called-up share capital”, in relation to a company, means so much 35 of its share capital as equals the aggregate amount of the calls made on its shares, whether or not those calls have been paid, together with any share capital paid up without being called and any share capital to be paid on a specified future date under the company’s constitution, the terms of allotment of the relevant shares or any 40 other arrangements for payment of those shares, and “uncalled share capital” shall be read accordingly;

“category 1 offence” means an offence the penalties for which are specified in *section 872(1)*;

“category 2 offence” means an offence the penalties for which are specified in *section 872(2)*;

5 “category 3 offence” means an offence the penalties for which are specified in *section 872(3)*;

“category 4 offence” means an offence the penalties for which are specified in *section 872(4)*;

“Central Bank” means the Central Bank of Ireland;

10 “child” includes a step-child and an adopted child and “son”, “daughter” and “parent” shall be read accordingly;

“civil partner” has the meaning given to it by the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010;

15 “Community act” means an act adopted by an institution of the European Union;

“company”—

(a) in *Parts 2 to 14*, shall be read in accordance with *section 10*;

20 (b) subject to the foregoing, means a company formed and registered under this Act, or an existing company;

“company having a sole director” shall be read in accordance with *subsection (8)*;

25 “constitution” means the constitution of a company as provided for in *section 19* or, in the case of a company that is not a private company limited by shares, as provided for in *Part 16, 17, 18, 19* or *24*, as appropriate;

“contravention” includes a failure to comply;

“contributory” has the meaning given to it by *section 560*;

“court”—

30 (a) without prejudice to *paragraphs (b) and (c)*, where used in any provision of this Act in relation to a company, means—

(i) the High Court: or

35 (ii) where another court is specified for the purposes of that provision — that court;

(b) where used in relation to proceedings for an offence, means—

(i) in the case of an offence that is being prosecuted summarily – the District Court; or

(ii) in any other case – the court with jurisdiction in the matter concerned;

(c) where used in connection with proceedings for a debt or the recovery of a sum otherwise provided by this Act to be recoverable and a particular court or a court of competent jurisdiction is not specified for the purpose, means any court of competent jurisdiction; 5

“CRO Gazette” means the Companies Registration Office Gazette referred to in *section 888(7)*;

“debenture” includes debenture stock, bonds and any other securities of a company whether constituting a charge on the assets of the company or not; 10

“de facto director” shall be read in accordance with *section 223*;

“deliver” includes send or forward and, in the case of a requirement to deliver a document, notice or thing to the Registrar, where the provision concerned itself does not indicate that that is the purpose of its delivery, means deliver the document, notice or thing to the Registrar for the purposes of its registration; 15

“director” includes any person occupying the position of director by whatever name called; 20

“Director” means the Director of Corporate Enforcement (but that title appears set out in full in any provision where it is desirable to avoid confusion or otherwise to provide clarity on the matter) and includes an Acting Director while so acting and, in relation to a particular power of the Director, a delegate to whom the power is delegated under *section 954*; 25

“document” includes summons, notice, order and other legal process, and register;

“EEA Agreement” means the Agreement on the European Economic Area signed at Oporto on 2 May 1992, as adjusted by the Protocol signed at Brussels on 17 March 1993; 30

“EEA state” means a state, including the State, which is a contracting party to the EEA Agreement;

“enactment” means a statute or an instrument made under a power conferred by a statute; 35

“examiner” means an examiner appointed under *section 510* or *518*;

“existing company” means a company formed and registered in a register kept in the State under the Joint Stock Companies Acts, the Companies Act 1862, the Companies (Consolidation) Act 1908 or the Act of 1963; 40

“extended notice” has the meaning given to it by *section 397*;

“extraordinary general meeting” shall be read in accordance with *section 178*;

“financial year” shall be read in accordance with *section 289*;

“hire-purchase agreement” has the same meaning as it has in the Hire Purchase Act 1946; 45

“holding company” has the meaning given to it by *section 8*;

5 “insolvency proceedings”, other than in *Chapter 15 of Part 11*, means insolvency proceedings opened under Article 3 of the Insolvency Regulation in a Member State, other than the State and Denmark, where the proceedings relate to a body corporate;

“Insolvency Regulation” means Council Regulation (EC) No. 1346/2000 of 29 May 2000 on insolvency proceedings;

10 “Joint Stock Companies Acts” means the Joint Stock Companies Act 1856, the Joint Stock Companies Acts 1856, 1857, the Joint Stock Banking Companies Act 1857 and the Act to enable Joint Stock Banking Companies to be formed on the principle of limited liability, or any one or more of those Acts as the case may require, but does not include the Act 7 & 8 Victoria, Chapter 110;

15 “licensed bank” means the holder of a licence under section 9 of the Central Bank Act 1971;

“limited company” means a company the liability of whose members is limited;

“members’ voluntary winding up” has the meaning given to it by *section 560(1)*;

20 “memorandum” means memorandum of association;

“Minister”, other than in *Parts 23 and 24*, means the Minister for Jobs, Enterprise and Innovation;

“officer”, in relation to a body corporate, includes a director or secretary;

25 “officer of the Director” means—

(a) an officer of the Minister assigned to the Director;

(b) a member of An Garda Síochána seconded to the Director; or

30 (c) a person employed by the Minister or the Director under a contract for service or otherwise, to assist the Director in performing functions of the Director under this Act or any other enactment;

“ordinary resolution” has the meaning given to it by *section 192*;

“prescribed”—

35 (a) subject to *paragraphs (b), (c) and (d)*, means prescribed by regulations made by the Minister;

(b) in *Part 11*, unless a power of the Supervisory Authority to prescribe by regulations is provided or that Part otherwise makes express provision—

40 (i) means prescribed by rules of court; and

(ii) where a power of the Minister to prescribe is provided, means prescribed by the means referred to in *paragraph (a)*;

- (c) in *Part 15*, where a power of the Minister to prescribe is provided or the provision in which the expression appears does not indicate otherwise, means prescribed by the means referred to in *paragraph (a)*; and
- (d) in *Parts 23* and *24*, means prescribed by regulations made by the Minister for Finance; 5

“printed” includes reproduced in any legible and durable form approved by the Registrar;

“prior Companies Acts” means—

- (a) the Companies Acts 1963 to 2005; 10
- (b) Parts 2 and 3 of the Investment Funds, Companies and Miscellaneous Provisions Act 2006;
- (c) the Companies (Amendment) Act 2009;
- (d) the Companies (Miscellaneous Provisions) Act 2009;
- (e) the Companies (Amendment) Act 2012; and 15
- (f) every other enactment passed or made before the commencement of this section which provides that it is to be read as one with the Companies Acts;

“private company limited by shares” means, unless otherwise indicated, a private company limited by shares registered under *Part 2* as distinct from a designated activity company of the type referred to in *section 967(2)(a)*; 20

“prospectus” means a document or documents in such form and containing such information as may be required by or under Irish prospectus law or EU prospectus law (within the meaning of *Chapter 1* of *Part 23*), howsoever the document or documents are constituted, but does not include any advertisements in newspapers or journals derived from the foregoing; 25

“public holiday” means a day which is a public holiday under the Organisation of Working Time Act 1997; 30

“public limited company” includes (in *Parts 2 to 15*) an investment company within the meaning of *Part 24*;

“receiver of the property of a company” shall be read in accordance with *subsection (9)*;

“register” shall be read in accordance with *section 888(2)*; 35

“registered office”, in relation to a company, means the office provided for in *section 51*;

“Registrar” means—

- (a) the registrar appointed under *section 888(3)*; or
- (b) the person referred to in *subsection (6)* (which relates to the existing Registrar of Companies) of *section 888* for so long as the person holds office in accordance with *subsection (5)* of that section; 40

“related company” shall be read in accordance with *subsections (10) and (11)*;

“resolution for voluntary winding up” means a resolution referred to in—

5 (a) *section 203(1)(a)(i)* as it relates to *section 580*; or

(b) *section 581(1) or 587(2)*,

to wind up a company voluntarily;

“shadow director” shall be read in accordance with *section 222*;

10 “share” means share in the share capital of a company, and includes stock except where a distinction between stock and shares is express or implied;

“single-member company” has the meaning given to it by *section 197*;

“special resolution” has the meaning given to it by *section 192*;

15 “statutory auditor” means an individual or a firm (within the meaning of those Regulations) that stands approved as a statutory auditor or statutory audit firm, as the case may be, under the European Communities (Statutory Audits) (Directive 2006/43/EC) Regulations 2010 (S.I. No. 220 of 2010);

20 “subscribe” includes, where the means of authentication referred to in *section 889* are employed, subscribe in the prescribed non-legible form;

“subsidiary” has the meaning given to it by *section 7*;

“Summary Approval Procedure” has the meaning given to it by *section 203*;

25 “Supervisory Authority” has the meaning given to it by *section 901(1)*;

30 “undischarged bankrupt” means a person who is declared bankrupt by a court of competent jurisdiction, within the State or elsewhere, and who has not obtained a certificate of discharge or its equivalent in the relevant jurisdiction;

“written resolution” has the meaning given to it by *section 192(8)*.

(2) A word or expression used in *Part 6* and also used in another Part of this Act has, in that other Part, the same meaning as it has in *Part 6*.

35 (3) A reference in this Act to Table A in the First Schedule to the Act of 1963 shall, where appropriate, be read as a reference to *Tábla A* in that Schedule.

40 (4) References in this Act to a body corporate or to a corporation shall be read as not including a corporation sole, but as including a company or body corporate incorporated outside the State.

(5) Any provision of this Act overriding or interpreting a company’s constitution shall, except as provided by this Act, apply in



relation to the constitution in force on the provision's commencement as well as to regulations of the constitution coming into force thereafter.

(6) References in this Act to a person being in partnership with another are references to the person's being in partnership, within the meaning of section 1(1) of the Partnership Act 1890, with that person and references to a partner of a person shall be read accordingly. 5

(7) The Minister may, by order, specify a rate of interest for the purposes of *paragraph (b)* of the definition of "appropriate rate" in *subsection (1)*. 10

(8) In this Act a reference to a company having a sole director is a reference to either of the following—

(a) a case in which one person only is named in the statement delivered under *section 21(1)(a)* as a director of the company (and the company's constitution does not stand subsequently amended to provide that there shall be 2 or more directors of the company); or 15

(b) a case in which the company's constitution provides (or, as it stands subsequently amended, the company's constitution provides) that there shall be a single director of the company. 20

(9) In this Act a reference to a receiver of the property of a company includes—

(a) a reference to— 25

(i) a receiver and manager of the property of a company; or

(ii) a manager of the property of a company;

(b) a reference to a receiver or to a receiver and manager or to a manager, of part only of that property; and 30

(c) a reference to a receiver only of the income arising from that property or from part of it.

(10) For the purposes of this Act, a company is related to another company if—

(a) that other company is its holding company or subsidiary; or 35

(b) more than half in nominal value of its equity share capital (within the meaning of *section 7(10)*) is held by the other company and companies related to that other company (whether directly or indirectly, but other than in a fiduciary capacity); or 40

(c) more than half in nominal value of the equity share capital (within the meaning of *section 7(10)*) of each of them is held by members of the other (whether directly or indirectly, but other than in a fiduciary capacity); or 45

(d) that other company or a company or companies related to that other company, or that other company together with

a company or companies related to it, are entitled to exercise or control the exercise of more than one half of the voting power at any general meeting of the company; or

5 (e) the businesses of the companies have been so carried on that the separate business of each company, or a substantial part thereof, is not readily identifiable; or

(f) there is another body corporate to which both companies are related,

10 and “related company” has a corresponding meaning; for the purpose of any preceding paragraph of this subsection that contains a reference to a company being related to another, the provisions of this subsection also apply to the construction of each such reference.

15 (11) For the purposes of *subsection (10)* “company” includes any body that is capable of being wound up under this Act.

3.—(1) Where the time limited by any provision of this Act for the doing of anything expires on a Saturday, a Sunday or a public holiday, the time so limited shall extend to and the thing may be done on the first following day that is not a Saturday, a Sunday or a public holiday.

(2) Where in this Act anything is required or allowed to be done within a number of days not exceeding 6, a day that is a Saturday, a Sunday or a public holiday shall not be reckoned in computing that number.

25 4.—(1) The Acts of the Oireachtas specified in *Part 1 of Schedule 2* are repealed to the extent specified in the third column of that Part.

Repeals and revocations.

(2) The statutory instruments specified in *Part 2 of Schedule 2* are revoked to the extent specified in the third column of that Part.

30 (3) This section is in addition to *section 1315* and *Schedule 15* (repeals related to an unregistered company becoming registered under this Act).

5.—(1) As provided under *Part 17, 18, 19* or *24*, as appropriate, the repeal by this Act of any enactment shall not affect the incorporation of any company registered under any enactment so repealed.

Savings and transitional provisions.

35 (2) The effect of this Act in relation to a private company limited by shares incorporated under any former enactment relating to companies is provided for in *Chapter 6 of Part 2*.

40 (3) Any document referring to any former enactment relating to companies shall be read as referring to the corresponding enactment of this Act.

45 (4) Any person, appointed to any office under or by virtue of any former enactment relating to companies, who is in office immediately before the commencement of the provision concerned of this Act, shall be deemed to have been appointed to that office under or by virtue of the provision concerned of this Act.

(5) Any register, kept under any former enactment relating to companies, shall be deemed part of the register to be kept under the corresponding provision of this Act.

(6) All funds and accounts constituted under this Act shall be deemed to be in continuation of the corresponding funds and accounts constituted under the former enactments relating to companies. 5

(7) *Schedule 6* contains further savings and transitional provisions and shall have effect accordingly.

(8) This section is without prejudice to the generality of the Interpretation Act 2005 and, in particular, section 27 of it. 10

(9) In this section “former enactment relating to companies” means any enactment repealed or revoked by this Act and any enactment repealed or revoked by the Act of 1963 or the Companies (Consolidation) Act 1908. 15

Construction of references in other Acts to companies registered under Companies (Consolidation) Act 1908 and Act of 1963.

6.—(1) References in any Act, other than this Act, to a company formed and registered, or registered, under the Companies (Consolidation) Act 1908 or the Act of 1963 shall, unless the contrary intention appears, be read as references to a company formed and registered, or registered, under whichever of those Acts is appropriate or this Act. 20

(2) *Subsection (1)* applies despite section 26(2)(f) of the Interpretation Act 2005 (which provides that where an Act repeals and re-enacts, with or without modification, any provisions of a former Act, references in any other Act to the provisions so repealed shall, unless the contrary intention appears, be read as references to the provisions of the new Act relating to the same subject-matter as that of the former Act). 25

Definition of “subsidiary”.

7.—(1) In this section the expressions “superior company” and “lower company” are used solely to assist the understanding of its terms and— 30

(a) are not indicative of the status (in any manner not relevant to this section) of the respective companies vis a vis one another; and

(b) do not constitute definitions to which regard must be had for any other purpose of this Act. 35

(2) For the purposes of this Act, a company (the “lower company”) is, subject to *subsection (5)*, a subsidiary of another (the “superior company”) if, but only if—

(a) the superior company— 40

(i) is a shareholder or member of it and controls the composition of its board of directors; or

(ii) holds more than half in nominal value of its equity share capital; or

- (iii) holds more than half in nominal value of its shares carrying voting rights (other than voting rights which arise only in specified circumstances); or
- 5 (iv) holds a majority of the shareholders' or members' voting rights in the lower company; or
- (v) is a shareholder or member of it and controls alone, pursuant to an agreement with other shareholders or members, a majority of the shareholders' or members' voting rights; or
- 10 (b) the superior company has the right to exercise a dominant influence over it—
  - (i) by virtue of provisions contained in the lower company's constitution; or
  - (ii) by virtue of a control contract; or
- 15 (c) the superior company has the power to exercise, or actually exercises, dominant influence or control over it; or
- (d) the superior company and the lower company are managed by the superior company on a unified basis; or
- 20 (e) the lower company is a subsidiary (by virtue of the application of any of the provisions of this section) of any company which is the superior company's subsidiary (by virtue of such application).

(3) For the purposes of *subsection (2)(a)(i)*, the composition of the lower company's board of directors shall be regarded as being controlled by the superior company if, but only if, the latter company, by the exercise of some power exercisable by it without the consent or concurrence of any other person, can appoint or remove the holders of all or a majority of the directorships.

(4) In applying *subsection (3)*, the superior company shall be deemed to have power to appoint to a directorship in relation to which any of the following conditions is satisfied—

- 35 (a) that a person cannot be appointed to the directorship without the exercise in his or her favour by the superior company of such a power as is mentioned in that subsection; or
- (b) that a person's appointment to the directorship follows necessarily from his or her appointment as director of the superior company.

(5) In determining whether the lower company is a subsidiary of the superior company—

- (a) any shares held or power exercisable by the superior company in a fiduciary capacity shall be treated as not held or exercisable by it;
- 45 (b) subject to *paragraphs (c) and (d)*, any shares held or power exercisable—

- (i) by any person as a nominee for the superior company (except where the latter company is concerned only in a fiduciary capacity), or
- (ii) by, or by a nominee for, a subsidiary of the superior company, not being a subsidiary which is concerned only in a fiduciary capacity, 5

shall be treated as held or exercisable by the superior company;

- (c) any shares held or power exercisable by the superior company or a nominee for the superior company or a subsidiary of it shall be treated as not held or exercisable by the superior company where the shares are so held or the power is so exercisable by way of security but only if such power or the rights attaching to such shares are exercised in accordance with instructions received from the person providing the security; 10 15

- (d) any shares held or power exercisable by the superior company or by a nominee for the superior company or a subsidiary of it shall be treated as not held or exercisable by the superior company if the ordinary business of the superior company or its subsidiary, as the case may be, includes the lending of money and the shares are so held or the power is so exercisable by way of security but only if such power or the rights attaching to such shares are exercised in the interests of the person providing the security. 20 25

(6) For the purposes of *subsection (2)(a)(iv)* and *(v)*, the total of the voting rights of the shareholders or members in the lower company shall be reduced by the following—

- (a) the voting rights attached to shares held by the lower company in itself; and 30
- (b) the voting rights attached to shares held in the lower company by any of its subsidiaries; and
- (c) the voting rights attached to shares held by a person acting in his or her own name but on behalf of the lower company or one of the lower company’s own subsidiaries. 35

(7) For the purposes of *subsection (2)(b)*, a company shall not be regarded as having the right to exercise a dominant influence over another company unless it has a right to give directions with respect to the operating and financial policies of that other company which its directors are obliged to comply with. 40

(8) In *subsection (2)(b)* “control contract” means a contract in writing conferring such a right as is there referred to which—

- (a) is of a kind authorised by the constitution of the company in relation to which the right is exercisable; and
- (b) is permitted by the law under which that company is established. 45

(9) *Subsection (7)* shall not be read as affecting the construction of the expression “actually exercises dominant influence” in *subsection (2)(c)*.

(10) In this section—

“company” includes any body corporate;

“equity share capital” means, in relation to a company, its issued share capital excluding any part of it which, neither as respects dividends nor as respects capital, carries any right to participate beyond a specified amount in a distribution.

8.—(1) For the purposes of this Act, a company is another company’s holding company if, but only if, that other is its subsidiary.

Definitions of “holding company”, “wholly owned subsidiary” and “group of companies”.

(2) For the purposes of this Act, a company is another company’s wholly owned subsidiary if, but only if, the company has no members except—

(a) that other company; or

(b) companies that are wholly-owned subsidiaries (by virtue of the application of this subsection to them) of that other company; or

(c) nominees of any company referred to in *paragraph (a)* or *(b)*; or

(d) a mixture of what is referred to in 2 or more of the foregoing paragraphs.

(3) For the purposes of this Act “group of companies” means a holding company and its one or more subsidiaries.

(4) In this section “company” has the same meaning as it has in *section 7*.

9.—(1) Subject to *subsections (3) and (4)*, all of the law in this Act in relation to private companies limited by shares is to be found in *Parts 1 to 14* (or instruments under them) and *Schedules 1 to 6*.

Act structured to facilitate its use in relation to most common type of company.

(2) Subject to *subsection (3)*, all of the law in this Act in relation to other types of company is to be found amongst the provisions of—

(a) *Parts 16 to 25* (or instruments under them) and *Schedules 7 to 17*; and

(b) *Parts 1 to 14* (or instruments under them) and *Schedules 1 to 6* as applied or adapted by *Parts 16 to 25*.

(3) *Part 15* (Functions of Registrar and of regulatory and advisory bodies) applies to both—

(a) private companies limited by shares; and

(b) other types of company,

as well as to certain undertakings to which the European Communities (Accounts) Regulations 1993 (S.I. No.396 of 1993), as amended, apply.

(4) Exceptionally, provisions either—

- (a) of a miscellaneous nature arising out of the relationship between a private company limited by shares and another company type (such as provisions for re-registration); or
- (b) which it would not otherwise be practicable to include in *Parts 1 to 14* (such as provisions for a merger between a public limited company and a private company limited by shares),

will be found in *Parts 16 to 25*.

Reference in *Parts 2 to 14* to company to mean private company limited by shares.

**10.**—Unless expressly provided otherwise, a reference in *Parts 2 to 14* to a company is a reference to a private company limited by shares.

Construction of references to directors, board of directors and interpretation of certain other plural forms.

**11.**—(1) References in this Act to the directors of a company shall, where the company has a sole director, be read as references to the director of the company.

(2) References in this Act to the board of directors of a company shall, where the company has a sole director, be read as references to the director of the company.

(3) References in this Act to the members of a company, or the subscribers to a company’s constitution, shall, where the company has a sole member or where there is a single subscriber to its constitution, be read as references to the member of the company or the subscriber to its constitution, as the case may be.

(4) This section is in addition to, and does not derogate from, any special provision in this Act as to the construction of the expression “director” or “member” in a particular case.

(5) This section is without prejudice to the generality of section 18(a) of the Interpretation Act 2005.

Regulations and orders.

**12.**—(1) Subject to *subsection (2)*, the Minister may make regulations prescribing anything referred to in this Act as prescribed or to be prescribed.

(2) *Subsection (1)* does not apply to anything that *Part 11* or *15* provides is to be prescribed by another authority.

(3) Every regulation made by the Minister under this Act (other than a regulation referred to in *section 946, 1303* or *1311*) or order made by the Minister under this Act (other than an order under *section 1(2)* or *16(1)*) shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the regulation or order is passed by either such House within the next 21 days on which that House has sat after the regulation or order is laid before it, the regulation or order shall be annulled accordingly but without prejudice to the validity of anything previously done thereunder.

Authentication of certain official documents.

**13.**—Any approval, sanction, direction or licence or revocation of licence which, under this Act, may be given or made by the Minister may be signed by any person authorised in that behalf by the Minister.

14.—The expenses incurred by the Minister in the administration Expenses.  
of this Act shall, to such extent as may be sanctioned by the Minister  
for Public Expenditure and Reform, be paid out of moneys provided  
by the Oireachtas.

5

## PART 2

### INCORPORATION AND REGISTRATION

#### CHAPTER 1

##### *Preliminary*

15.—In this Part—

Definitions (*Part 2*).

10 “activity” means any activity that a company may be lawfully formed  
to carry on and includes the holding, acquisition or disposal of prop-  
erty of whatsoever kind;

“existing private company” means a private company limited by  
shares which—

15 (a) was incorporated under any former enactment relating to  
companies (within the meaning of *section 5*); and

(b) is in existence at the commencement of this section,

but does not include such a company where, subsequent to that com-  
mencement, it re-registers as another type of company;

20 “registered person” shall be read in accordance with *section 39(2)*;

“relevant classification system” means NACE Rev. 1, that is to say,  
the common basis for statistical classifications of economic activities  
within the European Community set out in the Annex to Council  
Regulation (EEC) No. 3037/90 of 9 October 1990 on the statistical  
25 classification of economic activities in the European Community, as  
amended for the time being;

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

16.—(1) If, in any respect, any difficulties arise in the operation  
30 of the provisions of the Act which, in the opinion of the Minister,  
necessitate the giving of more time for affected or interested parties  
to undertake any necessary actions or procedures in the period pro-  
vided for in the definition of “transition period” in *section 15*, the  
Minister may by order substitute a longer period (but not a period of  
35 longer than 30 months) for the period mentioned in that definition.

Extension of  
transition period in  
the event of  
difficulties.

(2) Where it is proposed to make an order under this section, a  
draft of the order shall be laid before each House of the Oireachtas  
and the order shall not be made unless a resolution approving of the  
draft has been passed by each such House.



## SCHEDULE 2

## REPEALS AND REVOCATIONS

## PART 1

## ACTS OF THE OIREACHTAS REPEALED

<i>Number and Year</i>	<i>Short title</i>	<i>Extent of Repeal</i>	
No. 33 of 1963	Companies Act 1963	The whole Act	5
No. 31 of 1977	Companies (Amendment Act) 1977	The whole Act	
No. 10 of 1982	Companies (Amendment) Act 1982	The whole Act	10
No. 13 of 1983	Companies (Amendment) Act 1983	The whole Act	
No. 25 of 1986	Companies (Amendment) Act 1986	The whole Act	
No. 27 of 1988	Bankruptcy Act 1988	Section 51(2)	15
No. 27 of 1990	Companies (Amendment) Act 1990	The whole Act	
No. 33 of 1990	Companies Act 1990	The whole Act	
No. 8 of 1999	Companies (Amendment) Act 1999	The whole Act	20
No. 30 of 1999	Companies (Amendment) (No. 2) Act 1999	The whole Act	
No. 28 of 2001	Company Law Enforcement Act 2001	The whole Act	
No. 44 of 2003	Companies (Auditing and Accounting) Act 2003	The whole Act	25
No. 12 of 2005	Investment Funds, Companies and Miscellaneous Provisions Act 2005	Parts 3, 4, 5 and 6	30
No. 41 of 2006	Investment Funds, Companies and Miscellaneous Provisions Act 2006	Parts 2 and 3	
No. 20 of 2009	Companies (Amendment) Act 2009	The whole Act	35
No. 45 of 2009	Companies (Miscellaneous Provisions) Act 2009	Sections 1 to 4	
No. 12 of 2012	Companies (Amendment) Act 2012	The whole Act	40

PART 2

STATUTORY INSTRUMENTS REVOKED

	<i>Number and Year</i>	<i>Citation</i>	<i>Extent of Revocation</i>
5	S.I. No. 163 of 1973	European Communities (Companies) Regulations 1973	The whole Statutory Instrument
10	S.I. No. 201 of 1992	European Communities (Companies: Group Accounts) Regulations 1992	The whole Statutory Instrument
	S.I. No. 395 of 1993	European Communities (Branch Disclosures) Regulations 1993	The whole Statutory Instrument
15	S.I. No. 275 of 1994	European Communities (Single Member Private Limited Companies) Regulations 1994	The whole Statutory Instrument
20	S.I. No. 437 of 2001	European Communities (Single-Member Private Limited Companies) Regulations 1994 (Amendment) Regulations 2001	The whole Statutory Instrument
25	S.I. No. 333 of 2002	European Communities (Corporate Insolvency) Regulations 2002	The whole Statutory Instrument
30	S.I. No. 765 of 2004	European Communities (Fair Value Accounting) Regulations 2004	The whole Statutory Instrument
	S.I. No. 839 of 2004	European Communities (Companies) Regulations 2004	The whole Statutory Instrument
35	S.I. No. 49 of 2007	European Communities (Companies) (Amendment) Regulations 2007	The whole Statutory Instrument
40	S.I. No. 450 of 2009	European Communities (Directive 2006/46/EC) Regulations 2009	The whole Statutory Instrument
	S.I. No. 83 of 2010	European Communities (Directive 2006/46/EC) (Amendment) Regulations 2010	The whole Statutory Instrument
45	S.I. No. 306 of 2011	European Communities (Mergers and Divisions of Companies) (Amendment) Regulations 2011	The whole Statutory Instrument
50	S.I. No. 304 of 2012	European Union (Accounts) Regulations 2012	The whole Statutory Instrument
55	S.I. No. 308 of 2012	Companies (Amendment) (No. 2) Act 1999 (Section 32) Order 2012	The whole Statutory Instrument

## SCHEDULE 6

## FURTHER SAVINGS AND TRANSITIONAL PROVISIONS

*Continuity of company law not affected*

**1.** The continuity of the operation of the law relating to companies shall not be affected by the substitution of this Act for the prior Companies Acts. 5

*Status (generally) of instruments made under prior Companies Acts*

**2.** Notwithstanding anything in section 26(2)(d) of the Interpretation Act 2005, no instrument made under any of the prior Companies Acts shall continue in force save as provided for in this Schedule. 10

*Certain regulations saved*

**3.** Any regulations made under section 28 or 48 of the Companies (Auditing and Accounting) Act 2003 and in force before the commencement of *Chapter 2* of *Part 15* shall continue in force as if made under the corresponding provision of that Chapter and may be amended or revoked accordingly. 15

*Certain superannuation schemes saved*

**4.** Every scheme made under section 9 of the Company Law Enforcement Act 2001 or section 20 of the Companies (Auditing and Accounting) Act 2003 and in force before the commencement of *Chapter 2* or *3*, as the case may be, of *Part 15* shall continue in force as if made under the corresponding provision of that Chapter and may be amended or revoked accordingly. 20

*Certain other instruments saved*

**5.** (1) As provided for in *section 1345, 1358* or *1371*, as appropriate— 25

- (a) the Prospectus (Directive 2003/71/EC) Regulations 2005 (S.I. No. 324 of 2005) and any regulations amending those regulations;
- (b) the Market Abuse (Directive 2003/6/EC) Regulations 2005 (S.I. No. 342 of 2005) and any regulations amending those regulations; 30
- (c) the Transparency (Directive 2004/109/EC) Regulations 2007 (S.I. No. 277 of 2007) and any regulations amending those regulations,

shall continue in force and may be amended or revoked under *section 1344, 1357* or *1370*, as appropriate, accordingly. 35

(2) The Companies Act 1990 (Uncertificated Securities) Regulations 1996 (S.I. No. 68 of 1996) shall continue in force and may be amended or revoked under *section 1085* accordingly.

*Applicability of offence investigation and other powers in case of offences under prior Companies Acts* 40

**6.** (1) For the purposes of the exercise of any power conferred by this Act, a reference in the provision concerned of this Act to an offence under a provision or provisions of this Act shall be read as

including a reference to an offence under the corresponding provision or provisions of the prior Companies Acts.

5 (2) Without prejudice to the generality of *subparagraph (1)*, that subparagraph applies to the exercise of any power of investigation or search, entry or seizure conferred by this Act and, in particular, as respects the operation of any condition precedent, provided in the provision concerned of this Act, with respect to the power's exercise.

10 (3) *Section 790* applies to a search warrant issued under section 20 of the Act of 1990 as it applies to a search warrant issued under *section 788*.

*Continuity of law relating to disqualifications and restrictions, etc.*

15 7. (1) Without prejudice to the generality of *paragraph 1*, the continuity of the law relating to disqualifications and restrictions is not affected by the substitution of *Chapters 3, 4 and 6 of Part 14* for Part VII of the Act of 1990.

20 (2) Without prejudice to the generality of *paragraph 1*, any disqualification or declaration of restriction (within the meaning of Part VII of the Act of 1990) provided, made or granted under that Part and in force before the commencement of the corresponding provision of *Part 14* shall continue in force and operate as a disqualification or declaration of restriction provided, made or granted under that corresponding provision.

25 (3) Without prejudice to the generality of *paragraph 6, section 840* (automatic disqualification on conviction of certain indictable offences) operates with respect to the circumstances of a person's being convicted of an indictable offence under the prior Companies Acts as it operates with respect to the circumstances of a person's being convicted of an indictable offence under this Act.

30 (4) Without prejudice to the generality of *paragraph 6*, the powers of the court under *section 843* (court may make disqualification order) are exercisable by reference to matters or things done or omitted to be done under the prior Companies Acts as they are exercisable by reference to matters or things done or omitted to be done under this Act.

35 (5) *Chapter 5* (Disqualification and Restriction Undertakings) of *Part 14* shall be read as being operative and as applicable in a case where the Director has reasonable grounds for the belief referred to in *section 851(2)* or *853(2)* by reference to matters or things done or omitted to be done, or circumstances, under the prior Companies  
40 Acts as they are operative and applicable in a case where the Director has reasonable grounds for such belief by reference to matters or things done or omitted to be done, or circumstances, under this Act.

*Continuation of acts not completed*

45 8. (1) Any thing commenced under a provision of the prior Companies Acts, before the repeal, by this Act, of that provision, and not completed before that repeal, may be continued and completed under the corresponding provision of this Act.

50 (2) Without prejudice to the generality of the preceding subparagraph or *paragraph 1*, any petition presented for the winding up of a company or the appointment of an examiner to a company before the repeal of the provision concerned of the prior Companies Acts but not disposed of before the commencement of the corresponding

provision of this Act may be proceeded with and heard under that corresponding provision and, likewise any subsequent act, application or proceeding in any such matter commenced but not completed before the corresponding provision of this Act is commenced may be so done, proceeded with or heard.

5

(3) However, in any such case, the court concerned shall, subject to *subparagraph (4)*, have jurisdiction to make whatever order it thinks appropriate for ensuring the smooth transition from the law and procedure under the prior Companies Acts to the law and procedure under this Act (that is to say, this Act and the rules of court as they have been brought into conformity with this Act as mentioned in *section 565(4)*) and that jurisdiction of the court shall extend, in a case where a liquidator has proceeded to take substantive steps in a winding up ordered by the court before the commencement of the relevant provision of *Part 11*, to making a direction that the functions of the court officer known as “the Examiner” that were performable under the rules of the court, before they were so brought into conformity, shall be performable in that winding up.

10

15

(4) In exercising the jurisdiction referred to in *subparagraph (3)*, the court shall bear in mind the extent to which a power of a liquidator that is exercisable under the relevant provisions of *Part 11* and also was exercisable under the relevant provisions of the prior Companies Acts may be exercised without the sanction of the court under the first-mentioned provisions.

20

(5) Notwithstanding anything in this paragraph or elsewhere, *sections 647 to 649* (liquidator’s remuneration) shall not apply to a winding up commenced before the commencement of the relevant provisions of *Part 11* and the matters dealt with by those sections shall be governed by the relevant provisions of the prior Companies Acts and the rules of court in force before the commencement of the first-mentioned provisions, and the second-mentioned provisions and rules of court shall, despite *section 4*, continue in force for that purpose accordingly.

25

30

(6) Without prejudice to the generality of *subparagraph (1)* or *paragraph 1*, any investigation by inspectors appointed under the Act of 1990 before the commencement of the relevant provisions of *Part 13* but not completed before that commencement may be continued and completed under those relevant provisions.

35

*Reckoning of periods of time in cases of acts continued under this Act*

40

9. (1) Where any thing commenced under the prior Companies Acts but not completed before the commencement of the corresponding provision of this Act is continued to be carried on under that corresponding provision but the time specified in that provision for completing the thing is less than the time specified in that behalf in the repealed provision then, notwithstanding that corresponding provision, the period of time within which the thing may be completed under it shall be that specified in the repealed provision.

45

(2) In the converse case (that is to say, a case in which a greater period of time is specified in the corresponding provision of this Act than that specified in the repealed provision), the thing concerned may be completed within that greater period of time.

50

*New Nomenclature for Certain Matters*

10. (1) Without prejudice to the generality of *paragraph 1*, neither the use of the expression “financial statements” in this Act, as distinct from the expression “accounts” used in the prior Companies  
5 Acts, nor the use, with respect to associated matters concerning accounts and financial reporting, in this Act of expressions different from those used in those other Acts affects the validity of the preparation, auditing, circulation or laying of documents or the delivery of them to the Registrar, being documents that—

10 (a) are prepared in respect of a financial year beginning before the commencement of this Schedule and ending thereafter; and

(b) bear a description by reference to the nomenclature used in the prior Companies Acts.

15 (2) Without prejudice to the generality of *paragraphs 1* and *8*, the use of the expression “independent expert” in this Act, as distinct from the expression “independent accountant” used in the Companies (Amendment) Act 1990, does not affect the continued performance, after the commencement of this Schedule, by a person engaged  
20 before that commencement (by reference to that former nomenclature) of his or her functions in relation to an actual or prospective examinership.

*References in enactments to provisions of prior Companies Acts*

11. (1) A reference in any enactment to a provision of the prior  
25 Companies Acts, being a provision that is repealed by this Act and which corresponds to a provision of this Act, shall, unless the context otherwise requires, be read as a reference to that provision of this Act.

(2) Without prejudice to the generality of *subparagraph (1)*—

30 (a) the reference in Regulation 22(2) of the European Communities (Takeover Bids (Directive 2004/25/EC)) Regulations 2006 (S.I. No. 255 of 2006) to section 204 of the Act of 1963 shall be read as a reference to *Chapter 2* of *Part 9*; and

35 (b) the reference in Regulation 81 of the Transparency (Directive 2004/109/EC) Regulations 2007 (S.I. No. 277 of 2007) to Chapter 2 of Part IV of the Act of 1990 shall be read as a reference to *Chapter 4* of *Part 17*.

(3) Nothing in this paragraph affects *section 6* (construction of refer-  
40 ences in other Acts to companies registered under the Companies (Consolidation) Act 1908 and Act of 1963).

*Authorisations, designations and approvals under Part XIII of the Act of 1990*

12. Every authorisation, designation and approval under Part XIII  
45 of the Act of 1990 (including any condition imposed thereunder) that is in force immediately before the commencement of *Part 24* shall continue in force as if granted, made or imposed under *Part 24* and may be the subject of the like exercise of powers thereafter as authorisations, designations, approvals and conditions generally under  
50 *Part 24*.

*Generality of Interpretation Act 2005 not affected*

**13.** Save for any express limitation by this Schedule of that Act's terms, this Schedule is without prejudice to the generality of the Interpretation Act 2005.

*Specific transitional provisions not affected* 5

**14.** This Schedule is in addition to the special provision made in certain provisions of this Act for transitional matters as they relate to those provisions and, in the event of conflict between this Schedule and such special provisions, those special provisions prevail as they relate to those matters. 10