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PART 21

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and

(c) unless the position concerning the allotted share capital of the company, at the date of the application for re-registration, is as referred to in *subsection (3)*, the court, on application to it by the company in that behalf, sanctions its re-registration as a DAC limited by guarantee and gives directions as to how its company capital is to be treated in the framework of the resultant company.

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(3) The position mentioned in *subsection (2)(c)*, concerning the company's allotted share capital, is that the following conditions are satisfied—

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(a) no amount is paid up on it; and

(b) its nominal value does not exceed the aggregate maximum amount that the company's shareholders, who become members of the resultant company on the issue of the certificate of incorporation under *section 1276(6)*, would be liable to pay by virtue of the latter company's memorandum were the latter immediately then to be wound up.

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(4) For the purposes of this section—

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(a) subscription to a form of assent by the personal representative of a deceased member of a company shall be deemed to be subscription by the member;

(b) an assignee in bankruptcy of a person who is a member of a company shall, to the exclusion of that person, be deemed to be a member of the company.

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PART 21

EXTERNAL COMPANIES

CHAPTER 1

Preliminary

30 **1291.**—(1) In this Part—

Interpretation (*Part 21*).

“1968 Directive” means Council Directive No. 68/151/EEC of 9 March 1968;

“1989 Directive” means Council Directive No. 89/666/EEC of 21 December 1989;

35 “accounting documents” means, in relation to a financial year of an external company, the following documents—

(a) the company's accounts for that period, including, if it has one or more subsidiaries, any consolidated accounts of the group;

40 (b) any annual report of the directors of the company for that period;

and *subsections (2) and (3)* supplement this definition;

“branch” has the same meaning as it has in the 1989 Directive;

“certified” means certified by—

- (a) a director or secretary of the external company before any of the persons or other bodies specified in *paragraphs (b) to (d)*; 5
- (b) any person authorised to take statutory declarations;
- (c) any notary or notary public;
- (d) a court;

in the prescribed manner to be a true copy or a correct translation;

“constitutive documents”, in relation to an external company, means 10 its memorandum of association and articles of association or its charter, statutes or other instrument constituting or defining its constitution;

“credit or financial institution” means a credit institution or financial 15 institution to which Council Directive 89/117/EEC of 13 February 1989 applies;

“EEA company” means a body corporate whose members’ liability in respect of such body corporate is limited, which is incorporated in a state (other than the State) that is an EEA state;

“external company” means an EEA company or a non-EEA 20 company;

“financial year” in relation to an external company, means the period for which the external company prepares its accounts in accordance with the law of the state in which it is incorporated;

“non-EEA company” means a body corporate whose members’ liability 25 in respect of such body corporate is limited, incorporated in a state that is not an EEA state.

(2) Subject to *subsection (3)*, “documents”, in the definition of “accounting documents” in *subsection (1)*, means documents as audited in accordance with the laws of the state in which the external 30 company is incorporated and, accordingly, “documents” in that definition includes the report of the auditors on—

- (a) the accounts referred to in *paragraph (a)* of it; and
- (b) any directors’ annual report referred to in *paragraph (b)* 35 of it.

(3) *Subsection (2)* does not apply if—

- (a) in a case where the external company is an EEA company, the foregoing accounts have not (in circumstances permitted by the relevant Community act) been audited in accordance with the laws of the EEA state concerned; or 40
- (b) in a case where the external company is a non-EEA company, the foregoing accounts have not (in circumstances permitted by the laws of the state concerned) been audited in accordance with those laws.

1292.—(1) In this section “relevant external company” means an external company that satisfies the following conditions—

Application to external companies of certain provisions of Parts 1 to 14.

(a) either—

(i) after the commencement of this section, a branch in the State is established by the external company; or

(ii) immediately before that commencement, a branch in the State stands established by it;

and

(b) subject to *subsection (2)(b)*, the foregoing branch is not subsequently closed, or has not otherwise ceased to be established in the State, at the time this section falls to be applied.

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

(a) in relation to the application of *Part 7* by this section, the relevant time that this section falls to be applied at shall be taken to be the time of the creation by the company of the charge, the acquisition by it of the property or the creation of the judgment mortgage referred to in *subsection (4)(a), (b) or (c)*, as the case may be; and

(b) in relation to the application of *Part 13* by this section, it suffices, for a company to be a relevant external company, that it satisfies the condition specified in *paragraph (a) of subsection (1)*.

(3) *Section 133* shall apply to a relevant external company as it applies to a company referred to in *section 133*.

(4) Subject to *subsection (5)*, *Part 7* shall apply to—

(a) charges on property in the State which are created after the commencement of this section by a relevant external company;

(b) charges on property in the State which is acquired after that commencement by such a company; and

(c) judgment mortgages created after that commencement and affecting property in the State of such a company,

as that Part applies to charges created, or charges on property acquired, by a company referred to in that Part or, as the case may be, judgment mortgages affecting property of a company so referred to.

(5) Without prejudice to the application generally of the provisions of *Part 7* by *subsection (4)* and, in particular, the consequence of a charge being void under *section 410(1)*, the following provisions of that Part, namely, *sections 410(3) and (4) and 411(2)*, may not, with respect to a charge created by a relevant external company, be availed of by the company or a person referred to in *section 411(2)* unless the company has complied with, as the case may be –

(a) *section 1293(1) and (2)*; or

(b) *section 1293(1) and (2)* as applied by *section 1295*.

(6) Subject to *subsection (7), Parts 13 and 14* (other than *section 799*) shall apply to a relevant external company as *Part 13 or 14*, as the case may be, applies to a company referred to in that Part.

(7) The following provisions have effect as regards the foregoing application of *Parts 13 and 14*—

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(a) in *section 748*—

(i) *paragraphs (a) to (d)* (which confer standing on certain persons to apply to have one or more competent inspectors appointed to investigate the affairs of a company) of *subsection (2)* shall not apply; and

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(ii) the following shall be substituted for *paragraph (e)* of *subsection (2)*:

“(e) a person who is a creditor of the company, but only if the person is the company’s creditor by reference to a liability which has arisen under and by virtue of business carried on in the State by the company.”;

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(b) *section 764* (investigation of share dealing by inspector appointed by Director) shall not apply;

(c) in *section 798* (court may order compliance by company or officer) “officer” shall include the one or more persons authorised by the relevant external company to ensure compliance with this Part;

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(d) references to an insolvent company in *Chapters 3, 5 and 6 of Part 14* shall be read as including references to a relevant external company that is insolvent if, but only if, the latter is an unregistered company (within the meaning of *Chapter 3 of Part 22*) that is being wound up pursuant to that Chapter;

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(e) for the avoidance of doubt, the reference in *subsection (6)* to a company referred to in *Part 14* – so far as it is in *Chapter 3, 4, 5 or 6* of that Part that the reference occurs— includes, as well as a private company limited by shares, any other company referred to in *section 820(6)* where the following is the context—

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(i) the context of the reference in *section 820(1)* to a person’s being appointed or acting as a director or secretary of a company, or taking part in the formation or promotion of a company;

(ii) the context of *section 826*;

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(iii) the context of *section 839*;

(iv) the context of a provision that otherwise imposes a restriction on a company by reference to the fact of its having a restricted person (within the meaning of *section 827*) or otherwise makes provision in consequence of that fact; and

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(v) the context of a provision that otherwise makes provision in consequence of a person’s being disqualified (within the meaning of *section 839*);

(f) in *section 880(1)*, for “*Parts 1 to 13 or Part 15*” there shall be substituted “*Parts 1 to 13 or Part 15 or 22*”;

(g) in *section 881(1)*, for “*Parts 1 to 13 or Part 15*” there shall be substituted “*Parts 1 to 13 or Part 15 or 22*”; and

5 (h) the principal place of business in the State of the relevant external company shall be deemed to be its registered office.

(8) This section is in addition to *section 1301(2)* and (3) (which relate to the application of *sections 271* and *272* to external companies and certain persons having responsibilities in relation to them).

CHAPTER 2

Filing obligations of external companies

15 **1293.**—(1) An EEA company that establishes a branch in the State shall, within 30 days after the date of its doing so, deliver to the Registrar a certified copy of its constitutive documents. Filing obligations of EEA company.

(2) An EEA company that establishes a branch in the State shall, within 30 days after the date of its doing so, notify the Registrar of, or as the case may be, deliver to the Registrar (in either case in the prescribed manner) the following particulars or matters—

20 (a) its name and legal form and the name of the branch if that is different from its name;

(b) a copy of its certificate of incorporation;

(c) the address of the branch;

(d) the activities at the branch;

25 (e) the place of registration of the company and the number under which it is registered;

30 (f) a list of its directors and secretary and any other persons who are authorised to represent the company in dealings with third parties and in legal proceedings together with the following particulars relating to each such person—

(i) present forename and surname and any former forename and surname;

(ii) date of birth;

(iii) usual residential address;

35 (iv) nationality;

(v) business occupation, if any;

(vi) particulars of any other directorships of bodies corporate, whether incorporated in the State or elsewhere, held by that person; and

40 (vii) the extent of that person’s powers in relation to the activities of the branch;

- (g) the name and addresses of some one or more persons resident in the State who is or are—
 - (i) authorised to accept service of documents required to be served on the EEA company; and
 - (ii) authorised to ensure compliance with the provisions of this Part together with a consent signed by each such person to act in that capacity; 5
 - (h) unless it is a credit or financial institution, copies of its latest accounting documents, that is to say the latest accounting documents— 10
 - (i) prepared in relation to a financial year of the company (in accordance with the laws of the EEA state in which it is incorporated); and
 - (ii) made public (in accordance with those laws) before the end of the period allowed for compliance with *subsection (1)* in respect of the branch, or if earlier, the date on which the company complies with *subsection (1)* in respect of the branch. 15
- (3) An EEA company that establishes a branch in the State shall also deliver to the Registrar, in the prescribed manner, the following documents and notices within 30 days after the date of the occurrence of the event concerned, namely— 20
- (a) any document making or evidencing an alteration in its constitutive documents;
 - (b) every amended text of its constitutive documents; 25
 - (c) notice of a change among the persons referred to in *subsection (2)(f)* or *(g)* or in any of the particulars relating to such persons, specifying the date of the change;
 - (d) notice of a change in the address referred to in *subsection (2)(c)* together with the new address of the branch; 30
 - (e) notice of the winding up of the company, the appointment of one or more liquidators, particulars concerning them and their powers and the termination of the winding up in accordance with disclosure by the company as provided for in Article 2 (1) *(h)*, *(j)* and *(k)* of the 1968 Directive and particulars concerning insolvency proceedings, arrangements, compositions or any analogous proceedings to which the company is subject; and 35
 - (f) notice of the closure of the branch or its otherwise ceasing to be established in the State. 40
- (4) *Section 150(12)* shall apply for the purposes of *subsection (2)(f)*.
- (5) The reference in *subsection (2)(h)* to a copy of an accounting document is a reference to a copy that satisfies the following conditions— 45
- (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

5 (b) it is accompanied by a certificate of a director and the secretary of the company, 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 one such certificate relating to all of the accounting documents mentioned in *subsection (2)* suffices and the foregoing statement need not be qualified on account of the difference permitted by *paragraph (a)* as to the form of a signature).

10 (6) If *subsection (1), (2) or (3)* is not complied with by an EEA company, the company and any officer of it who is in default shall be guilty of a category 3 offence.

15 **1294.**—(1) Subject to *subsection (7)*, for so long as a branch of it stands established in the State, an EEA company shall in each year deliver to the Registrar, in the prescribed manner, the following documents. Accounting documents to be filed by EEA company.

20 (2) Those documents are a copy of the accounting documents, for the financial year concerned, that the EEA company is required to cause to be prepared, and to be made public, in accordance with the laws of the EEA state in which it is incorporated.

25 (3) Those accounting documents shall be so delivered to the Registrar not later than 30 days after the last date upon which the EEA company was required to cause such accounting documents to be made public in accordance with the laws of the EEA state in which it is incorporated.

(4) The reference in *subsection (2)* to a copy of an accounting document is a reference to a copy that satisfies the following conditions—

30 (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

35 (b) it is accompanied by a certificate of a director and the secretary of the company, 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 one such certificate relating to all of the accounting documents mentioned in *subsection (2)* suffices and the foregoing statement need not be qualified on account of the difference permitted by *paragraph (a)* as to the form of a signature).
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(5) If this section is not complied with by an EEA company, the company and any officer of it who is in default shall be guilty of a category 3 offence.

45 (6) Without prejudice to the generality of *subsections (1) and (2)* of *section 866*, summary proceedings in relation to an offence under this section may be brought and prosecuted by the Registrar.

(7) This section shall not apply to a company that is a credit or financial institution.

Filing obligations of non-EEA company.

1295.—(1) If a non-EEA company establishes a branch in the State, the same requirements under *section 1293(1)* and *(2)* as apply to an EEA company’s doing so shall apply to the non-EEA company and, accordingly, *section 1293(1)* and *(2)* shall apply to the non-EEA company, but with the following modifications.

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(2) Those modifications are that—

(a) the following paragraph shall be substituted for *paragraph (e)* of *section 1293(2)*:

“(e) if the law of the state in which the company is incorporated requires entry in a register, the place of registration of the company and the number under which it is registered;”

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and

(b) the following paragraphs shall be substituted for *paragraph (h)* of *section 1293(2)*:

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“(h) unless it is a credit or financial institution, copies of its latest accounting documents, that is to say the latest accounting documents—

(i) prepared in relation to a financial year of the company (in accordance with the laws of the state in which it is incorporated); and

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(ii) made public (in accordance with those laws), or, if not required by those laws to be made public, prepared as so mentioned, before the end of the period allowed for compliance with *subsection (1)* in respect of the branch, or if earlier, the date on which the company complies with *subsection (1)* in respect of the branch;

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(i) each of the following so far as not ascertainable from its constitutive documents—

(i) the company’s principal place of business;

(ii) the company’s objects; and

(iii) the place where the company is incorporated.”.

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(3) A non-EEA company that establishes a branch in the State shall also deliver to the Registrar, in the prescribed manner, within 30 days after the date of the occurrence of the particular event referred to in *section 1293(3)(a)* to *(d)* or, as appropriate, *paragraph (b)* or *(c)* of this subsection—

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(a) any document or notice referred to in *section 1293(3)(a)* to *(d)*;

5 (b) notice of the winding up of the company, the appointment of one or more liquidators, particulars concerning them and their powers and the termination of the winding up and particulars concerning insolvency proceedings, arrangements, compositions or any analogous proceedings to which the company is subject; and

(c) notice of the closure of the branch or its otherwise ceasing to be established in the State.

10 (4) *Section 1293(4)* (application of *section 150(12)*) applies for the purposes of *section 1293(2)(f)* as the latter has effect in relation to a non-EEA company by virtue of this section.

(5) *Section 1293(5)* applies for the purposes of *section 1293(2)(h)* as the latter has effect in relation to a non-EEA company by virtue of this section.

15 (6) If *section 1293(1)* or *(2)* (as applied by this section), or *subsection (3)*, is not complied with by a non-EEA company, the company and any officer of it who is in default shall be guilty of a category 3 offence.

20 **1296.**—(1) Subject to *subsection (10)*, for so long as a branch of it stands established in the State, a non-EEA company shall in each year deliver to the Registrar, in the prescribed manner, the following documents. Accounting documents to be filed by non-EEA company.

25 (2) Those documents are a copy of the accounting documents, for the financial year concerned, that the non-EEA company is required to cause to be prepared, and, if such be the case, to be made public, in accordance with the laws of the state in which it is incorporated, but this is subject to *subsections (3)* and *(4)*.

30 (3) If there is no requirement, under the laws of the state in which it is incorporated, that accounting documents be caused to be prepared by it, the non-EEA company shall, subject to *subsection (9)*, for each year in which a branch of it stands established as mentioned in *subsection (1)*—

(a) cause to be prepared in accordance with—

35 (i) Council Directive 78/660/EEC and, where appropriate, Council Directive 83/349/EEC; or

(ii) international financial reporting standards,

accounts and a directors' annual report on them;

and

40 (b) unless the circumstances are such that auditing of those accounts is not required by the relevant Community act, cause those accounts and that annual report to be audited in accordance with Directive 2006/43/EC.

45 (4) If a non-EEA company to which *subsection (2)* applies so opts, there may, instead of the accounting documents referred to in that subsection, be delivered by it, in the prescribed manner, to the Registrar—

- (a) a copy of the accounts, and a directors' annual report on them, prepared as mentioned in *subsection (3)* (being accounts and such a report that have been audited as mentioned in *paragraph (b)* of that subsection unless the exception in that paragraph applies); and 5
- (b) a copy of the auditor's report on those accounts and that annual report unless the foregoing exception applies.
- (5) A copy of the accounting documents or accounts and other documents referred to in *subsection (2)* or *(4)*, as the case may be, shall be delivered to the Registrar not later than 30 days after— 10
- (a) subject to *paragraph (b)*—
- (i) in the case of those accounting documents, the last date on which, in accordance with the laws of the state in which it is incorporated, the non-EEA company was required to make public such accounting documents; or 15
- (ii) in the case of the accounts and other documents referred to in *subsection (4)*, the last date on which, in accordance with those laws, the non-EEA company would have been required to make those accounts and other documents public were they accounting documents referred to in *subsection (2)*; 20
- and
- (b) if there is no requirement, under the laws of the state in which it is incorporated, that the non-EEA company cause to be published accounting documents that have been prepared by it, the date on which the preparation of those accounting documents or accounts and other documents is completed. 25
- (6) In the case of a non-EEA company to which *subsection (3)* applies, a copy of the accounts and the directors' annual report referred to in that subsection and the auditor's report, if any, thereon, shall be delivered to the Registrar not later than 30 days after the date on which their preparation is completed. 30
- (7) *Section 1294(4)* applies for the purposes of the construction of references in this section to a copy of accounting documents or accounts and other documents as it applies for the purpose of the construction of the reference to a copy of accounting documents in *section 1294(2)*. 35
- (8) If this section is not complied with by a non-EEA company, the company and any officer of it who is in default shall be guilty of a category 3 offence. 40
- (9) Without prejudice to the generality of *subsections (1)* and *(2)* of *section 866*, summary proceedings in relation to an offence under this section may be brought and prosecuted by the Registrar. 45
- (10) This section shall not apply to a company that is a credit or financial institution.

5 **1297.**—(1) Subject to *subsection (2)*, a non-EEA company shall, at the same time as it delivers to the Registrar the accounting documents or accounts and other documents referred to in *section 1296*, deliver to the Registrar a statement, in the prescribed form, indicating the amount of the called up share capital of the company as of a date not earlier than 2 months before the date of the statement's delivery.

10 (2) *Subsection (1)* shall not apply where the information which would be contained in the foregoing statement is contained in the documentation referred to in *section 1293(1)* as applied by *section 1295(1)*.

CHAPTER 3

Disclosure in certain business documents and translation of documents

15 **1298.**—(1) For so long as a branch of an EEA company stands established in the State, every letter and order form that issues from or in respect of that branch shall bear the following particulars—

- (a) the place of registration of the company and the number under which it is registered;
- 20 (b) the name of the company (if different from the name of its branch), its legal form and the address of its registered office;
- (c) in the case of a company which is being wound up, the fact that that is so; and
- 25 (d) the fact that the branch is registered in the State and the number under which it is registered in the office of the Registrar.

30 (2) If on any foregoing letter or order form there is reference to the share capital of the EEA company, the company shall ensure that the reference is not stated otherwise than as a reference to the paid-up share capital of the company.

(3) For so long as a branch of a non-EEA company stands established in the State, every letter and order form that issues from or in respect of that branch shall bear the following particulars—

- 35 (a) the name of the company (if different from the name of its branch);
- (b) if the law of the state in which the company is incorporated requires entry in a register, the place of the registration of company and the number under which it is registered; and
- 40 (c) the fact that the branch is registered in the State and the number under which it is registered in the office of the Registrar.

45 (4) If on any foregoing letter or order form there is reference to the share capital of the non-EEA company, the company shall ensure that the reference is not stated otherwise than as a reference to the paid-up share capital of the company.

(5) If *subsection (1) or (2)* is not complied with by an EEA company, the company and any officer of it who is in default shall be guilty of a category 3 offence.

(6) If *subsection (3) or (4)* is not complied with by a non-EEA company, the company and any officer of it who is in default shall be guilty of a category 3 offence. 5

Translation of documents.

1299.—(1) Every document required to be delivered or notified by an external company to the Registrar under any of *sections 1293 to 1296* shall, if it is not in the Irish or English language, have annexed to it a certified translation of it in the Irish or English language. 10

(2) In any case of a discrepancy between the text, in its original language, of a document referred to in *subsection (1)* and the certified translation of it annexed as required by that subsection, the latter may not be relied upon by the external company against a third party. A third party may, nevertheless, rely on that translation against the external company, unless the company proves that the third party had knowledge of the text of the document in its original language. 15

(3) In *subsection (2)*, “third party” means a person other than the external company or a member, officer or employee of it. 20

CHAPTER 4

Service of documents

Service of documents.

1300.—(1) Subject to *subsection (2)*, any document required to be served on an external company referred to in *section 1293 or 1295* shall be sufficiently served if addressed to any person particulars of whom have been delivered to the Registrar under *section 1293(2)(g)* (or, as the case may be, that provision as applied by *section 1295*) and left at or sent by post to the address which has been so delivered. 25

(2) A document may be served on an external company referred to in *section 1293 or 1295* by leaving it at or sending it by post to any branch established by it in the State— 30

(a) where the external company makes default in delivering to the Registrar the particulars of a person resident in the State who is authorised to accept, on behalf of the company, service of the document; or 35

(b) if at any time all the persons whose particulars have been so delivered are dead or have ceased to so reside, or refuse to accept service on behalf of the external company, or for any reason it cannot be served. 40

(3) This section shall cease to apply to an external company on the expiration of 2 years after the date on which it has delivered the notice referred to in *section 1293(3)(f)* or, as the case may be, *section 1295(3)(c)*.

(4) If notice of a change among the persons referred to in *section 1293(2)(g)* or in any of the particulars relating to such persons has been delivered by the company concerned to the Registrar in accordance with this Part, then the references in this section to any person, particulars in respect of whom have been delivered to the Registrar 45

under the provision referred to in *subsection (1)*, shall be read having regard to the position that obtains in consequence of that change as so notified.

CHAPTER 5

5

Compliance

1301.—(1) The duty of securing compliance by an external company with this Part shall, without prejudice to the duty of the external company concerned, also lie upon the one or more persons authorised by the external company to ensure compliance with this Part.

Duty of securing compliance with this Part.

10 (2) *Sections 271 and 272* shall apply to an external company.

(3) If any person authorised, as mentioned in *subsection (1)*, by an external company would not otherwise be regarded as an officer of it for the purposes of *sections 271 and 272*, such a person shall be deemed to be an officer of the external company for the purposes of those sections.

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PART 22

UNREGISTERED COMPANIES AND JOINT STOCK COMPANIES

CHAPTER 1

Application of Act to unregistered companies

20 **1302.**—(1) Subject to *subsections (2) to (7)*, the provisions specified in *Schedule 14* shall apply to all bodies corporate incorporated in and having a principal place of business in the State as if they were companies registered under this Act.

Application of certain provisions of Act to unregistered companies.

25 (2) The foregoing provisions shall not apply by virtue of this section to any of the following bodies—

(a) any body corporate incorporated by or registered under any public general statute;

30 (b) any body corporate not formed for the purpose of carrying on a business which has for its objects the acquisition of gain by the body or by the individual members thereof;

(c) any body corporate which is prohibited by statute or otherwise from making any distribution of its income or property among its members while it is a going concern or when it is being wound up; and

35 (d) any body corporate for the time being exempted by a direction given by the Minister for the purposes of this section,

each of which is referred to in this section as an “excluded body”.

40 (3) The foregoing provisions shall apply also in like manner in relation to any unincorporated body of persons entitled by virtue of letters patent to any of the privileges conferred by the Chartered Companies Act 1837 and not registered under any other public general statute but subject to the like exceptions as are provided for