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# COMPANIES BILL 2012

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*Unofficial version*

As amended in ~~Committee-Report~~ Stage (Seanad)  
on ~~17<sup>th</sup> June~~30<sup>th</sup> September 2014

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**Arthur Cox**

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## PART 17

### PUBLIC LIMITED COMPANIES

#### Chapter 1

##### Preliminary and definitions

###### Interpretation (*Part 17*).

~~[10001002]~~. (1) In this Part -

“authorised minimum” means –

- (a) subject to *paragraph (b)*, €25,000 ; or
- (b) such greater sum as may be specified by order made by the Minister under *subsection (2)*;

“authorised share capital” shall be read in accordance with *section [10061008](2)(d)*;

“constitution” shall be read in accordance with *section [10061008](1)*;

“public limited company” or “PLC” means a company limited by shares and having a share capital, being a company—

- (a) the constitution of which states that the company is to be a public limited company; and
- (b) in relation to which the provisions of this Act as to the registration (or re-registration or registration under *Part 20* or *Part 22* of a body corporate) as a public limited company have been complied with,

and *section [10011003](2)* supplements this definition with regard to restricting the scope of that expression, as it occurs in this Part, to public limited companies that are not investment companies (as defined in *Part 24*);

“regulated market” has the meaning given to it by [point 14 of Article 4(1) of Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments]<sup>32</sup>;

[“securities” means transferable securities as defined in point 18 of Article 4(1) of Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments, with the exception of money market instruments as defined in point 19 of Article 4(1) of that Directive, having a maturity of less than 12 months.]<sup>33</sup>

(2) The Minister may, by order, specify that the authorised minimum for the purposes of this Part shall be an amount greater than €25,000 and such an order may—

- (a) require any PLC, having an allotted share capital of which the nominal value is less than the amount specified in the order as the authorised minimum, to increase that value to not less than that amount or make an application to be re-registered as another form of company;

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<sup>32</sup> Substituted by point 116 of Committee Amendments.

- (b) make, in connection with any such requirement, provision for any of the matters for which provision is made by any provision of this Act relating to a PLC's registration, re-registration or change of name, payment for any share comprised in a company's capital and offers of shares in, or debentures of, a company to the public, including provision as to the consequences (whether in criminal law or otherwise) of a failure to comply with any requirement of the order; and
- (c) contain such supplemental and transitional provision as the Minister thinks appropriate, make different provision for different cases and, in particular, provide for any provision of the order to come into operation on different days for different purposes.

(3) Provision in an order under *subsection (2)(b)* as to the consequences in criminal law of a failure to comply with any requirement of the order shall consist only of any adaptation of an offence under this Act that may be necessary with respect to the amount mentioned therein (not being a penalty).

**Investment company to be a PLC but non-application of this Part to that company type.**

~~[10014003]~~. (1) Public limited companies shall comprise 2 types –

- (a) those that are not investment companies (as defined in *Part 24*); and
- (b) those that are such companies.

(2) This Part applies only to public limited companies that are not investment companies (as so defined) and, accordingly, a reference in this Part to a public limited company does not include a reference to an investment company (as so defined).

(3) The law in this Act in relation to investment companies is to be found in *Part 24* (which makes provision for such companies by, *inter alia*, applying or adapting provisions of this Part and *Parts 1 to 14*) and certain associated provisions of this Act.

**Application of *Parts 1 to 14* to PLCs.**

~~[10024004]~~. (1) The provisions of *Parts 1 to 14* apply to a PLC 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]~~*section 10(1)*<sup>34</sup> shall have effect as if it read :

“~~Unless~~<sup>35</sup> (1) Unless expressly provided otherwise, a reference in *Parts 2 to 14* to a company is a reference to a PLC.”.

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<sup>33</sup> Substituted by point 117 of Committee Amendments.

<sup>34</sup> [Substituted by point 115 of Seanad Report Amendments.](#)

<sup>35</sup> [Substituted by point 116 of Seanad Report Amendments.](#)

(3) The provisions of this Act specified in the Table to this section shall not apply to a PLC.

(4) The specification in the foregoing Table of a provision (a “specified provision”) of *Parts 1 to 14* also operates to disapply to a PLC 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.

Table

Subject matter	Provision disapplied
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] <sup>36</sup>	<i>Section 18</i>
Form of the constitution	<i>Section 19</i>
Certificate of incorporation to state that the company is a private company limited by shares	<i>Section 25(3)</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>
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Limitation on offers of securities to the public	<i>Section [68]</i>
Allotment of shares	<i>Section [69]</i>
Supplemental and additional provisions as regards allotments	<i>Section [70]</i>
Reduction in company capital - use of Summary Approval Procedure therefor	<i>Sections [84](2)(a) and (3)</i>
Variation of rights attached to special classes of shares	<i>Section [88]</i>
Variation of company capital on reorganisation - use of Summary Approval Procedure therefor	<i>Section [91](4)(a)</i>
Directors	<i>Section [128]</i>
Directors’ duty as regards certain matters in appointing secretary	<i>Section [129](4)</i>
Removal of directors	<i>Section [146](2)</i>

<sup>36</sup> Inserted by point 118 of Committee Amendments.

Remuneration of directors	<i>Section [155]</i>
[Voting by director in respect of contract, etc. in which director is interested	<i>Section [161](7)]<sup>37</sup></i>
Majority written resolutions	<i>Section [194]</i>
Supplemental provisions in relation to <i>section 195</i>	<i>Section [195]</i>
Summary Approval Procedure	<i>Chapter 7 of Part 4 (save as it applies to— (a) a members’ voluntary winding up under section [579]; (b) an activity specified in section [118] (prohibition on preacquisition profits or losses being treated in holding company’s financial statements as profits available for distribution); or (c) the making of a loan or quasi-loan or the doing of any other thing referred to in section [239]).]</i> <sup>38</sup>
Directors’ compliance statement and related statement - exemption for companies below a particular size	The words “to which this section applies” in <i>section [225](2)</i> , and <i>section [225](7)</i>
Exemption from consolidation: size of group	<i>Section [297]</i>
Statutory financial statements must be audited (unless audit exemption availed of)	<i>Section [333]</i>
Exclusions, exemptions and special arrangements with regard to public disclosure of financial information	<i>Chapter 14 of Part 6</i>
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Special audit exemption for dormant companies	<i>Chapter 16 of Part 6</i>
Small and medium companies	<i>Section [377]</i>
<a href="#">Mergers and divisions of companies</a>	<a href="#">Chapters 3 and 4 of Part 9</a>
<a href="#">Mergers and divisions of companies</a>	<a href="#">Chapters 3 and 4 of Part 9</a> <sup>39</sup>
Disclosure orders	<i>Chapter 2 of Part 14</i>

### **Societas Europae to be regarded as PLC.**

[\[10031005\]](#). A Societas [Europaea ]<sup>40</sup> which is registered with the Registrar shall be regarded as a PLC for the purposes of this Part (but not as an investment company as defined in *Part 24*).

<sup>37</sup> Inserted by point 203 of Report Amendments.

<sup>38</sup> Substituted by point 120 of Committee Amendments .

<sup>39</sup> [Substituted by point 117 of Seanad Report Amendments.](#)

<sup>40</sup> Substituted by point 204 of Report Amendments.

## Chapter 2

### Incorporation and consequential Matters

#### Way of forming a PLC.

[10041006]. (1) A PLC 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
- (b) this Part,

in relation to registration of a PLC.

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

- (a) the re-registration, or registration, as a PLC of a body corporate pursuant to *Part 20* or *22*;
- (b) the merger of 2 or more bodies corporate pursuant to *Chapter 16*;
- (c) the division of a body corporate pursuant to *Chapter 17*; or
- (d) the merger operation provided for by the European Communities (Cross-Border Mergers) Regulations 2008 (S.I. No. 157 of 2008).

(3) The liability of a member of a PLC at any time shall be limited to the amount, if any, unpaid on the shares registered in the member's name at that time.

(4) *Subsection (3)* is without prejudice to any other liability to which a member may be subject as provided by this Act.

(5) The certificate of incorporation issued under *section 25(1)* shall state that the company is a public limited company.

#### PLC to carry on activity in the State.

[10051007]. A PLC 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 a PLC's constitution.

[10061008]. (1) Subject to *subsection (3)*, the constitution of a PLC 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 PLC shall state—

- (a) its name;
- (b) that it is a public limited company registered under this Part;
- [
- (c) its objects,
- (d) that the liability of its members is limited, and]<sup>41</sup>
- ([e]) its authorised share capital, being the amount of share capital with which the PLC proposes to be registered which shall not be less than the authorised minimum, and the division thereof into shares of a fixed amount.

(3) The constitution of a PLC 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 constitution;
- (b) be in accordance with the form set out in *Schedule 9* or 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 [888]*.

[(4) Where, subsequent to the registration of the constitution, an amendment of the memorandum of association is made affecting the matter of share capital, or another matter, referred to in *subsection (2)*, that subsection shall be read as requiring the memorandum to state the matter as it stands in consequence of that amendment.]<sup>42</sup>

**Supplemental provisions in relation to constitution and continuance in force of existing memorandum and articles.**

[[10074009](#)]. (1) This section –

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

(2) In this section –

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<sup>41</sup> Substituted by point 142 of Seanad Committee Amendments.

“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 a PLC may contain regulations in relation to the PLC.

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

(5) Articles, instead of containing any regulations in relation to the PLC, 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 a PLC 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 a PLC registered before the commencement of this section was, immediately before that commencement, governed by –

(a) the regulations of Part I of Table A 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.

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<sup>42</sup> Inserted by point 143 of Seanad Committee Amendments.

### Provisions as to names of PLCs.

[10081010]. (1) The name of a PLC shall end with one of the following:

- public limited company;
- cuideachta phoiblí theoranta.

(2) The words “public limited company” may be abbreviated to “p.l.c.” or “plc” (including either such abbreviation in capitalised form) in any usage after the company’s registration by any person including the PLC.

(3) The words “cuideachta phoiblí theoranta” may be abbreviated to “c.p.t.” or “cpt” (including either such abbreviation in capitalised form) in any usage after the company’s registration by any person including the PLC.

(4) A PLC 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.

### Trading under a misleading name.

[10091011]. (1) Subject to *subsection (6)*, neither a body that is not a PLC nor an individual shall carry on any trade, profession or business under a name which includes, as its last part, the words “public limited company”, or “cuideachta phoiblí theoranta” 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) A PLC 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 a PLC or that it is any other form of body corporate.

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

(5) If a PLC contravenes *subsection (3)*, the PLC 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 a PLC if it had been registered in the State.

**Restriction on commencement of business by a PLC.**

[10104012]. (1) A company registered as a PLC on its original incorporation or pursuant to a merger or division shall not do business or exercise any borrowing powers unless the Registrar has issued to it a certificate under this section or the PLC is re-registered as another type of company.

(2) The Registrar shall issue to a PLC a certificate under this section if, on an application made to him or her in the prescribed form by the PLC, the Registrar is satisfied that the nominal value of the PLC's allotted share capital is not less than the authorised minimum and there is delivered to the Registrar a declaration complying with *subsection (3)*.

(3) The declaration mentioned in *subsection (2)* shall be in the prescribed form and signed by a director or secretary of the PLC and shall state—

- (a) that the nominal value of the PLC's allotted share capital is not less than the authorised minimum;
- (b) the amount paid up, at the time of the application, on the PLC's allotted share capital;
- (c) the amount, or estimated amount, of the preliminary expenses of the PLC and the persons by whom any of those expenses have been paid or are payable; and
- (d) any amount or benefit paid or given or intended to be paid or given to any promoter of the PLC, and the consideration for the payment or benefit.

(4) For the purposes of *subsection (2)*, a share allotted in pursuance of an employees' share scheme may not be taken into account in determining the nominal value of the PLC's allotted share capital unless it is paid up at least as to one-quarter of the nominal value of the share and the whole of any premium on the share.

(5) The Registrar may accept a declaration delivered to him or her under *subsection (2)* as sufficient evidence of the matters stated therein.

(6) A certificate under this section in respect of any PLC shall be conclusive evidence that the PLC is entitled to do business and exercise any borrowing powers.

(7) If a PLC does business or exercises borrowing powers in contravention of this section, the PLC and any officer of it who is in default shall be guilty of a category 3 offence.

(8) Subject to *subsection (9)*, the provisions of this section are without prejudice to the validity of any transaction entered into by a PLC.

(9) If a PLC enters into a transaction in contravention of those provisions and fails to comply with its obligations in connection with them within 21 days after the date on which it is called upon to do so, the directors of the PLC shall be jointly and severally liable to indemnify the other party to the transaction in respect of any loss or damage suffered by that party by reason of the failure of the PLC to comply with those obligations.

#### **Capacity of a PLC.**

[1011:1013]. (1) A PLC 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 PLC’s memorandum without the following also being stated in relation to it, the capacity of the PLC 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 a PLC shall be read accordingly.

#### **Capacity not limited by a PLC’s constitution.**

[1012:1014]. (1) The validity of an act done by a PLC shall not be called into question on the ground of lack of capacity by reason of anything contained in the PLC’s objects.

(2) A member of a PLC may bring proceedings to restrain the doing of an act which, but for *subsection (1)*, would be beyond the PLC’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 PLC.

(3) Notwithstanding the enactment of *subsection (1)*, it remains the duty of the directors to observe any limitations on their powers flowing from the PLC’s objects and action by the directors which, but for *subsection (1)*, would be beyond the PLC’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 company it must be agreed to separately by a special resolution of it.

(5) A party to a transaction with a PLC is not bound to enquire as to whether it is permitted by the PLC’s objects.

**Alteration of objects clause by special resolution.**

[10131015]. (1) Subject to *subsection (2)*, a PLC 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) by the holders of not less, in the aggregate, than 15 percent in nominal value of the PLC's issued share capital or any class thereof; or
- (b) by the holders of not less than 15 percent of the PLC'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 PLC'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 PLC of the shares of any members of the PLC and for the reduction accordingly of the PLC's company capital and may make such alterations in the constitution of the PLC as may be required in consequence of that [provision; and such a purchase may be so ordered notwithstanding anything in *section [102]*]<sup>43</sup>.

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<sup>43</sup> Substituted by point 205 of Report Amendments.

**Supplemental provisions in relation to section [10134015].**

[10144016]. (1) Where an order under section [10134015] requires the PLC 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 PLC 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 a PLC made by virtue of an order under section [10134015], other than one made by resolution of the PLC, shall be of the same effect as if duly made by resolution of the PLC 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 a PLC's objects is intended to be proposed shall be given to any holders of the PLC'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 PLC, 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 PLC'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 PLC's constitution regulating the giving of notice to members shall apply.

(6) Where a PLC passes a resolution altering its objects—

- (a) if no application is made under section [10134015] 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 a PLC makes default in giving notice or delivering any document to the Registrar as required by subsection (6), the PLC and any

officer of it who is in default shall be guilty of a category 4 offence.

**Alteration of articles by special resolution.**

[10151017]. (1) Subject to the provisions of this Act and to the conditions contained in its memorandum, a PLC 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.**

[10161018]. (1) Subject to *subsection (2)*, *sections 32(4) and (5) and 213*, any provision contained in a PLC'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 PLC 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 [10131015](3) to (7) (other than subsection (3)(b)) and section [10141016] (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.

**[Official seal for sealing securities]**

[10171019]. (1) A PLC may have for use, for sealing—

- (a) securities issued by the company, and
- (b) documents creating or evidencing securities so issued,

an official seal which is a facsimile of the common seal of the company with the addition on its face of the word "Securities" or the word "Urrúis".

(2) Where a company was incorporated before 3 April 1978 and which has such an official seal as is mentioned in *subsection (1)*, the following provisions apply:

- (a) the company may use the seal for sealing such securities and documents as are mentioned in that subsection notwithstanding anything in any instrument constituting or regulating the company or in any instrument made before 3 April 1978 which relates to any securities issued by the company; and

(b) any provision of an instrument referred to in *paragraph (a)* which requires any such securities or documents to be signed shall not apply to the securities or documents if they are sealed with that seal.<sup>44</sup>

[3] Where a company has such an official seal as is mentioned in *subsection (1)*, then *section 99(1)* shall apply to the company as if after “common seal of the company” there were inserted “or the seal kept by the company by virtue of *section [10174019]*”.<sup>45</sup>

#### **Status of existing PLC.**

[~~10184020~~]. (1) A public limited company incorporated under the prior Companies Acts and in existence immediately before the commencement of this section shall continue in existence and be deemed to be a PLC to which this Part applies.

(2) In *subsection (1)* “public limited company incorporated under the prior Companies Acts” includes an old public limited company (within the meaning of the Companies (Amendment) Act 1983) that re-registered as a public limited company under that Act as well as a public limited company that any company re-registered as under the prior Companies Acts.

(3) 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.

### **Chapter 3**

#### **Share capital**

##### **[Provisions as to shares transferable by delivery (general prohibition and provision for certain letters of allotment)]**

[~~10194021~~]. (1) The provisions of this section shall, in relation to a PLC, have effect in place of *subsections (8) to (10) of section [66]*.

(2) In this section—

“bearer instrument” means an instrument, in relation to shares of a PLC, which entitles or purports to entitle the bearer thereof to transfer the shares that are specified in the instrument by delivery of the instrument, and includes a share warrant as that expression was defined by section 88 of the Act of 1963;

“expiry date”, in relation to a permissible letter of allotment, means a date no later than 30 days after the date of the instrument;

“permissible letter of allotment” means a letter of allotment by a PLC to a member of it of—

- (a) bonus shares of the PLC, credited as fully paid;
- (b) shares of the PLC, in lieu of a dividend, credited as fully paid; or
- (c) shares of the PLC allotted provisionally, on which no amount has been paid or which are shares partly paid up,

where the shares are allotted in connection with a rights issue or open offer in favour of members and the shares are issued proportionately (or as nearly as may be) to the respective number of shares held by the members of the PLC, there being disregarded

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<sup>44</sup> Inserted by point 206 of Report Amendments.

<sup>45</sup> Inserted by point 144 of Seanad Committee Amendments.

for this purpose any exceptions to such proportionality, or arrangements for a deviation from such proportionality, as the directors of the PLC may deem necessary or expedient to make for the purposes of dealing with—

- (i) fractional entitlements; or
- (ii) problems of a legal or practical nature arising under the laws of any territory or requirements imposed by any recognised regulatory body in any territory, which letter is expressed to be transferable by delivery during a period expiring on its expiry date.

(3) Save as provided by this section, a PLC shall not have power to issue any bearer instrument.

(4) If a PLC purports to issue a bearer instrument in contravention of *subsection (3)*, the shares that are specified in the instrument shall be deemed not to have been allotted or issued, and the amount subscribed therefor (and in the case of a non-cash asset subscribed therefor, the cash value of that asset) shall be due as a debt of the PLC to the purported subscriber thereof.

(5) *Subsection (3)* shall not apply to an instrument falling within the definition of “permissible letter of allotment” in this section

(6) Shares comprised in a permissible letter of allotment shall, until its expiry date, be transferable by renunciation and delivery of the letter, but subject to compliance with such conditions (if any) as may be specified in the letter.

(7) Where, on the commencement of this section, a PLC has in issue a bearer instrument in relation to shares of the PLC, other than a permissible letter of allotment—

(a) the PLC shall procure the entry in its register of members of the name of the holder or holders of those shares no later than the expiry of 18 months after that commencement;

(b) if and to the extent that paragraph (a) is not complied with, the PLC shall enter in its register of members the Minister for Finance as the person entitled to the share or shares concerned and thereupon the Minister for Finance shall become and be the full beneficial owner of that share or those shares.<sup>(8)</sup> Subject to *subsection (7)*, where on the commencement of this section a person has or is entitled to possession of a bearer instrument (other than a permissible letter of allotment), whether as owner or as encumbrancer, nothing in this section shall affect

any rights which such person has by virtue of such entitlement or possession, provided that any right to transfer the shares that are specified in it by delivery of the instrument shall cease 21 days before the expiry of the period referred to in *subsection (7)(a)*.]<sup>46</sup>

#### **Capacity to make public offers of securities.**

[[10201022](#)]. Save to the extent prohibited by its constitution, a PLC shall have the capacity to offer, allot and issue securities (as defined in *Part 3*) to the public subject to compliance, where applicable, with *Part 23*.

#### **Allotment of shares and other securities.**

[[10211023](#)]. (1) No relevant securities may be allotted by a PLC unless the allotment is authorised, either specifically or pursuant to a general authority, by ordinary resolution or by the constitution of the PLC.

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<sup>46</sup> Inserted by point 207 of Report Amendments.

(2) Without prejudice to *subsection (1)*, no shares may be allotted by a PLC unless those shares are comprised in the authorised but unissued share capital of the PLC.

(3) Any such authority as is referred to in *subsection (1)* shall state the maximum amount of relevant securities that may be allotted under it and the date on which the authority will expire, which shall be not more than 5 years after whichever is relevant of the following dates—

(a) in the case of an authority contained at the time of the original incorporation of the PLC in the articles of the PLC, the date of that incorporation; and

(b) in any other case, the date on which the resolution is passed by virtue of which that authority is given;

but any such authority (including an authority contained in the articles of the PLC) may be previously revoked or varied by the PLC in general meeting.

(4) Any such authority (whether or not it has been previously renewed under this subsection) may be renewed by the PLC in general meeting for a further period not exceeding 5 years; but the resolution must state (or restate) the amount of relevant securities which may be allotted under the authority or, as the case may be, the amount remaining to be allotted thereunder, and must specify the date on which the renewed authority will expire.

(5) Notwithstanding that any authorisation conferred by a resolution or the constitution such as is mentioned in *subsection (1)* has expired, the directors of a PLC may allot [relevant securities]<sup>47</sup> in pursuance of an offer or agreement previously made by the PLC, if that authorisation enabled the PLC to make an offer or agreement which would or might require [relevant securities]<sup>48</sup> to be allotted after the authorisation's expiry.

(6) A resolution of a PLC to give, vary, revoke or renew such an authority may, notwithstanding that it alters the articles of association of the PLC, be an ordinary resolution.

(7) Where a PLC allots shares, the shares shall be taken, for the purposes of this Act, to be allotted when a person acquires the unconditional right to be included in the PLC's register of members in respect of those shares.

[(8) Any director of a PLC who knowingly contravenes, or knowingly permits or authorises a contravention of, a preceding provision of this section shall be guilty of a category 3 offence.]<sup>49</sup>

[(9)] Where a PLC allots shares, it shall, within 30 days after the date of allotment, deliver particulars of the allotment in the

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<sup>47</sup> Substituted by point 208 of Report Amendments.

<sup>48</sup> Substituted by point 209 of Report Amendments.

<sup>49</sup> Inserted by point 210 of Report Amendments.

prescribed form to the Registrar.]<sup>50</sup>

(10) If a PLC fails to comply with *subsection (9)*, the PLC and any officer of it who is in default shall be guilty of a category 4 offence.

(11) Nothing in this section shall affect the validity of any allotment of relevant securities.

(12) In this section “relevant securities” means, in relation to a PLC —

(a) shares in the PLC other than shares shown in the memorandum to have been taken by the subscribers thereto or shares allotted in pursuance of an employees’ share scheme; and

(b) any right to subscribe for, or to convert any security into, shares in the PLC other than shares so allotted,

and any reference in this section to the allotment of relevant securities includes a reference to the grant of such a right but does not include any reference to the allotment of shares pursuant to such a right.

#### **Pre-emption rights.**

~~[1022-1024]~~. (1) Subject to the provisions of this section and *section [1023-1025]*, a PLC proposing to allot any equity securities –

(a) shall not allot any of those securities, on any terms -

(i) to any non-member, unless it has made an offer to each person who holds relevant shares or relevant employee shares in the PLC to allot to him or her, on the same or more favourable terms, a proportion of those securities which is, as nearly as practicable, equal to the proportion in nominal value held by him or her of the aggregate of the relevant shares and relevant employee shares; or

(ii) to any person who holds relevant shares or relevant employee shares in the PLC, unless it has made an offer to each [...] <sup>51</sup>person who holds relevant shares or relevant employee shares in the PLC to allot to him or her, on the same [or more favourable] <sup>52</sup>terms, a proportion of those securities which is, as nearly as practicable, equal to the proportion in nominal value held by him or her of the aggregate of the relevant shares and relevant employee shares;

and

(b) shall not allot any of those securities to any person unless the period during which any such offer may be accepted has expired or the PLC has received notice of the acceptance or refusal of every offer so made.

(2) In *subsection (1)(a)(i)* “non-member” means a person who is not a holder of shares (as that expression is to be read by virtue of *subsection (11)*) in the PLC.

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<sup>50</sup> Substituted by point 121 of Committee Amendments.

<sup>51</sup> Deleted by point 211 of Report Amendments.

<sup>52</sup> Inserted by point 212 of Report Amendments.

(3) *Subsection (4)* applies to any provision of the memorandum or articles of a PLC which requires the PLC, when proposing to allot equity securities consisting of relevant shares of any particular class, not to allot those securities on any terms unless it has complied with the condition that it makes such an offer as is described in *subsection (1)* to each person who holds relevant shares or relevant employee shares of that class.

(4) If, in accordance with a provision to which this subsection applies—

(a) a PLC makes an offer to allot any securities to such a holder; and

(b) that holder or anyone in whose favour that holder has renounced his or her right to their allotment accepts the offer, *subsection (1)* shall not apply to the allotment of those securities and the PLC may allot them accordingly; but this subsection is without prejudice to the application of *subsection (1)* in any other case.

(5) *Subsection (1)* shall not apply in relation to a particular allotment of equity securities if the securities are, or are to be, wholly or partly paid up otherwise than in cash.

(6) Securities which a PLC has offered to allot to a holder of relevant shares or relevant employee shares may be allotted to that holder or anyone in whose favour that holder has renounced his or her right to their allotment without contravening *subsection (1)(b)*.

(7) *Subsection (1)* shall not apply in relation to the allotment of any securities which would, apart from a renunciation or assignment of the right to their allotment, be held under an employees' share scheme.

(8) An offer which is required by *subsection (1)* or by any provision to which *subsection (4)* applies to be made to any person shall be made by serving it on him or her in the same manner in which notices are authorised to be given by *sections [180], [181] and [218]*.

(9) Any such offer as is mentioned in *subsection (8)* shall state a period of not less than [14 days]<sup>53</sup> during which the offer may be accepted; and the offer shall not be withdrawn before the end of that period.

(10) *Subsections (8) and (9)* shall not invalidate a provision to which *subsection (4)* applies by reason that that provision requires or authorises an offer thereunder to be made in contravention of one or both of those subsections, but, to the extent that the provision requires or authorises such an offer to be so made, it shall be of no effect.

(11) In relation to any offer to allot any securities required by *subsection (1)* or by any provision to which *subsection (4)* applies, references in this section (however expressed) to the holder of shares of any description shall be read as including references to any

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<sup>53</sup> Substituted by point 213 of Report Amendments.

person who held shares of that description on any day within the period of 28 days ending with the day immediately preceding the date of the offer which is specified by the directors of the PLC concerned as being the record date for the purposes of the offer.

(12) Where there is a contravention of *subsection (1), (8) or (9)* or a provision to which *subsection (4)* applies, the PLC and every officer of the PLC who knowingly authorised or permitted the contravention, shall be jointly and severally liable to compensate any person to whom an offer should have been made under the subsection or provision contravened for any loss, damage, costs or expenses which that person has sustained or incurred by reason of the contravention.

(13) No proceedings to recover any such loss, damage, costs or expenses shall be commenced after the expiration of 2 years after the date of the delivery to the Registrar of the return of allotments in question or, where equity securities other than shares are granted, after the date of the grant.

**Interpretation and supplemental provisions in relation to *section [1022+1024]*.**

**[1023+1025]**. (1) In *section [1024+1022]* and this section —

“equity security”, in relation to a PLC, means a relevant share in the PLC (other than a share shown in the memorandum to have been taken by a subscriber thereto or a bonus share) or a right to subscribe for, or to convert any securities into, relevant shares in the PLC, and references to the allotment of equity securities or of equity securities consisting of relevant shares of a particular class include references to the grant of a right to subscribe for, or to convert any securities into, relevant shares in the company or, as the case may be, relevant shares of a particular class, but does not include references to the allotment of any relevant shares pursuant to such a right;

“relevant employee shares”, in relation to a PLC, means shares of the PLC which would be relevant shares in the PLC but for the fact that they are held by a person who acquired them in pursuance of an employees’ share scheme;

“relevant shares”, in relation to a PLC, means shares in the PLC other than—

(a) shares which as respects dividends and capital carry a right to participate only up to a specified amount in a distribution; and

(b) shares which are held by a person who acquired them in pursuance of an employees’ share scheme, or, in the case of shares which have not been allotted, are to be allotted in pursuance of such a scheme.

(2) Any reference in *section [1022+1024]* or this section to a class of shares shall be read as a reference to shares to which the same rights are attached as to voting and as to participation, both as respects dividends and as respects capital, in a distribution.

(3) Where the directors of a PLC are generally authorised for the purposes of *section [1021+1023]*, they may be given power by the articles or by a special resolution of the PLC to allot equity securities pursuant to that authority as if—

(a) *subsection (1) of section [1022+1024]* did not apply to the allotment;

or

(b) that subsection applied to the allotment with such modifications as the directors may determine;

and where the directors make an allotment under this subsection, *section [1022+024]* shall have effect accordingly.

(4) Where the directors of a PLC are authorised for the purposes of *section [1022+024]* (whether generally or otherwise), the PLC may by special resolution resolve either—

(a) that *subsection (1)* of *section [1022+024]* shall not apply to a specified allotment of equity securities to be made pursuant to that authority; or

(b) that that subsection shall apply to the allotment with such modifications as may be specified in the resolution;

and where such a resolution is passed *section [1022+024]* shall have effect accordingly.

(5) A power conferred by virtue of *subsection (3)* or a special resolution under *subsection (4)* shall cease to have effect when the authority to which it relates is revoked or would, if not renewed, expire, but if that authority is renewed, the power or, as the case may be, the resolution may also be renewed, for a period not longer than that for which the authority is renewed, by a special resolution of the company.

(6) Notwithstanding that any such power or resolution has expired, the directors may allot equity securities in pursuance of an offer or agreement previously made by the PLC, if the power or resolution enabled the PLC to make an offer or agreement which would or might require equity securities to be allotted after it expired.

(7) A special resolution under *subsection (4)*, or a special resolution to renew such a resolution, shall not be proposed unless it is recommended by the directors and there has been circulated, with the notice of the meeting at which the resolution is proposed, to the members entitled to have that notice a written statement by the directors setting out—

(a) their reasons for making the recommendation;

(b) the amount to be paid to the PLC in respect of the equity securities to be allotted; and

(c) the directors' justification of that amount.

(8) A person who authorises or permits the inclusion in a statement circulated under *subsection (7)* of any matter which is false or misleading in a material particular knowing it to be so false or misleading or being reckless as to whether it is so false or misleading shall be guilty of a category 3 offence.

**Status of authority to allot[ shares]<sup>54</sup> conferred prior to company's re-registration as a PLC.**

**[1024+026]**. Any authority of directors to allot shares under *section [69]* conferred by ordinary resolution passed by a company prior to its re-registration as a PLC shall lapse at the conclusion of its annual general meeting next held after its re-registration as a PLC.

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<sup>54</sup> Correction of typographical error

### Subscription of share capital.

[10251027]. (1) A PLC shall not accept at any time, in payment up of its shares or any premium on them, an undertaking given by any person that he or she or another should do work or perform services for the PLC or any other person.

(2) Where a PLC accepts such an undertaking as payment up of its shares or any premium payable on them, the holder of the shares when they or the premium are treated as paid up, in whole or in part, by the undertaking—

(a) shall be liable to pay the PLC in respect of those shares, an amount equal to their nominal value, together with the whole of any premium or, if the case so requires, such proportion of that amount as is treated as paid up by the undertaking; and

(b) shall be liable to pay interest at the appropriate rate on the amount payable under *paragraph (a)*.

(3) Where any person becomes a holder of any shares in respect of which—

(a) there has been a contravention of this section; and

(b) by virtue of that contravention, another is liable to pay any amount under this section,

the first-mentioned person in this subsection also shall be liable to pay that amount (jointly and severally with any other person so liable) unless either that first-mentioned person is a purchaser for value and, at the time of the purchase, he or she did not have actual notice of the contravention or he or she derived title to the shares (directly or indirectly) from a person who became a holder of them after the contravention and was not so liable.

(4) References in this section to a holder, in relation to any shares in a PLC, include references to any person who has an unconditional right to be included in the PLC's register of members in respect of those shares or to have an instrument of transfer of the shares executed in his or her favour.

(5) Where a PLC contravenes any of the provisions of this section, the PLC and any officer of it who is in default shall be guilty of a category 3 offence.

### Payment for allotted shares.

[10261028]. (1) Subject to *subsection (4)*, a PLC shall not allot a share except as paid up at least as to one-quarter of the nominal value of the share and the whole of any premium on it.

(2) Where a PLC allots a share in contravention of *subsection (1)*, the share shall be treated as if one-quarter of its nominal value together with the whole of any premium had been received, but the allottee shall be liable to pay the PLC the minimum amount which should have been received in respect of the share under that subsection less the value of any consideration actually applied in payment

up (to any extent) of the share and any premium on it, and interest at the appropriate rate on the amount payable under this subsection.

(3) *Subsection (2)* shall not apply in relation to the allotment of a bonus share in contravention of *subsection (1)* unless the allottee knew or ought to have known the share was so allotted.

(4) *Subsections (1) to (3)* shall not apply to shares allotted in pursuance of an employees' share scheme.

(5) *Subsection (3)* of *section [40271025]* shall apply for the purposes of this section as it applies for the purposes of *section [10254027]*.

(6) Where a PLC contravenes any of the provisions of this section, the PLC and any officer of it who is in default shall be guilty of a category 3 offence.

#### **Payment of non-cash consideration.**

[10274029]. (1) A PLC shall not allot shares as fully or partly paid up (as to their nominal value or any premium payable on them) otherwise than in cash if the consideration for the allotment is or includes an undertaking which is to be or may be performed more than 5 years after the date of the allotment.

(2) Where a PLC allots shares in contravention of *subsection (1)*, the allottee of the shares shall be liable to pay the PLC an amount equal to their nominal value, together with the whole of any premium, or if the case so requires, such proportion of that amount as is treated as paid up by the undertaking and shall be liable to pay interest at the appropriate rate on the amount payable under this subsection.

(3) Where a contract for the allotment of shares does not contravene *subsection (1)*, any variation of the contract which has the effect that the contract would have contravened that subsection if the terms of the contract as varied had been its original terms shall be void.

(4) *Subsection (3)* shall apply to the variation by a PLC of the terms of a contract entered into before the company was registered or re-registered as a PLC.

(5) Where a PLC allots shares for a consideration which consists of or includes (in accordance with *subsection (1)*) an undertaking which is to be performed within 5 years after the date of the allotment but that undertaking is not performed within the period allowed by the contract for the allotment of the shares, the following subsection applies.

(6) The allottee of the shares in question shall be liable to pay the PLC at the end of the period secondly referred to in *subsection (5)*

the following –

- (a) an amount equal to the nominal value of the shares, together with the whole of any premium, or if the case so requires, such proportion of that amount as is treated as paid up by the undertaking; and
- (b) interest at the appropriate rate on the amount payable under *paragraph (a)*.

(7) *Subsection (3) of section [1025+027]* shall apply in relation to a contravention of this section and to a failure to carry out a term of a contract as mentioned in *subsection (5)* as it applies in relation to a contravention of *section [1025+027]*.

(8) Any reference in this section to a contract for the allotment of shares includes a reference to an ancillary contract relating to payment in respect of those shares.

(9) Where a PLC contravenes any of the provisions of this section, the PLC and any officer of it who is in default shall be guilty of a category 3 offence.

**Expert's report on non-cash consideration before allotment of shares.**

**[1028+030]**. (1) Subject to *subsection (2)* and *sections [1029+034]* and *[1031+033]* to *[1033+035]*, a PLC shall not allot shares as fully or partly paid up (as to their nominal value or any premium payable on them) otherwise than in cash unless—

- (a) the consideration for the allotment has been valued in accordance with the following provisions of this section;
- (b) a report with respect to its value has been made to the PLC by a person appointed by the PLC in accordance with those provisions during the 6 months immediately preceding the date of the allotment of the shares; and
- (c) a copy of the report has been sent to the proposed allottee of the shares.

(2) Subject to *subsection (3)*, *subsection (1)* shall not apply to the allotment of shares by a PLC in connection with an arrangement providing for the allotment of shares in that PLC on terms that the whole or part of the consideration for the shares allotted is to be provided by the transfer to that PLC or the cancellation of all or some of the shares, or of all or some of the shares of a particular class, in another company (with or without the issue to that PLC of shares, or of shares of any particular class, in that other company).

(3) *Subsection (2)* does not exclude the application of *subsection (1)* to the allotment of shares by a PLC in connection with any such arrangement as is there mentioned unless the following condition is satisfied, namely, it is open to all the holders of the shares in the other company in question or, where the arrangement applies only to shares of a particular class, to all the holders of shares in that other company of that class, to take part in the arrangement.

(4) In determining whether the foregoing condition is satisfied, shares held by, or by a nominee of, the PLC proposing to allot the shares in connection with the arrangement, or by, or by a nominee of, a company which is that PLC's holding company or subsidiary or

a company which is a subsidiary of that PLC's holding company, shall be disregarded.

(5) Subject to *subsections (6) and (7)*, the valuation and report required by *subsection (1)* shall be made by an independent person, that is to say, a person qualified at the time of the report to be appointed or to continue to be the statutory auditor of the PLC.

(6) Where it appears to the independent person referred to in *subsection (5)* to be reasonable for the valuation of the consideration, or a valuation of part of the consideration, to be made, or to accept such a valuation made, by any person who—

(a) appears to that independent person to have the requisite knowledge and experience to value the consideration or that part of the consideration; and

(b) is not –

(i) an officer or employee of the PLC or any other body corporate which is that PLC's subsidiary or holding company or a subsidiary of that PLC's holding company;[

(ii) a partner or employee of an officer or employee referred to in *subparagraph (i)*; or

(iii) a person otherwise connected (within the meaning of *section [220]* as adapted by *section [~~10291031~~](7)*) with an officer or employee referred to in *subparagraph (i)*];<sup>55</sup>

that independent person may arrange for or accept such a valuation, together with a report which will enable the independent person to make his or her own report under *subsection (1)* and provide a note in accordance with *subsection (11)*.

(7) Where the allotment of shares by a PLC is in connection with -

(a) a proposed merger, where that company was formed as a successor company for the purpose of the proposed merger, the merger being a merger by formation of a new company within the meaning of *Chapter 16* or the European Communities (Cross-Border Mergers) Regulations 2008 (S.I. No. 157 of 2008);

(b) a proposed merger of that company with another company; or

(c) a proposed division of that company,

the valuation and report required by *subsection (1)* may be made by the person appointed pursuant to *section [~~11341133~~]* or [~~11561155~~] or an expert within the meaning of Regulation 7 of the foregoing Regulations, in which case the person so appointed shall be deemed to be an independent person for the purposes of *subsection (5)*.

(8) For the purposes of *subsection (7)* there is a proposed merger of a PLC with a company when one of them proposes to acquire all the assets and liabilities of the other in exchange for the issue of shares or other securities in that one to shareholders of the other, with or without any cash payment to those shareholders.

(9) The report of the independent person under *subsection (1)* shall state—

(a) the nominal value of the shares to be wholly or partly paid for by the consideration in question;

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<sup>55</sup> Substituted by point 214 of Report Amendments.

- (b) the amount of any premium payable on those shares;
- (c) the description of the consideration and, as respects so much of the consideration as the independent person himself or herself has valued, a description of that part of the consideration, the method used to value it and the date of the valuation; and
- (d) the extent to which the nominal value of the shares and any premium are to be treated as paid up—
  - (i) by the consideration;
  - (ii) in cash.

(10) Where any consideration is valued under this section by a person other than the independent person, the latter's report under *subsection (1)* shall state that fact and shall also—

- (a) state the former's name and what knowledge and experience that other person has to carry out the valuation; and
- (b) describe so much of the consideration as was valued by that other person, the method used to value it and state the date of valuation.

(11) The report of the independent person made under *subsection (1)* shall contain a note by the independent person, or be accompanied by such a note —

- (a) in the case of a valuation made by another person, that it appeared to the independent person reasonable to arrange for it to be so made, or to accept a valuation so made;
- (b) irrespective of whether the valuation has been by that person or the independent person, that the method of valuation was reasonable in all the circumstances;
- (c) that it appears to the independent person that there has been no material change in the value of the consideration in question since the valuation; and
- (d) that on the basis of the valuation the value of the consideration, together with any cash by which the nominal value of the shares or any premium payable on them is to be paid up, is not less than so much of the aggregate of the nominal value and the whole of any such premium as is treated as paid up by the consideration and any such cash.

**Supplemental provisions in relation to *section [10281030]*.**

**[10291031]**. (1) *Subsection (2)* applies where a PLC allots any share in contravention of *section [10281030](1)* and either—

- (a) the allottee has not received a report under *section [10281030]*; or
- (b) there has been some other contravention of that section and the allottee knew or ought to have known that it amounted to a contravention.

(2) Where this subsection applies, the allottee shall be liable to pay the PLC an amount equal to the nominal value of the shares, together with the whole of any premium or if the case so requires, such proportion of that amount as is treated as paid up by the

consideration, and shall be liable to pay interest at the appropriate rate on the amount payable under this subsection.

(3) Subsection (3) of section [\[1025+027\]](#) shall apply for the purposes of section [\[1028+030\]](#) as it applies for the purposes of section [\[1026+028\]](#).

(4) Where the consideration referred to in section [\[1028+030\]](#) is accepted partly in payment up of the nominal value of the shares and any premium and partly for some other consideration given by the company, the provisions of that section and this section shall apply as if references to the consideration accepted by the PLC included references to the proportion of that consideration which is properly attributable to the payment up of that value and any premium; and -

(a) the independent person shall carry out or arrange for such other valuations as will enable him or her to determine that proportion; and

(b) the independent person's report under section [\[1028+030\]](#)(1) shall state what valuations have been made by virtue of this subsection and also the reason for and method and date of any such valuation and any other matters which may be relevant to that determination.

(5) It is declared for the avoidance of doubt that section [\[1028+030\]](#)(1) does not apply by reference to the application of an amount for the time being standing to the credit of any of the PLC's reserve accounts or to the credit of its profit and loss account in paying up (to any extent) any shares allotted to members of the PLC or any premiums on any shares so allotted; and in relation to any such allotment references in section [\[1028+030\]](#) or this section to the consideration for the allotment do not include any such amount so applied.

(6) In section [\[1028+030\]](#) and this section—

(a) “arrangement” means any agreement, scheme or arrangement (including an arrangement sanctioned in accordance with section [\[453\]](#), [\[541\]](#) or [\[601\]](#));

(b) any reference to a company, except where it is or is to be read as a reference to a PLC, includes a reference to any body corporate and any body to which letters patent have been issued under the Chartered Companies Act 1837; and

(c) any reference to an officer or employee shall not include a reference to a statutory auditor.

(7) For the purposes of the provision made by section [\[1028+030\]](#)(6)(b)(iii) concerning a person's being connected with an officer or employee there referred to (which officer or employee is, in this subsection, subsequently referred to as the “relevant person”), section [\[220\]](#) applies as if—

(a) for each reference in subsections (1), (2), (3) and (8) to a director of a company there were substituted a reference to the relevant person;

(b) for the first reference and the third reference in subsection (5) to a director of a company there were substituted a reference to the relevant person;

(c) the references in subsection (5) to another director or directors included references to one or more other relevant persons; and

(d) the reference in *subsection (6)(b)* to a director included a reference to a relevant person.]<sup>56</sup>

(18) Where a PLC contravenes any of the provisions of *section [1028+030]* or this section, the PLC and any officer of it who is in default shall be guilty of a category 3 offence.

**Expert's report: supplemental provisions in relation to *section [1028+030]*.**

[1030+032]. (1) Any person carrying out a valuation or making a report under *section [1028+030]* with respect to any consideration proposed to be accepted or given by a PLC shall be entitled to require from the officers of the PLC such information and explanation as the person thinks necessary to enable him or her to carry out the valuation or to make the report and provide a note required by that section.

(2) A PLC to which such a report is made as to the value of any consideration for which, or partly for which, it proposes to allot shares shall deliver a copy of the report to the Registrar at the same time that it delivers particulars of the allotments of those shares under *section [1021+023]([9])*.

(3) *Section [1021+023]([10])* shall apply to a default in complying with *subsection (2)* as it applies to a default in complying with *section [1021+023]([9])*.

(4) Any person who makes a statement -

- (a) that is a statement to which this subsection applies; and
- (b) which is false or misleading in a material particular,

knowing it to be so false or misleading or being reckless as to whether it is so false or misleading, shall be guilty of a category 2 offence.

(5) *Subsection (4)* applies to any statement made (whether orally or in writing) to any person carrying out a valuation or making a report under *section [1028+030]*, being a statement which conveys or purports to convey any information or explanation which that person requires, or is entitled to require, under *subsection (1)*.

**Dispensation from *section [1028+030]* - certain securities or money-market instruments constituting consideration for allotment.**

[1031+033]. (1) In this section -

“relevant assets” means securities or instruments (or, as the case may be, both) referred to in the definition of “securities based consideration” in this subsection;

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<sup>56</sup> Inserted by point 215 of Report Amendments.

“securities based consideration” means consideration consisting of-

- (a) transferable securities as defined in point 18 of Article 4(1) of Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments;
- (b) money-market instruments as defined in point 19 of Article 4(1) of that Directive; or
- (c) both such transferable securities and such money-market instruments.

(2) Where this section applies then either –

- (a) the requirements of *section* [1028+030] do not apply; or
- (b) those requirements only apply if the contingency specified in *subsection (4)(b)* arises.

(3) This section applies where the consideration for the allotment of the shares consists wholly, or together with cash consideration, of securities based consideration and –

- (a) the conditions specified in *subsection (4)* are satisfied with respect to the securities based consideration; and
- (b) the value of the securities based consideration is not less than the value of the relevant assets as determined in accordance with *paragraph (a)* of that subsection.

(4) The following are the conditions with respect to the securities based consideration –

- (a) the relevant assets are valued at the weighted average price at which they have been traded on one or more regulated markets during a period of 5 consecutive days (any break arising on account of closure of such market on one or more days being disregarded) immediately preceding the date on which those assets are treated as consideration given for the allotment of the shares in question; and
- (b) the foregoing price has not been affected by exceptional circumstances that would significantly change the value of the asset at the foregoing date, including situations where the market for the securities or instruments concerned has become illiquid.

(5) If exceptional circumstances or a situation as mentioned in *subsection (4)(b)* arise, a valuation under *section* [1028+030] of the relevant assets shall be caused to be carried out by the PLC and the relevant provisions of *sections* [1028+030] to [1030+032] shall apply accordingly.

(6) Where this section applies and shares are proposed to be allotted by a PLC without a report of an independent expert as otherwise required by *sections* [1028+030] to [1030+032], the PLC shall, no later than the date of allotment, deliver, in the prescribed form,

notice of the proposed allotment to the Registrar, which notice shall contain -

- (a) a description of the consideration other than in cash at issue;
- (b) the value of that consideration, the source of its valuation and, where appropriate, the method of valuation;
- (c) a statement whether the value arrived at corresponds at least to the number and nominal value of, and (where appropriate) to the premium on, the shares to be issued for that consideration.

(7) Where shares have been allotted as mentioned in *subsection (6)*, the notice of the allotment delivered under *section*

~~[10214023]~~(9) to the Registrar in respect of those shares shall –

(a) contain -

- (i) a description of the consideration other than in cash at issue;
- (ii) the value of that consideration, the source of its valuation and, where appropriate, the method of valuation; and
- (iii) a statement whether the value arrived at corresponds at least to the number and nominal value of, and (where appropriate) to the premium on, the shares issued for that consideration.

which may be by reference to the particulars delivered in accordance with *subsection (6)*;

and

- (b) contain a statement that no exceptional circumstances or a situation as mentioned in *subsection (4)(b)* with regard to the original valuation arose prior to the allotment.

**Dispensation from *section [10284030]* - consideration for allotment other than securities and money-market instruments referred to in *section [10314033]*.**

~~[10324034]~~. (1) In this section -

“non-securities based consideration” means consideration other than that falling within the definition of “securities based consideration” in *section [10314033](1)*;

“relevant assets” means assets other than those falling within that definition of “securities based consideration”.

(2) Where this section applies then either –

- (a) the requirements of *section [10284030]* do not apply; or
- (b) those requirements only apply if –
  - (i) the contingency specified in *subsection (4)(e)* arises; or
  - (ii) a request of the kind referred to in *subsection (6)* is made by one or more members of the PLC, being a request that, as provided therein, must be acceded to by the PLC.

(3) This section applies where the consideration for the allotment of the shares consists wholly, or together with cash consideration, of non-securities based consideration and –

- (a) the conditions specified in *subsection (4)* are satisfied with respect to the non-securities based consideration; and

(b) the value of the non-securities based consideration is not less than the value of the relevant assets as determined in accordance with *paragraph (a)* of that subsection.

(4) The following are the conditions with respect to the non-securities based consideration -

- (a) the relevant assets are valued by reference to an opinion as to their fair value by an expert who, in the opinion of the PLC, possesses the requisite degree of independence from the interests concerned in the transaction and holds an appropriate qualification;
- (b) that fair value was determined for a date not more than 6 months before the date on which the relevant assets are treated as consideration given for the allotment of the shares in question;
- (c) that valuation as to fair value has been performed in accordance with generally accepted valuation standards and principles in the State (or such standards and principles in another Member State as are equivalent to them) and, in either case, which are applicable to the class of assets concerned;
- (d) the giving of such consideration is approved –
  - (i) by ordinary resolution of the PLC; or
  - (ii) following 14 days' notice by the board of directors (of the PLC's intention to give that consideration) to the members, by a resolution of the board of directors of the PLC,and, in either case, that approval is granted not more than [30 days]<sup>57</sup> before the date on which the agreement to allot the shares in question is entered into or, where such agreement is subject to conditions that required fulfilment before the agreement can be carried into effect, on the date of those conditions' fulfilment;
- (e) no exceptional circumstances arise that would significantly change the fair value of the asset at the date secondly referred to in *paragraph (b)*; and
- (f) in a case where *paragraph (d)(ii)* applies, the resolution there referred to includes a statement by the board of directors that they are satisfied that there are no exceptional circumstances known to them that, in their opinion, have significantly changed the fair value of the assets at the date secondly referred to in *paragraph (b)*.

(5) If either –

- (a) exceptional circumstances as mentioned in *paragraph (e)* of *subsection (4)* arise; or
- (b) notwithstanding that the conditions specified in that subsection are satisfied, a request of the kind referred to in *subsection (6)* is made by one or more members of the PLC, being a request that, as provided therein, must be acceded to by the PLC,

a valuation under *section [10281030]* of the relevant assets shall be caused to be carried out by the PLC and the relevant provisions of *sections [10281030]* to *[10301032]* shall apply accordingly.

(6) One or more members who hold, or together hold, not less than 5 per cent of the issued shares of the PLC on the date of the passing

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<sup>57</sup> Substituted by point 122 of Committee Amendments.

of the ordinary resolution or the notification by the directors, as the case may be, referred to in *subsection (4)(d)* may, by notice in writing served on the PLC before the date secondly referred to in *subsection (4)(b)*, request a valuation under *section [1028+030]* of the relevant assets to be carried out; unless, on the date of service of that notice, the percentage of the issued shares of the PLC held by the requester or, as appropriate, the requesters has fallen below 5 per cent, the request shall be acceded to by the PLC.

(7) Where this section applies and shares are proposed to be allotted by a PLC without a report of an independent expert as otherwise required by *sections [1028+030]* to *[1030+032]*, the PLC shall, no later than the earliest of the dates specified in *subsection (8)*, deliver, in the prescribed form, notice of the proposed allotment to the Registrar, which notice shall contain -

- (a) a description of the consideration other than in cash at issue;
- (b) the value of that consideration, the source of its valuation and, where appropriate, the method of valuation; and
- (c) a statement whether the value arrived at corresponds at least to the number and nominal value of, and (where appropriate) to the premium on, the shares to be issued for that consideration.

(8) The dates referred to in *subsection (7)* are :

- (a) the date of the allotment;
- (b) where the allotment is to be authorised by ordinary resolution, as appropriate:
  - (i) the date of the notice of the general meeting at which the ordinary resolution is to be passed; or
  - (ii) where the ordinary resolution is to be passed by written resolution, the date on which the written resolution is deemed to be passed;
- (c) where the allotment is to be authorised by the board of directors only, the date of the notification by the directors referred to in *subsection (4)(d)*.

(9) Where shares have been allotted as mentioned in *subsection (7)*, the notice of the allotment delivered under *section [1021+023]* to the Registrar in respect of those shares shall –

- (a) contain -
  - (i) a description of the consideration other than in cash at issue;
  - (ii) the value of that consideration, the source of its valuation and, where appropriate, the method of valuation; and
  - (iii) a statement whether the value arrived at corresponds at least to the number and nominal value of, and (where appropriate) to the premium on, the shares issued for that consideration.which may be by reference to the particulars delivered in accordance with *subsection (7)*; and
- (b) contain a statement that no exceptional circumstances with regard to the original valuation arose prior to the allotment.

**Dispensation from *section [1028+030]*: cases in which consideration for allotment falls into both *section [1031+033]* and *section [1032+034]*.**

[10331035]. (1) If the consideration for the allotment of the shares consists of both -

- (a) securities based consideration; and
- (b) non-securities based consideration,

(whether in addition to cash or not), the provisions of *sections* [10311033] and [10321034] shall apply, respectively, to the securities based consideration and the non-securities based consideration, but with the modification that the notice of the proposed allotment, as provided for in *sections* [10311033](6) and [10311034](7), may be combined in the one document as long as that document is delivered to the Registrar no later than earliest of the dates specified in *section* [10321034](8).

(2) In this section –

“non-securities based consideration” has the same meaning as it has in *section* [10321034];

“securities based consideration” has the same meaning as it has in *section* [10311033].

#### **Expert’s report on non-cash assets acquired from subscribers, etc.**

[10341036]. (1) A PLC shall not, unless the conditions specified in *subsection* (3) have been satisfied, enter into an agreement with a relevant person for the transfer by him or her, during the initial period, of one or more non-cash assets to the PLC or another for a consideration to be given by the PLC equal in value at the time of the agreement to at least one-tenth of the nominal value of the PLC’s share capital issued at that time.

(2) In this section—

(a) in relation to a company formed as a PLC –

(i) “relevant person” means any subscriber to the memorandum of the company; and

(ii) “initial period” means the period of 2 years beginning after the date on which the company is issued with a certificate under *section* [10101012] that it is entitled to do business;

(b) in relation to a company re-registered or registered in accordance with *Part 20* or *22* as a PLC -

(i) “relevant person” means any person who was a member of the company on the date of the re-registration or registration; and

(ii) “initial period” means the period of 2 years beginning after that date.

(3) The conditions referred to in *subsection* (1) are that—

(a) the consideration to be received by the PLC (that is to say, the asset to be transferred to the PLC or the advantage to the PLC of its transfer to another person) and any consideration other than cash to be given by the PLC have been valued under the following provisions of this section (without prejudice to any requirement to value any consideration under *sections* [10281030] to [10301032]);

(b) a report with respect to the consideration to be so received and given has been made to the PLC in accordance with those

provisions during the 6 months immediately preceding the date of the agreement;

(c) the terms of the agreement have been approved by an ordinary resolution of the PLC; and

(d) not later than –

(i) the date of the giving of the notice of the meeting at which the resolution is proposed; or

(ii) where the means under *section [193]* (unanimous written resolutions) for passing the resolution is used, 21 days before the date of the signing of the resolution by the last member to sign,

copies of the resolution and report have been circulated to the members of the PLC entitled to receive that notice or sign the resolution and, if the relevant person is not then such a member, to that person[, but in a case falling within *subparagraph (ii)*, compliance with this paragraph may be waived in writing by such members and the relevant person]<sup>58</sup>.

(4) *Subsection (1)* shall not apply to the following agreements for the transfer of an asset for a consideration to be given by the PLC, that is to say—

(a) where it is part of the ordinary business of the PLC to acquire or arrange for other persons to acquire assets of a particular description, an agreement entered into by the PLC in the ordinary course of its business for the transfer of an asset of that description to it or such a person, as the case may be; or

(b) an agreement entered into by the PLC under the supervision of the court, or an officer authorised by the court for the purpose, for the transfer of an asset to the PLC or to another.

(5) *Subsections (5), (6) and (10) of section [1028+030]* shall apply to a valuation and report of any consideration under this section as those subsections apply to a valuation of and report on any consideration under *subsection (1) of section [1028+030]*.

(6) The report of the independent person under this section shall—

(a) state the consideration to be received by the PLC, describing the asset in question, specifying the amount to be received in cash and the consideration to be given by the PLC, specifying the amount to be given in cash;

(b) state the method and date of valuation;

(c) contain a note by the independent person, or be accompanied by such a note, as to the matters mentioned in *section [1028+030](11)(a) to (c)*; and

(d) contain a note by the independent person, or be accompanied by such a note, that, on the basis of the valuation, the value of the consideration to be received by the PLC is not less than the value of the consideration to be given by it.

(7) If a PLC enters into an agreement with any relevant person in contravention of *subsection (1)* and either the relevant person has not

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<sup>58</sup> Inserted by point 145 of Seanad Committee Amendments.

received a report under this section or there has been some other contravention of this section or *section [1028+030](5), (6) or (10)* which he or she knew or ought to have known amounted to a contravention, then, subject to *subsection (8)*—

- (a) the PLC shall be entitled to recover from the relevant person, any consideration given by the PLC under the agreement or an amount equivalent to its value at the time of the agreement; and
- (b) the agreement, so far as not carried out, shall be void.

(8) Where a PLC enters into an agreement in contravention of *subsection (1)* and that agreement is or includes an agreement for the allotment of shares in that PLC, then whether or not the agreement also contravenes *section [1028+030]* -

- (a) *subsection (7)* shall not apply to the agreement in so far as it is an agreement for the allotment of shares; and
- (b) *sections [1025+027](3)* and *[1029+031](2)* shall apply in relation to the shares as if they had been allotted in contravention of *section [1028+030]*.

(9) Where a PLC contravenes any of the provisions of this section, the PLC and any officer of it who is in default shall be guilty of a category 3 offence.

**Supplemental provisions in relation to *section [1034+036]*.**

**[1035+037].** (1) Any person carrying out a valuation or making a report under *section [1034+036]* shall be entitled to require from the officers of the PLC such information and explanation as the person thinks necessary to enable him or her to carry out the valuation or make the report and provide the note required by that section.

(2) *Section [1030+032](4)* shall apply in relation to any such valuation and report as it applies in relation to a valuation and report under *section [1028+030]* with the substitution of a reference to this subsection for the reference in *section [1030+032](5)* to *section [1030+032](1)*.

(3) A PLC which has passed a resolution under *section [1034+036]* with respect to the transfer of an asset shall, within 15 days after the date of the passing of the resolution, deliver to the Registrar a copy of the resolution together with the report required by that section and, if the PLC fails to do so, the PLC and any officer of it who is in default shall be guilty of a category 4 offence.

(4) Any reference in *section [1034+036]* or this section to consideration given for the transfer of an asset includes a reference to consideration given partly for its transfer but—

- (a) the value of any consideration partly so given shall be taken to be the proportion of that consideration properly attributable to its transfer;
- (b) the independent person shall carry out or arrange for such valuations of anything else as will enable him or her to determine that proportion; and
- (c) his or her report under *section [1034+036]* shall state what valuation has been made by virtue of *paragraph (b)* and

also the reason for and method and date of any such valuation and any other matters which may be relevant to that determination.

**Relief.**

[10364038]. (1) Where any person is liable to a PLC under *section* [10254027], [10274029], [10284030], [10294031] or [10344036] in relation to payment in respect of any shares in the PLC or is liable by virtue of any undertaking given to the PLC in, or in connection with, payment for any such shares, the person so liable may make an application to the court under this subsection to be exempted in whole or in part from that liability.

(2) Where the liability mentioned in *subsection (1)* arises under any of the foregoing sections in relation to payment in respect of any shares, the court may, on an application under that subsection, exempt the applicant from that liability only—

- (a) if and to the extent that it appears to the court just and equitable to do so having regard to the following, namely—
  - (i) whether the applicant has paid, or is liable to pay, any amount in respect of any other liability arising in relation to those shares under any of the foregoing sections or of any liability arising by virtue of any undertaking given in or in connection with payment for those shares;
  - (ii) whether any person other than the applicant has paid or is likely to pay (whether in pursuance of an order of the court or otherwise) any such amount; and
  - (iii) whether the applicant or any other person has performed, in whole or in part, or is likely so to perform any such undertaking or has done or is likely to do any other thing in payment or part payment in respect of those shares;
- (b) if and to the extent that it appears to the court just and equitable to do so in respect of any interest which he or she is liable to pay to the PLC under any of the foregoing sections.

(3) Where the liability mentioned in *subsection (1)* arises by virtue of an undertaking given to the PLC in or in connection with, payment for any shares in the PLC, the court may, on an application under that subsection, exempt the applicant from that liability only if and to the extent that it appears to the court just and equitable to do so having regard to the following, namely—

- (a) whether the applicant has paid or is liable to pay any amount in respect of any liability arising in relation to those shares under *section* [10254027], [10274029], [10284030], [10294031] or [10344036]; and
- (b) whether any person other than the applicant has paid or is likely to pay (whether in pursuance of an order of the court or otherwise) any such amount.

(4) In determining in pursuance of an application under *subsection (1)* whether it should exempt the applicant in whole or in part from any liability, the court shall have regard to the following overriding principles, namely—

- (a) that a PLC which has allotted shares should receive money or money's worth at least equal in value to the aggregate of the nominal value of those shares and the whole of any premium or, if the case so requires, so much of that

aggregate as is treated as paid up; and

- (b) subject to *paragraph (a)*, that where such a PLC would, if the court did not grant that exemption, have more than one remedy against a particular person, it should be for the PLC to decide which remedy it should remain entitled to pursue.

(5) Where a person brings any proceedings against another (the “contributor”) for a contribution in respect of any liability to a company arising under any of *sections [1025+027]* to *[1029+034]* and *[1034+036]* and it appears to the court that the contributor is liable to make such a contribution, the court may, if and to the extent that it appears to the court, having regard to the respective culpability in respect of the liability to the PLC of the contributor and the person bringing the proceedings, that it is just and equitable to do so—

- (a) exempt the contributor in whole or in part from his or her liability to make such a contribution; or  
(b) order the contributor to make a larger contribution than, but for this subsection, he or she would be liable to make.

(6) Where a person is liable to a PLC by virtue of *subsection (7)(a)* of *section [1034+036]* the court may, on an application under this subsection, exempt that person in whole or in part from that liability if and to the extent that it appears to the court just and equitable to do so having regard to any benefit accruing to the PLC by virtue of anything done by that person towards the carrying out of the agreement mentioned in that *subsection (7)(a)*.

#### **Special provisions as to issue of shares to subscribers.**

**[1037+039]**. (1) Any shares taken by a subscriber to the constitution of a PLC in pursuance of an undertaking of his or hers in the constitution and any premium on the shares shall be paid up in cash.

(2) If a PLC permits any such share to be paid up otherwise than in cash, the PLC and any officer of it who is in default shall be guilty of a category 3 offence.

[...] <sup>59</sup>

#### **Enforceability of undertakings made in contravention of certain provisions of Chapter.**

**[1038+040]**. Subject to *section [1-36+038]* -

- (a) an undertaking given by any person in or in connection with payment for shares in a PLC to do work or perform services or to do any other thing shall, if it is enforceable by the PLC apart from this Part, be so enforceable notwithstanding that there has been a contravention in relation thereto of *section [1025+027]*, *[1027+029]*, *[1028+030]* or *[1029+034]*; and  
(b) where such an undertaking is given in contravention of *section [1034+036]* or *[1036+037]* in respect of the allotment

<sup>59</sup> Deleted by point 122 of Committee Amendments.

of any shares it shall be so enforceable notwithstanding that contravention.

**Adaptation of section [102](1) and (2) in relation to a PLC.**

**[10391041]**. Section [102](1) and (2) shall apply in relation to a PLC as if references in them to *Chapter 3* or *4* of *Part 9* were references to *Chapter 16* or, as the case may be, *Chapter 17* of this Part.

**Treatment of own shares held by or on behalf of a PLC.**

**[10401042]**. (1) Subject to section [~~1041~~1043](5), this section applies to a PLC—

- (a) where shares in the PLC are forfeited, or are surrendered to the PLC in lieu of forfeiture, in pursuance of *Part 3* or its constitution for failure to pay any sum payable in respect of those shares;
- (b) where shares in the PLC are acquired by the PLC otherwise than by any of the methods mentioned in section [102](1) and the company has a beneficial interest in those shares;
- (c) where the nominee of the PLC acquires shares in the PLC from a third person without financial assistance being given directly or indirectly by the PLC and the PLC has a beneficial interest in those shares; or
- (d) where any person acquires shares in the PLC with financial assistance given to him or her directly or indirectly by the PLC for the purpose of the acquisition and the PLC has a beneficial interest in those shares.

(2) In determining for the purposes of *subsection (1)(b)* or *(c)* whether a PLC has a beneficial interest in any shares, there shall be disregarded, in any case where the PLC is a trustee (whether as personal representative or otherwise), any right of the PLC (as trustee) to recover its expenses or be remunerated out of the trust property.

(3) Unless the shares or any interest of the PLC in them are previously disposed of, the PLC shall, not later than the end of the relevant period after the date of their forfeiture or surrender or, in a case to which *subsection (1)(b)*, *(c)* or *(d)* applies, their acquisition—

- (a) cancel them and reduce the amount of the share capital by the nominal value of the shares; and
- (b) where the effect of cancelling the shares will be that the nominal value of the PLC's allotted share capital is brought below the authorised minimum, apply for re-registration as another type of company, stating the effect of the cancellation,

and the directors may take such steps as are requisite to enable the PLC to carry out its obligations under this subsection without complying with *sections [84]* and *[85]*, including passing a resolution in accordance with *subsection (5)*.

(4) The PLC and, in a case falling within *subsection (1)(c)* or *(d)*, the PLC's nominee or, as the case may be, the other shareholder, shall not exercise any voting rights in respect of the shares and any purported exercise of those rights shall be void.

(5) The resolution authorised by *subsection (3)* may alter the PLC's constitution so that it no longer states that the company is to be a

PLC and may make such other alterations in the constitution as are requisite in the circumstances.

(6) Without prejudice to the generality of *subsection (5)*, where the resultant company type is a private company limited by shares, the alteration referred to in that subsection shall include the replacement of the memorandum and articles of the re-registering company by a constitution in conformity with *section 19* and *Schedule 1* (but nothing in this section authorises the alteration of the rights and obligations of members of the re-registering company, or of other persons, as set out in its memorandum and articles and, accordingly, where necessary, the foregoing replacement constitution shall include such supplemental regulations as will secure those rights and obligations).

(7) The application for re-registration required by *subsection (3)(b)* shall be in the prescribed form and signed by a director or secretary of the PLC and shall be delivered to the Registrar together with a copy of the constitution of the PLC as altered by the resolution.

(8) If a PLC required to apply to be re-registered as another type of company under this section, fails to do so before the end of the relevant period, *section 69* shall apply to it as if it were a private company limited by shares, but, subject to that, the company shall continue to be treated for the purposes of this Act as a PLC until it is re-registered as another form of company.

(9) If a PLC, when required to do so by *subsection (3)*, fails to cancel any shares in accordance with *paragraph (a)* of that subsection or to make an application for re-registration in accordance with *paragraph (b)* of that subsection, the PLC and any officer of it who is in default shall be guilty of a category 3 offence.

(10) In addition to the resolutions which *subsection (4)* of that section provides that that section applies to, *section [198]* shall apply to resolutions of the directors of a PLC passed by virtue of *subsection (3)*.

**Supplemental provisions in relation to *section [1040+042]* (including definition of “relevant period”).**

**[1041+043]**. (1) If the Registrar is satisfied that a PLC is required to be re-registered in accordance with *section [1040+042]*, the Registrar shall—

- (a) retain the application and other documents delivered to him or her under *subsection (7)* of that section; and
- (b) issue to the company an appropriate certificate of incorporation.

(2) Upon the issue of a certificate of incorporation under *subsection (1)*—

- (a) the company shall, by virtue of the issue of that certificate, become the type of company stated in the certificate; and
- (b) the alterations in the constitution set out in the resolution shall take effect accordingly.

(3) A certificate of incorporation issued to a company under *subsection (1)* shall be conclusive evidence—

- (a) that the requirements of *section [1040+042]* and this section in respect of re-registration and of matters precedent and incidental thereto have been complied with; and
- (b) that the company is the type of company stated in the certificate.

(4) *Section [1285](9)* shall apply to a re-registration pursuant to *section [1040+042]* as it applies to a re-registration pursuant to *Part 20*.

(5) Where, after shares in a company—

- (a) are forfeited, or are surrendered to the company in lieu of forfeiture, in pursuance of *Part 3* or its constitution or are otherwise acquired by the company;
- (b) are acquired by a nominee of the company in the circumstances mentioned in *section [1040+042](1)(c)* (and the references in that provision to a PLC shall, for the purposes of this paragraph, be read as references to a company); or
- (c) are acquired by any person in the circumstances mentioned in *section [1040+042](1)(d)* (and the references in that provision to a PLC shall, for the purposes of this paragraph, be read as references to a company),

the company is re-registered as a PLC, *section [1040+042]* and the foregoing provisions of this section shall apply to the company as if it had been a PLC at the time of the forfeiture, surrender or acquisition and as if for any reference to the relevant period after the date of the forfeiture, surrender or acquisition there were substituted a reference to the relevant period after the date of the re-registration of the company as a PLC.

(6) *Section [104](1)* shall not apply to shares acquired otherwise than by subscription by a nominee of a PLC in a case falling within *section [1040+042](1)(d)*.

(7) In *section [1040+042]* and this section “relevant period”, in relation to any shares, means—

- (a) in the case of shares forfeited or surrendered to the company in lieu of forfeiture or acquired as mentioned in *section [1040+042](1)(b)* or (c) - 3 years;
- (b) in the case of shares acquired as mentioned in *section [1040+042](1)(d)* - one year.

#### **Charges taken by PLC on own shares.**

**[1042+044]**. (1) A mortgage, charge, lien or pledge of a PLC on its own shares (whether taken expressly or otherwise), except a mortgage or charge permitted by *subsection (2)*, is void.

(2) The following are permitted mortgages and charges, that is to say—

- (a) in the case of every description of PLC, a mortgage or charge on its own shares (not being fully paid) for any amount payable in respect of the shares;

- (b) in the case of a PLC whose ordinary business includes the lending of money or consists of the provision of credit or the bailment or hiring of goods under a hire-purchase agreement, or both, a mortgage or charge of the PLC on its own shares (whether fully paid or not) which arises in connection with a transaction entered into by the company in the ordinary course of its business;
- (c) in the case of a company which is re-registered under *Part 20* as a PLC, a mortgage or charge on its own shares which was in existence immediately before its application for re-registration.

**Application of certain provisions of section [82](6) in relation to PLCs.**

[10431045]. (1) Without prejudice to [subsections (2) to (4)]<sup>60</sup>, in its application to a PLC giving financial assistance, section 83(6) shall apply –

- (a) as if, in *paragraph (k)*, “of it or its holding company” were substituted for “of its holding company”;
- (b) as if, in *paragraph (m)*, “by an offeree (within the meaning of the Irish Takeover Panel Act 1997) or a private limited subsidiary of an offeree” were substituted for “by a private limited subsidiary of an offeree (within the meaning of the Irish Takeover Panel Act 1997)”; and
- (c) as if the following paragraph were substituted for *paragraph (n)* :
- “(n) in connection with an allotment of shares by a company or its holding company, the payment by the company of commissions, not exceeding 10 per cent of the money received in respect of such allotment, to intermediaries, and the payment by the company of professional fees;”.

[(2) Subject to *subsection (3)*, section [82](6)(a) shall not apply to a PLC.

(3) In either of the following 2 cases, namely—

- (a) a case in which the giving of particular financial assistance by a company (not being a PLC) has been authorised by the company’s use of the Summary Approval Procedure; or
- (b) a case in which, before the commencement of this section, the giving of particular financial assistance by an existing company (not being a PLC) has been authorised by the company’s use of the procedure contained in subsection (2) of section 60 of the Act of 1963 (and that subsection and subsections (3) to (11) of that section shall remain in force for the purposes of the particular transaction and for the purposes of, and incidental to, the court’s jurisdiction to cancel the special resolution concerned), and—
- (i) following such authorisation, the company has applied to re-register, and has reregistered (whether under the prior Companies Acts or Part 20), as a PLC; and
- (ii) save where, by reason of the operation of Chapter 7 of Part 4 or, as the case may be, the foregoing subsections (3) to (11), the particular transaction may not be proceeded with,

<sup>60</sup> Substituted by point 123 of Committee Amendments.

then the giving by the PLC of the financial assistance (pursuant to the foregoing authority) shall be lawful.]<sup>61</sup>

[(4)] A PLC may, in accordance with *paragraph (e), (f) or (g) of section [82](6)*, give financial assistance to any person only if the PLC's net assets are not thereby reduced or, to the extent that those assets are thereby reduced, if the financial assistance is provided out of profits which are available for distribution.

[(5)] In *subsection [(4)]* "net assets" means the aggregate of the PLC's assets less the aggregate of its liabilities; and "liabilities" includes –

- (a) where the PLC prepares Companies Act entity financial statements, any provision for liabilities (within the meaning of *paragraph 82 of Schedule 3*) that is made in those financial statements;
- (b) where the PLC prepares IFRS entity financial statements, any provision that is made in those financial statements,

except to the extent that that provision is taken into account in calculating the value of any asset to the PLC.

#### **Variation of rights attached to special classes of shares.**

[~~10441046~~]. *Section [~~982984~~]* shall apply to a PLC as if –

- (a) each reference in it to a DAC were a reference to a PLC; and
- (b) in *subsection (3)(c)* –
  - (i) the reference to the giving, variation, revocation or renewal of an authority for the purposes of *section [69](1)* were a reference to the giving, variation, revocation or renewal of an authority for the purposes of *section [~~10204022~~](1)*; and
  - (ii) "by the means referred to in *section [84](2)(b)*" were substituted for "by either of the means referred to in *section [84]*".

#### **Restriction on transfer of shares.**

[~~10451047~~]. *Section [95](2)* shall not apply in respect of a transfer of shares in a PLC where those shares fall within a class of securities the evidencing and transfer of title to which is [ the time being governed by, as appropriate—

- (a) regulations under *section [~~10864088~~]*, or
- (b) for so long as they remain in force (including for any period as they may stand amended by regulations under *section [~~10864088~~]*), the Companies Act 1990 (Uncertificated Securities) Regulations 1996 (S.I. No. 68 of 1996).]<sup>62</sup>

<sup>61</sup> Inserted by point 124 of Committee Amendments.

<sup>62</sup> Substituted by point 216 of Report Amendments.

## Chapter 4

### Interests in shares: disclosure of individual and group acquisitions

#### Purpose of Chapter.

[10461048]. The purpose of this Chapter is to require the disclosure to a PLC (and the keeping of a register by the PLC as to the matters disclosed) of the following facts, and certain associated particulars, namely –

- (a) the fact of there being acquired an interest in shares of the PLC (being shares with full voting rights) of an amount that is equal to or above a specified percentage – see, principally, *sections* [10481050] and [10491051];
- (b) the fact of there no longer being held an interest in shares of the PLC (of the foregoing kind) of an amount that is equal to or above a specified percentage – see, principally, *sections* [10481050] and [10491051];
- (c) the fact of there being acquired, or there no longer being held, an interest in shares of the PLC (of the foregoing kind) where, in consequence of either such event, the percentage levels of the interest (in terms of whole number of percentages) in the shares before and immediately after that event are not the same – see, principally, *sections* [10481050] and [10491051]; and
- (d) facts relevant to the application of the provisions of this Chapter as they require a disclosure of the kind described in a preceding paragraph, for example, the fact that full voting rights have, by virtue of a condition being satisfied, become attached to the shares in which the interests concerned exist – see, principally, *sections* [10481050] and [10501052],

and this Chapter –

- (i) includes provisions for reckoning the interest of a spouse, civil partner or child of the person concerned, or a body corporate controlled by any of them, as an interest of that person and for reckoning, as an interest of the person concerned, the interest of another who is party with that person to a particular type of agreement;
- (ii) may limit the duty of disclosure to circumstances in which the person concerned has become aware of the relevant facts; and
- (iii) in addition to the various foregoing requirements, enables or, in certain cases requires, a PLC to conduct an investigation into whether interests are, or within a certain period have been, held in its shares that carry full voting rights.

#### Interpretation and supplemental (*Chapter 4*).

[10471049]. (1) In this Chapter –

“child” does not include a person who has attained the age of majority;

“duty of disclosure” shall be read in accordance with *section* [10481050] or [10501052](1), as appropriate;

“notifiable percentage” has the meaning given to it by *section* [10521054];

“relevant share capital”, in relation to a PLC, means the PLC’s issued share capital of a class carrying rights to vote in all

circumstances at general meetings of the PLC.

(2) It is declared for the avoidance of doubt that—

- (a) where a PLC's relevant share capital is divided into different classes of shares, references in this Chapter to a percentage of the nominal value of its relevant share capital are references to a percentage of the nominal value of the issued shares comprised in each of the classes taken separately; and
- (b) the temporary suspension of voting rights in respect of shares comprised in issued share capital of a PLC of any such class does not affect the application of this Chapter in relation to interests in those or any other shares comprised in that class.

(3) The application of this Chapter is restricted, as was the position in the case of the corresponding provisions of the Act of 1990, by the regulations made under section 20 of the Investment Funds, Companies and Miscellaneous Provisions Act 2006 that are referred to in *paragraph 11 of Schedule 6*.

**Duty of disclosure – first class of case in which duty arises.**

[\[10481050\]](#). Where a person either—

- (a) to the person's knowledge acquires an interest in shares comprised in a PLC's relevant share capital, or ceases to be interested in shares so comprised (whether or not retaining an interest in other shares so comprised); or
- (b) becomes aware that he or she has acquired an interest in shares so comprised or that he or she has ceased to be interested in shares so comprised in which he or she was previously interested,

then, if –

- (i) the interest in the shares is a notifiable interest as provided for in *section [\[10491051\]](#)(2)*; and
- (ii) the case concerned falls within *section [\[10491051\]](#)(4) or (5)*,

the person shall be under a duty (in this Chapter referred to as the “duty of disclosure”) to make notification to the PLC of the interests which the person has, or had, in its shares.

**Notifiable interest.**

[\[10491051\]](#). (1) For the purposes of the duty of disclosure, the interests to be taken into account are those in relevant share capital of the PLC concerned; *section [\[10591061\]](#)* has effect (by means of its applying certain provisions of *Chapter 5 of Part 5*) for the purpose of determining whether a particular interest in shares is an interest in shares that is to be reckoned in applying the next following subsection.

(2) For the purposes of this Chapter, a person has a notifiable interest at any time when the person is interested in shares comprised in that share capital of an aggregate nominal value equal to or more than the percentage of the nominal value of that share capital which is for the time being the notifiable percentage.

(3) All facts relevant to determining whether a person has a notifiable interest at any time (or the percentage level of the person's interest) are taken to be what he or she knows the facts to be at that time.

(4) The duty of disclosure arises under *section [1048+050]* where the person has a notifiable interest immediately after the relevant time, but did not have such an interest immediately before that time.

(5) The duty of disclosure also arises under *section [1048+050]* where—

(a) the person had a notifiable interest immediately before the relevant time, but does not have such an interest immediately after it; or

(b) the person had a notifiable interest immediately before that time, and has such an interest immediately after it, but the percentage levels of his or her interest immediately before and immediately after that time are not the same.

(6) For the purposes of this section, the “relevant time” means—

(a) in a case falling within *section [1048+050](a)* - the time of the event there mentioned; and

(b) in a case falling within *section [1048+050](b)* - the time at which the person became aware of the facts in question.

#### **Duty of disclosure – second class of case in which duty arises.**

**[1050+052].** (1) Where, otherwise than in circumstances falling within *section [1048+050]*, a person—

(a) is aware at the time when it occurs of any change of circumstances affecting facts relevant to the application of

*section [1049+051](2)* to an existing interest of his or hers in shares comprised in a PLC's share capital of any description; or

(b) otherwise becomes aware of any such facts (whether or not arising from any such change of circumstances),

then, if the case concerned falls within *subsection (2)*, the person shall be under a duty (in this Chapter also referred to as the “duty of disclosure”) to make notification to the PLC of those circumstances or facts.

(2) The duty of disclosure arises under this section where the person has a notifiable interest immediately after the relevant time, but did not have such an interest immediately before that time.

(3) For the purposes of this section, the “relevant time” means—

- (a) in a case falling within *subsection (1)(a)* - the time of the change of circumstances there mentioned; and
- (b) in a case falling within *subsection (1)(b)* - the time at which the person became aware of the facts in question.

**“Percentage level” in relation to notifiable interests.**

[10514053]. (1) Subject to *subsection (2)*, in this Chapter “percentage level” means the percentage figure found by expressing the aggregate nominal value of all the shares comprised in the share capital concerned in which the person is interested immediately before or (as the case may be) immediately after the relevant time as a percentage of the nominal value of that share capital and rounding that figure down, if it is not a whole number, to the next whole number.

(2) Where the nominal value of the share capital is greater immediately after the relevant time than it was immediately before, the percentage level of the person’s interest immediately before (as well as immediately after) that time is determined by reference to the larger amount.

**The notifiable percentage.**

[10524054]. (1) In this Chapter “notifiable percentage” means –

- (a) subject to *paragraph (b)*, 3 per cent; or
- (b) such other rate as may be specified by order made by the Minister under *subsection (2)*.

(2) The Minister may, by order, specify the percentage to apply in determining whether a person’s interest in a PLC’s shares is notifiable under this Chapter; and different percentages may be so specified in relation to public limited companies of different classes or descriptions.

(3) Where - in consequence of a reduction specified under this section in the percentage made by such order - a person’s interest in a PLC’s shares becomes notifiable, the person shall then come under the duty of disclosure in respect of it; and the duty shall be performed within the period of 10 days after the day on which it arises.

**Particulars to be contained in notification.**

[10534055]. (1) Subject to *section [10524054](3)*, a person’s duty to make a notification under *section [10484050]* or *[10504052]* shall be performed within the period of 5 days after the day on which the duty arises; and the notification shall be in writing to the PLC.

(2) The notification shall specify the share capital to which it relates, and shall also—

- (a) state the number of shares comprised in that share capital in which the person making the notification knows he or

she was interested immediately after the time when the duty arose; or

(b) in a case where the person no longer has a notifiable interest in shares comprised in that share capital, state that he or she no longer has that interest.

(3) A notification with respect to a person's interest in a PLC's relevant share capital (other than one stating that he or she no longer has a notifiable interest in shares comprised in that share capital) shall include particulars of—

(a) the identity of each registered holder of shares to which the notification relates; and

(b) the number of those shares held by each such registered holder,

so far as known to the person making the notification at the date when the notification is made.

(4) A person who has an interest in shares comprised in a PLC's relevant share capital, that interest being notifiable, is under a duty to notify the PLC in writing—

(a) of any particulars in relation to those shares which are specified in *subsection (3)*; and

(b) of any change in those particulars,

of which, in either case, the person becomes aware at any time after any interest notification date and before the first occasion following that date on which the person comes under any further duty of disclosure with respect to his or her interest in shares comprised in that share capital.

(5) A duty arising under *subsection (4)* shall be performed within the period of 5 days after the day on which it arises.

(6) The reference in *subsection (4)* to an interest notification date, in relation to a person's interest in shares comprised in a PLC's relevant share capital, is to either of the following—

(a) the date of any notification made by the person with respect to his or her interest under this Chapter; or

(b) where the person has failed to make a notification, the date on which the period allowed for making it came to an end.

(7) A person who at any time has an interest in shares which is notifiable is to be regarded under *subsection (4)* as continuing to have a notifiable interest in them unless and until the person comes under a duty to make a notification stating that he or she no longer has such an interest in those shares.

#### **Notification of family and corporate interests.**

[10541056]. (1) For the purposes of *sections [10471049] to [10531055]*, a person is taken to be interested in any shares in which the person's spouse or civil partner or any child of the person is interested.

(2) For the purposes of *sections* [1047-1049] to [1053-1055] and *subsection (1)*, a person is taken to be interested in shares if a body corporate is interested in them and—

(a) that body or its directors are accustomed to act in accordance with his or her directions or instructions; or

(b) he or she is entitled to exercise or control the exercise of one-third or more of the voting power at general meetings of that body corporate.

(3) Where a person is entitled to exercise or control the exercise of one-third or more of the voting power at general meetings of a body corporate and that body corporate is entitled to exercise or control the exercise of any of the voting power at general meetings of another body corporate (the “effective voting power”) then, for the purposes of *subsection (2)(b)*, the effective voting power is taken as exercisable by that person.

(4) For the purposes of *subsections (2) and (3)* a person is entitled to exercise or control the exercise of voting power if—

(a) the person has a right (whether subject to conditions or not) the exercise of which would make him or her so entitled; or

(b) the person is under an obligation (whether or not so subject) the fulfilment of which would make him or her so entitled.

(5) A reference in this section to a child of a person shall be deemed to include a reference to a child of the person’s civil partner who is ordinarily resident with the person and the civil partner.

**“Share acquisition agreement” – meaning.**

[1055-1057]. (1) Subject to the following provisions of this section, “share acquisition agreement”, for the purposes of this Chapter, means an agreement between 2 or more persons which includes provision for the acquisition by any one or more of the parties to the agreement of interests in shares comprised in relevant share capital of a particular PLC (the “target company”) but only if the following 2 conditions are satisfied.

(2) Those conditions are -

(a) the agreement also includes provisions imposing obligations or restrictions on any one or more of the parties to the agreement with respect to their use, retention or disposal of interests in that company’s shares acquired in pursuance of the agreement (whether or not together with any other interests of theirs in that company’s shares to which the agreement relates); and

(b) any interest in the company’s shares is in fact acquired by any of the parties in pursuance of the agreement.

(3) In relation to such an agreement references in this section and in sections [\[1056-1058\]](#) and [\[1057-1059\]](#) to the target company are to the company which is the target company for that agreement in accordance with this section.

(4) The reference in *subsection (2)(a)* to the use of interests in shares in the target company is to the exercise of any rights or of any control or influence arising from those interests (including the right to enter into any agreement for the exercise, or for control of the exercise, of any of those rights by another person).

(5) Once any interest in shares in the target company has been acquired in pursuance of such an agreement as is mentioned in *subsection (1)*, the agreement continues to be a share acquisition agreement for the purposes of this Chapter irrespective of—

- (a) whether or not any further acquisitions of interests in the company's shares take place in pursuance of the agreement; and
- (b) any change in the persons who are for the time being parties to it; and
- (c) any variation of the agreement, so long as the agreement continues to include provisions of any description mentioned in *subsection (2)(a)*.

(6) References in *subsection (5)* to the agreement include any agreement having effect (whether directly or indirectly) in substitution for the original agreement.

(7) In this section, and also in references elsewhere in this Chapter to a share acquisition agreement as defined by this section, “agreement” includes any agreement or arrangement; and references in this section to provisions of an agreement—

- (a) accordingly include undertakings, expectations or understandings operative under any arrangement; and
- (b) (without prejudice to the foregoing) also include any provisions, whether express or implied and whether absolute or not.

(8) Neither of the following is a share acquisition agreement for the purposes of this Chapter –

- (a) an agreement which is not legally binding unless it involves mutuality in the undertakings, expectations or understandings of the parties to it;
- (b) an agreement to underwrite or sub-underwrite any offer of shares in a company, provided the agreement is confined to that purpose and any matters incidental to it.

**Duties of disclosure arising in consequence of section [\[1055-1057\]](#).**

[\[1056-1058\]](#). (1) In the case of a share acquisition agreement, each party to the agreement shall be taken (for purposes of the duty of disclosure) to be interested in all shares in the target company in which any other party to it is interested apart from the agreement

(whether or not the interest of the other party in question was acquired, or includes any interest which was acquired, in pursuance of the agreement).

(2) For those purposes, and also for those of *section [1057+059]*, an interest of a party to such an agreement in shares in the target company is an interest apart from the agreement if the party is interested in those shares otherwise than by virtue of the application of *section [1055+057]* and this section in relation to the agreement.

(3) Accordingly, any such interest of the person (apart from the agreement) includes for those purposes any interest treated as his or hers under *section [1054+056]* or by the application of *section [1055+057]* and this section in relation to any other agreement with respect to shares in the target company to which he or she is a party.

(4) A notification with respect to his or her interest in shares in the target company made to that company under this Chapter by a person who is for the time being a party to a share acquisition agreement shall—

(a) state that the person making the notification is a party to such an agreement;

(b) include the names and (so far as known to the person) the addresses of the other parties to the agreement, identifying them as such, and

(c) state whether or not any of the shares to which the notification relates are shares in which the person is interested by virtue of *section [1055+057]* and this section and, if so, the number of those shares.

(5) Where a person makes a notification to a PLC under this Chapter in consequence of ceasing to be interested in any shares of that PLC by virtue of the fact that he or she or any other person has ceased to be a party to a share acquisition agreement, the notification shall include a statement that he or she or that other person has ceased to be a party to the agreement (as the case may require) and also (in the latter case) the name and (if known to him or her) the address of that other.

#### **Duty of persons acting together to keep each other informed.**

**[1057+059].** (1) A person who is a party to a share acquisition agreement shall be subject to the requirements of this section at any time when—

(a) the target company is a PLC, and the person knows it to be so; and

(b) the shares in that company to which the agreement relates consist of or include shares comprised in relevant share capital of the company, and the person knows that to be the case; and

(c) the person knows the facts which make the agreement a share acquisition agreement.

(2) Such a person shall be under a duty to notify every other party to the agreement, in writing, of the relevant particulars of his or her interest (if any) apart from the agreement in shares comprised in relevant share capital of the target company—

(a) on the person's first becoming subject to the requirements of this section; and

(b) on each occurrence after that time while the person is still subject to those requirements of any event or circumstances within *section* [~~1048~~1050] or [~~1050~~1052] (as it applies to the person's case otherwise than by reference to interests treated as his or hers under *section* [~~1056~~1058] as applying to that agreement).

(3) The relevant particulars to be notified under *subsection* (2) are—

- (a) the number of shares (if any) comprised in the target company's relevant share capital in which the person giving the notice would be required to state his or her interest if he or she were under the duty of disclosure with respect to that interest (apart from the agreement) immediately after the time when the obligation to give notice under *subsection* (2) arose; and
- (b) the relevant particulars with respect to the registered ownership of those shares, so far as known to the person at the date of the notice.

(4) A person who is for the time being subject to the requirements of this section shall be under a duty to notify every other party to the agreement, in writing—

- (a) of any relevant particulars with respect to the registered ownership of any shares comprised in relevant share capital of the target company in which he or she is interested apart from the agreement; and
- (b) of any change in those particulars,

of which, in either case, the person becomes aware at any time after any interest notification date and before the first occasion following that date on which the person becomes subject to any further duty to give notice under *subsection* (2) with respect to his or her interest in shares comprised in that share capital.

(5) The reference in *subsection* (4) to an interest notification date, in relation to a person's interest in shares comprised in the target company's relevant share capital, is to either of the following—

- (a) the date of any notice given by the person with respect to his or her interest under *subsection* (2); and
- (b) where the person has failed to give that notice, the date on which the period allowed by this section for giving the notice came to an end.

(6) A person who is a party to a share acquisition agreement shall be under a duty to notify each other party to the agreement, in writing, of his or her current address—

- (a) on the person's first becoming subject to the requirements of this section; and
- (b) on any change in his or her address occurring after that time and while he or she is still subject to those requirements.

(7) A reference in this section to the relevant particulars with respect to the registered ownership of shares is a reference to such particulars in relation to those shares as are mentioned in *section* [~~1053~~1055](3)(a) or (b).

(8) A person's duty to give any notice required by this section to any other person shall be performed within the period of 5 days after the day on which that duty arose.

**Interest in shares by attribution.**

[1058+060]. (1) Where *section* [1048+050] refers to a person acquiring an interest in shares or ceasing to be interested in shares, that reference in certain cases includes the person's becoming or ceasing to be interested in those shares by virtue of another person's interest.

(2) This section applies where the person (the "first-mentioned person") becomes or ceases to be interested by virtue of *section* [1054+056] or (as the case may be) *section* [1056+058] whether—

- (a) by virtue of the fact that the person who is interested in the shares becomes or ceases to be a person whose interests (if any) fall by virtue of either section to be treated as the first-mentioned person's; or
- (b) in consequence of the fact that such a person has become or ceased to be interested in the shares; or
- (c) in consequence of the fact that the first-mentioned person himself or herself becomes or ceases to be a party to a share acquisition agreement to which the person interested in the shares is for the time being a party; or
- (d) in consequence of the fact that an agreement to which both the first-mentioned person and that person are parties becomes or ceases to be a share acquisition agreement.

(3) The person shall be treated under *section* [1048+050] as knowing he or she has acquired an interest in the shares or (as the case may be) that he or she has ceased to be interested in them, if and when the person knows both—

- (a) the relevant facts with respect to the other person's interest in the shares; and
- (b) the relevant facts by virtue of which the person himself or herself has become or ceased to be interested in them in accordance with *section* [1054+056] or [1056+058].

(4) The person shall be deemed to know the relevant facts referred to in *subsection* (3)(a) if the person knows (whether contemporaneously or not) either of the subsistence of the other person's interest at any material time or of the fact that the other has become or ceased to be interested in the shares at any such time; and in this subsection "material time" means any time at which the other's interests (if any) fall or fell to be treated as his or hers under *section* [1054+056] or [1056+058].

(5) A person shall be regarded as knowing of the subsistence of another's interest in shares or (as the case may be) that another has become or ceased to be interested in shares if the person has been notified under *section* [1057+059] of facts with respect to the other's interest which indicate that he or she is or has become or ceased to be interested in the shares (whether on his or her own account or by virtue of a third party's interest in them).

**Interest in shares that are notifiable interests for purposes of Chapter.**

[10591061]. (1) Sections [257] to [260] shall, with the adaptations and modifications in this section, apply for the purposes of determining whether a particular interest in shares is an interest that is notifiable under this Chapter and, for the purpose of those adaptations, the expression “reckonable interest” means such an interest that is so notifiable.

(2) The adaptations of sections [257] to [260] are:

- (a) for each reference in them to disclosable interest there shall be substituted a reference to reckonable interest;
- (b) references in them to debentures shall be disregarded.

(3) Section [260] shall have effect as if –

- (a) the existing section were re-numbered as *subsection (1)* thereof;
- (b) the following paragraphs were substituted for *paragraph (h)* of that subsection :

“(h) an exempt security interest;

(i) an interest of the President of the High Court subsisting by virtue of section 13 of the Succession Act 1965;

(j) an interest of the Accountant of the High Court in shares held by him or her in accordance with rules of court;

(k) such interests, or interests of such a class, as may be prescribed for purposes of this section.”; and

(c) the following subsection were added :

“(2) An interest in shares is an exempt security interest for the purposes of *subsection (1)(h)* if—

(a) it is held by—

(i) a [credit institution]<sup>63</sup>, or an insurance undertaking within the meaning of *Part 6*;

(ii) a trustee savings bank (within the meaning of the Trustee Savings Banks Act 1989) or a Post Office Savings Bank within the meaning of the Post Office Savings Bank Acts 1861 to 1958; or

(iii) a member of an authorised market operator carrying on business as a stockbroker;

and

(b) it is held by way of security only for the purposes of a transaction entered into by the body or other person concerned in the ordinary course of business of such body or other person.”.

#### **Enforcement of notification obligation.**

[10601062]. (1) Where a person authorises any other person (the “agent”) to acquire or dispose of, on his or her behalf, interests in shares comprised in relevant share capital of a PLC, the person shall secure that the agent notifies him or her immediately of acquisitions or disposals of interests in shares so comprised effected by the agent which will or may give rise to any duty on the person’s part to make a notification under this Chapter with respect to his or her interest in that share capital.

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<sup>63</sup> Substituted by point 217 of Report Amendments.

(2) An obligation to make any notification imposed on any person by this Chapter shall be treated as not being fulfilled unless the notice by means of which it purports to be fulfilled identifies the person and gives his or her address, and in a case where the person is a director or secretary of the PLC, is expressed to be given in fulfilment of that obligation.

(3) Subject to the subsequent provisions of this section, where a person fails to fulfil, within the period specified by this Chapter in that behalf, a duty to which he or she is, by virtue of *section* [~~1048+050~~], [~~1050+052~~] or [~~1057+059~~], subject, no right or interest of any kind whatsoever in respect of any shares in the PLC concerned, held by the person, shall be enforceable by the person, whether directly or indirectly, by action or legal proceeding.

(4) Where any right or interest is restricted under *subsection* (3) -

- (a) any person in default as is mentioned in that subsection or any other person affected by such restriction may apply to the court for relief against a disability imposed by or arising out of that subsection;
- (b) the court, on being satisfied that the default was accidental or due to inadvertence or some other sufficient cause or that on other grounds it is just and equitable to grant relief, may grant such relief either generally or as respects any particular right or interest, on such terms and conditions as it sees fit;
- (c) where an applicant for relief under this subsection is a person referred to in *subsection* (3), the court may not grant such relief if it appears that the default has arisen as a result of any deliberate act or omission on the part of the applicant.

(5) *Subsection* (3) shall not apply to a duty relating to a person ceasing to be interested in shares in any PLC.

(6) A person who fails without reasonable excuse to comply with *subsection* (1) shall be guilty of a category 3 offence.

(7) A person who fails to fulfil, within the period specified by this Chapter in that behalf, a duty to which he or she is, by virtue of *section* [~~1048+050~~], [~~1050+052~~] or [~~1057+059~~], subject, shall be guilty of a category 3 offence.

(8) In any proceedings in respect of an offence under *subsection* (7) consisting of a failure by a person to fulfil, within the period specified by this Chapter in that behalf, a duty to which the person is, by virtue of *section* [~~1057+059~~], subject, it shall be a defence to prove that it was not possible for the person to give the notice to the other person concerned required by that section within that period, and either—

- (a) that it has not since become possible for him or her to give the notice so required; or
- (b) that he or she gave that notice as soon after the end of that period as it became possible for him or her to do so.

**Individual and group acquisitions register.**

[~~1061+063~~]. (1) A PLC shall keep a register (the “individual and group acquisitions register”) for the purposes of *sections* [~~1048+050~~] to [~~1053+055~~].

(2) Whenever the PLC receives information from a person in consequence of the fulfilment of a duty to which he or she is, by virtue of any of those sections, subject, the PLC shall enter in the individual and group acquisitions register, against that person's name, that information and the date of the entry.

(3) Without prejudice to *subsection (2)*, where a PLC receives a notification under any of *sections [1048-1050]* to *[1053-1055]* which includes a statement that the person making the notification, or any other person, has ceased to be a party to a share acquisition agreement, the PLC shall record that information against the name of that person in every place where the person's name appears in the individual and group acquisitions register as a party to that agreement (including any entry relating to that person made against another person's name).

(4) An obligation imposed by *subsection (2)* or *(3)* on a PLC shall be fulfilled within the period of 3 days after the day on which it arises.

(5) The nature and extent of an interest recorded in the individual and group acquisitions register of a person in any shares shall, if he or she so requires, be recorded in that register.

(6) A PLC shall not, by virtue of anything done for the purposes of this section, be affected with notice of, or put upon enquiry as to, the rights of any person in relation to any shares.

(7) The individual and group acquisitions register shall be so made up that the entries in it against the several names inscribed in it appear in chronological order.

(8) Unless the forgoing register is in such form as to constitute in itself an index, the PLC shall keep an index of the names entered in it which shall, in respect of each name, contain a sufficient indication to enable the information inscribed against it to be readily found; and the PLC shall, within 10 days after the date on which a name is entered in the register, make any necessary alteration in the index.

(9) If the PLC ceases to be a PLC it shall continue to keep the individual and group acquisitions register and any associated index until the end of the period of 6 years beginning after the date on which it ceases to be a PLC.

(10) If default is made by a PLC (or, in the case of *subsection (9)* by the company that it has re-registered as) in complying with any of the provisions of this section, the PLC (or the other company, as the case may be) and any officer of it who is in default shall be guilty of a category 3 offence.

**Company investigations concerning interests in shares.**

[10621064]. (1) A PLC may, by notice in writing, require a person whom the PLC knows or has reasonable cause to believe to be, or at any time during the 3 years immediately preceding the date on which the notice is issued, to have been, interested in shares comprised in the PLC's relevant share capital—

- (a) to confirm that fact or (as the case may be) to indicate whether or not it is the case; and
- (b) where he or she holds or has during that time held an interest in shares so comprised, to give such further information as may be required in accordance with *subsection (2)*.

(2) A notice under this section may require the person to whom it is addressed—

- (a) to give particulars of the person's own past or present interest in shares comprised in relevant share capital of the PLC (held by him or her at any time during the 3 year period mentioned in *subsection (1)*);
- (b) where –
  - (i) the interest is a present interest and any other interest in the shares subsists; or
  - (ii) in any case, where another interest in the shares subsisted during that 3 year period at any time when the person's own interest subsisted,to give (so far as lies within his or her knowledge) such particulars with respect to that other interest as may be required by the notice;
- (c) where the person's interest is a past interest, to give (so far as lies within his or her knowledge) particulars of the identity of the person who held that interest immediately upon his or her ceasing to hold it.

(3) The particulars referred to in *subsection (2)(a)* and *(b)* include particulars of the identity of persons interested in the shares in question and of whether persons interested in the same shares are or were parties to a share acquisition agreement or to any agreement or arrangement relating to the exercise of any rights conferred by the holding of the shares.

(4) A notice under this section shall require any information given in response to the notice to be given in writing within such reasonable time as may be specified in the notice.

(5) *Sections [257] to [259]* (as adapted by *section [10591061]*) apply for the purpose of construing references in this section to persons interested in shares and to interests in shares respectively, as they apply for the purposes mentioned in *section [10591061]* (but with the omission of any reference to *section [260]*).

(6) This section applies in relation to a person who has or previously had, or is or was entitled to acquire, a right to subscribe for shares in a PLC which would on issue be comprised in relevant share capital of that PLC as it applies in relation to a person who is or was interested in shares so comprised; and references in this section to an interest in shares so comprised and to shares so comprised are to be read accordingly in any such case as including, respectively, any such right and shares which would on issue be so comprised.

**Registration of interest disclosed under *section* [1062+064].**

[1063+065]. (1) Whenever, in pursuance of a requirement imposed on a person under *section* [1062+064], a PLC receives information to which this section applies relating to shares comprised in its relevant share capital, the PLC shall enter against the name of the registered holder of those shares, in a separate part of the register kept by it under *section* [1061+063] —

- (a) the fact that the requirement was imposed and the date on which it was imposed; and
- (b) any information to which this section applies received in pursuance of the requirement.

(2) This section applies to any information received in pursuance of a requirement imposed by *section* [1062+064] which relates to the present interests held by any persons in shares comprised in relevant share capital of the PLC in question.

(3) *Subsections (4) to (10) of section* [1061+063] apply in relation to any part of the register maintained in accordance with *subsection (1) of this section*, reading references to *subsection (2) of that section* to include *subsection (1) of this section*.

**Company investigations on requisition by members.**

[1064+066]. (1) A PLC may be required to exercise its powers under *section* [1062+064] on the requisition of members of the PLC holding at the date of the deposit of the requisition not less than one-tenth of such of the paid-up capital of the company as carries at that date the right of voting at general meetings of the company.

(2) The requisition shall —

- (a) state that the requisitionists are requiring the PLC to exercise its powers under *section* [1062+064];
- (b) specify the manner in which they require those powers to be exercised; and
- (c) give reasonable grounds for requiring the PLC to exercise those powers in the manner specified,

and shall be signed by the requisitionists and deposited at the PLC's registered office.

(3) The requisition may consist of several documents in like form each signed by one or more requisitionists.

(4) On the deposit of a requisition complying with this section, the PLC shall exercise its powers under *section* [1062+064] in the manner specified in the requisition.

(5) If default is made in complying with *subsection (4)*, the court may, on the application of the requisitionists, or any of them, and on being satisfied that it is reasonable to do so, require the PLC to exercise its powers under *section* [1062+064] in a manner specified in the order of the court.

### **Company reports on investigation.**

[10651067]. (1) On the conclusion of an investigation carried out by a PLC in pursuance of a requisition under *section* [10641066], the PLC shall cause a report of the information received in pursuance of that investigation to be prepared.

(2) Where—

(a) a PLC undertakes an investigation in pursuance of a requisition under *section* [10641066]; and

(b) the investigation is not concluded before the end of the period of 3 months falling after the date of the deposit of the requisition,

the PLC shall cause to be prepared, in respect of that period and each successive period of 3 months ending before the conclusion of the investigation, an interim report of the information received during that period in pursuance of the investigation.

(3) The PLC shall, within 3 days after the date of making any report prepared under this section available for inspection in accordance with *Chapter 10 of Part 4* (as adapted by *section* [10691071]), notify the requisitionists that the report is so available.

(4) An investigation carried out by a company in pursuance of a requisition under *section* [10641066] shall be regarded for the purposes of this section as concluded when –

(a) the PLC has made all such inquiries as are necessary or expedient for the purposes of the requisition; and

(b) in the case of each such inquiry –

(i) a response has been received by the PLC; or

(ii) the time allowed for a response has elapsed.

(5) If default is made by a PLC in complying with *subsection* (1), (2) or (3), the PLC and any officer of it who is in default shall be guilty of a category 3 offence.

### **Penalty for failure to provide information.**

[10661068]. (1) Where notice is served by a PLC under *section* [10621064] on a person who is or was interested in shares of the PLC and that person fails to give the PLC any information required by the notice within the time specified in it, the PLC may apply to the court for an order directing that the shares in question be subject to restrictions under *section* [768].

(2) Such an order may be made by the court notwithstanding any power contained in the applicant PLC's constitution enabling the

company itself to impose similar restrictions on the shares in question.

(3) Subject to the following subsections, a person who fails to comply with a notice under *section* [~~1062+064~~] shall be guilty of a category 3 offence.

(4) A person shall not be guilty of an offence by virtue of failing to comply with a notice under *section* [~~1062+064~~] if he or she proves that the requirement to give the information was frivolous or vexatious.

(5) Where an order is made under this section directing that shares shall be subject to restrictions under *section* [768], the PLC or any person aggrieved by the order may apply to the court for an order directing that the shares shall cease to be subject thereto.

(6) *Sections* [769] to [776] shall apply in relation to any shares subject to the restrictions imposed by *section* [768] by virtue of an order under this section but with the omission in *sections* [769] to [775] of any reference to the Director.

#### **Removal of entries from register.**

[~~1067+069~~]. (1) A PLC may remove an entry against a person's name from the register required to be kept by it under *section* [~~1060+062~~] (the "register") if more than 6 years have elapsed after the date of the entry being made, and either—

- (a) that entry recorded the fact that the person in question had ceased to have an interest notifiable under *sections* [~~1048+050~~] to [~~1053+055~~] in relevant share capital of the PLC; or
- (b) it has been superseded by a later entry made under *section* [~~1061+063~~] against the same person's name,

and, in a case falling within *paragraph* (a), the PLC may also remove that person's name from the register.

(2) If a person, in pursuance of an obligation imposed on him or her by any of *sections* [~~1048+050~~] to [~~1053+055~~], gives to a PLC the name and address of another person as being interested in shares in the PLC, the PLC shall, within 15 days after the date on which it was given that information, notify the other person that he or she has been so named and shall include in that notification—

- (a) particulars of any entry relating to the person made, in consequence of its being given that information, by the PLC in the register; and
- (b) a statement informing the person of his or her right to apply to have the entry removed in accordance with the following provisions of this section.

(3) A person who has been notified by a PLC in pursuance of *subsection* (2) that an entry relating to him or her has been made in the register, may apply in writing to the PLC for the removal of that entry from the register, and the PLC shall remove the entry if satisfied that the information in pursuance of which the entry was made was incorrect.

(4) If a person who is identified in the register as being a party to a share acquisition agreement (whether by an entry against the person's own name or by an entry relating to him or her made against another person's name as mentioned in *subsection (2)(a)*) ceases to be a party to that agreement, the person may apply in writing to the PLC for the inclusion of that information in the register.

(5) If the PLC is satisfied that the first-mentioned person in *subsection (4)* has ceased to be a party to the agreement concerned, it shall record that information (if not already recorded) in every place where that person's name appears as a party to that agreement in the register.

(6) If an application under –

(a) *subsection (3)* is refused; or

(b) *subsection (4)* is refused otherwise than on the ground that the information has already been recorded,

the applicant may apply to the court for an order directing the PLC to remove the entry in question from the register or (as the case may be) to include the information in question in the register; and the court may, if it thinks fit, make such an order.

(7) Where a name is removed from the register pursuant to *subsection (1)* or *(3)* or an order under *subsection (6)*, the PLC shall, within 14 days after the date of that removal, make any necessary alterations in any associated index.

(8) If default is made by a PLC in complying with *subsection (2)* or *(7)*, the PLC and any officer of it who is in default shall be guilty of a category 3 offence.

#### **Entries, when not to be removed.**

**[10681070]**. (1) Entries in the register kept by a PLC under *section [10614063]* shall not be deleted except in accordance with *section [10674069]*.

(2) If an entry is deleted from that register in contravention of *subsection (1)*, the PLC shall restore that entry to the register as soon as is reasonable and practicable.

(3) If default is made by a PLC in complying with *subsection (1)* or *(2)*, the PLC and any officer of it who is in default shall be guilty of a category 3 offence.

#### **Where register to be kept, inspection of register, inspection of reports, etc.**

**[10691071]**. (1) *Chapter 10 of Part 4*, as adapted by this section, shall apply in relation to –

(a) the register under *section [40631061]*; and

(b) any report referred to in section [~~1067~~1065].

(2) For the purposes of this section, Chapter 10 of Part 4 is adapted as follows :

(a) in section [215](a), there shall be added the following definitions :

“ ‘individual and group acquisitions register’ means the register kept by

the company pursuant to section [~~1063~~1061](1);

‘share interest investigation report’ means any report referred to in section [~~1065~~1067] caused to be prepared by the company;”;

(b) section [216](1) shall have effect as if, in addition to the registers and documents specified in that provision as being registers and documents to which section [216] applies, that provision specified the individual and group acquisitions register and the share interest investigation report as being, respectively, a register and a document to which that section applies; and

(c) each of subsections (9), (11) and (12) of section [216] shall have effect as if, in addition to the registers or documents specified in the particular subsection, there were specified in the particular subsection the individual and group acquisitions register and the share interest investigation report.

(3) The register under section [~~1061~~1063] shall also be and remain open and accessible to any person attending the PLC’s annual general meeting at least one quarter hour before the appointed time for the commencement of the meeting and during the continuance of the meeting.

(4) A report referred to in section [~~1065~~1067](1) shall be made available for inspection in accordance with Chapter 10 of Part 4 (as so adapted) within a reasonable period (not more than 15 days) after the date of conclusion of the investigation concerned.

(5) Each report referred to in section [~~1065~~1067](2) shall be made available for inspection in accordance with Chapter 10 of Part 4 (as so adapted) within a reasonable period (not more than 15 days) after the end of the period to which it relates.

(6) Such a report (that is a report whether referred to in section [~~1065~~1067](1) or (2)) shall continue to be so made available for inspection for a period that expires 6 years beginning on the day after the first day that it is made available for inspection in accordance with the foregoing provisions.

(7) Section 128(1) (access to documents during business hours) shall apply for the purposes of Chapter 10 of Part 4, as that Chapter is adapted for the purposes of this section, as it applies in relation to the relevant provisions of Part 4.

#### **Duty of PLC to notify authorised market operator.**

[~~1070~~1072]. (1) In this section “relevant PLC” means a PLC dealing facilities in respect of the shares or debentures of which are provided by an authorised market operator.

(2) If –

(a) a relevant PLC is notified of any matter by a director or secretary in consequence of the fulfilment of a duty imposed on him or her by *Chapter 5 of Part 5*; and

(b) the matter relates to shares or debentures for which the dealing facilities referred to in *subsection (1)* are provided, the PLC shall be under an obligation to notify the market operator referred to in that subsection of the matter.

(3) That market operator may publish, in such manner as it may determine, any information received by it under *subsection (2)*.

(4) An obligation imposed by *subsection (2)* shall be fulfilled before the end of the day after that on which it arises.

(5) If default is made in complying with this section, the PLC and any officer of it who is in default shall be guilty of a category 3 offence.

## Chapter 5

### Acquisition of own shares and certain acquisitions by subsidiaries

#### Additional (general) provisions relating to acquisition by PLCs of own shares.

~~[1071-1073]~~. (1) In addition to the requirements set out in *sections [105]* and *[106]* –

~~[(a) — an acquisition by a PLC of its own shares shall not be made otherwise than in respect of those of them that are fully paid;]~~<sup>64</sup> ~~]~~<sup>65</sup>

~~[(ab)]~~ an acquisition by a PLC of its own shares, in so far as the consideration therefor is profits available for distribution, shall be in compliance with the restriction on the distribution of assets specified in *section [1082-1084]*; and

~~[(be)]~~ a PLC shall not purchase any of its shares if as a result of such purchase the nominal value of its issued share capital which is not redeemable would be less than one-tenth of the nominal value of the total issued share capital of the PLC.

(2) With regard to the purchase by a PLC of its own shares, the requirements of *sections [105]* and *[106]* and the preceding subsection shall have effect without prejudice to –

(a) the principle of equal treatment of all shareholders who are in the same position; and

(b) *Chapter 2 of Part 23* and regulations thereunder.

#### “Market purchase”, “overseas market purchase” and “off-market purchase”.

~~[1072-1074]~~. (1) For the purposes of *sections [1073-1075]* to ~~[1081-1083]~~, a purchase by a PLC of its own shares is –

<sup>64</sup> ~~Inserted by point 146 of Seanad Committee Amendments.~~

- (a) an “off-market purchase” if the shares are purchased either -
  - (i) otherwise than on a securities market; or
  - (ii) on a securities market but are not subject to a marketing arrangement on that market;
- (b) a “market purchase” if the shares are purchased on a securities market within the State and are subject to a marketing arrangement.

(2) For the purposes of *sections* [~~1073-1075~~] to [~~1081-1083~~], a purchase by a PLC that issues shares, or by a subsidiary of that PLC, of the first-mentioned company’s shares, is an “overseas market purchase” if the shares –

- (a) are purchased on –
  - (i) a regulated market; or
  - (ii) another market recognised for the purposes of this section, being, in either case, a market outside the State; and
- (b) are subject to a marketing arrangement.

(3) For the purposes of *subsections* (1) and (2), a PLC’s shares are subject to a marketing arrangement on a securities market or, in the case of *subsection* (2)(a), a regulated market or another market recognised for the purposes of this section, if either -

- (a) they are listed or admitted to trading on that market; or
- (b) the PLC has been afforded facilities for dealings in those shares to take place on that market without prior permission for individual transactions from the –
  - (i) authorised market operator concerned; or
  - (ii) in the case of *subsection* (2)(a), the authority in the state concerned that governs the market, and without limit as to the time during which those facilities are to be available.

(4) *Sections* [~~1073-1075~~] to [~~1081-1083~~] shall apply to American depositary receipts as those sections apply to shares.

(5) In this section –

“American depositary receipt” means an instrument—

- (a) which acknowledges—
    - (i) that a depositary or a nominee acting on his or her behalf, holds stocks or marketable securities which are dealt in and quoted on a market recognised for the purposes of this section; and
    - (ii) that the holder of the instrument has rights in or in relation to such stocks or marketable securities, including the right to receive such stocks or marketable securities from the depositary or his or her nominee;
- and

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<sup>65</sup> [Deleted by point 118 of Seanad Report Amendments.](#)

(b) which—

- (i) is dealt in and quoted on a market recognised for the purposes of this section, being a market which is situated in the United States of America, or
- (ii) represents stocks or marketable securities which are so dealt in and quoted;

“recognised for the purposes of this section” , in relation to a market, means recognised by order made by the Minister (and such an order may provide for different markets to be recognised for the purposes of different provisions of this section);

“securities market” means –

- (a) a regulated market;
- (b) a multilateral trading facility (within the meaning of Article 4(1), point (15) of Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004); or
- (c) such other securities market as may be prescribed.

#### **Authority for PLC’s purchase of own shares.**

**[1073+075]**. Neither *paragraph (a) or (b) of section [105](4)* shall be regarded as conferring authority for a purchase by a PLC of its own shares and accordingly such purchase shall be required to have the authority of –

- (a) in a case falling within *section [1074+076]* - an ordinary resolution of the PLC;
- (b) in a case falling within *section [1075+077]* - a special resolution of the PLC.

#### **Market purchase of own shares.**

**[[1074+076]**. (1) A PLC shall not make a market purchase or overseas market purchase of its own shares unless the purchase has first been authorised by the PLC by ordinary resolution and any such authority may be varied, revoked or from time to time renewed by the PLC by ordinary resolution.

(2) *Subsection (1)* shall not be read as requiring any particular contract for the market purchase or overseas market purchase of shares to be authorised by the PLC in general meeting and, for the purposes of this Part, where a market purchase or overseas market purchase of shares has been authorised in accordance with this section any contract entered into pursuant to that authority in respect of such a purchase shall be deemed also to be so authorised.

(3) *Section [198]* shall apply to a resolution under *subsection (1)*.

(4) The authority granted under *subsection (1)* shall -

- (a) specify the maximum number of shares authorised to be acquired;
- (b) determine both the maximum and minimum prices which may be paid for the shares, either by -

- (i) specifying a particular sum; or
- (ii) providing a basis or formula for calculating the amount of the price in question without reference to any person's discretion or opinion;
- (c) specify the date on which the authority is to expire which shall not be later than 5 years after the date on which the ordinary resolution granting the authority is passed.

(5) A PLC may make a purchase referred to in *subsection (1)* after the expiry of any time limit imposed by virtue of *subsection (4)(c)* in any case where the contract of purchase was concluded before the authority conferred on it expired and the terms of that authority permit the PLC to make a contract of purchase which would or might be executed wholly or partly after the authority expired.

#### **Off-market purchase of own shares.**

~~[10751077]~~. (1) A PLC shall not make an off-market purchase of its own shares otherwise than in pursuance of a contract authorised in advance by a special resolution of the PLC.

(2) Any such authority may be varied, revoked or from time to time renewed by the PLC by special resolution.

(3) *Section [105](5), (7), (8) and (10) to (12)* apply to a special resolution referred to in *subsection (1) or (2)* as they apply to a special resolution of a private company limited by shares authorising the acquisition by it of its own shares but *subsections (4) and (5)* of this section supplement those provisions.

(4) Any authority granted under *subsection (1) or (2)* shall specify the date on which the authority is to expire which shall not be later than 18 months after the date on which the special resolution granting the authority is passed.

(5) A PLC may make a purchase referred to in *subsection (1)* after the expiry of any time limit imposed by virtue of *subsection (4)* in any case where the contract of purchase was concluded before the authority conferred on it expired and the terms of that authority permit the PLC to make a contract of purchase which would or might be executed wholly or partly after the authority expired.

#### **Assignment or release of company's right to purchase own shares.**

~~[10761078]~~. (1) Any purported assignment of the rights of a PLC under any contract authorised under *section [10741076]* or ~~[10751077]~~ shall be void.

(2) Nothing in *subsection (1)* shall prevent a PLC from releasing its right under any contract authorised under *section [10741076]* or ~~[10751077]~~ provided that the release has been authorised by –

- (a) in the case of *section [10741076]* - an ordinary resolution of the PLC;

(b) in the case of *section* [1075+077] – a special resolution of the PLC,

before the release is entered into, and any such purported release by a PLC which has not been authorised in that manner shall be void.

(3) *Subsections* (5), (7) and (8) of *section* [105] shall apply to a resolution under *subsection* (2) and, for the purposes of this subsection, *subsection* (8) of *section* [105] shall have effect as if the references in it to the contract of purchase were references to the release concerned.

#### **Relationship of certain acquisition provisions to those in Part 3.**

[1077+079]. (1) For the avoidance of doubt, the provisions of *Part 3* that make consequential or supplementary provision in respect of an acquisition by a company under *section* [105] of its own shares (and, in particular, the provisions referred to in *subsection* (2)) apply to an acquisition by a PLC of its own shares referred to in *sections* [1071+073] to [1076+078], and the authorisation of any contract thereunder, unless a contrary intention is indicated in one of those latter sections.

(2) The particular provisions mentioned in *subsection* (1) are those that contain reference, however expressed, to a contract authorised under *section* [105].

#### **Off-market re-allotment of treasury shares by PLC.**

[1078+080]. (1) The maximum and minimum prices at which treasury shares may be re-allotted off-market (the “re-allotment price range”) by a PLC shall be determined in advance by the PLC in general meeting in accordance with *subsections* (2) to (4) and such determination may fix different maximum and minimum prices for different shares.

(2) Where the treasury shares to be re-allotted are derived in whole or in part from shares purchased by the PLC in accordance with the provisions of *Part 3* (as applied by this Part) the re-allotment price range of the whole or such part (as the case may be) of those shares shall be determined by special resolution of the PLC passed at the meeting at which the resolution authorising that purchase has been passed and such determination shall, for the purposes of this section, remain effective with respect to those shares for the requisite period.

(3) Where the treasury shares to be re-allotted are derived in whole or in part from shares redeemed by the PLC in accordance with the provisions of *Part 3* (as applied by this Part) the re-allotment price range of the whole or such part (as the case may be) of those shares shall be determined by special resolution of the PLC passed before any contract for the re-allotment of those shares is entered into and such determination shall, for the purposes of this section, remain effective with respect to those shares for the requisite period.

(4) The PLC may from time to time by special resolution vary or renew a determination of re-allotment price range under *subsection* (2) or (3) with respect to particular treasury shares before any contract for re-allotment of those shares is entered into and any such

variation or renewal shall, for the purposes of this section, remain effective as a determination of the re-allotment price range of those shares for the requisite period.

(5) A re-allotment by a PLC of treasury shares in contravention of *subsection (2), (3) or (4)* shall be unlawful.

(6) For the purposes of determining in this section whether treasury shares are re-allotted off-market, the provisions of *section [10741072]* shall have effect with the substitution of the words “re-allotment”, “off-market re-allotment” and “re-allotted” respectively for the words “purchase”, “off-market purchase” and “purchased” in *subsection (1)(a)* of that section.

(7) In this section, the “requisite period” means the period of 18 months after the date of the passing of the resolution determining the re-allotment price range or varying or renewing (as the case may be) such determination or such lesser period of time as the resolution may specify.

**Return to be made to Registrar under *section [116](1)*.**

**[10791081]**. (1) In its application to shares, the subject of an overseas market purchase by a PLC, *section [116](1)* shall apply as if “3 days” were substituted for “30 days”.

(2) In addition to the requirements of *section [116]*, the return required to be made by a PLC under that section shall state—

- (a) the aggregate amount paid by the PLC for the shares; and
- (b) the maximum and minimum prices paid in respect of each class purchased.

(3) Where *subsection (2)* applies, then the following subsection shall be substituted for *subsection (2)* of *section [116]*:

“(2) Particulars of shares delivered to the company on different dates and under different contracts may be included in a single return to the Registrar, and in such a case the amount required to be stated under *section [10791081](2)(a)* shall be the aggregate amount paid by the company for all the shares to which the return relates.”.

**Duty of PLC to publish particulars of overseas market purchase.**

**[10801082]**. (1) Whenever shares for which dealing facilities are provided on a regulated market or other market referred to in *section [10721074](2)(a)* are the subject of an overseas market purchase either by the PLC which issued the shares or by a company which is that PLC’s subsidiary, the PLC which issued the shares has the following duty.

(2) That duty of the PLC is to publish -

- (a) on its website; or
- (b) in any other prescribed manner,

for a continuous period of not less than 28 days beginning on the day that next follows the overseas market purchase concerned and is a day on which the market concerned is open for business the following information for total purchases on the market concerned on each such day –

- (i) the date, in the place outside the State where the market concerned is located, of the overseas market purchase;
- (ii) the purchase price at which the shares were purchased, or the highest such price and lowest such price paid by the PLC or the subsidiary;
- (iii) the number of shares which were purchased; and
- (iv) the market on which the shares were purchased.

(3) If a PLC fails to fulfil its duty under *subsection (1)*, the PLC and any officer of it who is in default shall be guilty of a category 3 offence.

**Duty of PLC to notify authorised market operator.**

[10814083]. (1) Whenever shares for which dealing facilities are provided on a regulated market have been purchased, either by the PLC which issued the shares or by a [company]<sup>66</sup> which is that PLC's subsidiary, then, save where the purchase was an overseas market purchase, the PLC whose shares have been purchased has the following duty.

(2) That duty of the PLC is to notify the authorised market operator concerned of the fact of that purchase; that operator may publish, in such manner as it may determine, any information received by it under this subsection.

(3) That duty shall be fulfilled before the end of the day after that on which the purchase concerned has taken place.

(4) If a PLC fails to fulfil its duty under *subsection (1)*, the PLC and any officer of it who is in default shall be guilty of a category 3 offence.

## Chapter 6

### Distribution by a PLC

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<sup>66</sup> Substituted by point 218 of Report Amendments.

### Restriction on distribution of assets.

[1082+084]. (1) A PLC may only make a distribution at any time—

- (a) if at that time the amount of its net assets is not less than the aggregate of the PLC's called-up share capital and its undistributable reserves; and
- (b) if, and to the extent that, the distribution does not reduce the amount of those assets to less than that aggregate.

(2) For the purposes of this section the undistributable reserves of a PLC are—

- (a) the PLC's undenominated capital;
- (b) the amount by which the PLC's accumulated, unrealised profits, so far as not previously utilised by any capitalisation, exceed its accumulated, unrealised losses, so far as not previously written off in a reduction or reorganisation of capital duly made; and
- (c) any other reserve which the PLC is prohibited from distributing by any enactment, other than one contained in this Part, or by its constitution.

(3) *Subsections (4) to (8) of section [117]* shall apply for the purposes of this section as they apply for the purposes of that section.

(4) A PLC shall not include any uncalled share capital as an asset in any financial statement relevant for the purposes of this section.

### Relevant financial statements in the case of distribution by PLC.

[1083+085]. (1) In addition to its application for the purpose of determining whether a distribution may be made by a PLC without contravening *section [117]*, and the amount of any distribution which may be so made, *section [121]* shall apply for the purpose of determining whether a distribution may be made by a PLC without contravening *section [1082+084]*, and the amount of any distribution which may be so made.

(2) Accordingly *section [1082+084]* shall be treated as contravened in the case of a distribution unless the requirements of *section [121]* in relation to the financial statements mentioned therein are complied with in the case of that distribution.

(3) For the purposes of the application of *section [121]*, by virtue of *subsection (1)*, to a distribution (and without prejudice to that section's application otherwise to a distribution by a PLC) -

- (a) there shall, in *section [121(3)(b)]*<sup>67</sup>, be substituted “if that distribution would be found to contravene *section [1082+084]*” for “if that distribution would be found to contravene *section [117]*”; and
- (b) there shall, in *section [121](3)(a)* and *(c)*, be substituted “whether that distribution would be in contravention of *section*

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<sup>67</sup> Correction of typographical error from Bill as initiated

~~[1084+1082]~~” for “whether that distribution would be in contravention of *section [117]*”.

(4) In addition to the foregoing provisions as regards *section [121]*'s application, *subsections (5) to ~~[(7)(8)]~~*<sup>68</sup> contain provisions supplementing *section [121]*'s application in the case of a distribution by a PLC and that section shall have effect accordingly

(5) The following requirements apply to interim financial statements, as referred to in *section [121]*, that are prepared for a proposed distribution by a PLC, that is to say—

- (a) the financial statements shall have been properly prepared or have been so prepared subject only to matters which are not material for the purpose of determining, by reference to the relevant items as stated in those statements, whether that distribution would be in contravention of *section [117]* or ~~[1082+1084]~~, as the case may be;
- (b) a copy of those financial statements shall have been delivered to the Registrar;
- (c) if the financial statements are in a language other than the English or Irish language, a translation into English or Irish of the statements which has been certified in the prescribed manner to be a correct translation, shall also have been delivered to the Registrar.

(6) The following requirements apply to initial financial statements, as referred to in *section [121]*, that are prepared for a proposed distribution by a PLC, that is to say—

- (a) the financial statements shall have been properly prepared or have been so prepared subject only to matters which are not material for the purpose of determining, by reference to the relevant items as stated in those statements, whether that distribution would be in contravention of *section [117]* or ~~[1082+1084]~~, as the case may be;
- (b) the statutory auditors of the PLC shall have made a report stating whether, in their opinion, the financial statements have been properly prepared;
- (c) if, by virtue of anything referred to in that report, the report is not an unqualified report, the statutory auditors shall also have stated in writing whether, in their opinion, that thing is material for the purpose of determining, by reference to the relevant items as stated in those financial statements, whether that distribution would be in contravention of *section [117]* or ~~[1082+1084]~~, as the case may be;
- (d) a copy of those financial statements, of the report made under *paragraph (b)* and of any such statement shall have been delivered to the Registrar; and
- (e) if the financial statements are, or that report or statement is, in a language other than the English or Irish language, a translation into English or Irish of the financial statements, the report or statement, as the case may be, which has been certified in the prescribed manner to be a correct translation, shall also have been delivered to the Registrar.

(7) For the purposes of this section, *section [121](6)* shall apply as if “Where *subsection (3)(a)* or *section ~~[1083+1085](5)(a)~~* or

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<sup>68</sup> [Substituted by point 119 of Seanad Report Amendments.](#)

[\[10831085\]](#)(6)(a) applies to the relevant financial statements” were substituted for “Where *subsection (3)(a)* applies to the relevant financial statements”.

[\[\(8\) The reference in the definition of “properly prepared” in \*section 121\(7\)\* to financial statements includes a reference to interim or initial financial statements referred to in \*subsection \(5\)\* or \*\(6\)\* and, for the purpose of that definition as it relates to either such type of statement, \*section 290\* and \*section 291\* or \*292\* as appropriate, and, where applicable, \*Schedule 3\* shall be deemed to have effect in relation to interim and initial financial statements with such modifications as are necessary by reason of the fact that the financial statements are prepared otherwise than in respect of a financial year.\]](#)<sup>69</sup>

#### **Limitation on reduction by a PLC of its company capital.**

[\[10841086\]](#). A PLC may not reduce its company capital below the authorised minimum and *section [84]* shall be read accordingly.

## **Chapter 7**

### Uncertificated securities

#### **Transfer in writing.**

[\[10851087\]](#). The following :

- (a) section 6 of the Statute of Frauds 1695;
- (b) section 28 (6) of the Supreme Court of Judicature (Ireland) Act 1877;
- (c) *section [94](4)*; and
- (d) any other enactment or rule of law requiring the execution, under hand or seal, of a document in writing for the transfer of property,

shall not apply (if they would otherwise do so) to any transfer of title to securities pursuant to -

- (i) section 12 of the Electronic Commerce Act 2000; or
- (ii) procedures authorised or required pursuant to regulations made by the Minister under *section [10861088]*.

#### **Power to make regulations for the transfer of securities.**

[\[10861088\]](#). (1) The Minister may make provision by regulations for enabling or requiring title to securities or any class of securities to be evidenced and transferred without a written instrument.

(2) Subject to any exceptions that may be specified in the regulations, the regulations may, in respect of—

- (a) securities of public limited companies admitted to trading on a regulated market,
- (b) securities of public limited companies admitted to trading on a market other than a regulated market, or

(c) securities of public limited companies of a specified class,

provide that the means provided by the regulations for evidencing and transferring title to such securities shall constitute the sole and exclusive means for doing so (and accordingly, that any purported transfer of such securities otherwise than by those means shall be void).

(3) In this section—

(a) “securities” means transferable securities as defined by Directive 2004/39/EC of the European Parliament and the Council of 21 April 2004 ;

(b) references to title to securities include any legal or equitable interest in securities; and

(c) references to a transfer of title include a transfer by way of security.

(4) The regulations may make provision—

(a) for procedures for recording and transferring title to securities; and

(b) for the regulation of those procedures and the persons responsible for or involved in their operation; and

(c) for dispensing with the obligations of a company under *section [99]* to issue certificates and providing for alternative procedures.

(5) The regulations shall contain such safeguards as appear to the Minister appropriate for the protection of investors and for ensuring that competition is not restricted, distorted or prevented.

(6) The regulations may, for the purpose of enabling or facilitating the operation of the new procedures, make provision with respect to the rights and obligations of persons in relation to securities dealt with under the procedures.

(7) The regulations shall be framed so as to secure that the rights and obligations in relation to securities dealt with under the new procedures correspond, so far as practicable, with those which would arise apart from any regulations under this section.

(8) The regulations may—

(a) require the provision of statements by a company to holders of securities (at specified intervals or on specified occasions) of the securities held in their name;

(b) make provision removing any requirement for the holders of securities to surrender existing share certificates to issuers; and

(c) make provision that the requirements of the regulations supersede any existing requirements in the articles of association of a company which would be incompatible with the requirements of the regulations.

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<sup>69</sup> [Inserted by point 120 of Seanad Report Amendments.](#)

**Supplemental provisions in relation to section [10864088].**

[10874089]. (1) Without prejudice to the generality of subsections (5) to (8) of section [10864088], regulations under that section shall not contain provisions that would result in a person who, but for the regulations, would be entitled—

(a) to have his or her name entered in the register of members of a company; or

(b) to give instructions in respect of any securities,

ceasing to be so entitled.

(2) Regulations under section [10864088] may include such supplementary, incidental and transitional provisions as appear to the Minister to be necessary or expedient.

(3) In particular, provision may be made for the purpose of giving effect to—

(a) the transmission of title of securities by operation of law;

(b) any restriction on the transfer of title to securities arising by virtue of the provisions of any enactment or instrument, court order or agreement;

(c) any power conferred by any such provision on a person to deal with securities on behalf of the person entitled.

(4) Regulations under section [10864088] may, for the purposes mentioned in that section and this section, make provision with respect to the persons who are to be responsible for the operation of the new procedures and for those purposes may empower the Minister to delegate to any person willing and able to discharge them, any functions of the Minister under the regulations.

(5) Regulations under section [10864088] may make different provision for different cases.

## Chapter 8

### Corporate governance

#### Number of directors of a PLC.

[10884090]. [(1)] A PLC shall have at least 2 directors.

[(2) Nothing in Parts 1 to 14 that makes provision in the case of a company having a sole director shall apply to a PLC.]<sup>70</sup>

~~[PLC may not dispense with holding of a.g.m.]~~

~~[1091]. Section [175](3) and (4) (which relate to dispensing with the holding of an annual general meeting) shall not apply to a~~

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<sup>70</sup> Inserted by point 147 of Seanad Committee Amendments.

PLC.]<sup>74</sup>

PLC, with 2 or more members, may not dispense with holding of a.g.m.

1089. Section 175(3) and (4) (which relate to dispensing with the holding of an annual general meeting) shall not apply to a PLC if it has more than one member.]<sup>72</sup>

#### **Rotation of directors.**

[10901092]. (1) Each provision of this section applies save to the extent that the PLC's constitution provides otherwise.

(2) At the first annual general meeting of the PLC all the directors shall retire from office.

(3) At the annual general meeting in every subsequent year, one-third of the directors for the time being, or, if their number is not 3 or a multiple of 3, then the number nearest one-third shall retire from office.

(4) The directors to retire in every year shall be those who have been longest in office since their last election but as between persons who became directors on the same day, those to retire shall (unless they otherwise agree among themselves) be determined by lot.

(5) A retiring director shall be eligible for re-election.

(6) The PLC, at the meeting at which a director retires in any of the foregoing instances, may fill the vacated office by electing a person to it.

(7) In default of the PLC doing so, the retiring director shall, if offering himself or herself for re-election, be deemed to have been re-elected, unless -

- (a) at such meeting it is expressly resolved not to fill such vacated office; or
- (b) a resolution for the re-election of such director has been put to the meeting and lost.

#### **Modification of section [149](8)'s operation where public or local offer co-incides with change among directors.**

[10911093]. Where -

- (a) a change among a PLC's directors occurs; and
- (b) prior to the end of the period referred to in section [149](8) (as that provision operates apart from this section) for the sending to the Registrar of the notification required by that provision of the change, the PLC issues a prospectus or, in the case of a local offer (within the meaning of Chapter 1 of Part 23), a document for the purposes of making such an offer, then, notwithstanding that the foregoing period has not expired, the PLC shall send that notification to the Registrar no later than the

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<sup>74</sup>~~Inserted by point 125 of Committee Amendments.~~

time of issue of such prospectus or document, and *section [149](8)* shall be read and operate accordingly.

#### **Remuneration of directors.**

[\[1092+1094\]](#). (1) Each provision of this section applies save to the extent that the PLC's constitution provides otherwise.

(2) The remuneration of the directors of a PLC shall be such as is determined, from time to time, by the PLC in general meeting and such remuneration shall be deemed to accrue from day to day.

(3) The directors of a PLC may also be paid all travelling, hotel and other expenses properly incurred by them -

- (a) in attending and returning from –
  - (i) meetings of the directors or any committee referred to in *section [160](9)*; or
  - (ii) general meetings of the PLC,
- or
- (b) otherwise in connection with the business of the PLC.

#### **[Application of *section [193]* in relation to PLC.**

[\[1093+1095\]](#). *Section [193]* shall apply to a PLC as if, in *subsection (1)*, after “Notwithstanding any provision to the contrary in this [Act]<sup>73</sup>”, there were inserted “and unless the Constitution provides otherwise”.<sup>74</sup>

#### **Provisions consequent on participation by PLC in system for uncertificated transfer of securities.**

[\[1094+1096\]](#). (1) *Sections [1095+1097]* and [\[1096+1098\]](#) have effect where a PLC is a participating issuer.

(2) *Sections [1095+1097]* and [\[1096+1098\]](#) are without prejudice to *sections [1099+1101]* to [\[1110+1112\]](#).

(3) In this section and *sections [1095+1097]* and [\[1096+1098\]](#) “participating issuer” has the meaning given to it by -

- (a) the Companies Act 1990 (Uncertificated Securities) Regulations 1996 (S.I. No.68 of 1996) which regulations are continued in force by *Schedule 6*; or
- (b) if regulations under *section [1086+1088]* are made and those regulations -
  - (i) replace the regulations referred to in *paragraph (a)* - those replacement regulations; or
  - (ii) amend the regulations referred to in *paragraph (a)* - the latter regulations as they stand so amended.

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<sup>72</sup> [Substituted by point 121 of Seanad Report Amendments.](#)

<sup>73</sup> Substituted by point 148 of Seanad Committee Amendments.

<sup>74</sup> Inserted by point 126 of Committee Amendments.

### Attendance and voting at meetings.

[10951097]. (1) For the purposes of determining which persons are entitled to attend or vote at a meeting, and how many votes such persons may cast, a PLC that is a participating issuer may specify in the notice of the meeting a time, not more than 48 hours before the time fixed for the meeting, by which a person must be entered on the relevant register of securities in order to have the right to attend or vote at the meeting.

(2) Changes to entries on the relevant register of securities after the time specified by virtue of *subsection (1)* shall be disregarded in determining the rights of any person to attend or vote at the meeting, notwithstanding any provisions in any enactment, articles of association or other instrument to the contrary.

(3) In this section, “register of securities” has the meaning given to it by -

(a) the Companies Act 1990 (Uncertificated Securities) Regulations 1996 (S.I. No. 68 of 1996) which regulations are continued in force by *Schedule 6*; or

(b) if regulations under *section [10881086]* are made and those regulations -

(i) replace the regulations referred to in *paragraph (a)* - those replacement regulations; or

(ii) amend the regulations referred to in *paragraph (a)* - the latter regulations as they stand so amended.

### Notice of meetings.

[10961098]. (1) For the purposes of serving notices of meetings, whether under *section [218]*, any other enactment, a provision in the articles or any other instrument, a participating issuer may determine that persons entitled to receive such notices are those persons entered on the relevant register of securities at the close of business on a day determined by the participating issuer.

(2) The day determined by a participating issuer under *subsection (1)* may not be more than 7 days before the day that the notices of the meeting are sent.

(3) In this section “register of securities” has the same meaning as *subsection (3)* of *section [10951097]* provides it is to have in that section.

### Application of *section [167]* to PLC that is not a public-interest entity under S.I. No. 220 of 2010.

[10971099]. *Section [167]* shall apply to a PLC that does not fall within Regulation 91 (which relates to an obligation of a public-interest entity to establish an audit committee) of the European Communities (Statutory Audits) (Directive 2006/43/EC) Regulations 2010 and, for the avoidance of doubt, that section shall apply irrespective of the balance sheet amount or the amount of turnover of the

PLC for any financial year.

#### **Length of notice of general meetings to be given.**

[1098+100]. Subject to *section [1102+104]*, in its application to a PLC, *section [181](1)* shall apply as if the following paragraph were substituted for *paragraph (b)* :

“(b) in the case of any other extraordinary general meeting, by not less than 14 days’ notice.”.

#### **Additional rights of shareholders in certain PLCs (provisions implementing Shareholders’ Rights Directive 2007/36/EC).**

[1099+101]. (1) *Sections [1100+102]* to *[1110+112]* have effect in relation to –

- (a) a notice of a general meeting given by a PLC; and
- (b) otherwise in relation to a general meeting of a PLC,

being a PLC whose shares are admitted to trading on a regulated market in any Member State (in *sections [1100+102]* to *[1110+112]* referred to as a “traded PLC”).

(2) *Sections [1100+102]* to *[1110+112]* have effect notwithstanding anything in the PLC’s constitution.

#### **Equality of treatment of shareholders.**

[1100+102]. In addition to any provisions of *Part 4* imposing requirements on the company in that behalf, a traded PLC shall ensure equal treatment for all members who are in the same position with regard to the exercise of voting rights and participation in a general meeting of the company.

#### **Requisitioning of general meeting by members – modification of *section [178](3)*.**

[1101+103]. In its application to a traded PLC, *section [178]* shall apply as if the following subsection were substituted for *subsection (3)*:

“(3) The directors of a company shall, on the requisition of one or more members holding, or together holding, at the date of the deposit of the requisition, not less than 5 per cent of the paid up share capital of the company, as at the date of the deposit carries the right of voting at general meetings of the company, forthwith proceed duly to convene an extraordinary general meeting of the company.”.

**Length of notice of general meetings to be given by traded PLC.**

[\[1102+104\]](#). (1) In its application to a PLC which is a traded PLC, *section [181]* shall apply as if –

(a) the following subsection were substituted for *subsection (1)* :

“(1) Subject to *section [1102+104](2)*, a general meeting of a company (whether an annual general meeting or an extraordinary general meeting), other than an adjourned meeting, shall be called by not less than 21 days’ notice.”; and

(b) *subsection (2)* were omitted.

(2) Notwithstanding *section [181](1)* as it applies by virtue of *subsection (1)* of this section, a general meeting of a PLC which is a traded PLC (other than an annual general meeting or an extraordinary general meeting for the passing of a special resolution) may be called by not less than 14 days’ notice if -

(a) the PLC offers the facility for members to vote by electronic means accessible to all members who hold shares that carry rights to vote at general meetings; and

(b) a special resolution reducing the period of notice to 14 days has been passed at the immediately preceding annual general meeting, or at a general meeting held since that meeting.

**Additional provisions concerning notice under *section [181]* by a traded PLC.**

[\[1103+105\]](#). (1) In addition to the requirements of *section [181]*, a notice, under that section, by a traded PLC of a general meeting, whether –

(a) an annual general meeting; or

(b) an extraordinary general meeting,

shall be issued, free of charge, in a manner ensuring fast access to the notice on a non-discriminatory basis, using such media as may reasonably be relied upon for the effective dissemination of information to the public throughout the Member States.

(2) Notice of a general meeting shall set out:

(a) when and where the meeting is to take place and the proposed agenda for the meeting;

(b) a clear and precise statement of any procedures a member shall comply with in order to participate and vote in the meeting, including -

(i) the right of a member to put items on the agenda of a general meeting and to table draft resolutions pursuant to *section [1104+106]* and to ask questions relating to items on the agenda pursuant to *section [1107+109]*, and the time limits applicable to the exercise of any of those rights;

- (ii) the right of a member entitled to attend, speak, ask questions and vote, to appoint, pursuant to *section [183]* as it applies by virtue of *section [1108/1110]*, by electronic means or otherwise–
  - (I) a proxy ; or
  - (II) in any of the cases set out in those sections, more than one proxy,
 to attend, speak, ask questions and vote instead of the member and that any such proxy need not be a member;
- (iii) the procedure for voting by proxy pursuant to *section [183]* as so applied, including the forms to be used and the means by which the company is prepared to accept electronic notification of the appointment of a proxy; and
- (iv) the procedure (where applicable) to be followed pursuant to *sections [1106/1108]* and *[1109/1111]* for voting electronically or by correspondence respectively;
- (c) the record date for eligibility for voting as defined in *section [1105/1107]* and state that only members registered on the record date shall have the right to participate and vote in the general meeting;
- (d) where and how the full, unabridged text of the documents and draft resolutions referred to in *subsection (3)(c)* and *(d)* may be obtained, and
- (e) the website at which the information contained in *subsection (3)* shall be made available.

(3) A traded PLC shall make available to its members on its website, for a continuous period beginning not later than 21 days before a general meeting (inclusive of the day of the meeting), the following -

- (a) the notice under *section [181]*;
- (b) the total number of shares and voting rights at the date of the giving of the notice (including separate totals for each class of shares where the company's capital is divided into 2 or more classes of shares);
- (c) the documents to be submitted to the meeting;
- (d) a copy of any draft resolution or, where no such resolution is proposed to be adopted, a comment from the board of directors on each item of the proposed agenda of the meeting;
- (e) a copy of forms to be used to vote by proxy and to vote by correspondence unless these forms are sent directly to each member.

(4) The traded PLC shall make available, on its website as soon as possible following their receipt, draft resolutions tabled by members.

(5) Where the forms referred to in *subsection (3)(e)* cannot be made available on the traded PLC's website for technical reasons, the PLC shall indicate on its website how the forms may be obtained in hard copy form and the PLC shall send the forms by post, free of charge, to every member who requests them.

(6) Where notice of a general meeting is issued later than on the twenty first day before the meeting pursuant to *section [1102/1104](2)* or Article 9(4) or 11(4) of Directive 2004/25/EC, the period specified in *subsection (3)* shall be reduced accordingly.

**Right to put items on the agenda of the general meeting and to table draft resolutions.**

[11041106]. (1) One or more members of a traded PLC shall have the right, by electronic or postal means, at an address specified by the PLC, to -

(a) put an item on the agenda of an annual general meeting, provided that each such item is accompanied by –

- (i) stated grounds justifying its inclusion; or
- (ii) a draft resolution to be adopted at the general meeting;

and

(b) table a draft resolution for an item on the agenda of a general meeting (whether an annual general meeting or not),

subject to the member or members concerned holding 3 per cent of the issued share capital of the PLC, representing at least 3 per cent of the total voting rights of all the members who have a right to vote at the meeting to which the request for inclusion of the item relates.

(2) A request by a member to put an item on the agenda or to table a draft resolution under *subsection (1)(a)* shall be received by the traded PLC in written or electronic form at least 42 days before the date of the meeting to which it relates.

(3) Where the exercise of the right conferred by *subsection (1)(a)* involves a modification of the agenda for the annual general meeting, in situations where the agenda has already been communicated to the members, and only in such situations, the traded PLC shall make available a revised agenda in the same manner as the previous agenda –

(a) in advance of the applicable record date (as defined in *section [11051107]*) of share-ownership for purposes of entitlement to vote; or

(b) if no such record date applies, sufficiently in advance of the date of the annual general meeting so as to enable other members to appoint a proxy or, where applicable, to vote by correspondence.

(4) In order to facilitate a member to avail of *subsection (1)(a)*, the traded PLC shall ensure that the date of the next annual general meeting is placed on its website by -

- (a) the end of the previous financial year; or
- (b) not later than 70 days prior to the date of the annual general meeting,

whichever is the earlier.

**Requirements for participation and voting in general meeting.**

[11051107]. (1) In this section -

“record date” means a date not more than 48 hours before the general meeting to which it relates;

“register of securities” has the same meaning as *subsection (3)* of *section [10951097]* provides it is to have in that section.

(2) A person shall be entered on the relevant register of securities by the record date in order to exercise the right of a member to participate and vote at a general meeting and any change to an entry on the relevant register of securities after the record date shall be disregarded in determining the right of any person to attend and vote at the meeting.

(3) The right of a member to participate in a general meeting and to vote in respect of his or her shares shall not be subject to any requirement that the shares be deposited with, or transferred to, or registered in the name of another person before the general meeting.

(4) Unless that right is otherwise subject to such a restriction, a member shall have the right to sell or otherwise transfer shares in the traded PLC at any time between the record date and the general meeting to which it applies.

(5) In relation to the subjecting by a traded PLC of a person to proof of the person's qualification as a member, that person may be made subject only to such requirements -

- (a) as are necessary to ensure the identification of the person as a member; and
- (b) then only to the extent that such requirements are proportionate to the achievement of that objective.

**Participation in general meeting by electronic means.**

[\[11064108\]](#). (1) A traded PLC may provide for participation in a general meeting by electronic means including -

- (a) a mechanism for casting votes, whether before or during the meeting, and the mechanism adopted shall not require the member to be physically present at the meeting or require the member to appoint a proxy who is physically present at the meeting;
- (b) real time transmission of the meeting;
- (c) real time two way communication enabling members to address the meeting from a remote location.

(2) The use of electronic means pursuant to *subsection (1)* may be made subject only to such requirements and restrictions as are necessary to ensure the identification of those taking part and the security of the electronic communication, to the extent that such requirements and restrictions are proportionate to the achievement of those objectives.

(3) Members shall be informed of any requirements or restrictions which a traded PLC puts in place pursuant to *subsection (2)*.

(4) A traded PLC that provides electronic means for participation at a general meeting by a member shall ensure, as far as practicable, that -

- (a) such means -
  - (i) guarantee the security of any electronic communication by the member;
  - (ii) minimise the risk of data corruption and unauthorised access;
  - (iii) provide certainty as to the source of the electronic communication; and

(b) in the case of any failure or disruption of such means, that failure or disruption is remedied as soon as practicable.

#### **Right to ask questions.**

~~[11074109]~~. (1) A member of a traded PLC has the right to ask questions related to items on the agenda of a general meeting and to have such questions answered by the PLC subject to any reasonable measures the PLC may take to ensure the identification of the member.

(2) An answer to a question asked pursuant to *subsection (1)* is not required where -

- (a) to give an answer would interfere unduly with the preparation for the meeting or the confidentiality and business interests of the PLC;
- (b) the answer has already been given on the PLC's website by means of what is commonly known as "a question and answer forum"; or
- (c) it appears to the chairperson of the meeting that it is undesirable in the interests of good order of the meeting that the question be answered.

#### **Provisions concerning appointment of proxies.**

~~[1108440]~~. (1) In the case of a traded PLC, *section [183]* shall have effect subject to the following subsections.

(2) *Section [183]* shall apply as if the following subsection were substituted for *subsection (3)*:

"(3) Unless the company's constitution otherwise provides, a member of a company shall not be entitled to appoint more than one proxy to attend on the same occasion, but this is subject to *section [1108440](3)*."

(3) Notwithstanding anything in *section [183](3)*, as applied by *subsection (2)*, or in the traded PLC's constitution –

(a) no limitation may be placed on the right of a member to appoint more than one proxy to attend on the same occasion in respect of shares held in different securities accounts; and

(b) a member (being an individual or a body corporate) acting as an intermediary on behalf of one or more clients shall not be prohibited from granting a proxy to each of his or her clients or to any third party designated by such a client, and an intermediary referred to in *paragraph (b)* shall be permitted to cast votes attaching to some of the shares differently from others.

~~[(4) Without prejudice to the other means of communication that may be used for that purpose, the instrument of proxy referred to in *section [183]* may be notified to the traded PLC by electronic means.]<sup>75</sup>~~

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<sup>75</sup> Deleted by point 122 of Seanad Report Amendments.

~~(145)~~ ~~[A member]~~ Without prejudice to the member's general entitlements in that regard under *section 183(7)*, a member<sup>76</sup> shall be entitled to -

- (a) appoint a proxy by electronic means, to an address specified by the traded PLC;
- (b) have the electronic notification of such appointment accepted by the traded PLC; and
- (c) have at least one effective method of notification of a proxy by electronic means offered to it by the traded PLC.

~~(156)~~ The appointment and notification of appointment of a proxy to a traded PLC and the issuing of voting instructions to a proxy may be subject only to such formal requirements as are necessary to ensure identification of a member or the proxy, or the possibility of verifying the content of voting instructions, if any, and only to the extent that those requirements are proportionate to achieving those objectives.

~~(167)~~ *Subsections (4) to (156)* apply with the necessary modifications to the revocation of the appointment of a proxy.

~~(178)~~ Any provision contained in the constitution of a traded PLC (other than a requirement that a person appointed as a proxy shall possess legal capacity) shall be void in so far as it would have the effect of restricting the eligibility of a person to be appointed as a proxy.

#### **Traded PLC may permit vote to be cast in advance by correspondence.**

~~[1109+111]~~. (1) A traded PLC may permit, by appropriate arrangements, a vote to be exercised for the purpose of a poll (that is to be taken at a general meeting) by means of the vote being cast in advance by correspondence.

(2) Any such arrangements may be made subject only to such requirements and restrictions as are –

- (a) necessary to ensure the identification of the person voting; and
- (b) proportionate to the achievement of that objective.

(3) A traded PLC shall not be required to count votes cast in advance by correspondence pursuant to *subsection (1)* unless such votes are received before the date and time specified by the PLC; however, for that purpose, the PLC may not specify a date and time that is more than 24 hours before the time at which the vote is to be concluded.

#### **Voting results.**

~~[1110+112]~~. (1) Where a member requests a full account of a vote before or on the declaration of the result of a vote at a general meeting, then with respect to each resolution proposed at a general meeting the traded PLC shall establish -

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<sup>76</sup> [Substituted by point 123 of Seanad Report Amendments.](#)

- (a) the number of shares for which votes have been validly cast;
- (b) the proportion of the company's issued share capital at close of business on the day before the meeting represented by those votes;
- (c) the total number of votes validly cast; and
- (d) the number of votes cast in favour of and against each resolution and, if counted, the number of abstentions.

(2) Where no member requests a full account of the voting before or on the declaration of the result of a vote at a general meeting, it shall be sufficient for the traded PLC to establish the voting results only to the extent necessary to ensure that the required majority is reached for each resolution.

(3) A traded PLC shall ensure that a voting result established in accordance with this section is published on its website not later than the expiry of 15 days after the date of the meeting at which the voting result was obtained.

## Chapter 9

### Duties of directors and other officers

#### **Obligation to convene extraordinary general meeting in event of serious loss of capital.**

~~[1111+113]~~. (1) Where the net assets of a PLC are half or less of the amount of the PLC's called-up share capital, the directors of the PLC shall, not later than 28 days after the earliest day on which that fact is known to a director of the PLC (the "relevant day"), duly convene an extraordinary general meeting of the PLC.

(2) That extraordinary general meeting shall be convened –

- (a) for the purpose of considering whether any, and if so what, measures should be taken to deal with the situation; and
- (b) for a date not later than 56 days after the relevant day.

(3) If there is a failure to convene an extraordinary general meeting of a PLC as required by *subsections (1) and (2)*, each of the directors of the PLC who—

(a) knowingly and intentionally authorises or permits that failure; or

(b) after the expiry of the period during which that meeting should have been convened, knowingly and intentionally authorises or permits that failure to continue,

shall be guilty of a category 3 offence.

(4) Nothing in this section shall be taken as authorising the consideration, at an extraordinary general meeting convened in pursuance of this section, of any matter which could not have been considered at that meeting apart from this section.

#### **Qualifications of secretary of a PLC.**

~~[1112+114]~~. (1) The directors of a PLC shall have a duty to ensure that the person appointed as [secretary has the skills or resources necessary to discharge his or her statutory and other duties and]<sup>77</sup> that the person complies with one, or more than one, of the following 3 conditions.

(2) Those conditions are —

- (a) the person, for at least 3 years of the 5 years immediately preceding his or her appointment as secretary, held the office of secretary of a company;
- (b) the person is a member of a body for the time being recognised for the purposes of this section by the Minister;
- (c) the person is a person who, by virtue of his or her —
  - (i) holding or having held any other position; or
  - (ii) his or her being a member of any other body,appears to the directors of the PLC to be capable of discharging the duties referred to in *subsection (1)*.

(3) *Section [226]* shall apply, in relation to a PLC, as if, in *subsection (2)*, “Without prejudice to the generality of *section [1112+114](1) and (2)*” were substituted for “Without prejudice to the generality of *section [129](4)*”.

#### **[Voting by director in respect of certain matters: prohibition and exceptions thereto]**

**1113. Save to the extent that the PLC’s constitution provides otherwise, a director of a PLC shall not vote in respect of any contract or arrangement in which the director is interested, and if the director does so vote, the director’s vote shall not be counted, nor shall he or she be counted in the quorum present at the meeting, but neither of those prohibitions shall apply to:**

- (a) any arrangement for giving any director any security or indemnity in respect of money lent by the director to or obligations undertaken by the director for the benefit of the PLC; or
- (b) any arrangement for the giving by the PLC of any security to a third party in respect of a debt or obligation of the PLC for which the director himself or herself has assumed responsibility in whole or in part under a guarantee or indemnity or by the deposit of security; or
- (c) any contract by the director to subscribe for or underwrite shares or debentures of the PLC; or

<sup>77</sup> Substituted by point 149 of Seanad Committee Amendments.

(d) any contract or arrangement with any other company in which the director is interested only as an officer of such other company or as a holder of shares or other securities in such other company, and the operation of those prohibitions may at any time be suspended or limited to any extent and either generally or in respect of any particular contract, arrangement or transaction by the PLC in general meeting.<sup>78</sup>

## Chapter 10

Financial statements, annual return and audit

### **Non-application of Part 6 to PLCs that are credit institutions or insurance undertakings.**

[1114115]. Part 6 shall not apply to a PLC 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 PLCs.**

[1115116]. Chapter 3 of Part 23 has effect in relation to, amongst other companies, a PLC that has shares or debentures admitted to trading on a regulated market in an EEA state.

### **[Modification of definition of “IAS Regulation” in the case of PLCs**

[1116117]. The definition of “IAS Regulation” in section 274(1) shall apply in the case of PLC as if “and a reference to Article 4 of that Regulation is, where the financial statements concerned are entity financial statements or the company concerned is not a traded company (within the meaning of section [1372]), a reference to Article 5 of that Regulation” were substituted for “and a reference to Article 4 of that Regulation is, in the case of a private company limited by shares, a reference to Article 5 of that Regulation”.<sup>79</sup>

### **Obligation for a PLC’s statutory financial statements to be audited.**

[1117118]. The directors of a PLC shall arrange for the statutory financial statements of the PLC for a financial year to be audited by statutory auditors.

### **Statutory auditors’ report on revised financial statements and revised report.**

[1118119]. Section [370] shall apply to a PLC as if, in subsection (1), “Subject to subsection (3)” were substituted for “Subject to section [371] and subsection (3)”.

<sup>78</sup> Inserted by point 124 of Seanad Report Amendments.

<sup>79</sup> Inserted by point 150 of Seanad Committee Amendments.

**Summary financial statements and circulation of them to members in lieu of full financial statements.**

[1119-120]. (1) The directors of a PLC may prepare in respect of each financial year a summary financial statement for that financial year derived from the statutory financial statements and the directors' report for that period, giving a fair and accurate summary account of the PLC's financial development during that financial year and financial position at the end of that year.

(2) The summary financial statement shall be approved by the board of directors and shall be signed by them or, if there are more than 2 directors, shall be signed on their behalf by 2 of them.

(3) Where the PLC has subsidiary undertakings or undertakings of substantial interest (within the meaning of *section [314]*), the statement shall (so far as they are dealt with in the group financial statements) give an account of the financial development and position of the PLC and its subsidiary undertakings and other such undertakings.

(4) Every summary financial statement shall include a statement of the statutory auditors' opinion as to its consistency with the statutory financial statements of the PLC and the directors' report and its conformity with the requirements of this section.

(5) Not later than the day specified in *subsection (6)*, a copy of –

(a) the summary financial statement; and

(b) where it includes a qualification, the statutory auditors' report under *section [391]*,

may, in lieu of the documents specified in *section [338](2)*, be sent by the PLC to every member who is entitled to notice of the meeting referred to in *subsection (6)* and to the Registrar.

(6) The day referred to in *subsection (5)* is the 21st day before the date of the annual general meeting at which the statutory financial statements and directors' report of the PLC are to be considered

(7) Every summary financial statement shall also include statements to the effect that -

(a) it is only a summary of information in the statutory financial statements and directors' report;

(b) the statutory financial statements have been audited; and

(c) copies of the statutory financial statements, statutory auditors' report and directors' report will be available to members upon request,

and copies of those documents will, accordingly, be made available by the PLC to any member upon request.

(8) For the avoidance of doubt, the reference, in relation to non-statutory financial statements, in *section [340](4)* to publication does not include the sending of a summary financial statement to a member in accordance with *subsection (5)*.

(9) *Section [347](2)* applies for the purpose of the construction of the reference to a copy of a document in *subsection (5)* of this section (in so far as the reference is to a copy to be sent to the Registrar) as it applies for the purpose of the construction of the reference to a copy of a document in *section [347](1)*.

**Application of sections [310] to [313].**

~~[11204121]~~. (1) For the purposes of this Part, *sections [310] to [313]* shall apply as if, in those sections, there were substituted for the references to a holding company of a [credit institution]<sup>80</sup> preparing financial statements references to a PLC that is a [credit institution]<sup>81</sup> preparing financial statements; but this adaptation does not displace those sections' application in cases where –

- (a) the holding company of the company concerned is a PLC that is a [credit institution]<sup>82</sup>; or
- (b) both the holding company and the company concerned are [credit institutions]<sup>83</sup>.

(2) In particular, that adaptation does not limit the provisions of *sections [310] to [313]* that operate by reference to something that has been done to or in relation to a person connected with a director of a holding company of another company.

(3) Accordingly any exemption conferred, or requirement imposed, by any of those sections applies in respect of a transaction, arrangement or agreement (being a transaction, arrangement or agreement to which the PLC hereafter mentioned is a party) that is entered into or made with or for –

- (a) a person connected with a director of a holding company of a PLC which PLC is a [credit institution]<sup>84</sup>; or
- (b) an officer of such a PLC,

as it applies in respect of a transaction, arrangement or agreement (being a transaction, arrangement or agreement to which such a PLC is a party) entered into or made with or for –

- (i) a person connected with a director of such a PLC; or
- (ii) an officer of such a PLC.

(4) *Section [312](3) to (6)* shall not apply to a [credit institution]<sup>85</sup> which is the wholly owned subsidiary of a company incorporated in the State.

## Chapter 11

### Debentures

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<sup>80</sup> Substituted by point 219 of Report Amendments.

<sup>81</sup> Substituted by point 220 of Report Amendments.

<sup>82</sup> Substituted by point 221 of Report Amendments.

<sup>83</sup> Substituted by point 222 of Report Amendments.

<sup>84</sup> Substituted by point 223 of Report Amendments.

<sup>85</sup> Substituted by point 224 of Report Amendments.

**Provisions as to register of debenture holders.**

[1121+122]. (1) A PLC shall keep a register of holders of debentures (the “debenture holders’ register”) of the PLC and enter therein the names and addresses of the debenture holders and the amount of debentures currently held by each.

(2) For the purposes of *subsection (1)*, debentures do not include any debenture which does not form part of a series ranking *pari passu* nor any debenture which is transferable by delivery.

(3) *Chapter 10 of Part 4*, as adapted by *subsection (4)*, shall apply in relation to the debenture holders’ register.

(4) For the purposes of this section, *Chapter 10 of Part 4* is adapted as follows :

(a) in *section [215](a)*, there shall be added the following definition:

“ ‘debenture holders’ register’ means the register kept by the company pursuant to *section [1121+122](1)*”;

(b) *section [216](1)* shall have effect as if, in addition to the registers specified in that provision as being registers to which *section [216]* applies, that provision specified the debenture holders’ register as being a register to which that section applies;

(c) *subsection (7) of section [216]* shall have effect as if after “it is closed under *section [174]*” there were inserted “and, in the case of the debenture holders’ register, when it is deemed to be closed under *section [1121+122](6)*”; and

(d) each of *subsections (9), (11) and (12) of section [216]* shall have effect as if, in addition to the registers specified in the particular subsection, there were specified in the particular subsection the debenture holders’ register.

(5) *Section [127](1)* (access to documents during business hours) shall apply for the purposes of *Chapter 10 of Part 4*, as that Chapter is adapted for the purposes of this section, as it applies in relation to the relevant provisions of *Part 4*.

(6) For the purposes of *section [216](7)*, as adapted by *subsection (4)*, the debenture holders’ register shall be deemed to be closed if closed in accordance with provisions contained in -

(a) the articles of the PLC; or

(b) the debentures, or in the case of debenture stock, in the stock certificates; or

(c) the trust deed or other document securing the debentures or debenture stock,

during such period or periods, not exceeding in the whole 30 days in any year, as may be specified in the document referred to in *paragraph (a), (b) or (c)*.

(7) A copy of any trust deed for securing any issue of debentures shall be forwarded to every holder of any such debentures, at his or her request, by the PLC on payment to it of a fee of €10.00 or such less sum as may be determined by the PLC.

(8) If a copy of a trust deed referred to in *subsection (7)* is not forwarded by the PLC in accordance with that subsection, the PLC and

any officer of it who is in default shall be guilty of a category 3 offence.

(9) In the case of a failure to comply with *subsection (7)*, the court may, on application being made to it, make an order directing that the copy requested be forwarded to the person requesting it.

## Chapter 12

### Examinerships

#### Petitions for examinerships.

~~[1122-1123]~~. *Section [510]* shall apply to a PLC as if the following subsections were substituted for *subsections (2) and (3)*:

“(2) Where the company referred to in *section [509]* 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 [509]* is –

(a) a [credit institution]<sup>86</sup> or the holding company of a [credit institution]<sup>87</sup>;

(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 13

### Reorganisations

#### Acquisitions of uncertificated securities from dissenting shareholders.

~~[1123-1124]~~. (1) In this section –

“dissenting security holder” has the meaning given to it by Part 5 of the European Communities (Takeover Bids (Directive 2004/25/EC)) Regulations 2006 (S.I. No. 255 of 2006);

“dissenting shareholder” has the meaning given to it by *Chapter 2 of Part 9*;

“relevant offeree” means an offeree company within the meaning of –

(a) *Chapter 2 of Part 9*; or

(b) Part 5 of the European Communities (Takeover Bids (Directive 2004/25/EC)) Regulations 2006, which is a participating issuer;

“relevant offeror” means an offeror within the meaning of –

(a) *Chapter 2 of Part 9*; or

(b) Part 5 of the European Communities (Takeover Bids (Directive 2004/25/EC)) Regulations 2006;

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<sup>86</sup> Substituted by point 225 of Report Amendments.

“relevant regulations” means -

(a) the Companies Act 1990 (Uncertificated Securities) Regulations 1996 (S.I. No. 68 of 1996) which regulations are continued in force by *Schedule 6*; or

(b) if regulations under *section [10861088]* are made and those regulations -

(i) replace the regulations referred to in *paragraph (a)* - those replacement regulations; or

(ii) amend the regulations referred to in *paragraph (a)* - the latter regulations as they stand so amended;

(2) In this section each of the following –

(i) “issuer-instruction”;

(ii) “operator”;

(iii) “operator-instruction”;

(iv) “participating issuer”;

(v) “register of securities”;

(vi) “system-member”;

(vii) “uncertificated securities”

(viii) “unit of a security”,

has the meaning given to it by the relevant regulations.

(3) Where a relevant offeror has become bound to acquire under, as the case may be –

(a) *Chapter 2 of Part 9*; or

(b) Part 5 of the European Communities (Takeover Bids (Directive 2004/25/EC)) Regulations 2006,

the shares or securities of a dissenting shareholder or dissenting security holder then, *subsection (4)* applies, in lieu of the relevant procedures specified in *section [459]* or Regulation 25 of the foregoing Regulations, with respect to effecting the transfer and a reference in *subsection (4)* to securities includes shares.

(4) The relevant offeree shall enter the relevant offeror in its register of securities as the holder of the uncertificated units of the securities concerned in place of the system-member who was, immediately prior to such entry, registered as the holder of such units as if it had received an operator-instruction requiring it to amend its register of securities in such manner.

(5) A company which amends its register of securities in accordance with *subsection (4)* shall forthwith notify the operator by issuer-instruction of the amendment.

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<sup>87</sup> Substituted by point 226 of Report Amendments.

## Chapter 14

### Strike-off and restoration

#### Power of Registrar to strike PLC off register.

~~[11241125]~~. (1) In addition to the cases mentioned in *section [725]*, a PLC may be struck off the register in the circumstances and under the conditions specified in the following provisions.

(2) Where a PLC, registered as such on its original incorporation, has not been issued with a certificate under *section [10101012]* within one year after the date on which it was registered, the Registrar may employ the following procedure.

(3) That procedure consists of there being sent by the Registrar, by registered post, the notice referred to in *subsection (5)* to the PLC at its registered office.

(4) The Registrar shall also send a copy of the foregoing notice by prepaid ordinary post to such persons, if any, as are recorded in the office of the Registrar as being current directors of the PLC but non-compliance with this subsection does not affect the validity of a notice that otherwise complies with *subsection (3)*; the address to which a notice under this subsection is sent shall be the usual residential address, as recorded in the office of the Registrar, of the addressee concerned.

(5) The Registrar's notice referred to in *subsections (3) and (4)* shall -

- (a) state that the issue of the notice is the first step in a process that may lead to the PLC being struck off the register;
- (b) state the ground for striking off being invoked by the Registrar, namely, that the PLC has not been issued with a certificate under *section [10101012]* within one year after the date on which it was registered;
- (c) state that the PLC will be dissolved if it is struck off the register;
- (d) specify the remedial step, namely the procuring by the PLC of the issue to it of a certificate under *section [10101012]*;
- (e) specify the date on or before which that certificate must be issued to the PLC; and
- (f) state that failure to have that certificate issued to it on or before the date so specified may result in the Registrar giving public notice of an intention to strike the PLC off the register.

(6) The date to be specified for the purposes of *subsection (5)(e)* shall be a date falling not less than 28 days after the date of the notice.

(7) If the Registrar has given a notice under *subsection (3)* and the remedial step referred to in *subsection (5)(d)* has not been taken on or before the date specified in that notice for the purposes of *subsection (5)(e)*, the Registrar may, by publishing a notice in the CRO Gazette that complies with *subsection (8)*, give public notice of the Registrar's intention to strike the PLC off the register.

(8) The notice referred to in *subsection (7)* shall -

- (a) specify the ground for striking the PLC off the register, namely, that the PLC has not been issued with a certificate under *section [10104012]* within one year after the date on which it was registered;;
- (b) specify the remedial step, namely the procuring by the PLC of the issue to it of a certificate under *section [10104012]*;
- (c) specify the date on or before which that remedial step must be taken; and
- (d) state that unless that remedial step is taken on or before the date so specified the Registrar may strike the PLC off the register and, if the Registrar does so, the PLC will be dissolved.

(9) The date to be specified for the purposes of *subsection (8)(c)* shall be a date falling not less than 28 days after the date of publication of the notice.

(10) If the Registrar has given a notice referred to in *subsection (8)* and the remedial step referred to in *paragraph (b)* of that subsection has not been taken on or before the date specified in that notice for the purposes of *paragraph (c)* of that subsection, the Registrar may strike the PLC off the register.

(11) *Section [733](3) and (4), section [734] and sections [738] to [743]* shall apply to a PLC which has been struck off the register in accordance with *subsection (10)* as those provisions apply to a company struck off the register in accordance with *section [733](1)*.

#### **Reinstatement as PLC confined to company which had such status before dissolution.**

**[11254126]**. Where a company has been dissolved under this Act or under any of the prior Companies Acts, it may not be restored to the register as a PLC unless it was a PLC immediately before such dissolution.

### **Chapter 15**

#### Investigations

#### **Inspectors - minimum number of members that may apply for their appointment in the case of a PLC.**

**[11264127]**. *Section [747](2)* shall apply to a PLC as if the following paragraph were substituted for *paragraph (b)* :

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

### **Chapter 16**

#### Mergers

#### **Interpretation (Chapter 16).**

**[11274128]**. (1) In this Chapter—

“company” includes a body corporate to which *section [1312](1)* (application of certain provisions of Act to unregistered companies)

relates;

“director”, in relation to a company which is being wound up, means liquidator;

“merger” means –

- (a) a merger by acquisition;
- (b) a merger by absorption; or
- (c) a merger by formation of a new company,

within, in each case, the meaning of *section [1129+130]*;

“merging company” means—

(a) in relation to a merger by acquisition or a merger by absorption, a company that is, in relation to that merger, a transferor company or the successor company; and

(b) in relation to a merger by formation of a new company, a company that is, in relation to that merger, a transferor company;

“share exchange ratio” means the number of shares or other securities in the successor company that the common draft terms of merger provide to be allotted to members of any transferor company for a given number of their shares or other securities in the transferor company;

“successor company” shall be read in accordance with *section [1129+130]*;

“transferor company”, in relation to a merger, means a company, the assets and liabilities of which are to be, or have been, transferred to the successor company by way of that merger.

(2) References in this Chapter to the acquisition of a company are references to the acquisition of the assets and liabilities of the company by way of a merger under this Chapter.

**Requirement for Chapter to apply.**

**[1128+129]**. This Chapter applies only if each of the merging companies, or, one at least, of them, is a PLC.

**Mergers to which Chapter applies – definitions and supplementary provision.**

**[1129+130]**. (1) In this Chapter “merger by acquisition” means an operation in which a company (the “successor company”) acquires

all the assets and liabilities of one or more other companies that is or are dissolved without going into liquidation in exchange for the issue to the members of that company or those companies of shares in the first-mentioned company, with or without any cash payment.

(2) In this Chapter “merger by absorption” means an operation whereby, on being dissolved and without going into liquidation, a company transfers all of its assets and liabilities to a company that is the holder of all the shares representing the capital of the first-mentioned company.

(3) The reference in *subsection (2)* to a company (the “second-mentioned company”) that is the holder of all the shares representing the capital of the first-mentioned company in that subsection includes a reference to either of the following cases :

(a) a case where all of those shares are held by other persons in their own names but on behalf of the second-mentioned company;

(b) a case where the shares representing the capital of the first-mentioned company held by the second-mentioned company and by other persons in their own names but on behalf of the second-mentioned company amount, in aggregate, to all of the shares representing the foregoing capital.

(4) In this Chapter “merger by formation of a new company” means an operation in which 2 or more companies, on being dissolved without going into liquidation, transfer all their assets and liabilities to a company that they form – the “other company” – in exchange for the issue to their members of shares representing the capital of the other company, with or without any cash payment.

(5) Where a company is being wound up it may—

(a) become a party to a merger by acquisition, a merger by absorption or a merger by formation of a new company, provided that the distribution of its assets to its shareholders has not begun at the date, under *section [1131+132](6)*, of the common draft terms of merger; or

(b) opt to avail itself of the provisions of *Chapters 1 and 2 of Part 9* or *section [601]*.

(6) Subject to *subsection (5)*, the provisions of *Chapters 1 and 2 of Part 9* and *section [601]* shall not apply to a merger by acquisition, a merger by absorption or a merger by formation of a new company.

**Merger may not be put into effect save in accordance with this Chapter.**

**[1130+131].** (1) A merger may not be put into effect save under and in accordance with the provisions of this Chapter.

(2) A merger shall not take effect under this Chapter in the absence of the approval, authorisation or other consent, if any, that is required by any other enactment or a Community act for the merger to take effect.

**Common draft terms of merger.**

~~[1131+132]~~. (1) Where a merger is proposed to be entered into, the directors of the merging companies shall draw up common draft terms of the merger in writing and approve those terms in writing.

(2) The common draft terms of merger shall state, at least—

- (a) the name and registered office of each of the merging companies;
- (b) as to each of the merging companies, whether it is a PLC, another type of company as defined in *section 2(1)* or a body corporate to which *section [1312](1)* relates;
- (c) save in the case of a merger by absorption, the proposed share exchange ratio and the amount of any cash payment;
- (d) save in the case of a merger by absorption, the proposed terms relating to allotment of shares in the successor company;
- (e) save in the case of a merger by absorption, the date from which holders of such shares will become entitled to participate in the profits of the successor company;
- (f) the date from which the transactions of the company or companies being acquired are to be treated for accounting purposes as being those of the successor company;
- (g) any special conditions, including special rights or restrictions, whether in regard to voting, participation in profits, share capital or otherwise, which will apply to shares issued by the successor company in exchange for shares in the company or companies being acquired;
- (h) any payment or benefit in cash or otherwise, paid or given or intended to be paid or given to any expert referred to in *section [1133+134]* and to any director of any of the merging companies in so far as it differs from the payment or benefit paid or given to other persons in respect of the merger and the consideration, if any, for any such payment or benefit.

(3) The common draft terms of merger shall not provide for any shares in the successor company to be exchanged for shares in a company being acquired that are held either—

- (a) by the successor company itself or its nominee on its behalf; or
- (b) by the company being acquired itself or its nominee on its behalf.

(4) Where the merger is a merger by formation of a new company the common draft terms of merger shall include or be accompanied by the constitution or draft constitution of the new company.

(5) The common draft terms of merger, as approved under *subsection (1)*, shall be signed, on the same date, on behalf of each of the merging companies by 2 directors of each such company (or, in the case of each of one or more of them having a sole director, by the sole director); the common draft terms shall bear the date of such signing.

(6) That date shall, for the purposes of this Chapter, be the date of the common draft terms of merger.

Directors' explanatory report.

[\[1132+133\]](#). (1) Except in the case of a merger by absorption and subject to *subsections (4) and (5)*, a separate written report (the "explanatory report") shall be prepared in respect of each of the merging companies by the directors of each such company.

(2) The explanatory report shall at least give particulars of, and explain—

(a) the common draft terms of merger;

(b) the legal and economic grounds for and implications of the common draft terms of merger with particular reference to the proposed share exchange ratio, organisation and management structures, recent and future commercial activities and the financial interests of the holders of the shares and other securities in the company;

(c) the methods used to arrive at the proposed share exchange ratio and the reasons for the use of these methods; and

(d) any special valuation difficulties which have arisen.

(3) The explanatory report shall be signed, on the same date, on behalf of each of the merging companies by 2 directors of each such company (or, in the case of each of one or more of them having a sole director, by the sole director); the report shall bear the date of such signing.

(4) This section is subject to *section [1137+138](11)* (which provides for an exemption from its requirements in relation to a particular type of

merger operation).

(5) This section shall not apply if the following condition is, or (as appropriate) the following 2 conditions are, satisfied –

- (a) other than in a case falling within paragraph (b), all of the holders of shares conferring the right to vote at general meetings of each of the merging companies have agreed that this section shall not apply; or
- (b) where a requirement for the taking effect of a vote (whether a vote generally or of the type to which this subsection applies) by holders of shares of any of the merging companies is that a holder of securities of the company has consented thereto –
  - (i) the agreement mentioned in paragraph (a) exists; and
  - (ii) all of the holders of securities of the company or companies in respect of which requirement mentioned in this paragraph operates have agreed that this section shall not apply.

**Expert's report.**

[11334134]. (1) Subject to *subsections (2), (13) and (14)*, there shall, in accordance with this section, be appointed one or more persons to –

- (a) examine the common draft terms of merger; and
  - (b) make a report on those terms to the shareholders of the merging companies.
- (2) *Subsection (1)* shall not apply where the merger is a merger by absorption.
- (3) The functions referred to in *subsection (1)(a) and (b)* shall be performed either –
- (a) in relation to each merging company, by one or more persons appointed for that purpose in relation to the particular company by its directors and –
    - (i) no person may be appointed under this paragraph unless the person's appointment has first been approved by the court on the application to it of the company concerned;
    - (ii) the directors of each company may appoint the same person or persons for that purpose;or
  - (b) in relation to all the merging companies, by one or more persons appointed for that purpose by the court, on the application to it of all of the merging companies.
- (4) The person so appointed, or each person so appointed, is referred to in this Chapter as an "expert" and a reference in this Chapter to

a report of an expert or other action (including an opinion) of an expert shall, in a case where there are 2 or more experts, be read as reference to a joint report or joint other action (including an opinion) of or by them.

(5) A person shall not be appointed an expert unless the person is a qualified person.

(6) A person is a qualified person for the purposes of this section if the person -

(a) is a statutory auditor; and

(b) is not—

(i) a person who is or, within the period of 12 months before the date of the common draft terms of merger has been, an officer or employee of any of the merging companies;

(ii) except with the leave of the court, a parent, spouse, civil partner, brother, sister or child of an officer of any of the merging companies (and a reference in this subparagraph to a child of an officer shall be deemed to include a child of the officer's civil partner who is ordinarily resident with the officer and the civil partner); or

(iii) a person who is a partner, or in the employment, of an officer or employee of any of the merging companies.

(7) The report of the expert shall be in writing and shall—

(a) state the method or methods used to arrive at the proposed share exchange ratio;

(b) give the opinion of the expert as to whether the proposed share exchange ratio is fair and reasonable;

(c) give the opinion of the expert as to the adequacy of the method or methods used in the case in question;

(d) indicate the values arrived at using each such method;

(e) give the opinion of the expert as to the relative importance attributed to such methods in arriving at the values decided on;

and

(f) specify any special valuation difficulties which have arisen.

(8) The expert may –

- (a) require each of the merging companies and their officers to give to the expert such information and explanations (whether oral or in writing); and
- (b) make such enquiries,

as the expert thinks necessary for the purposes of making the report.

(9) If a merging company fails to give to the expert any information or explanation in the power, possession or procurement of that company, on a requirement being made of it under *subsection (8)(a)* by the expert, that company and any officer of it who is in default shall be guilty of a category 2 offence.

(10) If a merging company makes a statement (whether orally or in writing), or provides a document, to the expert that conveys or purports to convey any information or explanation the subject of a requirement made of it under *subsection (8)(a)* by the expert and -

- (a) that information is false or misleading in a material particular; and
- (b) the company knows it to be so false or misleading or is reckless as to whether it is so false or misleading,

the company and any officer of it who is in default shall be guilty of a category 2 offence.

(11) If a person appointed an expert under *subsection (3)(a)* or *(b)* ceases to be a qualified person, that person—

- (a) shall immediately cease to hold office; and

(b) shall give notice in writing of the fact of the person's ceasing to be a qualified person to each merging company and (in the case of an appointment under *subsection (3)(b)*) to the court within 14 days after the date of that cessation, but without prejudice to the validity of any acts done by the person under this Chapter before that cessation.

(12) A person who purports to perform the functions of an expert (in respect of the merger concerned) under this Chapter after ceasing to be a qualified person (in respect of that merger) shall be guilty of a category 2 offence.

(13) This section is subject to *section [1137+138](11)* (which provides for an exemption from its requirements in relation to a particular type of merger operation).

(14) This section shall not apply if the following condition is, or (as appropriate) the following 2 conditions are, satisfied—

- (a) other than in a case falling within paragraph (b), all of the holders of shares conferring the right to vote at general meetings of each of the merging companies have agreed that this section shall not apply; or

(b) where a requirement for the taking effect of a vote (whether a vote generally or of the type to which this subsection applies) by holders of shares of any of the merging companies is that a holder of securities of the company has consented thereto –

(i) the agreement mentioned in paragraph (a) exists; and

(ii) all of the holders of securities of the company or companies in respect of which the requirement mentioned in this paragraph operates have agreed that this section shall not apply.

**Merger financial statement.**

~~[1134+135]~~. (1) Subject to *subsections (6) and (8)*, where the latest statutory financial statements of any of the merging companies relate to a financial year ended more than 6 months before the date of the common draft terms of merger, that company shall prepare a merger financial statement in accordance with the provisions of this section.

(2) The merger financial statement shall be drawn up —

(a) in the format of the last annual balance sheet, if any, of the company and in accordance with the provisions of *Part 6*; and

(b) as at a date not earlier than the first day of the third month preceding the date of the common draft terms of merger.

(3) Valuations shown in the last annual balance sheet, if any, shall, subject to the exceptions provided for under *subsection (4)*, only be altered to reflect entries in the accounting records of the company.

(4) Notwithstanding *subsection (3)*, the following shall be taken into account in preparing the merger financial statement—

(a) interim depreciation and provisions; and

(b) material changes in actual value not shown in the accounting records.

(5) The provisions of *Part 6* relating to the statutory auditor's report on the last statutory financial statements of the company concerned shall apply, with any necessary modifications, to the merger financial statement required of the company by *subsection (1)*.

(6) This section shall not apply in relation to a merging company which makes public a half-yearly financial report covering the first 6 months of its financial year pursuant to the provision referred to in *subsection (7)* if that company makes that report available for inspection pursuant to *section [1136+137]*.

(7) The provision referred to in *subsection (6)* is, as appropriate –

(a) Regulation 6 of the Transparency (Directive 2004/109/EC) Regulations 2007 (S.I. No.277 of 2007) which regulations are continued in force by *Schedule 6*; or

(b) if regulations under *section [1380]* are made and those regulations –

(i) replace the regulations referred to in *paragraph (a)* – the provision of those replacement regulations corresponding to the foregoing Regulation 6; or

(ii) amend the foregoing Regulation 6 – that Regulation as it stands so amended.

(8) This section shall not apply to a merging company if the following condition is, or (as appropriate) the following 2 conditions are, satisfied –

(a) other than in a case falling within *paragraph (b)*, all of the holders of shares conferring the right to vote at general meetings of the company have agreed that this section shall not apply; or

(b) where a requirement for the taking effect of a vote (whether a vote generally or of the type to which this subsection applies) by holders of shares of the company is that a holder of securities of the company has consented thereto –

(i) the agreement mentioned in *paragraph (a)* exists; and

(ii) all of the holders of securities in respect of which the requirement mentioned in this paragraph operates have agreed that this section shall not apply.

#### **Registration and publication of documents.**

~~[1135+136]~~. (1) Subject to *subsection (3)*, each of the merging companies shall—

(a) deliver to the Registrar a copy of the common draft terms of merger, signed and dated as required by *section [1131+132](5)*;

(b) cause to be published in the CRO Gazette notice of delivery to the Registrar of the common draft terms of merger.

(2) The requirements of *subsection (1)* shall be fulfilled by each of the merging companies at least 30 days before the date of the general meeting of each such company which, by virtue of *section [1137+138]*, is held to consider the common draft terms of merger.

(3) This section shall not apply in relation to a merging company if the company –

(a) publishes, free of charge on its website for a continuous period of at least 2 months, commencing at least 30 days before the date of the general meeting which, by virtue of *section [1137+138]*, is to consider the common draft terms of merger and ending at least 30 days after that date, a copy of the common draft terms of merger, signed and dated pursuant to *section [1131+132](5)*; and

(b) causes to be published in the CRO Gazette and once at least in 2 daily newspapers circulating in the district in which the registered office or principal place of business of the company is situate notice of publication on its website of the common draft terms of

merger.

(4) Where, in the period referred to in *subsection (3)(a)*, access to the company's website is disrupted for a continuous period of at least 24 hours or for separate periods totalling not less than 72 hours, the period referred to in *subsection (3)(a)* shall be extended for a period corresponding to the period or periods of disruption.

**Inspection of documents.**

~~[11364137]~~. (1) Subject to *subsections (5) and (9)*, each of the merging companies shall, in accordance with *subsection (3)*, make available for inspection free of charge by any member of the company at its registered office during business hours—

(a) the common draft terms of merger;

(b) subject to *subsection (2)*, the statutory financial statements for the preceding 3 financial years of each company (audited, where required by that Part, in accordance with *Part 6*);

(c) if such a report is required to be prepared by that section, each explanatory report in relation to the merging companies referred to in *section [11324133]*;

(d) if such a report is required to be prepared by that section, the expert's report relating to each of the merging companies referred to in *section [11334134]*; and

(e) each merger financial statement, if any, in relation to one or, as the case may be, more than one of the merging companies, required to be prepared by *section [11344135]* or, as appropriate, its half-yearly financial report referred to in *subsection (6)* of that section.

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

(a) if any of the merging companies has traded for less than 3 financial years before the date of the common draft terms of merger, then, as respects that company, that paragraph is satisfied by the statutory financial statements for those financial years for which the company has traded (audited, where required by that Part, in accordance with *Part 6*) being made available as mentioned in that subsection by each of the merging companies; or

(b) if, by reason of its recent incorporation, the obligation of any of the foregoing companies to prepare its first financial statements under *Part 6* had not arisen as of the date of the common draft terms of merger, then the reference in that paragraph to the financial statements of that company shall be disregarded.

(3) The provisions of *subsection (1)* shall apply in the case of each of the merging companies for a period of 30 days before the date of

the meeting of each such company which, by virtue of *section [1137+138]*, is held to consider the common draft terms of merger.

(4) *Section [127](1)* (access to documents during business hours) shall apply in relation to *subsection (1)* as it applies in relation to the relevant provisions of *Part 4*.

(5) Subject to *subsection (6)*, *subsection (1)* shall not apply in relation to a merging company if it publishes free of charge on its website the documents specified in that subsection for a continuous period of at least 2 months, commencing at least 30 days before the date of the general meeting which, by virtue of *section [1137+138]*, is to consider the common draft terms of merger and ending at least 30 days after that date.

(6) *Subsection (5)* shall not apply where the entitlement referred to in *section [1137+138](4)* does not apply in consequence of the application of *section [1138+139](2)*.

(7) Where, in the period referred to in *subsection (5)*, access to the company's website is disrupted for a continuous period of at least 24 hours or for separate periods totalling not less than 72 hours, the period referred to in *subsection (5)* shall be extended for a period corresponding to the period or periods of disruption.

(8) A reference in this section to statutory financial statements shall be deemed to include a reference to a directors' report and a reference to auditing shall, in the case of such a report, be read as a reference to the operation referred to in *section [336](5)*.

(9) This section is subject to *section [1137+138](11)* (which provides for an exemption from its requirements in relation to a particular type of merger operation).

#### **General meetings of merging companies.**

**[1137+138].** (1) In this section a reference to a general meeting, without qualification, is a reference to a general meeting referred to in *subsection (2)*.

(2) Subject to *subsection (7)* and without prejudice to *section [1139+140]*, the subsequent steps under this Chapter in relation to the merger shall not be taken unless the common draft terms of merger have been approved by a special resolution passed at a general meeting of each of the merging companies.

(3) In addition, where the merger is a merger by formation of a new company, those subsequent steps shall not be taken unless the constitution or draft constitution of the new company has been approved by a special resolution of each of the companies being acquired.

(4) Subject to *section* [~~1138+139~~](2), the notice convening the general meeting referred to in *subsection* (2) shall contain a statement of every shareholder's entitlement to obtain on request, free of charge, full or, if so desired, partial copies of the documents referred to in *section* [~~1136+137~~](1) (and, accordingly, every shareholder has, subject to the foregoing provision, that entitlement).

(5) The directors of each of the companies involved in a merger shall inform—

(a) the general meeting of that company; and

(b) the directors of each of the other companies involved in the merger,

of any material change in the assets and liabilities of that company that occurs between the date of the common draft terms of merger and the date of such general meeting.

(6) On being so informed of them, the directors of each such other company involved in the merger shall inform the general meeting of that company of the matters referred to in *subsection* (5).

(7) Where the merger is —

(a) a merger by acquisition (not falling within *paragraph* (b)); or

(b) a merger by acquisition carried out by a company which holds 90 per cent or more, but not all, of the shares conferring the right to vote at general meetings (excluding any shares held as treasury shares) of the company or companies being acquired; or

(c) a merger by absorption,

approval, by means of a special resolution, of the common draft terms of merger is not required in the case of the successor company if the conditions specified in *subsection* (8) are satisfied.

(8) The conditions referred to in *subsection* (7) are the following:

(a) the provisions of *sections* [~~1135+136~~] and [~~1136+137~~] are complied with at least 30 days before the date of the general meeting of each of the companies being acquired; and

(b) the right, conferred by *subsection* (9), to requisition a general meeting has not been exercised during that period of 30 days.

(9) One or more members of the successor company who hold or together hold not less than 5 per cent of the paid-up capital of the company which carries the right to vote at general meetings of the company (excluding any shares held as treasury shares) may require the convening of a general meeting of the company to consider the common draft terms of merger, and *section [178](3) to (7)* apply, with any necessary modifications, in relation to the requisition.

(10) The reference in *subsection (7)(b)* to a percentage of shares (the “specified percentage”) being held by the company carrying out the acquisition includes a reference to either of the following cases :

(a) a case where the specified percentage of shares are held by other persons in their own names but on behalf of that company;

(b) a case where the percentages of –

(i) shares held by that company; and

(ii) shares held by other persons in the manner referred to in *paragraph (a)*,

amount, in aggregate, to the specified percentage.

(11) *Sections [1132+133], [1133+134] and [1136+137]* shall not apply to an operation referred to in *subsection (7)(b)* if –

(a) any shareholder in any of the merging companies indicates to the successor company that the shareholder will not vote in favour of the special resolution concerning the common draft terms of merger and requests, in writing, that company to purchase his or her shares in the company concerned for cash (which request such a shareholder is empowered by this subsection to make); and

(b) within 15 days after the date of that request, the successor company purchases those shares of that shareholder at the market sale price.

**Electronic means of making certain information available for purposes of *section [1138+1137]*.**

**[1138+139]**. (1) For the purposes of *section [1137+138]*, but subject to *subsection (2)*, where a shareholder has consented to the use by the company of electronic means for conveying information, the copies of the documents referred to in *section [1136+137](1)* may be provided, by electronic mail, to that shareholder by the company and the notice convening the general meeting referred to in *section [1137+138](2)* shall contain a statement to that effect.

(2) The entitlement referred to in *section [1137+138](4)* shall not apply where, for the period specified in *subsection (3)*, copies of the documents referred to in *section [1136+137](1)* are available to download and print, free of charge, from the company’s website by shareholders of the company.

(3) The period referred to in *subsection (2)* is a continuous period of at least 2 months, commencing at least 30 days before the date of the general meeting which, by virtue of *section [1137+138]*, is to consider the common draft terms of merger and ending at least 30 days after that date.

(4) Where, in the period referred to in *subsection (3)*, access to the company's website is disrupted for a continuous period of at least 24 hours or for separate periods totalling not less than 72 hours, the period referred to in *subsection (3)* shall be extended for a period corresponding to the period or periods of disruption.

**Meetings of classes of shareholders.**

~~[11391140]~~. (1) Where the share capital of any of the merging companies is divided into shares of different classes the provisions referred to in *subsection (2)*, with the exclusions specified in *subsection (3)*, shall apply with respect to the variation of the rights attached to any such class that is entailed by the merger.

(2) Those provisions are –

(a) if the merging company is not a private company limited by shares, as appropriate –

(i) ~~section [982984]~~;

(ii) ~~section [10451046]~~;

(iii) ~~section [12501251]~~;

or

(b) if the merging company is a private company limited by shares, the provisions of *Chapter 4 of Part 3* on the variation of the rights attached to any class of shares in a company

(3) There is excluded the following from the foregoing provisions -

(a) *section [88](9)*;

(b) *section [982984](10)* (including as it applies to a company other than a DAC);

(c) *section [89]* (including as it applies to a company other than a private company limited by shares).

**Purchase of minority shares.**

~~[11401141]~~. (1) Any person being—

(a) a shareholder in any of the merging companies who voted against the special resolution of the company concerned relating to the common draft terms of merger; or

(b) in a case to which *section [11371138](7)(b)* relates, any shareholder other than the successor company,

may, not later than 15 days after the relevant date, request the successor company in writing to acquire his or her shares for cash.

(2) Where a request is made by a shareholder in accordance with *subsection (1)*, the successor company shall purchase the shares of the shareholder at a price determined in accordance with the share exchange ratio set out in the common draft terms of merger and the shares so purchased by the successor company shall be treated as treasury shares within the meaning of *section [106]*.

(3) In this section the “relevant date” means, in relation to the particular merging company to which *subsection (1)(a)* or *(b)* relates, the date on which the latest general meeting of that company to consider the draft terms of merger, or of any class of the holders of shares or other securities of such company, as required by this Chapter, is held.

(4) Nothing in this section shall prejudice the power of the court to make any order necessary for the protection of the interests of a dissenting minority in a merging company.

#### **Application for confirmation of merger by court.**

~~[1141-1142]~~. (1) An application under this section to the court for an order confirming a merger shall be made jointly by all the merging companies.

(2) That application shall be accompanied by a statement of the size of the shareholding of any shareholder who has requested the purchase of his or her shares under *section [1140-1141]* and of the measures which the successor company proposes to take to comply with the shareholder’s request.

#### **Protection of creditors.**

~~[1142-1143]~~. (1) A creditor of any of the merging companies who –

(a) at the date of publication of the notice under *section [1135-1136](1)(b)* is entitled to any debt or claim against the company; and

(b) can credibly demonstrate that the proposed merger would be likely to put the satisfaction of that debt or claim at risk, and that no adequate safe-guards have been obtained from the company or the acquiring company, shall be entitled to object to the confirmation by the court of the merger.

(2) If the court deems it necessary in order to secure the adequate protection of creditors of any of the merging companies it may—

(a) determine a list of creditors entitled to object and the nature and amount of their debts or claims, and may publish notices fixing a day or days within which creditors not entered on the list are to claim to be so entered or are to be excluded from the right of objecting to the confirmation;

(b) where a creditor entered on the list whose debt or claim is not discharged or has not terminated does not consent to the

confirmation, the court may, if it thinks fit, dispense with the consent of that creditor, on either –

(i) the company securing payment of his or her debt or claim by appropriating, as the court may direct, the following amount

–

(I) if the company admits the full amount of the debt or claim, or, though not admitting it, is willing to provide for it, then the full amount of the debt or claim;

(II) if the company does not admit and is not willing to provide for the full amount of the debt or claim, or, if the amount is contingent or not ascertained, then an amount fixed by the court after the like inquiry and adjudication as if the company were being wound up by the court;

(ii) the successor company, on behalf of the company liable for the debt or claim, securing payment of the debt or claim.

(3) If, having regard to any special circumstances of the case it thinks proper so to do, the court may direct that *subsection (2)* shall not apply as regards any class of creditors.

(4) References in this section to a debt or claim having terminated are references to the debt or claim ceasing to be enforceable or to its otherwise determining.

#### **Preservation of rights of holders of securities.**

[\[1143+144\]](#). (1) Subject to *subsection (2)*, holders of securities, other than shares, in any of the companies being acquired to which special rights are attached shall be given rights in the successor company at least equivalent to those they possessed in the company being acquired.

(2) *Subsection (1)* shall not apply—

(a) where the alteration of the rights in the successor company has been approved—

(i) by a majority of the holders of such securities at a meeting held for that purpose, or

(ii) by the holders of those securities individually;

or

(b) where the holders of those securities are entitled under the terms of those securities to have their securities purchased by the successor company.

#### **Confirmation order.**

[\[1144+145\]](#). (1) Where an application is made under *section [1141+142]* to the court for an order confirming a merger this section

applies.

(2) The court, on being satisfied that—

(a) the requirements of this Chapter have been complied with;

(b) proper provision has been made for—

(i) any shareholder in any of the merging companies who has made a request under *section [1140+141]*; and

(ii) any creditor of any of the merging companies who objects to the merger in accordance with *section [1142+143]*;

(c) the rights of holders of securities other than shares in any of the companies being acquired are safeguarded in accordance with *section [1143+144]*; and

(d) where applicable, the relevant provisions referred to in *section [1139+140](2)* on the variation of the rights attached to any class of shares in any of the merging companies have been complied with,

may make an order confirming the merger with effect from such date as the court appoints (the “effective date”).

(3) The order of the court confirming the merger shall, from the effective date, have the following effects—

(a) all the assets and liabilities of the company or companies being acquired are transferred to the successor company;

(b) in the case of a merger by acquisition or a merger by formation of a new company, where no request has been made by shareholders under *section [1140+141]*, all remaining members of the transferor company or companies except the successor company (if it is a member of a transferor company) become members of the successor company;

(c) the transferor company or companies is or are dissolved;

(d) all legal proceedings pending by or against any transferor company shall be continued with the substitution, for the transferor company, of the successor company as a party;

(e) the successor company is obliged to make to the members of the transferor company or companies any cash payment required by the common draft terms of merger;

(f) every contract, agreement or instrument to which a transferor company is a party shall, notwithstanding anything to the contrary contained in that contract, agreement or instrument, be read and have effect as if—

(i) the successor company had been a party thereto instead of the transferor company;

(ii) for any reference (however worded and whether express or implied) to the transferor company there were substituted a reference to the successor company; and

(iii) any reference (however worded and whether express or implied) to the directors, officers, representatives or employees of the transferor company, or any of them -

(I) were, respectively, a reference to the directors, officers, representatives or employees of the successor company or to such director, officer, representative or employee of the successor company as the successor company nominates for that purpose; or

(II) in default of such nomination, were, respectively, a reference to the director, officer, representative or employee of the successor company who corresponds as nearly as may be to the first-mentioned director, officer, representative or employee;

(g) every contract, agreement or instrument to which a transferor company is a party becomes a contract, agreement or instrument between the successor company and the counterparty with the same rights, and subject to the same obligations, liabilities and incidents (including rights of set-off), as would have been applicable thereto if that contract, agreement or instrument had continued in force between the transferor company and the counterparty;

(h) any money due and owing (or payable) by or to a transferor company under or by virtue of any such contract, agreement or instrument as is mentioned in *paragraph (g)* shall become due and owing (or payable) by or to the successor company instead of the transferor company; and

(i) an offer or invitation to treat made to or by a transferor company before the effective date shall be read and have effect, respectively, as an offer or invitation to treat made to or by the successor company.

(4) The following provisions have effect for the purposes of subsection (3)—

(a) “instrument” in that subsection includes—

(i) a lease, conveyance, transfer or charge or any other instrument relating to real property (including chattels real); and

(ii) an instrument relating to personalty;

(b) paragraph (f)(ii) of that subsection applies in the case of references to the transferor company and its successors and assigns as it applies in the case of references to the transferor company personally;

(c) paragraph (g) of that subsection applies in the case of rights, obligations and liabilities mentioned in that paragraph whether they are expressed in the contract, agreement or instrument concerned to be personal to the transferor company or to benefit or bind (as appropriate) the transferor company and its successors and assigns.]<sup>88</sup>

(154) [The Without prejudice to subsections (6) and (7), the]<sup>89</sup> successor company shall comply with registration requirements and any other special formalities required by law and as directed by the court for the transfer of the assets and liabilities of the transferor company or companies to be effective in relation to other persons.

(6) There shall be entered by the keeper of any register in the State—

(a) upon production of a certified copy of the order under subsection (2); and

(b) without the necessity of there being produced any other document (and, accordingly, any provision requiring such production shall, if it would otherwise apply, not apply), the name of the successor company in place of any transferor company in respect of the information, act, ownership or other matter in that register and any document kept in that register.

(7) Without prejudice to the generality of subsection (6), the Property Registration Authority, as respects any deed (within the meaning of section 32 of the Registration of Deeds and Title Act 2006) registered by that Authority or produced for registration by it, shall, upon production of the document referred to in subsection (6)(a) but without the necessity of there being produced that which is referred to in subsection (6)(b), enter the name of the successor company in place of any transferor company in respect of such deed.

(8) Without prejudice to the application of subsection (6) to any other type of register in the State, each of the following shall be deemed to be a register in the State for the purposes of that subsection:

(a) the register of members of a company referred to in section 169;

(b) the register of holders of debentures of a public limited company kept pursuant to section 1120;

(c) the register kept by a public limited company for the purposes of sections 1048 to 1053;

(d) the register of charges kept by the Registrar pursuant to section 414;

(e) the Land Registry;

(f) any register of shipping kept under the Mercantile Marine Act 1955.]<sup>90</sup>

(195) The court may, either by the order confirming the merger or by a separate order, make provision for such matters as the court

<sup>88</sup> Inserted by point 125 of Seanad Report Amendments.

<sup>89</sup> Substituted by point 126 of Seanad Report Amendments.

<sup>90</sup> Inserted by point 127 of Seanad Report Amendments.

considers necessary to secure that the merger shall be fully and effectively carried out.

[\[1106\]](#) If the taking effect of the merger would fall at a time (being the time ascertained by reference to the general law and without regard to this subsection) on the particular date appointed under *subsection (2)* that is a time that would not, in the opinion of the court, be suitable having regard to the need of the parties to co-ordinate various transactions, the court may, in appointing a date under *subsection (2)* with respect to when the merger takes effect, specify a time, different from the foregoing, on that date when the merger takes effect and, where such a time is so specified –

- (a) the merger takes effect on that time of the date concerned; and
- (b) references in this section to the effective date shall be read accordingly.

**Certain provisions not to apply where court so orders.**

[\[1145-1146\]](#). Where the court makes an order confirming a merger under this Chapter, the court may, if it sees fit for the purpose of enabling the merger properly to have effect, include in the order provision permitting -

- (a) the giving of financial assistance which may otherwise be prohibited under *section [82]*;
- (b) a reduction in company capital which may otherwise be restricted under *section [84]*.

**Registration and publication of confirmation of merger.**

[\[1146-1147\]](#). (1) If the court makes an order confirming a merger, a certified copy of the order shall forthwith be sent to the Registrar by such officer of the court as the court may direct.

(2) Where the Registrar receives a certified copy of the order of the court in accordance with *subsection (1)*, the Registrar shall -

- (a) on, or as soon as practicable after, the effective date - register in the register that certified copy and the dissolution of the transferor company or companies; and
- (b) within 14 days after the date of that delivery - cause to be published in the CRO Gazette notice that a copy of an order of the court confirming the merger has been delivered to him or her.

**Civil liability of directors and experts.**

[\[1147-1148\]](#). (1) Subject to *subsection (5)*, any shareholder of any of the merging companies who has suffered loss or damage by reason of misconduct in the preparation or implementation of the merger by a director of any such company or by the expert, if any, who has made a report under *section [1133-1134]* shall be entitled to have such loss or damage made good to him or her by—

- (a) in the case of misconduct by a person who was a director of that company at the date of the common draft terms of merger — that person;

(b) in the case of misconduct by any expert who made a report under *section [1133+134]* in respect of any of the merging companies — that person.

(2) Without prejudice to the generality of *subsection (1)*, any shareholder of any of the merging companies who has suffered loss or damage arising from the inclusion of any untrue statement in any of the following, namely :

- (a) the common draft terms of merger;
- (b) the explanatory report, if any, referred to in *section [1132+133]*;
- (c) the expert's report, if any, under *section [1133+134]*;
- (d) the merger financial statement, if any, prepared under *section [1134+135]*,

shall, subject to *subsections (3) to (5)*, be entitled to have such loss or damage made good to him or her –

- (i) in the case of the document or report referred to in *paragraph (a), (b) or (d)* - by every person who was a director of that company at the date of the common draft terms of merger; or
- (ii) in the case of the report referred to in *paragraph (c)* - by the person who made that report in relation to that company.

(3) A director of a company shall not be liable under *subsection (2)* if he or she proves—

- (a) that the document or report referred to in *subsection (2)(a), (b) or (d)*, as the case may be, was issued without his or her knowledge or consent and that, on becoming aware of its issue, he or she forthwith informed the shareholders of that company that it was issued without his or her knowledge or consent; or
- (b) that as regards every untrue statement he or she had reasonable grounds, having exercised all reasonable care and skill, for believing and did, up to the time the merger took effect, believe that the statement was true.

(4) A person who makes a report under *section [1133+134]* in relation to a company shall not be liable in the case of any untrue statement in the report if he or she proves—

- (a) that, on becoming aware of the statement, he or she forthwith informed that company and its shareholders of the untruth;  
or
- (b) that he or she was competent to make the statement and that he or she had reasonable grounds for believing and did up to the time the merger took effect believe that the statement was true.

(5) This section shall not apply to a merger by absorption.

**Criminal liability for untrue statements in merger documents.**

[11481149]. (1) Where any untrue statement has been included in –

- (a) the common draft terms of merger;
- (b) the explanatory report, if any, referred to in *section [11321133]*; or
- (c) the merger financial statement, if any, prepared under *section [11341135]*,

the following –

- (i) each of the persons who was a director of any of the merging companies at the date of the common draft terms of merger or, in the case of the foregoing explanatory report or merger financial statement, at the time of the report's or statement's preparation; and
- (ii) any person who authorised the issue of the document,

shall be guilty of a category 2 offence.

(2) Where any untrue statement has been included in the expert's report prepared under *section [11331134]*, the expert and any person who authorised the issue of the report shall be guilty of a category 2 offence.

(3) In any proceedings against a person in respect of an offence under *subsection (1) or (2)*, it shall be a defence to prove that, having exercised all reasonable care and skill, the defendant had reasonable grounds for believing and did, up to the time of the issue of the document concerned, believe that the statement concerned was true.

## Chapter 17

### Divisions

#### Interpretation (Chapter 17).

[11491150]. (1) In this Chapter —

“company” includes a body corporate to which *section [1312](1)* (application of certain provisions of Act to unregistered companies) relates;

“director”, in relation to a company which is being wound up, means liquidator;

“division” means –

- (a) a division by acquisition; or
- (b) a division by formation of new companies,

within, in each case, the meaning of *section [11511152]*;

“share exchange ratio” means the number of shares or other securities in any of the successor companies that the draft terms of division provide to be allotted to members of the transferor company for a given number of their shares or other securities in the

transferor company;

“successor company” shall be read in accordance with *section [1151+152](1)*;

“transferor company” shall be read in accordance with *section [1151+152](1)*.

(2) A reference in this Chapter to a company involved in a division shall –

- (a) in the case of a division by acquisition, be read as a reference to a company that is, in relation to that division, the transferor company or a successor company (other than a new company formed for the purpose of the acquisition concerned);
- (b) in the case of a division by formation of new companies, be read as a reference to a company that is, in relation to that division, the transferor company.

(3) References in this Chapter to the acquisition of a company are references to the acquisition of the assets and liabilities of the company by way of a division under this Chapter.

**Requirements for Chapter to apply.**

[1150+151]. This Chapter applies only if each of the companies involved in the division, or, one at least, of them, is a PLC.

**Divisions to which this Chapter applies – definitions and supplementary provisions.**

[1151+152]. (1) In this Chapter “division by acquisition” means an operation consisting of the following :

- (a) 2 or more companies (each of which is referred to in this Chapter as a “successor company”), of which one or more but not all may be a new company, acquire between them all the assets and liabilities of another company that is dissolved without going into liquidation (referred to in this Chapter as the “transferor company”); and
- (b) such acquisition is –
  - (i) in exchange for the issue to the shareholders of the transferor company of shares in one or more of the successor companies, with or without any cash payment; and
  - (ii) with a view to the dissolution of the transferor company.

(2) In this Chapter “division by formation of new companies” means an operation consisting of the same elements as a division by acquisition (as defined in *subsection (1)*) consists of save that the successor companies have been formed for the purposes of the acquisition of the assets

and liabilities referred to in that subsection.

(3) Where a company is being wound up it may—

- (a) become a party to a division by acquisition or a division by formation of new companies, provided that the distribution of its assets to its shareholders has not begun at the date, under *section [1153+154](8)*, of the common draft terms of division; or
- (b) opt to avail itself of the provisions of *Chapters 1 and 2 of Part 9* or *section [601]*.

(4) Subject to *subsection (3)*, the provisions of *Chapters 1 and 2 of Part 9* and *section [601]* shall not apply to a division by acquisition or a division by formation of new companies.

**Division may not be put into effect save under and in accordance with this Chapter.**

**[1152+153]**. (1) A division may not be put into effect save under and in accordance with the provisions of this Chapter.

(2) A division shall not take effect under this Chapter in the absence of the approval, authorisation or other consent, if any, that is required by any other enactment or a Community act for the division to take effect.

**Common draft terms of division.**

**[1153+154]**. (1) Where a division is proposed to be entered into, the directors of the companies involved in the division shall draw up common draft terms of division and approve those terms in writing.

(2) The common draft terms of division shall state, at least—

(a) in relation to the transferor company—

- (i) its name;
- (ii) its registered office; and
- (iii) its registered number;

(b) in relation to each of the successor companies—

- (i) where any of those is an existing company, the particulars specified in *subparagraphs (i) to (iii) of paragraph (a)*; or
- (ii) where any of those is a new company yet to be formed, what is proposed as the particulars specified in *subparagraphs (i) and (ii) of that paragraph*;

(c) as to each of the companies involved in the division, whether it is a PLC, another type of company as defined in *section 2(1)* or a

body corporate to which *section [1312](1)* relates;

(d) the proposed share exchange ratio and amount of any cash payment;

(e) the proposed terms relating to allotment of shares or other securities in the successor companies;

(f) the date from which the holding of shares or other securities in the successor companies will entitle the holders to participate in profits and any special conditions affecting that entitlement;

(g) the date from which the transactions of the transferor company are to be treated for accounting purposes as being those of any of the successor companies;

(h) the rights, if any, to be conferred by the successor companies on members of the transferor company enjoying special rights or on holders of securities other than shares representing the transferor company's capital, and the measures proposed concerning them;

(i) any special advantages granted to—

(i) any director of a company involved in the division; or

(ii) any person appointed under *section [1155-1156]*;

(j) the precise description and allocation of the assets and liabilities of the company being acquired that are to be transferred to each of the successor companies;

(k) the allocation of shares in the successor companies to the shareholders of the transferor company and the criteria on which such allocation is based;

(l) the dates of the financial statements, if any, of every company involved in the division which were used for the purpose of preparing the common draft terms of division.

(3) Where the division involves the formation of one or more new companies the common draft terms of division shall include or be accompanied by the constitution or draft constitution of each of the new companies.

(4) The common draft terms of division shall not provide for any shares in the any of the successor companies to be exchanged for shares in the transferor company held either—

(a) by the successor companies themselves or their nominees on their behalf; or

(b) by the transferor company or its nominee on its behalf.

(5) Without prejudice to *subsection (6)*, where –

(a) an asset of the transferor company is not allocated by the common draft terms of division; and

(b) it is not possible, by reference to an interpretation of those terms, to determine the manner in which it is to be allocated,

the asset or the consideration therefor shall be allocated to the successor companies in proportion to the share of the net assets allocated to each of those companies under the common draft terms of division.

(6) If provision is not made by the common draft terms of division for the allocation of an asset acquired by, or otherwise becoming vested in, the transferor company on or after the date of those draft terms then, subject to any provision the court may make in an order under *section [1166+167]*, the asset or the consideration therefor shall be allocated in the manner specified in *subsection (5)*.

(7) The common draft terms of division, as approved under *subsection (1)*, shall be signed, on the same date, on behalf of each of the companies involved in the division by 2 directors of each such company (or, in the case of each of one or more of them having a sole director, by the sole director); the common draft terms shall bear the date of such signing.

(8) That date shall, for the purposes of this Chapter, be the date of the common draft terms of division.

**Directors' explanatory report.**

**[1154+155].** (1) Subject to *subsections (5) and (6)*, a separate written report (the “explanatory report”) shall be prepared in respect of each of the companies involved in the division by the directors of each such company.

(2) The explanatory report shall at least give particulars of, and explain—

(a) the common draft terms of division;

(b) the legal and economic grounds for and implications of the common draft terms of division with particular reference to the proposed share exchange ratio, organisation and management structures, recent and future commercial activities and the financial interests of holders of the shares and other securities in the company;

(c) the methods used to arrive at the proposed share exchange ratio and the reasons for the use of these methods; and

(d) any special valuation difficulties which have arisen.

(3) Where it is proposed that any of the successor companies (being a company that is a PLC) will allot shares for a consideration other than in cash, the explanatory report shall also state –

- (a) whether a report has been made to that successor company under *section* [~~1028~~1030] in relation to that consideration; and
- (b) if so, whether that report has been delivered to the Registrar.

(4) The explanatory report shall be signed on behalf of each of the companies involved in the division by 2 directors of each such company (or, in the case of each of one or more of them having a sole director, by the sole director) and shall bear the date of such signing.

(5) This section shall not apply if the following condition is, or (as appropriate) the following 2 conditions are, satisfied –

(a) other than in a case falling within *paragraph (b)*, all of the holders of shares conferring the right to vote at general meetings of each of the companies involved in the division have agreed that this section shall not apply; or

(b) where a requirement for the taking effect of a vote (whether a vote generally or of the type to which this subsection applies) by holders of shares of any of the companies involved in the division is that a holder of securities of the company has consented thereto –

(i) the agreement mentioned in *paragraph (a)* exists; and

(ii) all of the holders of securities of the company or companies in respect of which the requirement mentioned in this paragraph operates have agreed that this section shall not apply.

(6) This section shall not apply in relation to a company involved in a division by formation of new companies where the shares in each of the acquiring companies are allocated to the shareholders of the transferor company in proportion to their rights in the capital of that company.

**Expert's report.**

[~~1155~~1156]. (1) Subject to *subsections (12) and (13)*, there shall, in accordance with this section, be appointed one or more persons to –

- (a) examine the common draft terms of division; and
- (b) make a report on those terms to the shareholders of the companies involved in the division.

(2) The functions referred to in *subsection (1)(a) and (b)* shall be performed either –

(a) in relation to each company involved in the division, by one or more persons appointed for that purpose in relation to the particular company by its directors and –

(i) no person may be appointed under this paragraph unless the person’s appointment has first been approved by the court on the application to it of the company concerned;

(ii) the directors of each company may appoint the same person or persons for that purpose;

or

(b) in relation to all the companies involved in the division, by one or more persons appointed for that purpose by the court, on the application to it of all of the companies so involved.

(3) The person so appointed, or each person so appointed, is referred to in this Chapter as an “expert” and a reference in this Chapter to a report of an expert or other action (including an opinion) of an expert shall, in a case where there are 2 or more experts, be read as reference to a joint report or joint other action (including an opinion) of or by them.

(4) A person shall not be appointed an expert unless the person is a qualified person.

(5) A person is a qualified person for the purposes of this section if the person -

(a) is a statutory auditor; and

(b) is not—

(i) a person who is or, within the period of 12 months before the date of the common draft terms of division has been, an officer or employee of any of the companies involved in the division;

(ii) except with the leave of the court, a parent, spouse, civil partner, brother, sister or child of an officer of any of the companies involved in the division (and a reference in this subparagraph to a child of an officer shall be deemed to include a child of the officer’s civil partner who is ordinarily resident with the officer and the civil partner); or

(iii) a person who is a partner, or in the employment, of an officer or employee of any of the companies involved in the division.

(6) The report of the expert shall be made available not less than 30 days before the date of the passing of the resolution referred to in section ~~[1159-1160]~~ by each of the companies involved in the division, shall be in writing and shall—

(a) state the method or methods used to arrive at the proposed share exchange ratio;

(b) give the opinion of the expert as to whether the proposed share exchange ratio is fair and reasonable;

(c) give the opinion of the expert as to the adequacy of the method or methods used in the case in question;

(d) indicate the values arrived at using each such method;

(e) give the opinion of the expert as to the relative importance attributed to such methods in arriving at the values decided on; and

(f) specify any special valuation difficulties which have arisen.

(7) The expert may –

(a) require each of the companies involved in the division and their officers to give to the expert such information and explanations (whether oral or in writing); and

(b) make such enquiries,

as the expert thinks necessary for the purposes of making the report.

(8) If a company involved in the division fails to give to the expert any information or explanation in the power, possession or procurement of that company, on a requirement being made of it under *subsection (7)(a)* by the expert, that company and any officer of it who is in default shall be guilty of a category 2 offence.

(9) If a company involved in the division makes a statement (whether orally or in writing), or provides a document, to the expert that conveys or purports to convey any information or explanation the subject of a requirement made of it under *subsection (7)(a)* by the expert and -

(a) that information is false or misleading in a material particular; and

(b) the company knows it to be so false or misleading or is reckless as to whether it is so false or misleading,

the company and any officer of it who is in default shall be guilty of a category 2 offence.

(10) If a person appointed an expert under *subsection (2)(a)* or *(b)* ceases to be a qualified person, that person—

(a) shall immediately cease to hold office; and

(b) shall give notice in writing of the fact of the person's ceasing to be a qualified person to each company involved in the division

and (in the case of an appointment under *subsection (2)(b)*) to the court within 14 days after the date of that cessation, but without prejudice to the validity of any acts done by the person under this Chapter before that cessation.

(11) A person who purports to perform the functions of an expert (in respect of the division concerned) under this Chapter after ceasing to be a qualified person (in respect of that division) shall be guilty of a category 2 offence.

(12) This section shall not apply if the following condition is, or (as appropriate) the following 2 conditions are, satisfied –

(a) other than in a case falling within *paragraph (b)*, all of the holders of shares conferring the right to vote at general meetings of each of the companies involved in the division have agreed that this section shall not apply; or

(b) where a requirement for the taking effect of a vote (whether a vote generally or of the type to which this subsection applies) by holders of shares of any of the companies involved in the division is that a holder of securities of the company has consented thereto –

(i) the agreement mentioned in *paragraph (a)* exists; and

(ii) all of the holders of securities of the company or companies in respect of which the requirement mentioned in this paragraph operates have agreed that this section shall not apply.

(13) This section shall not apply in relation to a company involved in a division by formation of new companies where the shares in each of the successor companies are allocated to the shareholders of the transferor company in proportion to their rights in the capital of that company.

**Division financial statement.**

[11564157]. (1) Subject to *subsections (6) and (8)*, where the latest statutory financial statements of any of the companies involved in the division relate to a financial year ended more than 6 months before the date of the common draft terms of division then that company shall prepare a division financial statement in accordance with the provisions of this section.

(2) The division financial statement shall be drawn up—

(a) in the format of the last annual balance sheet, if any, of the company and in accordance with the provisions of *Part 6*; and

(b) as at a date not earlier than the first day of the third month preceding the date of the common draft terms of division.

(3) Valuations shown in the last annual balance sheet, if any, shall, subject to the exceptions provided for under *subsection (4)*, only be altered to reflect entries in the accounting records of the company.

(4) Notwithstanding *subsection (3)*, the following shall be taken into account in preparing the division financial statement—

- (a) interim depreciation and provisions; and
- (b) material changes in actual value not shown in the accounting records.

(5) The provisions of *Part 6* relating to the statutory auditor's report on the last statutory financial statements of the company concerned shall apply, with any necessary modifications, to the division financial statement required of the company by *subsection (1)*.

(6) This section shall not apply in relation to a company involved in a division which makes public a half-yearly financial report covering the first 6 months of its financial year pursuant to the provision referred to in *subsection (7)* if that company makes that report available for inspection pursuant to *section [1158+159]*.

(7) The provision referred to in *subsection (6)* is, as appropriate –

- (a) Regulation 6 of the Transparency (Directive 2004/109/EC) Regulations 2007 (S.I. No.277 of 2007) which regulations are continued in force by *Schedule 6*; or
- (b) if regulations under *section [1380]* are made and those regulations –
  - (i) replace the regulations referred to in *paragraph (a)* – the provision of those replacement regulations corresponding to the foregoing Regulation 6; or
  - (ii) amend the foregoing Regulation 6 – that Regulation as it stands so amended.

(8) This section shall not apply to a company involved in a division if the following condition is, or (as appropriate) the following 2 conditions are, satisfied –

- (a) other than in a case falling within *paragraph (b)*, all of the holders of shares conferring the right to vote at general meetings of the company have agreed that this section shall not apply; or
- (b) where a requirement for the taking effect of a vote (whether a vote generally or of the type to which this subsection applies) by holders of shares of the company is that a holder of securities of the company has consented thereto –
  - (i) the agreement mentioned in *paragraph (a)* exists; and
  - (ii) all of the holders of securities in respect of which the requirement mentioned in this paragraph operates have agreed that this section shall not apply.

### Registration and publication of documents.

~~[1157+158]~~. (1) Subject to *subsection (3)*, each of the companies involved in the division shall—

(a) deliver to the Registrar a copy of the common draft terms of division, signed and dated as required by *section [1153+154](7)*;

(b) cause to be published in the CRO Gazette notice of delivery to the Registrar of the common draft terms of division.

(2) The requirements of *subsection (1)* shall be fulfilled by each of the companies involved in the division at least 30 days before the date of the general meeting of each such company which, by virtue of *section [1159+160]*, is held to consider the common draft terms of division.

(3) This section shall not apply in relation to a company involved in the division if the company –

(a) publishes, free of charge on its website for a continuous period of at least 2 months, commencing at least 30 days before the date of the general meeting which, by virtue of *section [1159+160]*, is to consider the common draft terms of division and ending at least 30 days after that date, a copy of the common draft terms of division, signed and dated pursuant to *section [1153+154](7)*; and

(b) causes to be published in the CRO Gazette and once at least in 2 daily newspapers circulating in the district in which the registered office or principal place of business of the company is situate notice of publication on its website of the common draft terms of division.

(4) Where, in the period referred to in *subsection (3)(a)*, access to the company's website is disrupted for a continuous period of at least 24 hours or for separate periods totalling not less than 72 hours, the period referred to in *subsection (3)(a)* shall be extended for a period corresponding to the period or periods of disruption.

### Inspection of documents.

~~[1158+159]~~. (1) Subject to *subsections (5) and (6)*, each of the companies involved in the division shall, in accordance with *subsection (3)*, make available for inspection free of charge by any member of the company at its registered office during business hours —

(a) the common draft terms of division;

(b) subject to *subsection (2)*, the statutory financial statements for the preceding 3 financial years of each company (audited, where required by that Part, in accordance with *Part 6*);

(c) if such a report is required to be prepared by that section, each explanatory report in relation to the companies involved in the

division referred to in *section [1154+155]*;

(d) if such a report is required to be prepared by that section, the expert's report relating to each of the companies involved in the division referred to in *section [1155+156]*;

(e) each division financial statement, if any, in relation to one or, as the case may be, more than one of the companies involved in the division, required to be prepared by *section [1156+157]* or, as appropriate, its half-yearly financial report referred to in *subsection (6)* of that section.

(2) For the purposes of *paragraph (b)* of *subsection (1)* –

(a) if any of the companies involved in the division has traded for less than 3 financial years before the date of the common draft terms of division, then, as respects that company, that paragraph is satisfied by the statutory financial statements for those financial years for which the company has traded (audited, where required by that Part, in accordance with *Part 6*) being made available as mentioned in that subsection by each of the companies involved in the division; or

(b) if, by reason of its recent incorporation, the obligation of any of the foregoing companies to prepare its first financial statements under *Part 6* had not arisen as of the date of the common draft terms of division, then the reference in that paragraph to the financial statements of that company shall be disregarded.

(3) The provisions of *subsection (1)* shall apply in the case of each of the companies involved in the division for a period of 30 days before the date of the meeting of each such company which, by virtue of *section [1159+160]*, is held to consider the common draft terms of division.

(4) *Section [127](1)* (access to documents during business hours) shall apply in relation to *subsection (1)* as it applies in relation to the relevant provisions of *Part 4*.

(5) *Subsection (1)(e)* shall not apply in relation to a company involved in a division by formation of new companies where the shares in each of the successor companies are allocated to the shareholders of the transferor company in proportion to their rights in the capital of that company.

(6) Subject to *subsection (7)*, *subsection (1)* shall not apply in relation to a company involved in a division if it publishes free of charge on its website the documents specified in that subsection for a continuous period of at least 2 months, commencing at least 30 days before the date of the general meeting which, by virtue of *section [1159+160]*, is to consider the common draft terms of division and ending at least 30 days after that date.

(7) *Subsection (6)* shall not apply where the entitlement referred to in *section [1159+160](4)* does not apply in consequence of the

application of *section [1160+161](2)*.

(8) Where, in the period referred to in *subsection (6)*, access to the company's website is disrupted for a continuous period of at least 24 hours or for separate periods totalling not less than 72 hours, the period referred to in *subsection (6)* shall be extended for a period corresponding to the period or periods of disruption.

(9) A reference in this section to statutory financial statements shall be deemed to include a reference to a directors' report and a reference to auditing shall, in the case of such a report, be read as a reference to the operation referred to in *section [336](5)*.

**General meetings of companies involved in a division.**

~~[1159+160]~~. (1) In this section a reference to a general meeting, without qualification, is a reference to a general meeting referred to in *subsection (2)*.

(2) Subject to *subsections (7) and (10)* and without prejudice to *section [1161+162]*, the subsequent steps under this Chapter in relation to the division shall not be taken unless the common draft terms of division have been approved by a special resolution passed at a general meeting of each of the companies involved in the division.

(3) In addition, where the division is a division by formation of new companies, those subsequent steps shall not be taken unless the constitution or draft constitution of each of the new companies has been approved by a special resolution of the transferor company.

(4) Subject to *section [1160+161](2)*, the notice convening the general meeting referred to in *subsection (2)* shall contain a statement of every shareholder's entitlement to obtain on request, free of charge, full or, if so desired, partial copies of the documents referred to in *section [1158+159](1)* (and, accordingly, every shareholder has, subject to the foregoing provision, that entitlement).

(5) The directors of the transferor company shall inform—

- (a) the general meeting of that company; and
- (b) the directors of the successor companies,

of any material change in the assets and liabilities of the transferor company that occurs between the date of the common draft terms of division and the date of that general meeting.

(6) On being so informed of them, the directors of each such other company involved in the division shall inform the general meeting of that company of the matters referred to in *subsection (5)*; this and the preceding subsection operate subject to *subsections (10)(c)* and

(11).

(7) Approval, by means of a special resolution, of the common draft terms of division is not required in the case of a successor company (in *subsections (8) and (9)* referred to as the “particular successor company”) if the conditions specified in *subsection (8)* have been satisfied.

(8) The conditions referred to in *subsection (7)* are the following:

(a) the provisions of *sections [1157+158]* and *[1158+159]* are complied with at least 30 days before the date of the general meeting of the transferor company; and

(b) the right, conferred by *subsection (9)*, to requisition a general meeting of the particular successor company has not been exercised during that period of 30 days.

(9) One or more members of the particular successor company who hold or together hold not less than 5 per cent of the paid-up capital of the company which carries the right to vote at general meetings of the company (excluding any shares held as treasury shares) may require the convening of a general meeting of the company to consider the common draft terms of division, and *section [178](3) to (7)* apply, with any necessary modifications, in relation to the requisition.

(10) Approval, by means of a special resolution, of the common draft terms of division is not required in the case of the transferor company if the following conditions have been satisfied -

(a) the successor companies together hold all of the shares carrying the right to vote at general meetings of the transferor company;

(b) the companies involved in the division comply with the provisions of *sections [1157+158]* and *[1158+159]* at least 30 days before the earlier of the dates specified in *paragraphs (f) and (g) of section [1153+154](2)*; and

(c) the condition specified in *subsection (11)*.

(11) The condition referred to in *subsection (10)(c)* is that the directors of the transferor company shall inform –

(a) the members of that company; and

(b) the directors of the successor companies,

of any material change in the assets and liabilities of the transferor company that has occurred since the date of the common draft terms of division and *subsection (6)* shall be read, as regards the information to which it applies, as referring to the foregoing information.

**Electronic means of making certain information available for purposes of *section [1159+160]*.**

**[1160+161].** (1) For the purposes of *section [1159+160]*, but subject to *subsection (2)*, where a shareholder has consented to the use by

the company of electronic means for conveying information, the copies of the documents referred to in *section [1158+159](1)* may be provided, by electronic mail, to that shareholder by the company and the notice convening the general meeting referred to in *section [1159+160](2)* shall contain a statement to that effect.

(2) The entitlement referred to in *section [1159+160](4)* shall not apply where, for the period specified in *subsection (3)*, copies of the documents referred to in *section [1158+159](1)* are available to download and print, free of charge, from the company's website by shareholders of the company.

(3) The period referred to in *subsection (2)* is a continuous period of at least 2 months, commencing at least 30 days before the date of the general meeting which, by virtue of *section [1159+160]*, is to consider the common draft terms of merger and ending at least 30 days after that date.

(4) Where, in the period referred to in *subsection (3)*, access to the company's website is disrupted for a continuous period of at least 24 hours or for separate periods totalling not less than 72 hours, the period referred to in *subsection (3)* shall be extended for a period corresponding to the period or periods of disruption.

#### **Meetings of classes of shareholders.**

**[1161+162].** (1) Where the share capital of any of the companies involved in the division is divided into shares of different classes the provisions referred to in *subsection (2)*, with the exclusions specified in *subsection (3)*, shall apply with respect to the variation of the rights attached to any such class that is entailed by the division.

(2) Those provisions are –

(a) if the particular company involved in the division is not a private company limited by shares, as appropriate –

(i) *section [984]*;

(ii) *section [1043+1045]*;

(iii) *section [1250+251]*;

or

(b) if the particular company involved in the division is a private company limited by shares, the provisions of *Chapter 4 of Part 3* on the variation of the rights attached to any class of shares in a company.

(3) There is excluded the following from the foregoing provisions –

(a) *section [88](9)*;

(b) *section [984](10)* (including as it applies to a company other than a DAC);

(c) *section [89]* (including as it applies to a company other than a private company limited by shares).

**Purchase of minority shares.**

[1162+163]. (1) Subject to *subsection (5)*, any person being—

- (a) a shareholder in any of the companies involved in the division who voted against the special resolution of the company concerned relating to the common draft terms of division; or
- (b) in a case to which *subsection (2)* relates, any shareholder in the transferor company other than the successor company there referred to,

may, not later than 15 days after the relevant date, request the successor companies in writing to acquire his or her shares for cash.

(2) This subsection relates to a case where a successor company (not being a company formed for the purpose of the division) holds 90 per cent or more (but not all) of the shares carrying the right to vote at general meetings of the transferor company.

(3) Where a request is made by a shareholder in accordance with *subsection (1)*, the successor companies (or such one, or more than one of them, as they may agree among themselves) shall purchase the shares of the shareholder at a price determined in accordance with the share exchange ratio set out in the common draft terms of division and the shares so purchased by any successor company shall be treated as treasury shares within the meaning of *section [106]*.

(4) Nothing in the preceding subsections limits the power of the court to make any order necessary for the protection of the interests of a dissenting minority in a company involved in a division.

(5) This section shall not apply where the shares in each of the successor companies are allocated to the shareholders of the transferor company in proportion to their rights in the capital of that company.

(6) In this section “relevant date” means—

- (a) in relation to a shareholder referred to in *subsection (1)(a)* - the date on which the resolution of the transferor company was passed;
- (b) in relation to a shareholder referred to in *subsection (1)(b)* - the date of publication of the notice of delivery of the common draft terms of division under *section [1157+158](1)(b)*

**Application for confirmation of division by court.**

[1163+164]. (1) An application under this section to the court for an order confirming a division shall be made jointly by all the companies involved in the division.

(2) The application shall be accompanied by a statement of the size of the shareholding of any shareholder who has requested the

purchase of his or her shares under *section [1162+163]* and of the measures which the successor companies propose to take to comply with the shareholder's request.

Protection of creditors and allocation of liabilities.

~~[1164+165]~~. (1) A creditor of any of the companies involved in a division who –

(a) at the date of publication of the notice under *section [1157+158](1)(b)* is entitled to any debt or claim against the company; and

(b) can credibly demonstrate that the proposed division would be likely to put the satisfaction of that debt or claim at risk and that no adequate safe-guards have been obtained from the company or a successor company, shall be entitled to object to the confirmation by the court of the division.

(2) If the court deems it necessary in order to secure the adequate protection of creditors of any of the companies involved in the division it may—

(a) determine a list of creditors entitled to object and the nature and amount of their debts or claims, and may publish notices fixing a day or days within which creditors not entered on the list are to claim to be so entered or are to be excluded from the right of objecting to the confirmation;

(b) where a creditor entered on the list whose debt or claim is not discharged or has not terminated does not consent to the confirmation, the court may, if it thinks fit, dispense with the consent of that creditor, on either –

(i) the company securing payment of his or her debt or claim by appropriating, as the court may direct, the following amount

–

(I) if the company admits the full amount of the debt or claim, or, though not admitting it, is willing to provide for it, then the full amount of the debt or claim;

(II) if the company does not admit and is not willing to provide for the full amount of the debt or claim, or, if the amount is contingent or not ascertained, then an amount fixed by the court after the like inquiry and adjudication as if the company were being wound up by the court;

(ii) a successor company, on behalf of the company liable for the debt or claim, securing payment of the debt or claim.

(3) If, having regard to any special circumstances of the case it thinks proper so to do, the court may direct that *subsection (2)* shall not apply as regards any class of creditors.

(4) Without prejudice to *subsection (5)*, where –

(a) a liability of the transferor company is not allocated by the common draft terms of division; and

(b) it is not possible, by reference to an interpretation of those terms, to determine the manner in which it is to be allocated, the liability shall become, jointly and severally, the liability of the successor companies.

(5) If provision is not made by the common draft terms of division for the allocation of a liability incurred by, or which otherwise becomes attached to, the transferor company on or after the date of those draft terms then, subject to any provision the court may make in an order under *section* ~~[1166+167]~~, the liability shall become, jointly and severally, the liability of the successor companies.

(6) References in this section to a debt or claim having terminated are references to the debt or claim ceasing to be enforceable or to its otherwise determining.

**Preservation of rights of holders of securities.**

~~[1165+166]~~. (1) Subject to *subsection* (2), holders of securities, other than shares, in the transferor company to which special rights are attached shall be given rights in one or more of the successor companies at least equivalent to those they possessed in the transferor company.

(2) *Subsection* (1) shall not apply—

(a) where the alteration of the rights in a successor company has been approved—

- (i) by a majority of the holders of such securities at a meeting held for that purpose; or
- (ii) by the holders of those securities individually;

or

(b) where the holders of those securities are entitled under the terms of those securities to have their securities purchased by a successor company.

**Confirmation order.**

~~[1166+167]~~. (1) Where an application is made under *section* ~~[1163+164]~~ to the court for an order confirming a division this section applies.

(2) The court, on being satisfied that—

(a) the requirements of this Chapter have been complied with;

(b) proper provision has been made for—

- (i) any shareholder in any of the companies involved in the division who has made a request under *section* ~~[+163+162]~~;
- and

- (ii) any creditor of any of the companies who objects to the division in accordance with *section* ~~[+165+164]~~;

(c) the rights of holders of securities other than shares in the transferor company are safeguarded in accordance with *section*

~~[11661165]~~; and

(d) where applicable, the relevant provisions referred to in *section* ~~[11621161]~~(2) on the variation of the rights attached to any class of shares in any of the companies involved in the division have been complied with,

may make an order confirming the division with effect from such date as the court appoints (the “effective date”).

(3) In the case of an asset or liability (including any contractual right or obligation or the obligation to make any cash payment), references in subsequent provisions of this section to the relevant successor company or companies are references to such one or (as the case may be) more than one of the successor companies –

(a) as provided for in respect of the matter concerned by the common draft terms of division; or

(b) in the cases or circumstances specified in whichever of the following is applicable, namely, *section* ~~[11531154]~~(5) or (6) or *section* ~~[11641165]~~(4) or (5) –

(i) subject to where it permits such provision by an order of the court, as provided for in that applicable provision (including, where relevant, as regards the nature of the joint liability) ; or

(ii) as provided for in an order of the court under this section.

(4) The order of the court confirming the division shall, from the effective date, have the following effects—

(a) each asset and liability of the transferor company is transferred to the relevant successor company or companies;

(b) where no request has been made by shareholders under *section* ~~[11621163]~~, all remaining members of the transferor company except any successor company (if it is a member of the transferor company) become members of the successor companies or any of them as provided by the common draft terms of division;

(c) the transferor company is dissolved;

(d) all legal proceedings pending by or against the transferor company shall be continued with the substitution, for the transferor company, of the successor companies or such of them as the court before which the proceedings have been brought may order;

(e) the relevant successor company or companies is or are obliged to make to the members of the transferor company any cash payment required by the common draft terms of division;

(f) every contract, agreement or instrument to which the transferor company is a party shall, notwithstanding anything to the contrary contained in that contract, agreement or instrument, be read and have effect as if—

(i) the relevant successor company or companies had been a party or parties thereto instead of the transferor company;

(ii) for any reference (however worded and whether express or implied) to the transferor company there were substituted a reference to the relevant successor company or companies; and

(iii) any reference (however worded and whether express or implied) to the directors, officers, representatives or employees of the transferor company, or any of them -

(I) were, respectively, a reference to the directors, officers, representatives or employees of the relevant successor

company or companies or to such director, officer, representative or employee of that company or those companies

as that company nominates or, as the case may be, those companies nominate for that purpose; or

(II) in default of such nomination, were, respectively, a reference to the director, officer, representative or employee of the relevant successor company or companies who corresponds as nearly as may be to the first-mentioned director, officer, representative or employee;

(g) every contract, agreement or instrument to which the transferor company is a party becomes a contract, agreement or instrument between the relevant successor company or companies and the counterparty with the same rights, and subject to the same obligations, liabilities and incidents (including rights of set-off), as would have been applicable thereto if that contract, agreement or instrument had continued in force between the transferor company and the counterparty;

(h) any money due and owing (or payable) by or to the transferor company under or by virtue of any such contract, agreement or instrument as is mentioned in *paragraph (g)* shall become due and owing (or payable) by or to the relevant successor company or companies instead of the transferor company; and

(i) an offer or invitation to treat made to or by the transferor company before the effective date shall be read and have effect, respectively, as an offer or invitation to treat made to or by the relevant successor company or companies.

[5] The following provisions have effect for the purposes of subsection (4)—

(a) “instrument” in that subsection includes—

(i) a lease, conveyance, transfer or charge or any other instrument relating to real property (including chattels real); and

(ii) an instrument relating to personalty;

(b) paragraph (f)(ii) of that subsection applies in the case of references to the transferor company and its successors and assigns as it applies in the case of references to the transferor company personally;

(c) paragraph (g) of that subsection applies in the case of rights, obligations and liabilities mentioned in that paragraph whether they are expressed in the contract, agreement or instrument concerned to be personal to the transferor company or to benefit or bind (as appropriate) the transferor company and its successors and assigns.]<sup>91</sup>

[65] ~~Such~~ Without prejudice to subsections (7) and (8), such]<sup>92</sup> of the successor companies as is or are appropriate shall comply with registration requirements and any other special formalities required by law and as directed by the court for the transfer of the assets and liabilities of the transferor company to be effective in relation to other persons.

[7] There shall be entered by the keeper of any register in the State—

(a) upon production of a certified copy of the order under subsection (2); and

(b) without the necessity of there being produced any other document (and, accordingly, any provision requiring such production shall, if it would otherwise apply, not apply), the name of the relevant successor company (or, as appropriate, the names of the relevant

<sup>91</sup> Inserted by point 128 of Seanad Report Amendments.

<sup>92</sup> Substituted by point 129 of Seanad Report Amendments.

successor companies) in place of the transferor company in respect of the information, act, ownership or other matter in that register and any document kept in that register.

(8) Without prejudice to the generality of subsection (7), the Property Registration Authority, as respects any deed (within the meaning of section 32 of the Registration of Deeds and Title Act 2006) registered by that Authority or produced for registration by it, shall, upon production of the document referred to in subsection (7)(a) but without the necessity of there being produced that which is referred to in subsection (7)(b), enter the name of the relevant successor company (or, as appropriate, the names of the relevant successor companies) in place of the transferor company in respect of such deed.

(9) Without prejudice to the application of subsection (7) to any other type of register in the State, each of the following shall be deemed to be a register in the State for the purposes of that subsection:

(a) the register of members of a company referred to in section 169;

(b) the register of holders of debentures of a public limited company kept pursuant to section 1121;

(c) the register kept by a public limited company for the purposes of sections 1050 to 1055;

(d) the register of charges kept by the Registrar pursuant to section 414;

(e) the Land Registry;

(f) any register of shipping kept under the Mercantile Marine Act 1955.<sup>93</sup>

(106) The court may, either by the order confirming the division or by a separate order, make provision for such matters as the court considers necessary to secure that the division shall be fully and effectively carried out.

(117) If the taking effect of the division would fall at a time (being the time ascertained by reference to the general law and without regard to this subsection) on the particular date appointed under subsection (2) that is a time that would not, in the opinion of the court, be suitable having regard to the need of the parties to co-ordinate various transactions, the court may, in appointing a date under subsection (2) with respect to when the division takes effect, specify a time, different from the foregoing, on that date when the division takes effect and, where such a time is so specified –

(a) the division takes effect on that time of the date concerned; and

(b) references in this section to the effective date shall be read accordingly.

#### **Certain provisions not to apply where court so orders.**

[11674168]. Where the court makes an order confirming a division under this Chapter, the court may, if it sees fit for the purpose of enabling the division properly to have effect, include in the order provision permitting –

(a) the giving of financial assistance which may otherwise be prohibited under section [82];

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<sup>93</sup> Inserted by point 130 of Seanad Report Amendments.

(b) a reduction in company capital which may otherwise be restricted under *section [84]*.

**Registration and publication of confirmation of division.**

~~[1168+169]~~. (1) If the court makes an order confirming a division, a certified copy of the order shall forthwith be sent to the Registrar by such officer of the court as the court may direct.

- (2) Where the Registrar receives a certified copy of the order of the court in accordance with *subsection (1)*, the Registrar shall -
- (a) on, or as soon as practicable after, the effective date - register that certified copy and the dissolution of the transferor company; and
  - (b) within 14 days after the date of that delivery - cause to be published in the CRO Gazette notice that a copy of an order of the court confirming the division has been delivered to him or her.

**Civil liability of directors and experts.**

~~[1169+170]~~. (1) Any shareholder of any of the companies involved in the division who has suffered loss or damage by reason of misconduct in the preparation or implementation of the division by a director of any such company or by the expert, if any, who has made a report under *section [1155+156]* shall be entitled to have such loss or damage made good to him or her by—

- (a) in the case of misconduct by a person who was a director of that company at the date of the common draft terms of division — that person;
- (b) in the case of misconduct by any expert who made a report under *section [1155+156]* in respect of any of the companies involved in the division — that person.

(2) Without prejudice to the generality of *subsection (1)*, any shareholder of any of the companies involved in the division who has suffered loss or damage arising from the inclusion of any untrue statement in any of the following, namely :

- (a) the common draft terms of division;
- (b) the explanatory report, if any, referred to in *section [1154+155]*;
- (c) the expert's report, if any, under *section [1155+156]*;
- (d) the division financial statement, if any, prepared under *section [1156+157]*,

shall, subject to *subsections (3) and (4)*, be entitled to have such loss or damage made good to him or her –

- (i) in the case of the document or report referred to in *paragraph (a), (b) or (d)* - by every person who was a director of that company at the date of the common draft terms of division; or
- (ii) in the case of the report referred to in *paragraph (c)* - by the person who made that report in relation to that company.

(3) A director of a company shall not be liable under *subsection (2)* if he or she proves—

- (a) that the document or report referred to in *subsection (2)(a), (b) or (d)*, as the case may be, was issued without his or her knowledge or consent and that, on becoming aware of its issue, he or she forthwith informed the shareholders of that company

that it was issued without his or her knowledge or consent; or

(b) that as regards every untrue statement he or she had reasonable grounds, having exercised all reasonable care and skill, for believing and did, up to the time the division took effect, believe that the statement was true.

(4) A person who makes a report under *section [1154+56]* in relation to a company shall not be liable in the case of any untrue statement in the report if he or she proves—

(a) that, on becoming aware of the statement, he or she forthwith informed that company and its shareholders of the untruth; or

(b) that he or she was competent to make the statement and that he or she had reasonable grounds for believing and did up to the time the division took effect believe that the statement was true.

#### **Criminal liability for untrue statements in division documents.**

**[1170+71]**. (1) Where any untrue statement has been included in –

(a) the common draft terms of division;

(b) the explanatory report, if any, referred to in *section [1154+55]*; or

(c) the division financial statement, if any, prepared under *section [1156+57]*,

the following –

(i) each of the persons who was a director of any of the companies involved in the division at the date of the common draft terms of division or, in the case of the foregoing explanatory report or division financial statement, at the time of the report's or statement's preparation; and

(ii) any person who authorised the issue of the document,

shall be guilty of a category 2 offence.

(2) Where any untrue statement has been included in the expert's report prepared under *section [1155+56]*, the expert and any person who authorised the issue of the report shall be guilty of a category 2 offence.

(3) In any proceedings against a person in respect of an offence under *subsection (1) or (2)*, it shall be a defence to prove that, having exercised all reasonable care and skill, the defendant had reasonable grounds for believing and did, up to the time of the issue of the document concerned, believe that the statement concerned was true.

## **Chapter 18**

Public Offers of Securities, Prevention of Market Abuse, Etc.

#### **Application of Chapters 1, 2 and 4 of Part 23 to PLCs.**

**[1171+72]**. *Chapters 1, 2 and 4 of Part 23* shall apply to a PLC.