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# COMPANIES BILL 2012

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*Unofficial version*

As amended in ~~Committee-Report~~ Stage (Seanad)  
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## PART 20

### RE-REGISTRATION

#### Chapter 1

##### *Interpretation*

##### **Interpretation (Part 20).**

[1283]. (1) In this Part -

“resultant company” means the company that a company re-registering becomes on the issue to the latter of a certificate of incorporation under *section [1285](6)*;

“resultant company type” means the type of company specified in the special resolution of a company under *section [1285](1)* as being the type of company which it wishes to be re-registered as;

“statement of compliance” shall be read in accordance with *section [1285](4)(c)*;

“type of company” means a company of a type that may be formed and registered under this Act.

(2) A word or expression used in this Part that is defined in a preceding Part of this Act shall, unless expressly provided otherwise, have the meaning given to it by that preceding Part.

#### Chapter 2

##### General provisions as to re-registration

##### **Company may re-register as another company type.**

[1284]. (1) This Part permits a company, subject to compliance with certain requirements, to re-register as another type of company.

(2) This Part is in addition to –

(a) the provisions of *Chapter 6* of Part 2 requiring or enabling an existing private company (within the meaning of Part 2) to re-register as a designated activity company limited by shares during the period specified in that Chapter;

(b) the provisions of *sections [1040+1042]* and *[1041+1043]* concerning the re-registration of a PLC as another type of company where the effect of the PLC cancelling its own shares will be that the nominal value of the PLC’s allotted share capital is brought below the authorised minimum.

**Procedure generally for re-registration.**

[1285]. (1) Subject to *section [1286]* and *Chapter 3*, a company may be re-registered as another type of company only if—

- (a) a special resolution of the company, complying with *subsection (2)*, that it should be so re-registered is passed; and
- (b) an application for the purpose, in the prescribed form and signed by a director or secretary of the company, is delivered to the Registrar together with the documents specified in *subsection (4)*.

(2) The special resolution shall-

- (a) alter the company's constitution so that it states that the company is to be a company of the type that the company wishes to be re-registered as;
- (b) make such other alterations in the company's constitution as are necessary to bring it in substance and in form into conformity with the requirements of this Act with respect to the constitution of the resultant company type; and
- (c) make such other alterations in the company's constitution as are requisite in the circumstances.

(3) Without prejudice to the generality of *subsection (2)*, where the resultant company type is a private company limited by shares, the alteration required by 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).

(4) The documents referred to in *subsection (1)* are—

- (a) a copy of the special resolution that the company should re-register as another type of company;
- (b) a copy of the constitution of the company as altered by the resolution;
- (c) a statement in the prescribed form (in this Part referred to as a "statement of compliance") by a director or secretary of the company that the requirements of this Part as to re-registration as another type of company have been complied with by the company, including the passing of the special resolution for re-registration.

(5) The Registrar may accept the statement of compliance as sufficient evidence that the special resolution has been duly passed and the other conditions of this Part for re-registration have been satisfied and that the company is entitled to be re-registered as the type of company concerned.

(6) If, on an application for re-registration of a company as another type of company under *subsection (1)*, the Registrar is satisfied that a company is entitled to be so re-registered, the Registrar shall—

- (a) retain the application and the other documents delivered to him or her under this Part; and
- (b) issue to the company a certificate of incorporation in respect of it, being a certificate of incorporation that –
  - (i) is altered to meet the circumstances of the case; and
  - (ii) states that it is issued on re-registration of the company and the date on which it is issued.

(7) Upon the issue to a company of a certificate of incorporation on re-registration under *subsection (6)* —

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

(8) A certificate of incorporation issued on re-registration to a company under *subsection (6)* shall be conclusive evidence -

- (a) that the requirements of this Part as to re-registration and of matters precedent and incidental thereto have been complied with; and
- (b) that the company is the type of company which is set out in the certificate,

and, accordingly, the law applicable to the resultant company type shall, on and from the issue of the certificate, apply to the company.

(9) The re-registration of a company as another type of company pursuant to this Part shall not affect any rights or obligations of the company or render defective any legal proceedings by or against the company, and any legal proceedings which might have been continued or commenced against it in its former status may be continued or commenced against it in its new status.

(10) For the avoidance of doubt, references in *Part 6*, and in particular *section [349]* (which exempts a company from having to annex financial statements to its first annual return), to the incorporation of a company are references to its original incorporation.

**Additional statements required of company that is to have a share capital on its re-registration.**

[1286]. (1) In addition to the requirements of *section [1285]*, in the case of a company, being a company which does not have a share capital, that proposes to re-register as a company which does have share capital, there shall, as part of the application under that section, be delivered to the Registrar –

- (a) a statement under *subsection (2)* – in this section referred to as a “statement of initial shareholdings”; and
- (b) a statement under *subsection (3)* – in this section referred to as a “statement of share capital” .

(2) The statement of initial shareholdings shall state with respect to each member of the company -

- (a) the number and nominal value of the shares to be taken by him or her on re-registration; and
- (b) the amount (if any) payable in respect of each share on re-registration, whether on account of the nominal value or by way of a premium.

(3) The statement of share capital –

(a) shall, if the resultant company will be other than a private company limited by shares, state with respect to the company's share capital to be allotted on re-registration –

(i) the total number of shares of the company;

(ii) the aggregate nominal value of those shares;

(iii) for each class of shares –

(I) the total number of shares of that class;

(II) the aggregate nominal value of shares of that class; and

(III) the amount paid up and the amount (if any) unpaid on each share (whether on account of the nominal value of the share or by way of premium);

or

(b) if the resultant company will be a private company limited by shares, state either (depending on whether it is to have an authorised share capital or not) –

(i) the particulars specified in *paragraph (a)(i) to (iii)*; or

(ii) that the share capital of the company shall, at the time of its re-registration, stand divided into shares of the fixed amount specified in the copy of the constitution delivered under *section [1285]* and such of the other particulars specified in *paragraph (a)* as, having regard to that intended position, the circumstances permit to be stated.

**PLC's resolution to re-register as a private company limited by shares or DAC may be cancelled by court.**

[1287]. (1) Subject to *subsection (2)*, where a special resolution by a PLC to be re-registered as a private company limited by shares or a designated activity company has been passed, an application to the court for the cancellation of the resolution may be made by -

(a) the holders of not less in the aggregate than 5 per cent in nominal value of the PLC's issued share capital or any class of the PLC's issued share capital (disregarding any shares held by the PLC as treasury shares); or

(b) not less than 50 of the PLC's members.

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

(3) An application under this section shall be made within 28 days after[ the]<sup>170</sup> date on which the resolution 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.

(4) If an application is made under this section -

- (a) the PLC shall forthwith give notice of that fact to the Registrar; and
- (b) within 15 days after the date of the court making its order on the application, or such longer period as the court may at any time direct, the PLC or the resultant company shall deliver to the Registrar a certified copy of the order.

(5) On the hearing of an application under this section, the court shall make an order either cancelling or confirming the resolution.

(6) The powers of the court on an application under this section extend to –

- (a) providing that the re-registration, notwithstanding the confirmation, shall not take effect unless such terms and conditions as the court thinks fit and specifies are satisfied;
- (b) if it thinks fit, adjourning the proceedings in order that an arrangement may be made to the satisfaction of the court for the purchase of the interests of dissentient members; and
- (c) giving such directions and making such order as it thinks expedient for facilitating or carrying into effect any such arrangement.

(7) Without prejudice to the generality of *subsection (6)*, the order of the court may, if the court thinks fit–

- (a) provide for the purchase by the PLC or the resultant company of the shares of any of its members and for the reduction accordingly of the PLC's or the resultant company's company capital;  
and
- (b) make such alteration in the PLC's or the resultant company's constitution as may be required in consequence of that [provision, and such a purchase may be so ordered notwithstanding anything in *section [102]*]<sup>171</sup>..

(8) Where an order under this section requires the PLC or the resultant company not to make any, or any specified, alterations in its constitution, then, notwithstanding anything in this Act, but subject to the provisions of the order, the PLC or the resultant company shall not have power, without the leave of the court, to make any such alteration in contravention of that requirement.

(9) Any alteration in the constitution of a company (whether the PLC or the resultant company) made by virtue of an order under this section, other than one made by resolution of the company, shall be of the same effect as if duly made by resolution of the company, and the provisions of this Act shall apply to the constitution as so altered accordingly.

(10) If a company (whether the PLC or the resultant company) fails to comply with *subsection (4)*, the company and any officer of it who is in default shall be guilty of a category 3 offence.

#### **Re-registration upon reduction of company capital of a PLC.**

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<sup>170</sup> Inserted by point 165 of Seanad Committee Amendments.

[1288]. (1) If –

- (a) the court makes an order confirming a reduction of the company capital of a PLC; and
- (b) that reduction has the effect of bringing the nominal value of the company's allotted share capital below the authorised minimum,

the court may authorise the PLC to be re-registered as another type of company without its having passed a special resolution for that purpose.

(2) Where the court makes an order authorising a PLC to so re-register, the court shall specify in the order the alterations in the PLC's constitution to be made in connection with that re-registration.

(3) In its application to a PLC that applies to be re-registered as another type of company in pursuance of an authority given under *subsection (1)*, this Part shall have effect with the following modifications—

(a) references in *section [1285]* to the special resolution of the company shall be read as references to the order of the court under *subsection (1)*;

(b) *section [1285](1)(a)* and (2) shall not apply and, in the event of an application to re-register the PLC as a private company limited by shares, *section [1290](1)(a)* shall not apply, and, in the event of an application to re-register the PLC as a designated activity company, *section [1298](1)(a)* or *[1299](1)(a)*, as the case may be, shall not apply; and

(c) *section [1285](6)* shall be read as if the following were substituted for all the words preceding *paragraphs (a)* and *(b)* of it :

“(6) On receipt of an application for re-registration under this section made in pursuance of an order of the court under *section [1288](1)*, the Registrar shall - ”.

### Chapter 3

#### Special requirements for re-registration

**What this Chapter does and references to relevant *Chapter 2* requirements.**

[1289]. (1) This Chapter –

- (a) makes provision in the following cases, namely –

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<sup>171</sup> Substituted by point 253 of Report Amendments.

- (i) a case in which an application is not made under *section [1287]*; and
  - (ii) a case in which an application is made under that section,
- and, in the latter case, the provision made by this Chapter is by reference to the particular course that the application takes;
- and
- (b) specifies requirements, additional to those in *Chapter 2*, that must be complied with in certain cases before a re-registration may be effected.

(2) In this Chapter a reference to the relevant *Chapter 2* requirements is a reference to -

- (a) subject to *paragraph (b)*, the requirements of *section [1285]*;
- (b) in the case of a company that does not have a share capital and that proposes to re-register as a company that does have share capital, the requirements of *sections [1285] and [1286]*.

**Particular requirements for re-registration as a private company limited by shares.**

**[1290].** A company may be re-registered as a private company limited by shares if, in addition to compliance by the company with the relevant *Chapter 2* requirements, the following requirements are complied with:

- (a) where the company is a PLC –
  - (i) the period during which an application under *section [1287]* for the cancellation of the special resolution has expired without any such application having been made; or
  - (ii) where such an application has been made, the application has been withdrawn; or
  - (iii) either –
    - (I) an order, not falling within *clause (II)*, has been made under *section [1287]* confirming the resolution; or
    - (II) if an order has been made under that section confirming the resolution but providing that re-registration shall not take effect unless specified terms and conditions are satisfied, those terms and condition are satisfied,

and, in either case, a certified copy of that order has been delivered to the Registrar;

and

- (b) where the company is an unlimited company, the special resolution required by *section [1285](1)(a)* includes a statement that the liability of the members of the resultant company is to be limited by shares and –
  - (i) if the resultant company is to have an authorised share capital, specifying what is to be that authorised share capital and the fixed amount of the shares into which that share capital is to be divided; or
  - (ii) if the resultant company is not to have an authorised share capital, specifying the fixed amount of the shares into which the company’s share capital is to be divided.

**Particular requirements for re-registration of company as a PLC.**

[1291]. (1) A company may be re-registered as a PLC if, in addition to compliance by the company with the relevant *Chapter 2* requirements and *section [1292]*, the following requirements are complied with -

(a) the company delivers the following documents to the Registrar:

(i) a copy of a balance sheet of the company prepared as at a date not more than 7 months before the date on which the application for re-registration is received by the Registrar;

(ii) an unqualified report by the company's statutory auditors on that balance sheet;

(iii) a copy of a written statement by the statutory auditors of the company that, in their opinion, that, at the balance sheet date, the amount of the company's net assets was not less than the aggregate of its called-up share capital and undistributable reserves; and

(iv) a copy of any report prepared under *section [1292]*;

(b) the statement of compliance includes a statement by a director or secretary of the company confirming that, between the balance sheet date and the date of the making by the company of the application for re-registration, there has been no change in the financial position of the company that has resulted in the amount of the company's net assets becoming less than the aggregate of its called-up share capital and undistributable reserves; and

(c) where the company is an unlimited company, the special resolution required by *section [1285](1)(a)* includes a statement that the liability of the members of the resultant company is to be limited by shares and specifying what is to be the authorised share capital of the resultant company and the fixed amount of the shares into which that share capital is to be divided.

(2) The Registrar shall not, on foot of the application to re-register a company as a PLC, issue a certificate of incorporation under *section [1285](6)* if it appears to the Registrar that –

(a) by, either of the means specified in [*section [84](2)*]<sup>172</sup>, a reduction of the company's company capital has taken place after the date of the passing of the special resolution that the company should be re-registered as a PLC; and

(b) the reduction has the effect of bringing the nominal value of the company's allotted share capital below the authorised minimum.

(3) A qualification shall be treated for the purposes of the definition of an "unqualified report" in *subsection (6)* as being not material in relation to any balance sheet if, but only if, the person making the report states in writing that the thing giving rise to the

qualification is not material for the purposes of determining, by reference to that balance sheet, whether, at the balance sheet date, the amount of the company's net assets was not less than the aggregate of its called-up share capital and undistributable reserves.

(4) For the purposes of the making, in relation to the foregoing balance sheet, of a report falling within the definition of an "unqualified report" in *subsection (6), section [290]* and the other relevant provisions of *Part 6* (so far as applicable to balance sheets as distinct from the other elements of financial statements) shall be deemed to have effect in relation to that balance sheet with the following modifications.

(5) Those modifications are such modifications as are necessary by reason of the fact (if such is the case) that that balance sheet is prepared otherwise than in respect of a financial year.

(6) In this section—

"undistributable reserves" has the same meaning as in *section [1082+084]*;

"unqualified report" means, in relation to the balance sheet of a company, a report stating without material qualification—

- (a) that, in the opinion of the person making the report, the balance sheet complies with *section [290]* and the other relevant provisions of *Part 6* (so far as applicable to balance sheets as distinct from the other elements of financial statements); and
- (b) without prejudice to *paragraph (a)*, that in the opinion of that person, the balance sheet gives a true and fair view of the company's assets, liabilities and equity as at the balance sheet date.

**Requirements as to share capital of a company applying to re-register as a PLC.**

[1292]. (1) Subject to *subsection (2)*, a company shall not be re-registered under this Part as a PLC unless, at the time the special resolution that the company should be re-registered as a PLC is passed—

- (a) the nominal value of the company's allotted share capital is not less than the authorised minimum;
- (b) each of its allotted shares is paid up at least as to one-quarter of the nominal value of that share and the whole of any premium on it;
- (c) where any share in the company or any premium payable on it has been fully or partly paid up by an undertaking given by any person that that person or another should do work or perform services for the company or another, the undertaking has been performed or otherwise discharged; and
- (d) where shares have been allotted as fully or partly paid up to their nominal value or any premium payable on them otherwise than in cash and the consideration for the allotment consists of or includes an undertaking (other than one to which *paragraph (c)* applies) to the company either—

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<sup>172</sup> Substituted by point 254 of Report Amendments.

(i) that undertaking has been performed or otherwise discharged; or

(ii) there is a contract between the company and any person pursuant to which that undertaking must be performed within 5 years after that time.

(2) Subject to *subsection (3)*, any share allotted by the company—

(a) which was allotted prior to 13 October 1986; or

(b) which was allotted in pursuance of an employees' share scheme and by reason of which the company would, but for this subsection, be precluded under *subsection (1)(b)*, but not otherwise, from being re-registered as a PLC, may be disregarded for the purpose of determining whether *subsection (1)(b) to (d)* is complied with in relation to the company, and a share so disregarded shall be treated for the purposes of *subsection (1)(a)* as if it were not part of the allotted share capital of the company.

(3) A share shall not be disregarded by virtue of *subsection (2)(a)* if the aggregate in nominal value of that share and the other shares which it is proposed so to disregard is more than one-tenth of the nominal value of the company's allotted share capital (not including any share disregarded by virtue of *subsection (2)(b)*).

**Shares allotted by company applying to re-register as PLC between balance sheet date and passing of special resolution.**

[1293]. (1) This section applies where –

(a) shares are allotted by a company applying to re-register as a PLC between the balance sheet date and the passing of the special resolution to re-register; and

(b) those shares have been allotted as fully or partly paid up as to their nominal value, or any premium on them, otherwise than in cash.

(2) Where this section applies the company shall not make an application for re-registration as a PLC under this Part unless, before the making of the application—

(a) the consideration for the allotment referred to in *subsection (1)* has been valued in accordance with the provisions of *Chapter 3 of Part 17* that are applied by this section; and

(b) a report with respect to the consideration's value has been made to the company in accordance with those provisions during the 6 months immediately preceding the date of that allotment,

but this is subject to *subsection (4)*.

(3) Without prejudice to *subsection (4)*, the following provisions of *Chapter 3 of Part 17*, namely –

(a) *section [1028/1030](5) to (11)*;

(b) *section [1029/1031](4)*; and

(c) *section [1030/1032]*,

shall apply for the purposes of this section as they apply for the purposes of *subsection (1)* of section ~~[1028+030]~~ and as if the references in them to that *subsection (1)* were references to *subsection (2)* of this section and with any other necessary modifications.

(4) The provisions of *Chapter 3* of *Part 17* that operate to disapply the requirement under section ~~[1028+030]~~(1) for a valuation of the consideration referred to in that provision to be carried out (and the making of a report thereon) shall operate to disapply the requirement under *subsection (2)* for a valuation of the consideration referred to in that subsection to be carried out (and the making of a report thereon).

(5) For the purpose of those foregoing provisions (as they operate by virtue of the preceding subsection), those provisions shall apply as if the references in them to *subsection (1)* of section ~~[1028+030]~~ were references to *subsection (2)* of this section and with any other necessary modifications.

(6) In this section “balance sheet date” means the date as of which the balance sheet referred to in section ~~[1291]~~(1)(a) is prepared.

**Application of certain other provisions of *Part 17* on allotments to a company that passed resolution for re-registration.**

[1294]. Sections ~~[1025+027]~~ to ~~[1033+035]~~ and ~~[1036+038]~~, ~~[1037+039]~~ and ~~[1038+040]~~ shall apply to a company which has passed and not revoked a resolution that the company be re-registered a PLC as those sections apply to a PLC.

**Power of unlimited company to provide for reserve share capital on re-registration.**

[1295]. An unlimited company having a share capital may, by its special resolution for re-registration as a limited company in pursuance of this Part, do either or both of the following things:

- (a) increase the nominal amount of its share capital by increasing the nominal amount of each of its shares, but subject to the condition that no part of the increased capital shall be capable of being called up, except in the event and for the purposes of the company being wound up;
- (b) provide that a specified portion of its uncalled share capital shall not be capable of being called up except in the event and for the purposes of the company being wound up.

**Particular requirements for re-registration of limited company as unlimited.**

[1296]. (1) A limited company may be re-registered as an unlimited company if, in addition to compliance by the company with the relevant *Chapter 2* requirements, all the members of it have assented to its being so re-registered and the following requirements are complied with -

(a) the company delivers to the Registrar –

- (i) the prescribed form of assent to the company's being re-registered as an unlimited company subscribed to by, or on behalf of, all members of the company; and
- (ii) subject to *subsection (2)*, the financial statements specified in *subsection (3)* and the report specified in *subsection (6)*;

and

(b) the statement of compliance includes confirmation by a director or secretary of the company that –

- (i) the persons by whom, or on whose behalf, the form of assent referred to in *paragraph (a)* is subscribed constitute the whole membership of the company; and
- (ii) if any of the members have not, themselves, subscribed that form, that the directors have taken all reasonable steps to satisfy themselves that each person who subscribed it on behalf of a member was lawfully empowered to do.

(2) *Subsection (1)(a)(ii)* does not apply if –

- (a) within the period of 3 months prior to the date of the application to re-register, the company has delivered to the Registrar, in accordance with *Part 6*, an annual return with the financial statements required by that Part annexed to it; or
- (b) the company was incorporated in that period of 3 months.

(3) The financial statements referred to in *subsection (1)(a)(ii)* are financial statements of the company covering a period that –

- (a) ends on a date that is not more than 3 months prior to the date of the application to re-register; and
- (b) subject to *subsection (4)*, is of at least 12 months duration.

(4) If, by reason of the company's recent incorporation, it is not possible for the duration of the foregoing period - that will [be]<sup>173</sup> covered by the foregoing financial statements - to be one of 12 months, then the period covered by them shall be a period beginning on the date of the company's incorporation and ending on the first-mentioned date in *subsection (3)(a)*.

(5) The provisions of *Part 6* as the form and content of, and the notes to accompany, the financial statements required by that Part shall apply to the financial statements specified in *subsection (3)*.

(6) Unless the company would be entitled to avail itself of the audit exemption conferred by *Chapter 15* or *16* of that Part in respect of financial statements that are required to be prepared by that Part (being statements that would cover the period covered by the financial

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<sup>173</sup> Correction of typographical error from Bill as initiated

statements specified in *subsection (3)*), the provisions of *Part 6* as to the auditing of financial statements required to be prepared by that Part shall apply to the financial statements specified in *subsection (3)*; accordingly there shall accompany the latter statements that are delivered to the Registrar a report of the company's statutory auditors on them that complies with *Part 6*.

(7) For the purposes of this section:

- (a) subscription to a form of assent by the personal representative of a deceased member of a company shall be deemed to be subscription by the member;
- (b) an assignee in bankruptcy of a person who is a member of a company shall, to the exclusion of that person, be deemed to be a member of the company.

(8) Where a company is re-registered as an unlimited company, a person who at the time when the application for it to be re-registered was delivered to the Registrar, was a past member of the company and did not thereafter again become a member thereof shall not, in the event of the company's being wound up, be liable to contribute to the assets of the company more than he or she would have been liable to contribute thereto had it not been so-registered.

(9) *Subsection (10)* applies if the provisions of *Part 6* on abridged financial statements (being statements that would cover the period covered by the financial statements specified in *subsection (3)*) could be availed of by the company with respect to the financial statements required by that Part to be prepared.

(10) Where this subsection applies, then the provisions of *Part 6* on abridged financial statements may be availed of by the company with respect to the financial statements specified in *subsection (3)* and those provisions shall have effect accordingly and the reference in *subsection (6)* to a report of the company's statutory auditors shall, if those provisions are availed of by the company, be read as a reference to a special report of those auditors referred to in *section [356]*.

#### **Particular requirements for re-registration of company as a CLG.**

[1297]. (1) A company may be re-registered as a company limited by guarantee if, in addition to compliance by the company with the relevant *Chapter 2* requirements, the following requirements are complied with -

- (a) where the company is a company with a share capital, all the members of it have assented to its being re-registered as a company limited by guarantee and the conditions specified in *subsection (2)* are satisfied;
- and
- (b) where the company is an unlimited company, in addition to the requirements of *paragraph (a)*, the special resolution required by *section [1285](1)(a)* includes a statement that the liability of the members of the resultant company is to be limited as provided for in the relevant alterations of its constitution made by that resolution.

(2) The conditions referred to in *subsection (1)(a)* are –

- (a) the company delivers to the Registrar the prescribed form of assent to the company's being re-registered as a company limited by guarantee subscribed to by, or on behalf of, all members of the company;
- (b) the statement of compliance includes confirmation by a director or secretary of the company that –
  - (i) the persons by whom, or on whose behalf, the form of assent referred to in *paragraph (a)* is subscribed constitute the whole membership of the company; and
  - (ii) if any of the members have not, themselves, subscribed that form, that the directors have taken all reasonable steps to satisfy themselves that each person who subscribed it on behalf of a member was lawfully empowered to do;

and

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

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

- (a) no amount is paid up on it; and
- (b) its nominal value does not [...] <sup>174</sup>exceed the aggregate maximum amount that the company's shareholders, who become members of the resultant company on the issue of the certificate of incorporation under *section [1285](6)*, would be liable to pay by virtue of the latter company's memorandum were the latter immediately then to be wound up.

(4) For the purposes of this section:

- (a) subscription to a form of assent by the personal representative of a deceased member of a company shall be deemed to be subscription by the member;
- (b) an assignee in bankruptcy of a person who is a member of a company shall, to the exclusion of that person, be deemed to be a member of the company.

**Particular requirements for re-registration of company as a DAC limited by shares.**

[1298]. (1) A company may be re-registered as a DAC limited by shares if, in addition to compliance by the company with the relevant *Chapter 2* requirements, the following requirements are complied with -

- (a) where the company is a PLC –
  - (i) the period during which an application under *section [1287]* for the cancellation of the special resolution has expired

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<sup>174</sup> Correction of typographical error from Bill as initiated

- without any such application having been made; or
- (ii) where such an application has been made, the application has been withdrawn; or
- (iii) either –
- (I) an order, not falling within *clause (II)*, has been made under *section [1287]* confirming the resolution; or
- (II) if an order has been made under that section confirming the resolution but providing that re-registration shall not take effect unless specified terms and conditions are satisfied, those terms and conditions are satisfied,
- and, in either case, a certified copy of that order has been delivered to the Registrar;
- and
- (b) where the company is an unlimited company, the special resolution required by *section [1285](1)(a)* includes a statement that the liability of the members of the resultant company is to be limited by shares and specifying what is to be the authorised share capital of the resultant company and the fixed amount of the shares into which that share capital is to be divided.

**Particular requirements for re-registration of company as a DAC limited by guarantee.**

[1299]. (1) A company may be re-registered as a DAC limited by guarantee if, in addition to compliance by the company with the relevant *Chapter 2* requirements, the following requirements are complied with –

- (a) where the company is a PLC –
- (i) the period during which an application under *section [1287]* for the cancellation of the special resolution has expired without any such application having been made; or
- (ii) where such an application has been made, the application has been withdrawn; or
- (iii) either –
- (I) an order, not falling within *clause (II)*, has been made under *section [1287]* confirming the resolution; or
- (II) if an order has been made under that section confirming the resolution but providing that re-registration shall not take effect unless specified terms and conditions are satisfied, those terms and conditions are satisfied,
- and, in either case, a certified copy of that order has been delivered to the Registrar;
- (b) where the company is an unlimited company, the special resolution required by *section [1285](1)(a)* includes a statement that the liability of the members of the resultant company is to be limited as provided for in the relevant alterations of its constitution made by that resolution; and
- (c) where the company is a company with a share capital, all the members of it have assented to its being re-registered as a DAC limited by guarantee and the conditions specified in *subsection (2)* are satisfied.

(2) The conditions referred to in *subsection (1)(c)* are –

- (a) the company delivers to the Registrar the prescribed form of assent to the company's being re-registered as a DAC limited by guarantee subscribed to by, or on behalf of, all members of the company;

(b) the statement of compliance includes confirmation by a director or secretary of the company that –

(i) the persons by whom, or on whose behalf, the form of assent referred to in *paragraph (a)* is subscribed constitute the whole membership of the company; and

(ii) if any of the members have not, themselves, subscribed that form, that the directors have taken all reasonable steps to satisfy themselves that each person who subscribed it on behalf of a member was lawfully empowered to do;

and

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

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

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

(b) its nominal value does not exceed the aggregate maximum amount that the company's shareholders, who become members of the resultant company on the issue of the certificate of incorporation under *section [1285](6)*, would be liable to pay by virtue of the latter company's memorandum were the latter immediately then to be wound up.

(4) For the purposes of this section:

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

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