
COMPANIES BILL 2012

Unofficial version

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

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PART 22

UNREGISTERED COMPANIES AND JOINT STOCK COMPANIES

Chapter 1

Application of Act to unregistered companies

Application of certain provisions of Act to unregistered companies.

[1312]. (1) Subject to *subsections (2) to (7)*, the provisions specified in *Schedule 14* shall apply to all bodies corporate incorporated in and having a principal place of business in the State as if they were companies registered under this Act.

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

- (a) any body corporate incorporated by or registered under any public general statute;
- (b) any body corporate not formed for the purpose of carrying on a business which has for its objects the acquisition of gain by the body or by the individual members thereof;
- (c) any body corporate which is prohibited by statute or otherwise from making any distribution of its income or property among its members while it is a going concern or when it is being wound up; and
- (d) any body corporate for the time being exempted by a direction given by the Minister for the purposes of this section,

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

(3) The foregoing provisions shall apply also in like manner in relation to any unincorporated body of persons entitled by virtue of letters patent to any of the privileges conferred by the Chartered Companies Act 1837 and not registered under any other public general statute but subject to the like exceptions as are provided for in the case of bodies corporate by *paragraphs (b), (c) and (d) of subsection (2)* (and any such incorporated body that is the subject of any of those exceptions is also referred to in this section as an “excluded body”).

(4) *Subsections (5) and (6)* operate to –

- (a) extend the effect of a certain provision (being a provision that excludes the application of provisions of this Act to public limited companies); or
- (b) exclude the application of certain provisions of this Act,

to a body depending on whether it has, or, as the case may be, has not the status of a body that has securities admitted to trading on a regulated market in an EEA state (and a body that has securities admitted to such trading is referred to in those subsections as a “traded body”).

(5) The provisions of *section [1002+1004]* that exclude the application of a provision of *Parts 1 to 14* to a public limited company shall (in so far as that provision would otherwise apply to a traded body by virtue of this section) operate to exclude the application of that provision to a traded body.

(6) In addition to the exceptions contained in *subsection (2)*, the following provisions specified in *Schedule 14*, namely –

- (a) the several provisions of *Part 17*; and
- (b) *Part 23*,

shall not apply to a body unless it is a traded body.

(7) This section shall not repeal or revoke, in whole or in part, any enactment, charter or other instrument constituting or regulating any body in relation to which the foregoing provisions are applied by virtue of this section, but in relation to any such body, the operation of any such enactment, charter or instrument shall be suspended in so far as it is inconsistent with any of the foregoing provisions as they apply for the time being to that body.

(8) A body referred to in this section (other than an excluded body or one to which *subsection (9)* applies) and which has not already done so, shall forthwith deliver to the Registrar a certified copy of the charter, statutes, memorandum and articles or other instrument [constituting]¹⁹² or defining the constitution of the body.

(9) A body referred to in this section (other than an excluded body) and which comes into existence on or after the commencement of this section shall, within 3 months after the date of its coming into existence, deliver to the Registrar a certified copy of the charter, statutes, memorandum and articles or other instrument constituting or defining the constitution of the body.

(10) If default is made by a body in complying with *subsection (8)* or *(9)*, the body and any officer of it who is in default shall be guilty of a category 3 offence.

(11) In this section “public general statute” means an Act (as defined in section 2(1) of the Interpretation Act 2005) that either –

- (a) was passed after 6 December 1922, not being –
 - (i) a private Act of the Oireachtas of Saorstát Éireann; or
 - (ii) a private Act of the Oireachtas;

or

- (b) was passed on or before 6 December 1922, not being –
 - (i) a private Act; or

(ii) a local and personal Act,
of the parliament concerned.

Minister's power to make regulations in relation to *Schedule 14*.

[1313]. (1) The Minister may, if he or she considers it necessary to do so in the interests of the orderly and proper regulation of the business of the bodies referred to in section [1312] (not being bodies referred to in that section as excluded bodies), make regulations adding to, or subtracting from, the list of the provisions of this Act specified in *Schedule 14*.

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

Chapter 2

Registration of certain bodies (other than joint stock companies) as companies

Definitions (*Chapter 2*).

[1314]. In this Chapter –

“registration date” shall be read in accordance with *section [1323](2)*;

“registration resolution” shall be read in accordance with *section [1316](1)*.

Registration as a company of body to which *section [1312](1)* applies.

[1315]. (1) A body corporate specified in *subsection (1)* of *section [1312]*, not being –

- (a) a body referred to in that section as an excluded body; or
- (b) a joint stock company within the meaning of *Chapter 5*,

may apply to be registered under this Chapter as –

- (i) a private company limited by shares;
- (ii) a designated activity company;
- (iii) a public limited company;
- (iv) a company limited by guarantee; or
- (v) an unlimited company,

but this is subject to the provisions of [this]¹⁹³ Chapter and the appropriate requirements under the applicable Part of this Act being satisfied.

¹⁹² Substituted by point 170 of Seanad Committee Amendments.

¹⁹³ Inserted by point 171 of Seanad Committee Amendments.

(2) Registration on foot of such an application shall not be invalid by reason that it has taken place with a view to the company's being wound up.

(3) Notwithstanding anything in this Part and, in particular, the definition of "joint stock company" in *Chapter 5, subsection (1)* applies to, amongst other bodies corporate, the Governor and Company of the Bank of Ireland and *Chapter 5* shall not apply to the latter body corporate.

[\[4\) Notwithstanding anything in paragraph \(a\) of that subsection, subsection \(1\) applies to, amongst other bodies corporate, a society registered under the Industrial and Provident Societies Acts 1893 to 2014.\]¹⁹⁴](#)

Requirements for registration under this Chapter as company.

[1316]. (1) A body corporate shall not be registered under this Chapter as any particular type of company referred to in *section [1315]* without the assent (in this Chapter referred to as a "registration resolution") to its registration as that type of company given by a majority of such of its members as, being entitled so to do, vote in person or, where proxies are allowed, by proxy at a general meeting summoned for the purpose.

(2) In computing any majority under this section, when a poll is demanded, regard shall be had to the number of votes to which the member is entitled according to the regulations of the body corporate concerned.

(3) Before a registration resolution is moved, a statement in accordance with *subsection (4)* shall be sent, 21 days before the date of the moving of the resolution, by the body corporate concerned to every member of it entitled to notice of the meeting of it at which the registration resolution is to be moved.

(4) Every statement required by *subsection (3)* shall—

(a) state the type of company that the body corporate is proposed to be registered as;

(b) state the name of the proposed company;

(c) state the reasons for the proposal to register;

(d) summarise the principal implications of the registration for members; and

(e) indicate the place where there may be obtained or inspected, in either case free of charge, the memorandum of association and articles of association of the proposed company that comply, or, if the proposed company is a private company limited by shares, the constitution of it referred to in *section 19* that complies, with the requirements of this Act,

and copies of that memorandum and articles or that constitution shall, accordingly, be made available for such supply or inspection to

¹⁹⁴ [Inserted by point 149 of Seanad Report Amendments.](#)

or by every member entitled to the foregoing notice at the place so indicated.

(5) As long as a document referred to in *subsection (4)(e)* is also made available for such supply or inspection in hardcopy form, it shall be permissible to include in the foregoing statement, as well as the indication required by *subsection (4)(e)* concerning the hardcopy form, an indication that that document may be –

- (a) inspected on; and
- (b) downloaded and printed from,

a website of the body corporate free of charge.

(6) If an assent of the body corporate's members to such registration has (by means of a registration resolution in accordance with *subsection (1)*) been given, a body corporate may, in the prescribed form, apply to the Registrar to be registered under this Chapter as the type of company concerned.

(7) Such an application shall be made within 30 days after the date of the meeting at which that assent was given.

(8) Such an application shall be accompanied by the following documents -

- (a) a copy of the statement required by *subsection (3)* and of the registration resolution, each certified by a director or other officer of the body corporate;
- (b) a list showing the names and addresses of all persons who, on a date specified in the list (not being more than 28 days before the date on which the application is received by the Registrar) were members of the body corporate, specifying the shares or stock held by them respectively (distinguishing, in cases where the shares or stock are numbered, each share or unit of stock by its number);
- (c) the nominal share capital of the body corporate and the number of shares into which it is divided, or the amount of stock of which it consists;
- (d) the number of shares of the body corporate taken and the amount paid on each share; and
- (e) the memorandum of association and articles of association of the proposed company.

Particular requirements for registration of body corporate as a PLC.

[1317]. (1) A body corporate may be registered under this Chapter as a PLC if, in addition to the preceding section and *section [1318]* being complied with, the following requirements are complied with -

- (a) the body corporate delivers, with the application under *section [1316](6)*, the following documents to the Registrar:
 - (i) a copy of a balance sheet of the body prepared as at a date not more than 7 months before the date of receipt by the Registrar of the application;
 - (ii) an unqualified report by the body's statutory auditors on that balance sheet;

- (iii) a copy of a written statement by those auditors that, at the balance sheet date, the amount of the body's net assets was not, in their opinion, less than the aggregate of its called-up share capital and undistributable reserves;
- (iv) a copy of any report prepared under *section [1318]*; and
- (v) a statement by a director or secretary of the body confirming –

- (I) that the requirements of *section [1318]* and *section [1319](2)* (where applicable) have been complied with; and

- (II) that, between the balance sheet date and the date of the making by the body of application for registration, there has been no change in the financial position of the body that has resulted in the amount of the body's net assets becoming less than the aggregate of its called-up share capital and undistributable reserves;

and

- (b) where the liability of the members of the body is unlimited, the registration resolution includes a statement that the liability of the members of the proposed company is to be limited by shares and specifying what is to be the authorised share capital of the proposed company and the fixed amount of the shares into which that share capital is to be divided.

(2) The Registrar may accept a statement under *paragraph (a)(v) of subsection (1)* as sufficient evidence that the requirements referred to in *clause (1)* of that provision have been complied with.

(3) The Registrar shall not, on foot of the application to register a body corporate under this Chapter as a PLC, issue a certificate of incorporation under *section [1323]* if it appears to the Registrar that –

- (a) by, either of the means specified in *section [84](2)(b)*, a reduction of the body's capital has taken place after the date of the passing of the registration resolution; and
- (b) the reduction has the effect of bringing the nominal value of the body's allotted share capital below the authorised minimum.

(4) A qualification shall be treated for the purposes of the definition of an “unqualified report” in *subsection (7)* 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 body corporate's net assets was not less than the aggregate of its called-up share capital and undistributable reserves.

(5) 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 (7), 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.

(6) 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.

(7) In this section—

“undistributable reserves” has the same meaning as in *section [10841082]*;

“unqualified report” means, in relation to the balance sheet of a body corporate, 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 body’s assets, liabilities and equity as at the balance sheet date.

Requirements as to share capital of body corporate applying to register as a PLC.

[1318]. A body corporate shall not be registered under this Chapter as a PLC unless, at the time the registration resolution is passed—

(a) the nominal value of the body’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 body 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 body 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 body either—

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

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

Shares allotted by body corporate applying to register as PLC between balance sheet date and passing of registration resolution.

[1319]. (1) This section applies where –

- (a) shares are allotted by a body corporate applying to register under this Chapter as a PLC between the balance sheet date and the passing of the registration resolution; 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 body corporate shall not make an application under this Chapter to register as a PLC 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 body 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+030](5) to (11)*;
- (b) *section [1029+031](4)*; and
- (c) *section [1030+032]*,

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 [1317](1)(a)* is prepared.

Application of certain other provisions of Part 17 on allotments to a body that passed resolution for registration as a PLC.

[1320]. *Sections [1025+027] to [1033+035] and [1036+038], [1037+039] and [1038+040]* shall apply to a body corporate which has

passed and not revoked a resolution that the body be registered under this Chapter as a PLC as those sections apply to a PLC.

Regulations for special cases.

[1321]. (1) With respect to -

- (a) an application that may be made by a body corporate, being a body corporate which does not have a share capital, to register under this Chapter as a company which does have a share capital; or
- (b) an application that may be made by a body corporate to register under this Chapter as a company that is not a PLC,

the Minister may make regulations specifying requirements, additional to those contained in the preceding provisions of this Chapter, that must be complied with before the application may be acceded to by the Registrar.

(2) The requirements that may be so specified may, in the case of an application referred to in *subsection (1)(a)*, include requirements analogous to those in *section [1286]*.

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

Change of name for purposes of registration.

[1322]. (1) Subject to *subsection (2)*, where the name of a body seeking registration under this Chapter is one by which it may not be so registered by reason of the name being, in the opinion of the Registrar, undesirable, it may, with the approval of the Registrar signified in writing, change its name with effect from its registration under this Chapter.

(2) The like assent of the members of the body shall be required to the change of name as is by *section [1316](1)* required to the registration under this Chapter.

Registration and its effects.

[1323]. (1) On compliance with the requirements of this Chapter with respect to registration, the Registrar shall certify in writing that the body applying for registration is incorporated, on a date specified by the Registrar, as the type of company specified in the application and shall issue to the company a certificate of incorporation in respect of it, and upon the foregoing date the company shall be so incorporated.

(2) In this Chapter, the foregoing date is referred to as the “registration date”.

(3) A certificate issued under this section in respect of a company shall be conclusive evidence that the requirements of this Chapter

in respect of registration and of matters precedent and incidental thereto have been complied with and that the company is duly registered under this Act.

(4) On and from the registration date the following provisions have effect –

- (a) the provisions of this Act relating to the numbering of shares shall not apply to stock that had been issued, or shares, not numbered, that had been issued, by the company in its former status before that date;
- (b) for the purposes of any provision of this Act which requires delivery of a document or return to the Registrar, the company shall not be obliged to so deliver any document or return, which relates to the period prior to the registration date, if it would not have been required to deliver such document or return had it not registered as a company;
- (c) in the event of the company being wound up, every person shall be a contributory, in respect of the debts and liabilities of the company in its former status contracted before the registration date, who is liable to pay or contribute to the payment of –
 - (i) any debt or liability of the company in its former status contracted or incurred before that date;
 - (ii) any sum for the adjustment of the rights of the members among themselves in respect of any such debt or liability; or
 - (iii) the costs and expenses of winding up the company,so far as relates to the foregoing debts or liabilities;
- (d) in the event of the company being wound up, every contributory shall be liable to contribute to the assets of the company, in the course of the winding up, all sums due from him or her in respect of any such liability as is mentioned in *paragraph (c)*, and, in the event of the death or bankruptcy of any contributory, the provisions of this Act relating to the personal representatives of deceased contributories and to the assignees in bankruptcy of bankrupt contributories, respectively, shall apply.

(5) All property, real and personal (including things in action), belonging to or vested in a body corporate registering under this Chapter as a company, shall, on the registration date, pass to and vest in that company for all the estate and interest of the body corporate therein.

(6) Registration under this Chapter shall not affect –

- (a) the rights or liabilities of the company in its former status in respect of any debt or obligation incurred, or any contract entered into by, to, with or on behalf of, it in its former status before the registration date; or
- (b) the priority of any mortgage, charge, pledge or other security or encumbrance created by the company in its former status before the registration date.

(7) All actions and other legal proceedings which, at the registration date, are pending by or against the company in its former status, or any officer or member thereof, may be continued in the same manner as if the registration of it in its new status had not taken place.

Supplemental provisions in relation to section [1323].

[1324]. Without prejudice to the generality of section [1323](4) to (7), the following provisions shall have effect where a body corporate registers under this Chapter as a company, that is to say -

- (a) a reference (express or implied) to the body corporate in any instrument made, given, passed, or executed before the registration date shall be read as a reference to the company;
- (b) all contracts, agreements, conveyances, mortgages, deeds, leases, licences, other instruments, undertakings and notices (whether or not in writing) entered into by, made with, given to or by, or addressed to the body corporate (whether alone or with any other person) before the registration date and subsisting immediately before the registration date shall, to the extent that they were previously binding on and enforceable by, against, or in favour of the body corporate, be binding on and enforceable by, against, or in favour of the company as fully and effectually in every respect as if, instead of the body corporate, the company had been the person by whom they were entered into, with whom they were made, or to or by whom they were given or addressed as the case may be;
- (c) an instruction, order, direction, mandate, or authority given to the body corporate and subsisting immediately before the registration date shall be deemed to have been given to the company;
- (d) a security held by the body corporate as security for a debt or other liability to the body corporate incurred before the registration date shall be available to the company as security for the discharge of that debt or liability and, where the security extends to future or prospective debts or liabilities, shall be available as security for the discharge of debts or liabilities to the company incurred on or after the registration date, and, in relation to a security, the company, shall be entitled to all the rights and priorities (howsoever arising) and shall be subject to all liabilities to which the body corporate would have been entitled or subject if the body corporate had not become registered as a company;
- (e) all the rights and liabilities of the body corporate as bailor or bailee of documents or chattels shall be vested in and assumed by the company;
- (f) a negotiable instrument or order for payment of money which, before the registration date is drawn on or given to or accepted or endorsed by the body corporate or payable at a place of business of the body corporate shall, unless the context otherwise requires, have the same effect on and after the registration date as if it had been drawn on or given to or accepted or endorsed by the company instead of the body corporate or was payable at the place of business of the company;
- (g) nothing effected or authorised by this Chapter—
 - (i) shall be regarded as placing the body corporate, or the company, or any other person, in breach of contract or confidence or as otherwise making any of them guilty of a civil wrong; or
 - (ii) shall be regarded as giving rise to a right to any person to terminate or cancel any contract or arrangement or to accelerate the performance of any obligation; or
 - (iii) shall be regarded as placing the body corporate or the company, or any other person in contravention or breach of any enactment or rule of law or contractual provision prohibiting, restricting or regulating the

assignment or transfer of any property or the disclosure of any information; or

- (iv) shall release any surety, wholly or in part, from any obligation; or
- (v) shall invalidate or discharge any contract or security.

Consequential repeals.

[1325]. (1) The statutes specified in *Part 1* of *Schedule 15* are repealed to the extent specified in the third column of that Part.

(2) The charters or instruments specified in *Part 2* of *Schedule 15* are revoked to the extent specified in the second column of that Part.

Chapter 3

Winding up of unregistered company

Chapter 3 – construction of expression “unregistered company”.

[1326]. For the purposes of this Chapter “unregistered company” includes any trustee savings bank licensed under the Trustee Savings Banks Act 1989, any partnership whether limited or not, any association and any company other than —

- (a) a company as defined by *section 2(1)*;
- (b) a partnership, association or company which consists of less than 8 members and is not formed outside the State.

Restriction of this Chapter.

[1327]. This Chapter is subject to Chapters I (general provisions) and III (secondary insolvency proceedings) of the Insolvency Regulation.

Winding up of unregistered companies.

[1328]. (1) Subject to the provisions of this Chapter, any unregistered company may be wound up under *Part 11* and all the provisions of *Part 11* relating to winding up shall apply to an unregistered company with the exceptions and additions mentioned in this section.

(2) The principal place of business in the State of an unregistered company shall, for all the purposes of the winding up, be deemed to be the registered office of the company.

(3) No unregistered company shall be wound up under this Act voluntarily.

(4) The circumstances in which an unregistered company may be wound up are as follows—

- (a) if the company is dissolved or has ceased to carry on business or is carrying on business only for the purpose of winding up its affairs;
- (b) if the company is unable to pay its debts;
- (c) if the court is of the opinion that it is just and equitable that the company should be wound up.

(5) A petition for winding up a trustee savings bank licensed under the Trustee Savings Banks Act 1989 may be presented by the Minister for Finance as well as by any person authorised under the other provisions of this Act to present a petition for winding up a company.

(6) Where a company incorporated outside the State which has been carrying on business in the State ceases to carry on business in the State it may be wound up as an unregistered company under this Part notwithstanding that it has been dissolved or otherwise ceased to exist as a company under or by virtue of the laws of the country under which it was incorporated.

Cases in which unregistered company shall be deemed to be unable to pay its debts.

[1329]. (1) In any of the following 4 cases, that is to say, those to which *subsections (2) to (5)* relate, an unregistered company shall be deemed to be unable to pay its debts for the purposes of this Chapter.

(2) This subsection relates to a case in which –

- (a) a creditor, by assignment or otherwise, to whom the company is indebted in a sum exceeding €10,000 then due, has served on the company –
 - (i) by leaving at its principal place of business in the State;
 - (ii) by delivering to the secretary or some director or principal officer of the company; or
 - (iii) by serving otherwise in such manner as the court may approve or direct,a demand in writing requiring the company to pay the sum so due; and
- (b) the company has, for 21 days after the date of the service of the demand, neglected to pay the amount or to secure or compound for it to the satisfaction of the creditor.

(3) This subsection relates to a case in which –

- (a) any action or other proceeding has been instituted against any person who is a member of the company for any debt or demand due, or claimed to be due, from the company or from the person in his or her character as member of it;
- (b) notice in writing that that action or proceeding has been instituted has been served, by the means referred to in *subsection (2)(a)(i),(ii) or (iii)*, on the company;

and

(c) the company has not, within 10 days after the date of service of the notice, paid, secured or compounded for the debt or demand or procured the action or proceeding to be stayed or indemnified the defendant to his or her reasonable satisfaction against the action or proceeding and against all costs, damages and expenses to be incurred by the defendant by reason of the action or proceeding.

(4) This subsection relates to a case in which, in the State or in any state recognised by the Minister for the purposes of *section [1417]* there has been returned unsatisfied execution or other process issued on a judgement, decree or order obtained in any court in favour of a creditor against –

- (a) the company;
- (b) any person, being a member of the company, in his or her character as such member; or
- (c) any person authorised to be sued as nominal defendant on behalf of the company.

(5) This subsection relates to a case in which it is otherwise proved to the satisfaction of the court that the company is unable to pay its debts.

Contributories in winding up of unregistered company.

[1330]. (1) In the event of an unregistered company being wound up, every person shall be deemed to be a contributory who is liable to pay or contribute to the payment of -

- (a) any debt or liability of the company;
- (b) any sum for the adjustment of the rights of the members among themselves; or
- (c) the costs and expenses of winding up the company,

and every contributory shall be liable to contribute to the assets of the company, all sums due from him or her in respect of any such liability as is mentioned in the preceding paragraphs.

(2) In the event of the death or bankruptcy of any contributory, the provisions of this Act relating to the personal representatives of deceased contributories and to the assignees in bankruptcy of bankrupt contributories, respectively, shall apply.

Power of court to stay or restrain proceedings.

[1331]. The provisions of this Act relating to staying and restraining actions and proceedings against a company at any time after the presentation of a petition for winding up and before the making of a winding-up order shall, in the case of an unregistered company where the application to stay or restrain is by a creditor, extend to actions and proceedings against any contributory of the company.

Actions stayed on winding-up order.

[1332]. Where an order has been made for winding up an unregistered company, no action or proceeding shall be proceeded with or commenced against any contributory of the company in respect of any debt of the company, except by leave of the court and subject to such

terms as the court may impose.

Provisions of this Chapter to be cumulative.

[1333]. The provisions of this Chapter relating to unregistered companies shall be in addition to and not in restriction of any provisions contained in *Part II* relating to winding up companies by the court and the court or liquidator may exercise any powers or do any act in the case of unregistered companies which might be exercised or done by it or him or her in winding up companies formed and registered under this Act.

Chapter 4

Provisions concerning companies registered, but not formed, under former Acts and certain other existing companies

Application of Act to companies registered but not formed under former Companies Acts.

[1334]. (1) Subject to *subsection (2)*, this Act shall apply to every company registered (in a register kept in the State) but not formed under -

- (a) the Joint Stock Companies Acts;
- (b) the Companies Act 1862;
- (c) the Companies (Consolidation) Act 1908; or
- (d) the prior Companies Acts,

in the same manner as it is in *Chapter 5* declared to apply to companies registered but not formed under this Act.

(2) In this Act a reference, express or implied, to the date of registration shall, in the case of a company registered but not formed under a foregoing enactment, be read as a reference to the date at which the company was registered under -

- (a) the Joint Stock Companies Acts;
- (b) the Companies Act 1862;
- (c) the Companies (Consolidation) Act 1908; or
- (d) the prior Companies Acts,

as the case may be.

Application of Act to unlimited companies re-registered as limited companies under certain former enactments.

[1335]. (1) Subject to *subsection (2)*, this Act shall apply to every unlimited company registered (in a register kept in the State) as a limited company in pursuance of -

- (a) the Companies Act 1879; or
- (b) section 57 of the Companies (Consolidation) Act 1908,

in the same manner as it applies to an unlimited company re-registered in pursuance of this Act as a limited company.

(2) In this Act a reference, express or implied, to the date of registration shall, in the case of an unlimited company registered as a limited company in pursuance of an enactment referred to in *paragraph (a) or (b)*, as the case may be, of *subsection (1)*, be read as a reference to the date on which it was registered as such in pursuance of the enactment referred to in that paragraph.

Provisions as to companies registered under Joint Stock Companies Acts.

[1336]. (1) A company registered under the Joint Stock Companies Acts may cause its shares to be transferred in manner hitherto in use, or in such other manner as the company may direct.

(2) The power conferred by this Act on a company (not being a private company limited by shares) to alter its articles shall, in the case of an unlimited company formed and registered under the Joint Stock Companies Acts, extend to altering any regulations relating to the amount of capital or to its distribution into shares, notwithstanding that those regulations are contained in the memorandum.

Chapter 5

Registration of joint stock companies under this Act

Interpretation (Chapter 5).

[1337]. In this Chapter –

“joint stock company” means a company -

- (a) having a permanent paid up or nominal share capital of fixed amount divided into shares, also of fixed amount, or held and transferable as stock, or divided and held partly in one way and partly in the other; and
- (b) formed on the principle of having for its members the holders of those shares or that stock, and no other persons, and such a company when registered with limited liability under this Chapter shall be deemed to be a company limited by shares;

“registration date” shall be read in accordance with *section [1343](2)*;

“registration resolution” shall be read in accordance with *section [1338](6)*.

Companies capable of being registered.

[1338]. (1) With the exceptions and subject to the provisions contained in this section, any –

- (a) company registered under the Joint Stock Companies Acts; or
- (b) joint stock company,

may at any time register under this Chapter as –

- (i) a private company limited by shares;
- (ii) a designated activity company;
- (iii) a company limited by guarantee; or

(iv) an unlimited company,

and the registration shall not be invalid by reason that it has taken place with a view to the company's being wound up.

(2) This section shall not apply to a company unless it has its registered office or principal place of business in the State.

(3) A company having the liability of its members limited by statute or letters patent, and not being a joint stock company, shall not register under this Chapter.

(4) A company, having the liability of its members limited by statute or letters patent, shall not register under this Chapter as an unlimited company or as a company limited by guarantee.

(5) A company that is not a joint stock company shall not register under this Chapter as a company limited by shares.

(6) A company shall not be registered under this Chapter as any particular type of company referred to in *subsection (1)* without the assent (in this Chapter referred to as a "registration resolution") to its registration as that type of company given, subject to *subsection (7)*, by a majority of such of its members as are present in person or by proxy at a general meeting summoned for the purpose.

(7) Where a company, not having the liability of its members limited by statute or letters patent, is about to register as a limited company, the majority required to assent as mentioned in *subsection (6)* shall consist of not less than three-fourths of the members present in person or by proxy at the meeting.

(8) Where a company is about to register as a company limited by guarantee, the assent to its being so registered shall be accompanied by a resolution declaring that each member undertakes to contribute to the assets of the company, in the event of its being wound up while he or she is a member, or within one year after the date on which he or she ceases to be a member –

(a) for payment of the debts and liabilities of the company contracted before he or she ceased to be a member;

(b) for payment of the costs and expenses of winding up; and

(c) for the adjustment of the rights of the contributories among themselves,

such amount as may be required, not exceeding an amount specified in the resolution.

(9) In computing any majority under this section when a poll is demanded, regard shall be had to the number of votes to which each member is entitled according to the regulations of the company.

(10) *Section [1322]* shall apply for the purposes of this section as it applies for the purposes of *Chapter 2* with the substitution for the reference in *subsection (2)* of that section to *section [1316](1)* of a reference to *subsection (6)* or *(7)*, as the case may be, of this

section and any other necessary modifications.

Requirements for registration of joint stock companies.

[1339]. Before the registration of a joint stock company under this Chapter as a company, there shall be delivered to the Registrar the following documents—

(a) a list showing the names, addresses and occupations of all persons who on a day named in the list, not being more than 6 days before the day of registration, were members of the company, specifying the shares or stock held by them respectively (distinguishing, in cases where the shares are numbered, each share by its number);

(b) a copy of any statute, charter, letters patent, deed of settlement, contract of copartnership or other instrument constituting or regulating the company; and

(c) if the company is intended to be registered as a limited company, a statement specifying the following particulars in relation to that proposed limited company -

(i) the nominal share capital of the company and the number of shares into which it is divided, or the amount of stock of which it consists;

(ii) the number of shares taken and the amount paid on each share;

(iii) the name of the company with the addition of, as appropriate –

(I) “limited” or “teoranta”;

(II) “designated activity company” or “cuideachta ghníomhaíochta ainmnithe”;

(III) “company limited by guarantee” or “cuideachta faoi theorainn rathaiochta”;

(IV) “unlimited company or “cuideachta neamhtheoranta”,

as the last word or words thereof;

and

(iv) in the case of a company intended to be registered as a company limited by guarantee, the resolution declaring the amount of the guarantee.

Verifications of lists of members and directors of company for purposes of registration.

[1340]. The lists of members and directors and any other particulars relating to the company required to be delivered under this Chapter to the Registrar shall be verified by a declaration of any 2 or more directors or other principal officers of the company.

Registrar may require evidence as to nature of company.

[1341]. The Registrar may require such evidence as the Registrar thinks necessary for the purpose of satisfying himself or herself whether any company which proposes to be registered under this Chapter is or is not a joint stock company.

Addition of “limited” or “teoranta”, etc to name.

[1342]. (1) Subject to *subsection (2)*, when a company registers under this Chapter with limited liability, the words -

- (a) “limited” or “teoranta”;
- (b) “designated activity company” or “cuideachta ghníomhaíochta ainmnithe”;
- (c) “company limited by guarantee” or “cuideachta faoi theorainn rathaíochta”,

as the case may be, shall form and be registered as part of its name.

(2) *Subsection (1)* shall not be taken as excluding the operation of *section [971973]* or [~~11781180~~].

(3) When a company registers under this Chapter with unlimited liability, the words [“unlimited company”]¹⁹⁵ or “cuideachta neamhtheoranta” shall form and be registered as part of its name.

Certificate of registration of existing company.

[1343]. (1) On compliance with the requirements of this Chapter with respect to registration, the Registrar shall certify in writing that the company applying for registration is incorporated, on a date specified by the Registrar, as the type of company specified in the application and shall issue to the company a certificate of incorporation in respect of it, and upon the foregoing date the company shall be so incorporated.

(2) In this Chapter, the foregoing date is referred to as the “registration date”.

(3) A certificate issued under this section in respect of a company shall be conclusive evidence that the requirements of this Chapter in respect of registration and of matters precedent and incidental thereto have been complied with and that the company is duly registered under this Act.

Effects of registration under this Chapter.

[1344]. (1) When a company is registered under this Chapter, the following provisions shall have effect.

(2) *Section [1323](5)* and (6) and, subject to *subsection (3)*, *section [1323](7)* shall apply to the company as they apply to a body corporate that has registered under *Chapter 2* as a company.

(3) Notwithstanding *section [1323](7)*, execution shall not issue against the effects of any individual member of the company on any judgment, decree or order obtained in any such action or proceeding as is mentioned in *section [1323](7)*, but in the

¹⁹⁵ Substituted by point 261 of Report Amendments.

event of the property and effects of the company being insufficient to satisfy the judgment, decree or order, an order may be obtained for winding up the company.

(4) *Subsection (5)* applies unless the company has registered under this Chapter as a private company limited by shares.

(5) All provisions contained in any statute or instrument constituting or regulating the company, including, in the case of a company registered as a company limited by guarantee, the resolution declaring the amount of the guarantee, shall be deemed to be conditions and regulations of the company, in the same manner and with the same incidents as if –

- (a) so much of them as would, if the company had been formed under this Act, have been required to be inserted in the memorandum, were contained in a registered memorandum; and
- (b) the residue of them were contained in registered articles.

(6) If the company has registered under this Chapter as a private company limited by shares, all provisions contained in any statute or instrument constituting or regulating the company shall be deemed to be conditions and regulations of the company, in the same manner and with the same incidents as if they were contained in a registered constitution.

(7) All the provisions of this Act shall apply to the company and the members, contributories and creditors thereof, in the same manner in all respects as if it had been formed under this Act, subject as follows—

- (a) the provisions of this Act relating to the numbering of shares shall not apply to any stock that had been issued, or shares, not numbered, that had been issued, by the company in its former status before the registration date;
- (b) subject to the provisions of this section, the company shall not have power to alter any provision contained in any statute relating to the company;
- (c) subject to the provisions of this section, the company shall not have power, without the sanction of the Minister, to alter any provision contained in any letters patent relating to the company;
- (d) the company shall not have power to alter any provision contained in a charter or letters patent relating to the objects of the company;
- (e) in the event of the company being wound up, every person shall be a contributory, in respect of the debts and liabilities of the company in its former status contracted before registration, who is liable to pay or contribute to the payment of –
 - (i) any debt or liability of the company in its former status contracted or incurred before the registration date;
 - (ii) any sum for the adjustment of the rights of the members among themselves in respect of any such debt or liability;
 - (iii) the costs and expenses of winding up the company,so far as relates to the foregoing debts or liabilities;

(f) in the event of the company being wound up, every contributory shall be liable to contribute to the assets of the company, in the course of the winding up, all sums due from him or her in respect of any such liability as is mentioned in *paragraph (e)*, and in the event of the death or bankruptcy of any contributory, the provisions of this Act relating to the personal representatives of deceased contributories and to the assignees in bankruptcy of bankrupt contributories, respectively, shall apply.

(8) The provisions of this Act relating to—

(a) the registration of an unlimited company as limited;

(b) the powers of an unlimited company on registration as a limited company to increase the nominal amount of its share capital and to provide that a portion of its share capital shall not be capable of being called up except in the event of winding up;

(c) the power of a limited company to determine that a portion of its share capital shall not be capable of being called up except in the event of winding up;

shall apply notwithstanding any provisions contained in any statute, charter or other instrument constituting or regulating the company.

(9) Nothing in this section shall authorise the company, not being a private company limited by shares, to alter any such provisions contained in any instrument constituting or regulating the company as would, if the company had originally been formed under this Act, have been required to be contained in the memorandum and are not authorised to be altered by this Act.

(10) None of the provisions of this Act (apart from *section [212](4)*) shall derogate from any power of altering its constitution or regulations which may, by virtue of any statute or other instrument constituting or regulating the company, be vested in the company.

(11) In this section “instrument” includes deed of settlement, contract of co-partnery and letters patent.

Power to substitute memorandum and articles for deed of settlement.

[1345]. (1) Subject to *subsections (2) to (4)*, a company registered under this Chapter may, by special resolution, alter the form of its constitution by substituting a memorandum and articles for a deed of settlement.

(2) The provisions of *sections [974976]* and *[975977]* relating to applications to the court for cancellation of alterations of the objects of a designated activity company and matters consequential on the passing of resolutions for such alterations shall, so far as applicable, apply to an alteration under this section with the following modifications—

(a) there shall be substituted for the copy of the altered memorandum, required to be delivered to the Registrar, a copy of the substituted memorandum and articles; and

(b) on the delivery to the Registrar of a copy of the substituted memorandum and articles or on the date when the alteration is no longer liable to be cancelled by order of the court, whichever last occurs, the substituted memorandum and articles shall apply to the company in the same manner as if it were a company registered under this Act, with that memorandum and those articles, and the company's deed of settlement shall cease to apply to the company.

(3) An alteration under this section may be made either with or without any alteration of the objects of the company under this Act.

(4) In this section "deed of settlement" includes any contract of co-partnership or other instrument constituting or regulating the company, not being a statute, charter or letters patent.

Power of court to stay or restrain proceedings.

[1346]. The provisions of this Act relating to staying and restraining actions and proceedings against a company at any time after the presentation of a petition for winding up and before the making of a winding-up order shall, in the case of a company registered under this Chapter, where the application to stay or restrain is by a creditor, extend to actions and proceedings against any contributory of the company.

Actions stayed on winding-up order.

[1347]. Where an order has been made for winding up a company registered under this Chapter, no action or proceeding shall be commenced or proceeded with against the company or any contributory of the company, in respect of any debt of the company except by leave of the court and subject to such terms as the court may impose.