
COMPANIES BILL 2012

Unofficial version

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PART 2

INCORPORATION AND REGISTRATION

Chapter 1

Preliminary

Definitions (*Part 2*).

15. In this Part -

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

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

- (a) was incorporated under any former enactment relating to companies (within the meaning of *section 5*); and
- (b) is in existence at the commencement of this section,

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

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

“relevant classification system” means [NACE Rev. 2]¹³, that is to say, the common basis for statistical classifications of economic activities within the European Community set out in the Annex to Council Regulation (EEC) No.3037/90 of 9 October 1990 on the statistical classification of economic activities in the European Community, as amended for the time being;

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

Extension of transition period in the event of difficulties.

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

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

¹³ Substituted by point 4 of Committee Amendments.

Chapter 2

Incorporation and consequential matters

Way of forming private company limited by shares.

17. (1) A company may be formed for any lawful purpose by any person or persons subscribing to a constitution and complying with the requirements of this Part as to registration of a company.

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

(3) *Subsection (2)* is without prejudice to any other liability to which a member may be subject as provided by this Act.

(4) The number of members of a company shall not exceed 149 but, in reckoning that limit, there shall be disregarded any of the following persons.

(5) Those persons are -

- (a) a person in the employment of the company who is a member of it;
- (b) a person who, having been formerly in the employment of the company, was, while in that employment, and has continued after the termination of the employment to be, a member of it.

(6) Where 2 or more persons hold one or more shares in a company jointly, they shall, for the purposes of this section, be treated as a single member.

(7) Any registration of a person as a member of a company in excess of the limit provided by *subsection (4)* shall be void.

[Company to carry on activity in the State and prohibition of certain activities

18. (1) A company shall not be formed or registered unless it appears to the Registrar that the company, when registered, will carry on an activity in the State.

(2) A company shall not carry on the activity of a [credit institution]¹⁴ or an insurance undertaking.¹⁵

Form of the constitution.

19. (1) The constitution of a company shall state –

- (a) the company's name;
- (b) that it is a private company limited by shares registered under this Part;
- [(c) that the liability of its members is limited;]¹⁶
- [(d) as respects its share capital, either –
 - (i) the amount of share capital with which it proposes to be registered (“its authorised share capital”), and the division of that capital into shares of a fixed amount specified in the constitution, or

¹⁴ Substituted by point 5 of Report Amendments.

¹⁵ Substituted by point 5 of Committee Amendments.

¹⁶ Inserted by point 4 of Seanad Committee Amendments.

- (ii) without stating such amount, that the share capital of the company shall, at the time of its registration, stand divided into shares of a fixed amount specified in the constitution;
- ([e]) the number of shares (which shall not be less than one) taken by each subscriber to the constitution; and
- ([f]) if the company adopts supplemental regulations, those regulations.

(2) The constitution shall –

- (a) be in a form in accordance with the form set out in *Schedule 1* or as near to it as circumstances permit;
- (b) be divided into paragraphs numbered consecutively; and
- (c) either –
 - (i) be signed by each subscriber in the presence of at least one witness who shall attest the signature; or
 - (ii) be authenticated in the manner referred to in *section [888]*.

[3) Where, subsequent to its registration, an amendment of the constitution is made affecting the matter of share capital, or another matter, referred to in *subsection (1)*, that subsection shall be read as requiring the constitution to state the matter as it stands in consequence of that amendment.]¹⁷

Restriction on amendment of constitution.

20. A company may not amend the provisions contained in its constitution except in the cases, in the manner and to the extent for which express provision is made in this Act.

Registration of constitution.

21. (1) The constitution of a company shall be delivered for registration to the Registrar together with –

- (a) the statement and consent referred to in *section 22*; and
- (b) the declaration referred to in *section 24*,

and, where appropriate -

- (i) the bond referred to in *section 22(6)*;
- (ii) the statement referred to in *section 23*.

(2) The Registrar shall not register a constitution delivered for registration under this section unless he or she is satisfied that all the requirements of this Act in respect of registration and of matters precedent and incidental thereto have been complied with.

Statement to be delivered with constitution.

22. (1) In this section –

- (a) a reference to a statement is to the statement required to be delivered by *section 21(1)(a)*; and

¹⁷ Inserted by point 5 of Seanad Committee Amendments.

(b) a reference to a company is to the company to which such statement relates.

(2) The statement shall be in the prescribed form and shall state:

- (a) the name of each of the persons who are to be the first directors of the company;
- (b) the name of the person who is, or of each of the persons who are, to be the first secretary or joint secretaries of the company;
- (c) the name of the person (if any) who is, or of each of the persons (if any) who are, to be the first assistant or deputy secretary or secretaries of the company;
- (d) the address of the company's registered office; and
- (e) the place (whether in the State or not) where the central administration of the company will normally be carried on,

and the particulars (in relation to any foregoing person) specified in *subsection (3)* and any other particulars that may be prescribed in relation to such a person or in relation to any other foregoing matter.

(3) The particulars referred to in *subsection (2)* are –

- (a) in relation to a person named as director of the company concerned, all particulars which are, in relation to a director, required pursuant to *subsection (2) of section [149]* to be contained in the register kept under that section;
- (b) in relation to a person named as secretary, or as one of the joint secretaries, all particulars which are, in relation to the secretary or to each joint secretary, required pursuant to *subsection (5) of section [149]* to be contained in the register kept under that section; and
- (c) in relation to a person named as assistant or deputy secretary, all particulars which are, in relation to an assistant or deputy secretary, required pursuant to *subsection (7) of section [149]* to be contained in the register kept under that section.

(4) Where the constitution is delivered, pursuant to *section 21*, to the Registrar by a person (the “agent”) as agent for the person or persons who have subscribed to the constitution, the statement shall so specify and shall specify the name and address of the agent.

(5) *Subsections (2) and (3)* are without prejudice to *subsection (7)*.

(6) Where no person referred to in *subsection (2)(a)* is resident in an EEA state, there shall be delivered for registration a bond as provided by *section [137](2)*.

(7) In respect of the activity, or one of the activities, to be carried on by the company in the State, the statement shall contain the following particulars:

- (a) if it appears to the person making the statement that the activity belongs to a division, group and class appearing in the relevant classification system -
 - (i) the general nature of the activity; and
 - (ii) the division, group and class in that system to which the activity belongs;
- (b) if it appears to that person that the activity does not belong to any such division, group and class, a precise description of the activity;

(c) the place or places in the State where it is proposed to carry on the activity.

(8) For the purposes of *subsection (7)*, if the purpose or one of the purposes for which the company is being formed is the carrying on of 2 or more activities in the State, the particulars in respect of the matters referred to in *paragraphs (a) to (c)* of that subsection to be given in the statement shall be the particulars that relate to whichever of those activities the person making the statement considers to be the principal activity for which the company is being formed to carry on in the State.

(9) The statement shall -

(a) be signed by or on behalf of each subscriber to the constitution of the company [or be authenticated in the manner referred to in *section [888]*¹⁸]; and

[(b) be accompanied by a consent that is either—

(i) signed by each of the persons named in the statement as a director, secretary or joint secretary or assistant or deputy secretary to act in that capacity, or

(ii) authenticated in the manner referred to in *section [888]*.]¹⁹

(10) *Section [223](3)*, in the case of a director, and *section [226](5)*, in the case of a secretary, requires the inclusion of a particular statement in a foregoing consent by him or her.

Additional statement to be furnished in certain circumstances.

23. (1) If any person named in the statement to be delivered under *section 21(1)(a)* as a director of the company concerned is a person who is disqualified under the law of another state (whether pursuant to an order of a judge or a tribunal or otherwise) from being appointed or acting as a director or secretary of a body corporate or an undertaking, that person has the following obligation.

(2) That obligation is to ensure that the foregoing statement is accompanied by (but as a separate document from that statement) a statement in the prescribed form signed by him or her [or authenticated in the manner referred to in *section [888]*]²⁰ specifying –

(a) the jurisdiction in which he or she is so disqualified;

(b) the date on which he or she became so disqualified; and

(c) the period for which he or she is so disqualified.

Declaration to be made to Registrar.

24. (1) In this section –

(a) a reference to a declaration is to the declaration required to be delivered by *section 21(1)(b)*; and

(b) a reference to a company is to the company to which such declaration relates.

(2) The declaration shall state that -

(a) all the requirements in respect of registration of the company and of matters precedent and incidental thereto have been complied with;

¹⁸ Inserted by point 8 of Committee Amendments.

¹⁹ Substituted by point 9 of Committee Amendments.

- (b) the purpose, or one of the purposes, for which the company is being formed is the carrying on by it of an activity in the State; and
- (c) the particulars contained in the statement delivered under *section 21(1)(a)* are correct.

(3) The declaration shall be made by -

- (a) one of the persons named in the statement delivered under *section 21(1)(a)* as directors of the company;
- (b) the person or, as the case may be, one of the persons named in that statement as secretary or joint secretaries of the company; or
- (c) the solicitor, if any, engaged in the formation of the company.

(4) The Registrar may accept the declaration as sufficient evidence that all the requirements in respect of registration of the company and of matters precedent and incidental thereto have been complied with and, in particular, that there have been complied with-

- (a) the requirements mentioned in *section 22* and, where appropriate, *section 23*; and
- (b) the requirement mentioned in *section 18*.

Effect of registration.

25. (1) On the registration of the constitution of a company, the Registrar shall certify in writing that the company is incorporated and shall issue to the company a certificate of incorporation in respect of it.

(2) From the date of incorporation mentioned in the certificate of incorporation, the subscriber or subscribers to the constitution, together with such other persons as may from time to time become members of the company, shall be a body corporate with the name contained in the constitution, having perpetual succession and a common seal.

(3) The certificate of incorporation issued under *subsection (1)* shall state that the company is a private company limited by shares.

(4) A certificate of incorporation issued under *subsection (1)* shall be conclusive evidence that the requirements of *section 21* have been complied with, and that the company is duly registered under this Act.

(5) The persons who are specified in the statement required to be delivered to the Registrar by *section 21(1)(a)* as the director or directors, secretary or joint secretaries or assistant or deputy secretary or secretaries of the company to which the statement refers shall, on the incorporation of the company, be deemed to have been appointed as the first director or directors, secretary or joint secretaries or assistant or deputy secretary or secretaries, as the case may be, of the company.

(6) Any indication in the constitution, as delivered under *section 21* for registration, specifying a person as a director or secretary (including any assistant or deputy secretary) of a company shall be void unless such person is specified as a director or as secretary (or, as the case may be, assistant or deputy secretary) in the foregoing statement.

(7) *Subsection (5)* does not operate to deem a person appointed as a director or secretary (including any assistant or deputy secretary) of a company where –

- (a) he or she is disqualified under this Act from being appointed a director, secretary, assistant or deputy secretary, as

²⁰ Inserted by point 10 of Committee Amendments.

the case may be, of a company; or

- (b) in the case of a director or secretary, a provision of this Act provides that the person's appointment as such in the circumstances is void.

Provisions as to names of companies.

26. (1) The name of a company shall end with one of the following:

- limited;
- teoranta.

(2) The word "limited" may be abbreviated to "ltd." (including that abbreviation in capitalised form) in any usage after the company's registration by any person including the company.

(3) The word "teoranta" may be abbreviated to "teo." (including that abbreviation in capitalised form) in any usage after the company's registration by any person including the company.

(4) A company carrying on business under a name other than its corporate name shall register in the manner directed by law for the registration of business names but the use of the abbreviation set out in *subsection (2)* or *(3)* shall not of itself render such registration necessary.

(5) No company shall be registered on –

- (a) its incorporation; or
- (b) should such occur, its re-registration, merger or division,

by a name which, in the opinion of the Registrar, is undesirable.

(6) An appeal shall lie to the court against a refusal by the Registrar to register a company (in any of the circumstances referred to in *paragraph (a)* or *(b)* of *subsection (5)*) on the ground there referred to.

Trading under a misleading name.

27. (1) Neither a body that is not a company nor an individual shall carry on any trade, profession or business under a name which includes, as its last part, the word "limited" or the words "company limited by shares" or any abbreviations of any of the foregoing words.

(2) If a body or individual contravenes *subsection (1)*, the body or individual and, in the case of a body, any officer of it who is in default, shall be guilty of a category 3 offence.

~~[\(3\) Subsection \(1\) as it relates to the use of the word "limited", or any abbreviation of that word, shall not apply to a society registered under the Industrial and Provident Societies Acts 1893 to 1978.](#)~~

~~[\(3\) Subsection \(1\) as it relates to the use of the word "limited", or any abbreviation of that word, shall not apply to a society registered under the Industrial and Provident Societies Acts 1893 to 2014.](#)~~^{21 22}

²¹ Inserted by point 6 of Seanad Committee Amendments.

²² [Substituted by point 6 of Seanad Report Amendments.](#)

(4) A company shall not, in the following circumstances, use a name which may reasonably be expected to give the impression that it is any type of company other than a private company limited by shares or that it is any other form of body corporate.

(5) Those circumstances are circumstances in which the fact that it is a private company limited by shares is likely to be material to any person.

[(6) Subsection (1) shall not apply to any company

(a) _____ to which Part 21 applies, and

(b) _____ which has provisions in its constitution that would entitle it to rank as a private company limited by shares (whether under this Part or Part 16) if it had been registered in the State.]²³

~~[(67)]~~ If a company contravenes *subsection (4)*, the company and any officer of it who is in default shall be guilty of a category 3 offence.

Reservation of a company name.

28. (1) In this section –

“reserved” means reserved under *subsection (4)* for the particular purpose mentioned in *subsection (2)*;

“specified period” means the period specified in the relevant notification made by the Registrar under *subsection (5)*.

(2) A person may apply to the Registrar to reserve a specified name for either of the following purposes, namely –

- (a) the purpose of a company that is proposed to be formed by that person being incorporated with that name;
- (b) the purpose of a company changing its name to that name,

and, in either such case, such an application shall be accompanied by the prescribed fee.

~~[(3) In *subsection (2)*, “person” means, for the purposes of *paragraph (b)* of it, the company referred to in that paragraph.]²⁴~~

(4) On the making of such an application, the Registrar may, subject to *subsection (7)*, determine that the name specified in the application shall be reserved for the particular purpose mentioned in *subsection (2)*.

(5) That determination shall be notified to the applicant by the Registrar and that notification shall specify the period for which the name is reserved.

(6) The specified period shall not be greater than 28 days and shall be expressed to begin on the making of the notification.

(7) A name shall not be reserved that, in the opinion of the Registrar, is undesirable.

(8) A person in whose favour a name has been reserved may, before the expiry of the specified period, apply to the Registrar for an extension of the specified period; such an application shall be accompanied by the prescribed fee.

(9) On the making of such an application, the Registrar may, if he or she considers it appropriate to do so, extend the specified period for such number of days (not exceeding 28 days) as the Registrar determines and specifies in a notification of the determination to the applicant.

²³ Inserted by point 7 of Seanad Report Amendments.

²⁴ Substituted by point 7 of Report Amendments.

Effect of reservation of name.

29. (1) During the specified period and any extension under *section 28(9)* of that period, a company shall neither –
- (a) be incorporated with a particular reserved name save on application of the person in whose favour that name has been reserved; nor
 - (b) be incorporated with a name that, in the opinion of the Registrar, is too like a particular reserved name.
- (2) During the specified period and any extension under *section 28(9)* of that period, a company shall neither –
- (a) change its name to a particular reserved name (unless it is the company in whose favour the name has been reserved);nor
 - (b) change its name to a name that, in the opinion of the Registrar, is too like a particular reserved name.
- (3) If an application for the incorporation of a company with a name that has been reserved under *section 28* is received by the Registrar during the specified period (or any extension of it granted under *section 28(9)*) from the person in whose favour the name has been so reserved, the fee payable to the Registrar in respect of that incorporation shall be reduced by an amount equal to the amount of the fee paid under *section 28(2)* in respect of the reservation of that name.
- (4) In this section “reserved” and “specified period” have the same meaning as they have in *section 28*.

Change of name.

30. (1) A company may, by special resolution and with the approval of the Registrar, signified in writing, change its name.
- (2) *Subsection (3)* applies if, through inadvertence or otherwise, a company is registered by a name (whether on its first registration, or on its registration by a new name) which, in the opinion of the Registrar, is too like the name by which a company in existence is already registered.
- (3) Where this subsection applies the first-mentioned company in *subsection (2)* –
- (a) with the approval of the Registrar - may change its name; or
 - (b) if, within 6 months after the date of its being registered by the first-mentioned name in *subsection (2)*, the Registrar directs it to do so - shall change its name.
- (4) A direction under *subsection (3)(b)* shall be complied with within a period of 6 weeks after the date of its being given or such longer period as the Registrar may think fit to allow.
- (5) Where a company changes its name under this section, the Registrar shall enter the new name in the register in place of the former name, and shall issue a certificate of incorporation altered to meet the circumstances of the case.
- (6) A change of name by a company under this section 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 by its former name may be continued or commenced against it by its new name.
- (7) A company which was registered by a name specified by statute, may, notwithstanding anything contained in that statute, change
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its name in accordance with *subsection (1)*, but, if the Registrar is of the opinion that any Minister of the Government is concerned in the administration of the statute which specified the name of the company, the Registrar shall not approve of the change of name save after consultation with that Minister of the Government.

(8) If a company fails to comply with a direction under *subsection (3)(b)* within the period provided under *subsection (4)*, the company and any officer of it who is in default shall be guilty of a category 4 offence.

Effect of constitution.

31. (1) Subject to the provisions of this Act, the constitution shall, when registered, bind the company and the members of it to the same extent as if it had been signed and sealed by each member, and contained covenants by the company and each member to observe all the provisions of the constitution and any provision of this Act as to the governance of the company.

(2) For the avoidance of doubt, in *subsection (1)* the reference to any provision of this Act as to the governance of the company includes a reference to any provision of this Act that commences with words to the effect that the provision applies save where the company's constitution provides otherwise or otherwise contains a qualification on the provision's application by reference to the company's constitution.

(3) All money payable by any member to the company under the constitution shall be a debt due from him or her to the company.

(4) An action to recover a debt created by this section shall not be brought after the expiration of 12 years after the date on which the cause of action accrued.

Amendment of constitution by special resolution.

32. (1) Subject to the provisions of this Act, a company may by special resolution amend its constitution.

(2) Any amendment so made of the constitution shall, subject to the provisions of this Act, be as valid as if originally contained therein, and be subject in like manner to amendment by special resolution.

(3) Where any amendment is made to a company's constitution notice of which *section 33* requires to be published as therein mentioned, the company shall deliver to the Registrar, in addition to the amendment, a copy of the text of the constitution as so amended.

(4) Subject to *subsection (5)*, and notwithstanding anything in the constitution of a [company,]²⁵ no member of the company shall be bound by an amendment made to the constitution after the date on which he or she became a member, if and so far as the amendment –

- (a) requires him or her to take or subscribe for more shares than the number held by him or her at the date on which the amendment is made, or
- (b) in any way increases his or her liability as at the date referred to in *paragraph (a)* to –
 - (i) contribute to the share capital of the company, or
 - (ii) otherwise pay money to the company.

(5) *Subsection (4)* shall not apply in any case where the member agrees in writing, either before or after the amendment is made, to

²⁵ Substituted by point 7 of Seanad Committee Amendments.

be bound by the amendment.

Publication of notices.

33. (1) The Registrar shall publish in the CRO Gazette notice of the delivery to or the issue by the Registrar of the following documents and particulars –

- (a) any certificate of incorporation of the company;
- (b) the constitution of the company;
- (c) any document making or evidencing an amendment of its constitution;
- (d) every amended text of its constitution;
- (e) any return relating to its register of directors or notification of a change among its directors;
- (f) any return relating to the persons, other than the board of directors, authorised to enter into transactions binding the company, or notification of a change among such persons;
- (g) its annual return and the financial statements that are required to be published in accordance with *Part 6*;
- (h) any notice of the situation of its registered office, or of any change [therein;
- (i) any copy of a winding up order in respect of the company;
- (j) any copy of an order for the dissolution of the company on a winding up;
- (k) any return by the liquidator of the final meeting of the company on a winding up;
- (l) any notice of the appointment of a liquidator in a voluntary winding up of the company.]²⁶

(2) The publication referred to in *subsection (1)* shall occur within 10 days after the date of the relevant delivery or issue.

Language of documents filed with Registrar.

34. (1) Without prejudice to any other provisions on the language of documents, any document delivered to the Registrar shall be in the Irish or English language.

(2) A translation of any such document may be delivered to the Registrar in any official language of the European Union.

(3) Every translation referred to in *subsection (2)* shall be certified, in a manner approved by the Registrar, to be a correct translation.

(4) In any case of a discrepancy between a document delivered as mentioned in *subsection (1)* and a translation of it delivered pursuant to *subsection (2)*, the latter may not be relied upon by the company against a third party. A third party may, nevertheless, rely on that translation against the company, unless the company proves that the third party had knowledge of the document delivered as mentioned in *subsection (1)*.

(5) In *subsection (4)*, “third party” means a person other than the company or a member, officer or employee of it.

Authorisation of an electronic filing agent.

²⁶ Substituted by point 8 of Seanad Committee Amendments.

35. (1) A company may authorise a person (who shall be known and is in this Act referred to as an “electronic filing agent”) to do the following acts on its behalf.

(2) Those acts are –

- (a) the electronic signing of documents that are required or authorised, by or under this Act or any other enactment, to be delivered by the company to the Registrar; and
- (b) the delivery to the Registrar, by electronic means, of those documents so signed.

(3) The authorisation of a firm (not being a body corporate) by its firm name to do the foregoing acts on behalf of a company shall operate to authorise the following persons to do those acts on the company’s behalf, namely those persons who are from time to time during the currency of the authorisation the partners in that firm as from time to time constituted.

(4) Subject to the following conditions being satisfied, an act of the foregoing kind done by such an agent on behalf of a company pursuant to an authorisation by the company under this section that is in force shall be as valid in law as if it had been done by the company (and the requirements of this Act or the other enactment concerned with respect to the doing of the act have otherwise been complied with (such as with regard to the period within which the act is to be done)).

(5) The conditions mentioned in *subsection (4)* are –

- (a) that prior to the first instance of the electronic filing agent’s doing of an act of the kind referred to in *subsection (2)*, pursuant to an authorisation by the company concerned under this section, the authorisation of the agent has been notified by the company to the Registrar in the prescribed form; and
- (b) the doing of the act complies with any requirements of the Registrar of the kind referred to in sections 12(2)(b) and 13(2)(a) of the Electronic Commerce Act 2000.

(6) It shall be the joint responsibility of a company and the electronic filing agent authorised by it under this section to manage the control of the documents referred to in *subsection (2)*.

(7) An electronic filing agent shall not, by virtue of his or her authorisation under this section to act as such, be regarded as an officer or servant of the company concerned for the purposes of Regulation 71(4) or (5) of the European Communities (Statutory Audits) (Directive 2006/43/EC) Regulations 2010 (S.I. No.220 of 2010).

Revocation of the authorisation of an electronic filing agent.

36. (1) A company may revoke an authorisation by it under *section 35* of an electronic filing agent.

(2) Such a revocation by a company shall be notified by it, in the prescribed form, to the Registrar.

(3) Unless and until the revocation is so notified to the Registrar, the authorisation concerned shall be deemed to subsist and, accordingly, to be still in force for the purposes of *section 35(4)*.

(4) If a revocation, in accordance with this section, of an authorisation under *section 35* constitutes a breach of contract or otherwise gives rise to a liability being incurred –

- (a) the fact that it constitutes such a breach or otherwise gives rise to a liability being incurred does not affect the validity of the revocation for the purposes of *section 35*; and

- (b) the fact of the revocation being so valid does not remove or otherwise affect any cause of action in respect of that breach or the incurring of that liability.

Copies of constitution to be given to members.

37. (1) A company shall, on being so requested by any member, send to him or her a copy of its constitution –

- (a) free of charge, and
(b) in the event of a second or subsequent such request by the member (the first request by him or her having been complied with) on payment to it of €5.00.

(2) Where an amendment is made of the constitution of a company, every copy of the constitution issued after the date of the amendment shall be in accordance with the amendment.

(3) If a company contravenes this section, the company and any officer of it who is in default shall be guilty of a category 4 offence.

Chapter 3

Corporate capacity and authority

Capacity of private company limited by shares.

38. (1) Subject to *subsection (2)*, notwithstanding anything contained in its constitution a company shall have, whether acting inside or outside of the State -

- (a) full and unlimited capacity to carry on and undertake any business or activity, do any act or enter into any transaction; and
(b) for the purposes of *paragraph (a)*, full rights, powers and privileges.

(2) Nothing in *subsection (1)* shall relieve a company from any duty or obligation under any enactment or the general law.

Registered person.

[39. (1) Where [the board of directors of]²⁷ a company authorises any person as being a person entitled to bind the company (not being an entitlement to bind that is, expressly or impliedly, restricted to a particular transaction or class of transactions), [the company]²⁸ [mayshall]²⁹ notify the Registrar in the prescribed form of the authorisation and the Registrar shall register the authorisation.

(2) A person so authorised, where his or her authorisation is registered in the foregoing manner, is referred to in this Act as a “registered person”; where, in a provision of this Act, that expression appears without qualification, it shall be taken as a reference to a registered person authorised by [the board of directors of]³⁰ the company to which the provision falls to be applied.

²⁷ Inserted by point 8 of Report Amendments.

²⁸ Substituted by point 9 of Report Amendments.

²⁹ [Substituted by point 9 of Seanad Report Amendments.](#)

³⁰ Inserted by point 10 of Report Amendments.

(3) Where [the board of directors of]³¹ a company revokes an authorisation of a person as a person entitled to bind the company (being an authorisation notified to the Registrar in the prescribed form), the person shall, notwithstanding that revocation, continue to be regarded for the purposes of this Act as a registered person unless and until the company notifies the Registrar in the prescribed form of that revocation.]³²

(4) References in this section to a person's entitlement to bind the company are references to his or her authority to exercise any power of the company and to authorise others to do so.

(5) In *subsection (4)* "power of the company" does not include -

- (a) any power of management of the company exercisable by its board of directors (as distinct from any power of the board to enter into transactions with third parties), or
- (b) a power of the company which this Act requires to be exercised otherwise than by its board of directors.

[(6) For the avoidance of doubt, for the purposes of this section the provisions of a company's constitution with regard to a person's office or powers shall not, in themselves, be taken as an authorisation by [the board of directors of]³³ the company of the person as a person entitled to bind the company.]³⁴

Persons authorised to bind company.

40. (1) For the purposes of any question whether a transaction fails to bind a company because of an alleged lack of authority on the part of the person who exercised (or purported to exercise) the company's powers, the following, namely :

- (a) the board of directors of the company; and
- (b) any registered person,

shall each be deemed to have authority to exercise any power of the company and to authorise others to do so.

(2) *Subsection (1)* applies regardless of any limitations in the company's constitution on the board's authority or a registered person's authority, but subject to *subsections (5) and (8)*.

(3) *Subsection (1)* is not to be read as preventing the exercise of a company's powers otherwise than by the board, a registered person or a person authorised by the board or by a registered person, where authority for that exercise exists.

(4) *Subsection (1)* does not affect -

- (a) a director's duties (including a director's duty to observe any limitations in the company's constitution on the board's authority), or his or her liability in respect of any breach of those duties; or
- (b) any duty arising on the part of any other person concerned in the transaction (including the registered person) or his or her liability in respect of any breach of that duty.

(5) Where a company is purportedly a party to a transaction -

- (a) in connection with which the board of directors exceeded limitations in the company's constitution on their authority; and

³¹ Inserted by point 11 of Report Amendments.

³² Substituted by point 11 of Committee Amendments.

³³ Inserted by point 12 of Report Amendments.

(b) to which a person referred to in *subsection (6)* is also a party,

subsection (1) does not apply in favour of the person so referred to.

(6) Each of the following is a person mentioned in *subsection (5)(b)*:

- (a) a director or shadow director of the company or of its holding company;
- (b) a person connected with such a director;
- (c) a registered person;
- (d) a person connected with a registered person,

and in this subsection references to a person's being connected with –

- (i) a director or shadow director are to be read in accordance with *section [220]*; or
- (ii) a registered person are to be read in accordance with *section [220]* as that section is applied by *subsection (7)*.

(7) For the purpose of *subsection (6)(ii)*, *section [220]* applies as if –

- (a) for each reference in *subsections (1), (2), (3) and (8)* to a director of a company there were substituted a reference to the registered person;
- (b) for the first reference and the third reference in *subsection (5)* to a director of a company there were substituted a reference to the registered person;
- (c) the references in *subsection (5)* to another director or directors included references to one or more other registered persons; and
- (d) the reference in *subsection (6)(b)* to a director included a reference to a registered person.

(8) In *subsection (1)* “power of the company” does not include -

- (a) with reference to any registered person, the power of management referred to in *section 39(5)(a)*, and
- (b) with reference to the board of directors or any registered person, the power referred to in *section 39(5)(b)*.

(9) Without prejudice to *subsection (1)*, in determining any question whether a person had ostensible authority to exercise any of a company's powers in a given case, no reference may be made to the company's constitution.

(10) In this section a reference -

- (a) to limitations in a company's constitution includes a reference to limitations deriving from -
 - (i) a resolution of the company or of any class of its members; or
 - (ii) any agreement between the members of the company or of any class of its members;
- (b) to a transaction includes a reference to any act or omission.

(11) This section is in addition to, and not in substitution for, the Rule in *Royal British Bank v. Turquand*.

Powers of attorney.

41. (1) Notwithstanding anything in its constitution, a company may ~~by writing under its common seal,~~³⁵ empower any person, either generally or in respect of any specified matters, as its attorney, to execute deeds or do any other matter on its behalf in any place

³⁴ Substituted by point 12 of Committee Amendments.

whether inside or outside the State.

(2) A deed signed by such attorney on behalf of the company [~~and under his or her seal~~]³⁶ shall bind the company and have the same effect as if it were under its common seal.

Chapter 4

Contracts and other transactions

Form of contracts.

42. (1) Contracts on behalf of a company may be made as follows -

- (a) a contract which, if made between natural persons, would be by law required to be in writing and to be under seal, may be made on behalf of the company in writing under the common seal of the company;
- (b) a contract which, if made between natural persons, would be by law required to be in writing, signed by the parties to be charged therewith, may be made on behalf of the company in writing, signed by any person acting under its authority, express or implied;
- (c) a contract which, if made between natural persons, would by law be valid although made by parol only, and not reduced into writing may be made by parol on behalf of the company by any person acting under its authority, express or implied.

(2) A contract made according to this section shall bind the company and its successors and all other parties to it.

(3) A contract made according to this section may be varied or discharged in the same manner in which it is authorised by this section to be made.

The common seal.

43. (1) A company shall have a common seal or seals that shall state the company's name, engraved in legible characters.

(2) Save as otherwise provided by this Act or by the constitution of the company -

- (a) a company's seal shall be used only by the authority of its directors, or of a committee of its directors authorised by its directors in that behalf; and
- (b) any instrument to which a company's seal shall be affixed shall be –
 - (i) signed by a director of it or by some other person appointed for the purpose by its directors or by a foregoing committee of them; and
 - (ii) be countersigned by the secretary or by a second (if any) director of it or by some other person appointed for the purpose by its directors or by a foregoing committee of them.

(3) Save as otherwise provided by the constitution of the company, [if there be a registered person in relation to a company]³⁷ the

³⁵ Deleted by point 11 of Seanad Report Amendments.

³⁶ Deleted by point 12 of Seanad Report Amendments.

³⁷ Substituted by point 13 of Report Amendments.

company's seal may be used by such person and any instrument to which the company's seal shall be affixed when it is used by the registered person shall be signed by that person and [countersigned–

- (a) by the secretary or a director of the company; or
- (b) by some other person appointed for the purpose by its directors or a committee of its directors authorised by its directors in that behalf]³⁸.

Power for company to have official seal for use abroad.

44. (1) In this section –

“official seal”, in relation to a company, means the official seal referred to in *subsection (2)*;

“place abroad” means any territory, district or place not situate in the State.

(2) A company may, if authorised by its constitution, have for use in any place abroad an official seal which shall resemble the common seal of the company with the addition on its face of the name of every place abroad where it is to be used.

(3) A deed or other document to which an official seal is duly affixed shall bind the company as if it had been sealed with the common seal of the company.

(4) A company having an official seal for use in any place abroad may, by writing under its common seal, authorise any person appointed for the purpose in that place (the “agent”) to affix the official seal to any deed or other document to which the company is party in that place.

(5) The authority of the agent shall, as between the company and any person dealing with the agent, continue during the period, if any, mentioned in the instrument conferring the authority, or, if no period is there mentioned, then until the notice of revocation or determination of the agent's authority has been given to the person dealing with him or her.

(6) The person affixing an official seal shall, by writing under his or her hand, certify on the deed or other instrument to which the seal is affixed, the date on which and the place at which it is affixed.

[...] ³⁹

Pre-incorporation contracts.

[45]. (1) Any contract or other transaction (including any application to any lawful authority) purporting to be entered into by a company prior to its formation, or by any person on behalf of the company prior to its formation, may be ratified by the company after its formation.

(2) Upon such contract or other transaction being so ratified, the company shall become bound by it and entitled to the benefit of it as if the company had been in existence at the date of such contract or other transaction and had been a party to it.

(3) Prior to such ratification (if any) by the company, the person or persons who purported to act in the name or on behalf of the company shall, in the absence of express agreement to the contrary, be personally bound by the contract or other transaction and

³⁸ Substituted by point 14 of Report Amendments.

entitled to the benefit of it.

Bills of exchange and promissory notes.

[46]. A bill of exchange or promissory note shall be deemed to have been made, accepted or endorsed on behalf of a company, if made, accepted or endorsed in the name of or by or on behalf or on account of, the company by a person acting under its authority.

Liability for use of incorrect company name.

[47]. (1) If an officer of a company or any person on its behalf does any of the following things, the officer or person shall be guilty of a category 4 offence.

(2) Those things are:

- (a) uses or authorises the use of any seal purporting to be a seal of the company on which its name is not engraved in legible characters;
- (b) issues or authorises the issue of any business letter of the company or any notice or other official publication of the company, or signs or authorises to be signed on behalf of the company any bill of exchange, promissory note, endorsement, cheque or order for money or goods, in which its name is not mentioned in the manner described in *section [49]*;
- (c) issues or authorises the issue of any invoice, receipt or letter of credit of the company in which its name is not mentioned in the manner described in *section [49]*.

(3) In the circumstances of his or her doing a relevant thing mentioned in *subsection (2)(b)*, the officer or other person shall be personally liable to the holder of the bill of exchange, promissory note, cheque or order for money or goods for the amount thereof unless –

- (a) it is duly paid by the company; or
- (b) it appears to the court that no injustice will be done by imposing liability for the amount on the company.

Authentication by company of documents.

[48]. A document or proceeding requiring authentication by a company may be signed by a director, secretary, registered person or other authorised officer of the company, and need not be under its common seal.

Chapter 5

Company name, registered office and service of documents

Publication of name by company.

³⁹ Deleted by point 15 of Report Amendments.

[49]. (1) A company -

- (a) shall display its name in a conspicuous position, in letters easily legible [, outside every office or place in which its business is carried on and at its registered office]⁴⁰; and
- (b) shall have its name mentioned in legible characters in each of the following :
 - [...] ⁴¹(i) all notices and other official publications of the company;
 - (ii) all bills of exchange, promissory notes, endorsements, cheques and orders for money or goods purporting to be signed by or on behalf of the company;
 - (iii) all invoices, receipts and letters of credit of the company.

(2) If a company contravenes *subsection (1)(a) or (b)*, the company and any officer of it who is in default shall be guilty of a category 4 offence.

(3) The use of the abbreviation “ltd” instead of “limited” or “teo” instead of “teoranta” shall not be regarded as constituting a contravention of this section.

[4] This section is without prejudice to *section [151].*⁴²

Registered office of company.

[50]. (1) A company shall, at all times, have a registered office in the State to which all communications and notices may be addressed.

(2) Particulars of the situation of the company’s registered office shall be specified in the statement delivered pursuant to *section 21(1)(a)* prior to the incorporation of the company.

(3) Notice of any change in the situation of the registered office of a company shall be given in the prescribed form, within 14 days after the date of the change, to the Registrar who shall record that change.

(4) A company’s registered office may be constituted by a statement (contained in the statement or notice referred to in *subsection (2) or (3)*) to the effect that the office is care of a specified agent, [being a company formed and registered under this Act, or an existing company, and which is]⁴³ approved for this purpose by the Registrar; where a registered office is constituted by those means, references in this Act to the situation of the company’s registered office shall be read accordingly.

(5) The notification to the Registrar by the agent approved for that purpose of any change in the situation [of the agent’s registered office]⁴⁴ shall, if made in the form prescribed for the purpose of *subsection (3)* and within the period there mentioned, be regarded as constituting compliance by the company concerned with *subsection (3)*.

(6) If default is made in complying with this section, the company concerned and any officer of it who is in default shall be guilty of a category 4 offence.

⁴⁰ Substituted by point 13 of Committee Amendments.

⁴¹ Deleted by point 14 of Committee Amendments.

⁴² Inserted by point 15 of Committee Amendments.

⁴³ Substituted by point 11 of Seanad Committee Amendments.

⁴⁴ Substituted by point 12 of Seanad Committee Amendments.

Service of documents.

[51]. (1) A document may be served on a company -

- (a) by leaving it at or sending it by post to the registered office of the company; or
- [(b) if the company has not given notice to the Registrar of the situation of its registered office, by delivering it to the Registrar.]⁴⁵

(2) For the purposes of this section, any document left at or sent by post to the place for the time being recorded by the Registrar as the situation of the registered office of a company shall be deemed to have been left at or sent by post to the registered office of the company notwithstanding that the situation of its registered office may have changed.

[(3) It shall be the duty of the Registrar to enter on the register a document that has, by the means referred to in *subsection (1)(b)*, been served on a company.]⁴⁶

Security for costs.

[52]. Where a company is plaintiff in any action or other legal proceeding, any judge having jurisdiction in the matter, may, if it appears by credible testimony that there is reason to believe that the company will be unable to pay the costs of the defendant if successful in his or her defence, require security to be given for those costs and may stay all proceedings until the security is given.

Enforcement of orders and judgments against companies and their officers.

[53]. (1) Any judgment or order against a company wilfully disobeyed may, by leave of the court, be enforced by -

- (a) sequestration against the property of the company,
- (b) attachment against the directors or other officers of the company, or
- (c) sequestration against the property of such directors or other officers.

(2) An application may not be made, in the foregoing circumstances, for attachment against directors or other officers or for sequestration against their property unless the judgment or order of the court to which the application relates has contained a statement indicating the liability of such persons or of their property to attachment or sequestration, as the case may be, should the judgment or order be disobeyed by the company.

(3) In this section “attachment” and “sequestration” have the same meaning as they have in rules of court concerning the jurisdiction of the High Court and the Supreme Court.

Chapter 6

Conversion of existing private company to private company limited by shares to which *Parts 1 to 15* apply

Interpretation (Chapter 6).

[54]. (1) In this Chapter –

“mandatory provision” means a provision of any of *Part 1*, this Part or *Parts 3 to 14* that is not an optional provision;

⁴⁵ Substituted by point 16 of Committee Amendments.

“optional provision” means a provision of any of *Part 1*, this Part or *Parts 3 to 14* that –

(a) contains a statement to the effect, or is governed by provision elsewhere to the effect, that the provision applies save to the extent that the constitution provides otherwise or unless the constitution states otherwise; or

(b) is otherwise of such import;

“Table A” means Table A in the First Schedule to the Act of 1963.

(2) A reference in this Chapter to a designated activity company is a reference to a designated activity company limited by shares.

(3) A reference in this Chapter to Table A includes, where appropriate, a reference to any Table referred to in section 3(9)(b), (c) or (d) of the Act of 1963.

Status of existing private companies at end of transition period: general principle.

[55]. As provided for in *section [61]*, on the expiry of the transition period, unless it has re-registered as a designated activity company or one of the other circumstances specified in that section prevent the following happening–

(a) an existing private company shall be deemed to have a constitution that comprises the provisions of its existing memorandum (other than the provisions excepted by *subsection (1)(a)* of that section) and of its existing articles[and subject to *subsection (3)* of that section]⁴⁷;

(b) the company’s constitution, as so constituted of those provisions, shall be deemed to satisfy the requirements of *section 19* as to the form of a company’s constitution,

and the company shall be deemed to have become a private company limited by shares to which this Part and *Parts 1 and 3 to 15* apply.

Conversion of existing private companies to designated activity companies: duties and powers in that regard.

[56]. (1) An existing private company may re-register as a designated activity company by passing an ordinary resolution, not later than 3 months before the expiry of the transition period, resolving that the company be so registered; if it so re-registers, pursuant to such a resolution, before the expiry of the transition period, *Part 16* shall, as provided in *section [63](8)*, apply to it.

(2) An existing private company shall re-register as a designated activity company before the expiry of the transition period if, not later than 3 months before the expiry of that period, a notice in writing requiring it to do so is served on it by a member or members holding shares in the company that confer, in aggregate, more than 25 per cent of the total voting rights in the company; on its so re-registering, in compliance with that notice, *Part 16* shall, as provided in *section [63](8)*, apply to it.

(3) Without prejudice to *subsections (1)* and *(2)* but subject to *subsection (4)*, where anything is done by an existing private company, being a thing which (if the company were a private company limited by shares to which this Part and *Parts 1 and 3 to 15* apply) would not be in compliance with *section [68]*, then the company shall re-register as a designated activity company before the expiry of the transition period and upon its so doing *Part 16* shall, as provided in *section [63](8)*, apply to it.

⁴⁶ Inserted by point 17 of Committee Amendments.

(4) Instead of re-registering as a designated activity company as mentioned in *subsection (3)*, an existing private company referred to in that subsection may, by passing a special resolution and otherwise complying with the requirements of *Part 20*, re-register as a type of company that is not a designated activity company before the expiry of the transition period.

(5) The reference in *subsection (2)* to a voting right in a company shall be read as a reference to a right exercisable for the time being to cast a vote at general meetings of members of the company, not being such a right that is exercisable only in special circumstances.

Relief where company does not re-register as a designated activity company.

[57]. (1) Where an existing private company does not, before the expiry of the transition period, re-register as a designated activity company under *section [56]* (whether it is obliged under that section to do so or not), the person or persons referred to in *subsection (2)* may apply to the court for an order directing that it shall re-register as such a company and the court shall, unless cause is shown to the contrary, make the order sought or make such other order as seems just.

(2) The persons mentioned in *subsection (1)* are:

- (a) one or more members of the company who hold, or together hold, not less than 15 per cent in nominal value of the company's issued share capital or any class thereof; or
- (b) one or more creditors of the company who hold, or together hold, not less than 15 per cent of the company's debentures entitling the holders to object to alterations of its objects.

Applicable laws during transition period.

[58]. (1) During the period beginning on the commencement of this Part and ending on the expiry of the transition period, *Part 16* shall, subject to *subsection (3)*[, and without prejudice to *subsection (7)*]⁴⁸, apply to an existing private company as if it were a designated activity company, unless and until there is delivered to the Registrar, in accordance with this Chapter, a constitution in respect of it in the form provided under *section 19*.

(2) If there is so delivered to the Registrar such a constitution in respect of that company then, on and from such delivery, this Part and *Parts 1 and 3 to 15* shall apply to that company.

(3) The provisions of the prior Companies Acts relating to the use of limited or *teoranta* (or their abbreviations) shall apply as respects the name of an existing private company referred to in *subsection (1)* during the period referred to in that subsection and not the provisions of *section 971* and the other relevant provisions of *Part 16*.

(4) The reference in *subsection (3)* to provisions relating to the use of any words includes a reference to provisions conferring an exemption from the use of those words.

(5) An existing private company that has adopted, or is deemed to have adopted, in whole or in part, the regulations of Table A as its articles, shall, despite the repeal of the Act of 1963, continue to be governed by those regulations (or the parts of them concerned) after the repeal of that Act[, without prejudice to *subsection (8)*]⁴⁹ and before the expiry of the transition period unless and until -

⁴⁷ Inserted by point 18 of Committee Amendments.

⁴⁸ Inserted by point 16 of Report Amendments.

⁴⁹ Inserted by point 17 of Report Amendments.

- (a) there is delivered to the Registrar, in accordance with this Chapter, a constitution in respect of it in the form provided under *section 19*; or
- (b) it re-registers as another type of company,

but, as regards the company continuing to be governed by the foregoing regulations -

- (i) this is save to the extent that those regulations are inconsistent with a mandatory provision;
- (ii) those regulations may be altered or added to under and in accordance with the conditions under which articles, whenever registered, are permitted by *Part 16* to be altered or added to; and
- (iii) references in those regulations to any provision of the prior Companies Acts shall be read as references to the corresponding provision of this Act.

(6) Subject to *paragraphs (ii) and (iii)* of that subsection, the regulations referred to in *subsection (5)* shall be interpreted according to the form in which they existed on the date of repeal of the Act of 1963.

(7) To take account of any interregnum between –

- (a) the delivery (in accordance with this Chapter and in the form provided under *section 19*) of a constitution in respect of an existing private company to the Registrar for registration; and
- (b) its registration by the Registrar,

it is declared that *subsections (1) and (2)* operate, and are to be read as operating, so as also to provide that *Part 16* applies, subject to *subsection (3)*, to that company as if it were a designated activity company during any such interregnum (and accordingly that the application of this Part, and *Parts 1 and 3 to 15*, to it is postponed until that registration is effected).

(8) Likewise, to take account of any similar interregnum in the case of *subsection (5)*, it is declared that that subsection operates, and is to be read as operating, so as also to provide that the whole or part (as the case may be) of the regulations of Table A continue to govern the company concerned during any such interregnum.

[\[9\] For the avoidance of doubt, the application of Part 16, in the circumstances under this section where that Part is stated to apply and notwithstanding that the course of action of delivering a constitution of the kind referred to in subsection \(1\) will not be adopted by such a company, extends to an existing private company falling within subsection \(10\) but—](#)

- [\(a\) the application of Part 16 to such a company does not affect the application of the provisions of the statute referred to in subsection \(10\) \(or any other relevant statute\) to the company; and](#)
- [\(b\) if, by virtue of the foregoing statute, the company was not required to include the word “limited” or “teoranta” in its name, that exemption is not affected by anything in this section or Part 16.](#)

[\[10\] The existing private company referred to in subsection \(9\) is one that has been incorporated under a former enactment relating to companies \(within the meaning of section 5\) pursuant to, or in compliance with a requirement of, any statute.](#)⁵⁰

Adoption of new constitution by members.

[59]. (1) An existing private company -

⁵⁰ [Inserted by point 13 of Seanad Report Amendments.](#)

(a) by special resolution passed in accordance with its existing memorandum and articles; and

(b) subject to compliance with the provisions of *Part 16* as to the variation of rights and obligations of members, may, after the commencement of this Part, adopt a new constitution in the form provided under *section 19*; where it does so and delivers, in the prescribed form, before the expiry of the transition period, the constitution to the Registrar for registration, it shall, on the constitution's registration, become a private company limited by shares to which this Part and *Parts 1* and *3 to 15* apply.

(2) The constitution need not contain any supplemental regulations, to the extent that the provisions of this Part and *Parts 1* and *3 to 15* regulate the matters which would be governed by those [regulations; for the avoidance of doubt, the requirements of *sections 19* and *26(1)* relating to a company's name shall apply despite any exemption of the kind referred to in *section [61](3)* that had been enjoyed by the company under the prior Companies Acts.]⁵¹

(3) On registration of its constitution under this section, the Registrar shall issue to the company a certificate of incorporation in respect of it stating that the company is a private company limited by shares registered under this Part.

Preparation, registration, etc of new constitution by directors.

[60]. (1) The directors of an existing private company shall do each of the things specified in *subsection (2)* before the expiry of the transition period, unless the company -

- (a) has already adopted a constitution in accordance with *section [59](1)*; or
- (b) is required, under *section [56](2)* or *(3)*, to re-register as a designated activity company; or
- (c) is proceeding, in accordance with a resolution passed pursuant to *section [56](1)*, to re-register as such a company or is proceeding, in accordance with *section [56](4)* and *Part 20*, to re-register as another type of company; or
- (d) is required by an order made under *section [57]* to re-register as a designated activity company or proceedings under that section are pending in relation to it.

(2) The things referred to in *subsection (1)* are -

- (a) prepare a constitution for the company in the form provided under *section 19*;
- (b) deliver a copy of such constitution to each member; and
- (c) deliver, in the prescribed form, the constitution to the Registrar for registration,

and, where the things in the foregoing paragraphs are done (including the delivery of the constitution to the Registrar for registration), the company shall, on the constitution's registration, become a private company limited by shares to which this Part and *Parts 1* and *3 to 15* apply, and the Registrar shall issue to it a certificate of incorporation in respect of it stating that it is a private company limited by shares registered under this Part.

(3) The provisions of that constitution of the company, to be prepared by the directors as mentioned in *subsection (2)(a)*, shall consist solely of –

- (a) the provisions of its existing memorandum, other than provisions that –
 - (i) contain its objects; or

⁵¹ Substituted by point 19 of the Committee Amendments.

(ii) provide for, or prohibit, the alteration of all or any of the provisions of its memorandum or articles;

and

[(b) the provisions of its existing articles,

but, despite any exemption of the kind referred to in *section [61](3)* that had been enjoyed by the company under the prior Companies Acts, nothing in this subsection shall be read as overriding the requirements of *sections 19* and *26(1)* relating to a company's name.]⁵²

(4) If, by reason of the company not having registered articles, the regulations in Table A are deemed to be the articles of the company, the constitution prepared under *subsection (2)(a)* shall state that the articles of the company comprise those regulations.

(5) If the existing articles do not exclude or modify the regulations contained in the Table A, those regulations shall, so far as applicable, be the regulations of the existing private company in the same manner and to the same extent as if they were contained in the constitution prepared under *subsection (2)(a)*.

(6) For the purposes of *subsections (4)* and *(5)* and without prejudice to their application otherwise by a provision of this Chapter, the regulations contained in Table A shall, despite the repeal of the Act of 1963, continue in force but, as regards the company continuing, by virtue of *subsection (4)* or *(5)*, to be governed (in whole or in part) by the foregoing regulations -

(a) this is save to the extent that those regulations are inconsistent with a mandatory provision;

(b) those regulations may be altered or added to under and in accordance with the conditions under which the company's constitution is permitted by *section 32* to be altered or added to; and

(c) references in those regulations to any provision of the prior Companies Acts shall be read as references to the corresponding provision of this Act.

(7) Subject to *paragraphs (b)* and *(c)* of that subsection, the regulations referred to in *subsection (6)* shall be interpreted according to the form in which they existed on the date of repeal of the Act of 1963.

Deemed constitution.

[61]. (1) Where there has not been delivered to the Registrar a constitution (in the form provided under *section 19*) in respect of an existing private company for registration within the transition period then, subject to *subsection ([4])*, from the expiry of that period -

(a) the existing private company shall be deemed to have, in place of its existing memorandum and articles, a constitution that comprises -

(i) the provisions of its existing memorandum, other than provisions that -

(I) contain its objects; or

(II) provide for, or prohibit, the alteration of all or any of the provisions of its memorandum or articles;

and

(ii) the provisions of its existing articles;

and

(b) its constitution, as so constituted of those provisions, shall be deemed to satisfy the requirements of *section 19* as to

⁵² Substituted by point 20 of Committee Amendments.

the form of a company's constitution,

and the company shall be deemed to have become a private company limited by shares to which this Part and *Parts 1 and 3 to 15* apply.

(2) In those circumstances the Registrar shall issue to the company a certificate of incorporation in respect of it stating that the company is a private company limited by shares registered under this Part.

[(3) Notwithstanding—

(a) section 24, as originally enacted, of the Act of 1963; or

(b) section 24, inserted in the Act of 1963 by section 88(1) of the Company Law Enforcement Act 2001, in place of the first-mentioned section,

and the continuing effect, for certain other types of company, provided elsewhere by this Act of an exemption conferred by or under either such section, any such exemption (whatever its basis) enjoyed, immediately before the expiry of the transition period, by an existing private company to which *subsection (1)* applies shall cease on that expiry; accordingly *subsection (1)(a)* shall be read as requiring such a company's name to end with "limited" or "teoranta", as appropriate, and *subsection (2)* shall have effect subject to this subsection.]⁵³

[(4)] *Subsection (1)* shall not apply if -

(a) the existing company has re-registered before the expiry of the transition period as a designated activity company in accordance with *section [56](1)* or as another type of company in accordance with *section [56](4)* and *Part 20*;

(b) the existing company is required under *section [56](2)* or *(3)* to re-register as such a company and has so re-registered; or

(c) its operation would be inconsistent with an order of the court made under *section [57]* or otherwise.

[(5)] If, by reason of *section [58]*, an existing private company was, immediately before the expiry of the transition period or, if later, the end of the interregnum referred to in *section [58](8)*, governed (in whole or in part) by the regulations contained in Table A, then for the purposes of this section and without prejudice to their application otherwise by a provision of this Chapter, those regulations shall, despite the repeal of the Act of 1963, continue in force and the existing articles of the company shall be deemed to comprise the whole of those regulations or, as the case may be, to include the parts concerned of those regulations, but -

(a) this is save to the extent that those regulations are inconsistent with a mandatory provision;

(b) those regulations may be altered or added to under and in accordance with the conditions under which the company's constitution is permitted by *section 32* to be altered or added to; and

(c) references in those regulations to any provision of the prior Companies Acts shall be read as references to the corresponding provision of this Act.

[(6)] Subject to *paragraphs (b)* and *(c)* of that subsection, the regulations referred to in *subsection (4)* shall be interpreted according to the form in which they existed on the date of repeal of the Act of 1963.

⁵³ Inserted by point 21 of Committee Amendments.

Relief for members and creditors.

[62]. (1) Without limiting the generality of *section [212]*, if any member of a company considers that his or her rights or obligations have been prejudiced by -

- (a) the exercise of any power under this Chapter;
- (b) the non-exercise of any such power; or
- (c) the exercise of any such power in a particular manner,

by the company or the directors of it, the member may apply to the court for an order under *section [212]*.

(2) In any such application where it is proved that the directors of the company have failed to comply with *section [60]* then, unless the members of the company have adopted a new constitution in accordance with *section [59](1)*, it shall be presumed, until the contrary is proved, that the directors have exercised their powers in a manner oppressive to the applicant or in disregard of his or her interests as a member.

(3) Where in relation to an existing private company a constitution in the form provided under *section 19* comes into being, the person or persons referred to in *subsection (5)* may apply under this subsection to the court for relief if the constitution prejudices any interest of the person or persons (but only if the person or persons has or have a legal or equitable right to that interest).

(4) On the hearing of an application under *subsection (3)*, the court may grant such relief to the applicant or applicants as the court thinks just.

(5) The persons mentioned in *subsection (3)* are one or more creditors of the company who hold, or together hold, not less than 15 per cent of the company's debentures entitling the holders to object to alterations of its objects.

(6) The jurisdiction of the court under *section [212]* as provided for under *subsection (1)* and the jurisdiction of the court under *subsection (3)* shall each be exercised having regard to, and, where appropriate subject to, any exercise by the court of its jurisdiction under *section [57]* in relation to the company concerned.

(7) In this section a reference to a constitution in the form provided under *section 19* coming into being is a reference to such a constitution coming into being by reason of -

- (a) its being adopted and registered under *section [59]*; or
- (b) its being prepared by the directors and registered under *section [60]*; or
- (c) the operation of *section [61]*.

Procedure for re-registration as designated activity company under this Chapter.

[63]. (1) This section contains the procedure for re-registration by an existing private company as a designated activity company under *section [56](1)*, (2) or (3) or pursuant to an order of the court under *section [57](1)*.

(2) Either -

- (a) in the case of re-registration under *section [56](1)*, the ordinary resolution referred to in that provision; or
- (b) in the case of re-registration under *subsection (2) or (3) of section [56]* or pursuant to an order of the court under *section*

[57](1), a resolution of the directors of the company passed for the purpose in consequence of that subsection's operation or that order,

shall alter the company's memorandum so that it states that the company is to be a designated activity company and shall[, unless this Act provides that on re-registration the company shall continue to enjoy an exemption conferred by or under either of the sections referred to in *section [61](3)*,]⁵⁴ alter that document and the articles so that there is substituted designated activity company or *cuideachta ghníomhaíochta ainmnithe* for limited or *teoranta*, as the case may be, in the company's name.

(3) An application for the purpose of re-registration, in the prescribed form and signed by a director or secretary of the company, shall be delivered by the company to the Registrar together with the documents specified in *subsection (4)*.

(4) Those documents are—

- (a) a copy of the ordinary resolution or the resolution of the directors referred to in *subsection (2)(a)* or *(b)*;
- (b) a copy of the memorandum and articles of the company as altered by the resolution; and
- (c) a statement in the prescribed form (in this section referred to as a "statement of compliance") by a director or secretary of the company that the requirements of this Chapter as to re-registration as a designated activity company have been complied with by the company, including the passing of the resolution referred to in *paragraph (a)*.

(5) The Registrar may accept the statement of compliance as sufficient evidence that the resolution referred to in *subsection (4)(a)* has been duly passed and the other conditions of this Chapter for re-registration as a designated activity company have been satisfied and that the company is entitled to be re-registered as that type of company.

(6) If, on an application under *subsection (3)* for re-registration of an existing private company as a designated activity company, 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 section; 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) If the existing private company had not registered articles and, by reason of section 58, the regulations in Table A are, immediately before the making by the company of an application under *subsection (3)*, deemed to be its articles, then each of the references in the preceding subsections of this section to articles shall be disregarded, but in such a case the application under *subsection (3)* shall be accompanied by a statement in the prescribed form that the articles of the company comprise those regulations.]⁵⁵

[(8) 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 designated activity company; and
- (b) any alterations in the memorandum and articles set out in the resolution concerned shall take effect accordingly.

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

- (a) that the requirements of this Chapter as to re-registration and of matters precedent and incidental thereto have been complied with; and

⁵⁴ Inserted by point 22 of Committee Amendments.

(b) that the company is the type of company which is set out in the certificate,

and, accordingly, without prejudice to *section [58], Part 16*, on and from the issue of the certificate, shall apply to the company as a designated activity company.

[[10] If, by reason of section 58, an existing private company was, immediately before the making by the company of an application under *subsection (3)*, governed (in whole or in part) by the regulations contained in Table A, then for the purposes of this section and in addition to the other cases where their continuance in force for a particular purpose is provided for by this Chapter, those regulations shall, despite the repeal of the Act of 1963, continue in force and upon the issue of the aforementioned certificate of incorporation the articles of the designated activity company shall be deemed to comprise the whole of those regulations or, as the case may be, to include the parts concerned of those regulations, but—

- (a) this is save to the extent that those regulations are inconsistent with a mandatory provision;
- (b) those regulations may be altered or added to under and in accordance with the conditions under which the designated activity company's articles are permitted by Part 16 to be altered or added to; and
- (c) references in those regulations to any provision of the prior Companies Acts shall be read as references to the corresponding provision of this Act.

[11] Subject to *paragraphs (b) and (c)* of that subsection, the regulations referred to in *subsection ([10])* shall be interpreted according to the form in which they existed on the date of repeal of the Act of 1963.⁵⁶

[12] The re-registration of an existing private company as a designated activity company pursuant to this Chapter 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.

[13] The procedures under this section may be followed, after consultation by the company with the relevant Minister, by an existing private company that has been incorporated under a former enactment relating to companies (within the meaning of *section 5*) pursuant to, or in compliance with a requirement of, any statute (in *subsection (1)* referred to as the “relevant statute”) and may be so followed notwithstanding that statute but—

- (a) the provisions otherwise of that statute (and any other relevant statute) shall apply to the designated activity company that the foregoing company re-registers as under this section as they apply to the foregoing company before such reregistration; and
- (b) if the foregoing company is a company to which *section 1436* applies, the provision made by *subsection (1)* requiring the substitution of certain words in its name shall be taken to be omitted from that subsection.

[14] In *subsection (13)* “relevant Minister” means the Minister of the Government concerned in the administration of the relevant statute.]⁵⁷

~~[1513]~~ 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.

⁵⁵ Inserted by point 13 of Seanad Committee Amendments.

⁵⁶ Inserted by point 14 of Seanad Committee Amendments.

⁵⁷ Inserted by point 14 of Seanad Report Amendments.

