
COMPANIES BILL 2012

Unofficial version

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Arthur Cox

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PART 4

CORPORATE GOVERNANCE

Chapter 1

Preliminary

Access to documents during business hours.

[127]. (1) A reference in this Part to a document kept by a company being open to the inspection of a person, or a specified class of person, during business hours shall be read as a requirement that the document be open to such inspection subject to such reasonable restrictions as the company may in general meeting impose, but so that not less than 2 hours in each day be allowed for such inspection.

(2) *Subsection (1)* applies to the provisions of other Parts of this Act that are referred to in *Chapter 10* (which deals with, amongst other things, inspection of registers) as it applies to the provisions of this Part so referred to.

Chapter 2

Directors and secretaries

Directors.

[128]. (1) A company shall have at least one director.

(2) If default is made by a company in complying with *subsection (1)* for 28 consecutive days, the company and any officer of it who is in default shall be guilty of a category 3 offence.

Secretaries.

[129]. (1) A company shall have a secretary, who may be one of the directors.

(2) Anything required or authorised to be done by or to the secretary may, if the office is vacant or there is for any other reason no secretary capable of acting, be done by or to any assistant or deputy secretary or, if there is no assistant or deputy secretary capable of acting, by or to any officer of the company authorised generally or specially in that behalf by the directors.

(3) Subject to *section 25(5)*, the secretary shall be appointed by the directors of the company for such term, at such remuneration and upon such conditions as they may think fit; and any secretary so appointed may be removed by them.

(4) The directors of a company shall have a duty to ensure that the person appointed as[secretary has the skills or resources necessary to discharge his or her statutory and other duties.]¹¹⁹

(5) The cases to which *subsection (4)* applies includes the case of an appointment of one of the directors of the company as secretary.

(6) Where a company has only one director, that person may not also hold the office of secretary of the company.

¹¹⁹ Substituted by point 29 of Seanad Committee Amendments.

(7) In *subsections (2) to (6)* references to a secretary include references to joint secretaries.

Prohibition of body corporate being director.

[130]. (1) A company shall not have as director of the company a body corporate[or an unincorporated body of persons].¹²⁰

(2) Any purported appointment of a body corporate [or an unincorporated body of persons]¹²¹ as a director of a company shall be void.

Prohibition of minor being director or secretary.

[131]. (1) No person shall be appointed a director or, in the case of an individual, secretary of a company unless he or she has attained the age of 18 years.

(2) Any purported appointment of a minor as a director of a company shall be void.

(3) Where –

- (a) a person appointed a director of a company before the commencement of *subsection (1)* has not attained the age of 18 years when that subsection is commenced; or
- (b) the office of director of a company is held otherwise by virtue of another office, and the person appointed to that other office has not attained the age of 18 years when *subsection (1)* is commenced,

that person ceases to be a director of the company on the commencement of *subsection (1)* and the company shall make the necessary consequential alteration in its register of directors and shall notify the Registrar of the change.

Prohibition of undischarged bankrupt being director or secretary or otherwise involved in company.

[132]. (1) If any person being an undischarged bankrupt –

- (a) acts as a director or secretary of a company; or
- (b) directly or indirectly takes part or is concerned in the promotion, formation or management of a company,

the person shall (unless he or she does so with the leave of the court) be guilty of a category 2 offence.

(2) Where a person is convicted of an offence under *subsection (1)* the person shall be deemed to be subject to a disqualification order from the date of such conviction for such period as the court specifies if he or she was not, or was not deemed to be, subject to such an order on that date.

(3) In this section “disqualification order” has the same meaning as it has in *Chapter 4 of Part 14*.

Examination as to solvency status.

[133]. (1) Where the Director of Corporate Enforcement has reason to believe that a director or secretary of a company is an undischarged bankrupt, the Director of Corporate Enforcement may exercise the following power.

¹²⁰ Inserted by point 31 of Committee Amendments.

(2) That power is to require the director or secretary of the company to produce to the Director, by a specified date, a sworn statement by him or her of all relevant facts pertaining to the director's or secretary's financial position, both within the State and elsewhere, and, in particular, to any matter relating to bankruptcy as at a particular date.

(3) The court may, on the application of the Director of Corporate Enforcement, require a director or secretary of a company who has made a statement under *subsection (2)* to appear before it and answer on oath any question pertaining to the content of the statement.

(4) The court may, on the application of the Director of Corporate Enforcement, make a disqualification order against a director or secretary of a company, to be for such period as the court specifies, on the grounds that he or she is an undischarged bankrupt.

(5) A director or secretary of a company who fails to comply with a requirement under *subsection (2)* shall be guilty of a category 3 offence.

(6) In this section "disqualification order" has the same meaning as it has in *Chapter 4 of Part 14*.

Performance of acts by person in dual capacity as director and secretary not permitted.

[134]. A provision of –

- (a) this Act;
- (b) an instrument under it; or
- (c) a company's constitution,

requiring or authorising a thing to be done by or to a director and the secretary shall not be satisfied by its being done by or to the same person acting both as director and as, or in place of, the secretary.

Validity of acts of director or secretary.

[135]. The acts of a director or of a secretary shall be valid notwithstanding any defect which may afterwards be discovered in his or her appointment or qualification.

Share qualifications of directors.

[136]. (1) This section applies where the constitution of a company requires a director of the company to hold a specified share qualification (the "specified qualification").

(2) Where this section applies –

- (a) the office of director of a company shall be vacated if the director –
 - (i) does not within 2 months after the date of his or her appointment or within such shorter time as may be fixed by the constitution, obtain the specified qualification; or
 - (ii) ceases at any time, after the expiration of that period or shorter time so fixed, as the case may be, to hold the specified qualification; and
- (b) a person vacating office under this section shall be incapable of being re-appointed director of the

¹²¹ Inserted by point 32 of Committee Amendments.

company until he or she has obtained the specified qualification.

Company to have director resident in an EEA state.

[137]. (1) Subject to *subsection (2)* and *section [140]*, one, at least, of the directors for the time being of a company shall be a person who is resident in an EEA state.

(2) *Subsection (1)* shall not apply in relation to a company if the company for the time being holds a bond, in the prescribed form, in force to the value of €25,000 and which provides that, in the event of a failure by the company to pay the whole or part of each (if any) fine and penalty specified in the Table to this section, there shall become payable under the bond to a person who is, under *subsection (4)*, nominated for the purpose (the “nominated person”) a sum of money for the following purpose.

(3) That purpose is the purpose of the sum being applied by the nominated person in discharging the whole or part, as the case may be, of the company’s liability in respect of any such fine or penalty (and any sum that becomes so payable shall be applied by the nominated person accordingly).

(4) The nomination referred to in *subsection (2)* shall be made –

- (a) by the Registrar or the Revenue Commissioners, as appropriate; or
- (b) in the case of failure to pay both a fine referred to in *paragraph 1* of the Table to this section and a fine or penalty, or a fine and penalty, referred to in *paragraph 2* of that Table, jointly by the Registrar and the Revenue Commissioners.

(5) The bond referred to in *subsection (2)* may be entered into and shall have effect according to its terms notwithstanding any rule of law whereby any agreement to insure or indemnify a person in respect of any punishment or liability imposed on him or her in relation to any offence or unlawful act committed by him or her is void or unenforceable.

(6) If *subsection (1)* is not complied with, the company concerned and any officer of it who is in default shall be guilty of a category 4 offence.

(7) In this section “director” does not include an alternate director.

Table

1. A fine imposed on the company in respect of an offence under this Act committed by it.
2. (1) A fine imposed on the company in respect of an offence under section 1078 of the Taxes Consolidation Act 1997 committed by it, being an offence that consists of a failure by the company to deliver a statement which it is required to deliver under section 882 of that Act or to comply with a notice served on it under section 884 of that Act.
(2) A penalty which the company has been held liable to pay under section 1071 or 1073 of the Taxes Consolidation Act 1997.

Supplemental provisions concerning bond referred to in *section [137](2)*.

[138]. (1) In this section –

“bond” means the bond referred to in *section [137](2)*;

“nominated person” means the person nominated under *section [137](4)* in relation to the bond concerned.

(2) The bond shall also provide that, in addition to the sum referred to in *section [137](2)*, there shall become payable under the bond to the nominated person, on demand being made, with the consent of the Revenue Commissioners, by him or her in that behalf, a sum of money (not exceeding such sum as the Revenue Commissioners and the Minister may sanction) for the purpose of defraying such expenses as may have been reasonably incurred by that person in carrying out his or her duties under *section [137](3)*.

(3) The nominated person shall keep all proper and usual accounts, including an income and expenditure account and a balance sheet, of all moneys received by him or her on foot of the bond and of all disbursements made by him or her from any such moneys.

(4) The Minister, after consultation with the Minister for Public Expenditure and Reform, the Revenue Commissioners and any other person who, in the opinion of the Minister, might be concerned with or interested in the matter, may prescribe –

- (a) that arrangements in relation to the bond shall only be entered into with persons of a prescribed class or classes;
- (b) the form of that bond and the minimum period to be specified in the bond as being the period for which it shall be valid.

(5) A copy of the bond held by a company shall be appended –

- (a) in case none of the directors (within the meaning of *section [137]*) of the company is resident in an EEA state on its incorporation, to the statement required by *section 21(1)(a)* to be delivered to the Registrar in relation to the company;
- (b) in case a notification is made under *section [139]* to the Registrar in relation to the company, to that notification;
- (c) in case during the period to which an annual return concerning the company relates none of the directors (within the meaning of *section [137]*) of the company is resident in an EEA state, to that annual return (unless such a copy has been appended to a notification under *section [139]* made to the Registrar in that period).

Notification requirement as regards non-residency of director.

[139]. (1) Without prejudice to anything in *section [149]*, if a person ceases to be a director of a company and, at the time of that cessation –

- (a) he or she is resident in an EEA state; and
- (b) either –
 - (i) he or she was the sole director; or
 - (ii) to his or her knowledge, no other director of the company is resident in an EEA state,

that person shall, within 14 days after the date of that cessation, notify, in writing, the Registrar of that cessation and the matter referred to in *paragraph (b)(i)* or *(ii)*, as the case may be.

(2) A notification in writing to the Registrar of the matter referred to in *subsection (1)(b) (i)* or *(ii)* shall not, of itself, be regarded as constituting defamatory matter.

(3) If a person fails to comply with *subsection (1)*, he or she shall be jointly and severally liable with the company of which he or she has ceased to be director for any fine or penalty referred to in *section [137](2)* imposed on the company, or which it is held liable to pay, after that cessation.

(4) Any such fine or penalty for which that person is so liable may be recovered by the Registrar or the Revenue Commissioners, as appropriate, from him or her as a simple contract debt in any court of competent jurisdiction.

(5) In this section “director” does not include an alternate director.

Exception to *section [137]* – companies having real and continuous link with economic activity in State.

[140]. (1) *Section [137](1)* shall not apply in relation to a company in respect of which there is in force a certificate under this section.

(2) The Registrar may grant to a company, on application in the prescribed form being made by it in that behalf, a certificate stating that the company has a real and continuous link with one or more economic activities that are being carried on in the State.

(3) The Registrar shall not grant such a certificate unless the company concerned tenders proof to him or her that it has such a link.

(4) A statement referred to in *subsection (5)* that is tendered by the applicant shall be deemed to be proof, for the purposes of *subsection (3)*, that the applicant has such a link.

(5) That statement is a statement in writing that has been given to the company concerned by the Revenue Commissioners within the period of 2 months ending before the date on which an application is made under *subsection (2)* by the company and which states that the Revenue Commissioners have reasonable grounds to believe that the company has a real and continuous link with one or more economic activities being carried on in the State.

(6) If, in consequence of information that has come into the possession of the Registrar, the Registrar is of opinion that a company in respect of which a certificate under *subsection (2)* has been granted has ceased to have a real and continuous link with any economic activity being carried on in the State, he or she shall revoke that certificate.

(7) If, in consequence of information that has come into their possession, the Revenue Commissioners are of opinion that a company in respect of which a certificate under *subsection (2)* has been granted has ceased to have a real and continuous link with any economic activity being carried on in the State, the following applies -

(a) the Commissioners may give a notice in writing to the Registrar stating that they are of that opinion;
and

(b) such a notice that is received by the Registrar shall constitute information in his or her possession for the purposes of *subsection (6)*.

(8) *Subsection (7)(a)* has effect notwithstanding any obligations as to secrecy or other restrictions upon disclosure of information imposed by or under statute or otherwise.

(9) For the purposes of this section a company has a real and continuous link with an economic activity that is being carried on in the State if one or more of the following conditions are satisfied by it :

(a) the affairs of the company are managed by one or more persons from a

place of business established in the State and that person or those persons is or are authorised by the company to act on its behalf;

- (b) the company carries on a trade in the State;
- (c) the company is a subsidiary or a holding company of a company or other body corporate that satisfies either or both of the conditions specified in *paragraphs (a) and (b)*;
- (d) the company is a subsidiary of a company, another subsidiary of which satisfies either or both of the conditions specified in *paragraphs (a) and (b)*.

Provisions for determining whether director resident in State.

[141]. (1) So far as it is the person's residence in the State that falls to be determined for the purposes of those sections, for the purposes of *sections [137] and [139]* a person is resident in the State at a particular time (the "relevant time") if -

- (a) he or she is present in the State at -
 - (i) any one time or several times in the period of 12 months preceding the relevant time (the "immediate 12 month period") for a period in the aggregate amounting to 183 days or more; or
 - (ii) any one time or several times -
 - (I) in the immediate 12 month period; and
 - (II) in the period of 12 months preceding the immediate 12 month period (the "previous 12 month period"),for a period (being a period comprising in the aggregate the number of days on which the person is present in the State in the immediate 12 month period and the number of days on which the person was present in the State in the previous 12 month period) in the aggregate amounting to 280 days or more;or
- (b) that time is in a year of assessment (within the meaning of the Taxes Consolidation Act 1997) in respect of which the person has made an election under section 819(3) of that Act.

(2) Notwithstanding *subsection (1)(a)(ii)*, where in the immediate 12 month period concerned a person is present in the State at any one time or several times for a period in the aggregate amounting to not more than 30 days -

- (a) the person shall not be resident in the State, for the purposes of *section [137] or [139]*, at the relevant time concerned; and
- (b) no account shall be taken of the period for the purposes of the aggregate mentioned in *subsection (1)(a)(ii)*.

(3) For the purposes of *subsections (1) and (2)* -

- (a) references in this section to a person's being present in the State are references to the person's being

personally present in the State; and

- (b) a person shall be deemed to be present in the State for a day if the person is present in the State [at any time during that day].¹²²

Limitation on number of directorships.

[142]. (1) A person shall not, at a particular time, be a director of more than –

- (a) 25 private companies limited by shares; or
- (b) 25 companies, one, or more than one, of which is a private company limited by shares and one, or more than one, of which is any other type of company capable of being wound up under this Act.

(2) *Subsections (3) to (7)* apply in reckoning, for the purposes of *subsection (1)*, (the “relevant purposes”) the number of companies of which the person concerned is a director at a particular time (the “relevant time”) and a reference in them to a company, without qualification, includes a reference to any type of company capable of being wound up under this Act.

(3) Without prejudice to the following subsections, there shall not be included for the relevant purposes any of the following companies of which the person is a director at the relevant time, namely -

- (a) a public limited company;
- (b) a company in respect of which a certificate under *section [140]* is in force.

(4) There shall not be included, for the relevant purposes, any company of which the person is a director at the relevant time (not being a time that is before the date of the giving of the certificate or direction referred to subsequently in this subsection) if -

- (a) the person, or the company, delivers to the Registrar a notice, in the prescribed form, stating that the company is a company falling within one or more of the categories of company specified in the Table to this section; and
- (b) either -
 - (i) the Registrar, having considered that notice and having made such enquiries as he or she thinks fit, certifies in writing, or as the case may be the Minister under *subsection (7)* so certifies, that the company is a company falling within one or more of the foregoing categories; or
 - (ii) the Minister directs, under *subsection (7)*, that the company is not to be included amongst the companies for the relevant purposes.

(5) There shall, for the relevant purposes, be counted as the one company of which the person is a director at the relevant time, 2 or more companies of which he or she is a director at that time if one of those companies is the holding company of the other or others.

(6) For the purposes of *subsection (4)(b)(i)*, the Registrar may accept as sufficient evidence that the company concerned falls

¹²² Substituted by point 36 of Committee Amendments.

within a category of company specified in the Table to this section a [...] ¹²³declaration, in the prescribed form, to that effect made by an officer of the company or the other person referred to in *subsection (4)(a)*.

(7) If the Registrar refuses to certify that the company to which a notice under *subsection (4)(a)* relates is a company falling within a category of company specified in the Table to this section, the company or the person referred to in *subsection (4)(a)* may appeal to the Minister against such a refusal and the Minister may, having considered the matter and made such enquiries as he or she thinks fit, do one of the following -

- (a) confirm the decision of the Registrar;
- (b) certify in writing that the company is a company falling within a foregoing category, or
- (c) notwithstanding that he or she confirms the decision of the Registrar, direct that the company is not to be included amongst the companies that shall be reckoned for the purposes of *subsection (1)* in so far as that subsection applies to the person concerned but shall only give such a direction if -
 - (i) the person concerned was a director of the company before 18 April 2000; and
 - (ii) in the opinion of the Minister the inclusion of the company amongst the companies that shall be reckoned for the purposes of *subsection (1)*, in so far as that subsection applies to the person concerned, would result in serious injustice or hardship to that person; and
 - (iii) the giving of the direction would not operate against the common good.

(8) A notice referred to in *subsection (4)(a)* may, for the purposes of that provision, be delivered to the Registrar before the person concerned becomes a director of the company to which the notice relates.

Table

A company that is the holder of a licence under section 9 of the Central Bank Act 1971 or is exempt from the requirement under that Act to hold such a licence.
A company falling with any provision (in so far as applicable to a private company limited by shares) of <i>Schedule 5</i> .

Sanctions for contravention of *section [142]* and supplemental provisions.

[143]. (1) If a person, in contravention of *section [142](1)*, purports to become, or purports to remain, a director of one or more companies he or she shall be guilty of a category 4 offence.

(2) An appointment of a person as a director of a company shall, if it contravenes *section [142](1)*, be void.

(3) For the avoidance of doubt -

- (a) each purported appointment, in excess of the limit (reckoned in accordance with *section [142](3)* to (7)) that is provided for by *section [142](1)*, of a person as a director of a company shall constitute a separate contravention of *section [142](1)*;

¹²³ Deleted by point 37 of Committee Amendments.

- (b) an appointment, not in excess of the foregoing limit, of a person as a director of a company shall not, by virtue of this section, become unlawful, be rendered void or cease to have effect by reason of a subsequent appointment, in excess of that limit, of the person as a director of a company.

(4) If -

- (a) the appointments of a person as a director of 2 or more companies are made at the same time; or
- (b) the times at which the appointments of a person as a director of 2 or more companies were made are not capable of being distinguished from one another,

then those appointments shall, for the purposes of *section [142]*, be deemed to have been made at different times on the day concerned and in the same order as the order in which the companies to which the appointments relate were registered under this Act, the prior Companies Acts or any other former enactment relating to companies (within the meaning of *section 5*), as the case may be.

(5) A reference in this section to a company includes a reference to any type of company capable of being wound up under this Act.

Appointment of director.

[144]. (1) Any purported appointment of a director without that director's consent shall be void.

(2) Subject to *subsection (1)*, the first directors of a company shall be those persons determined in writing by the subscribers of the constitution or a majority of them.

(3) Save to the extent that the company's constitution provides otherwise and subject to *subsection (5)* in the case of a single-member company -

- (a) subsequent directors of a company may be appointed by the members in general meeting, provided that no person other than a director retiring at the meeting shall, save where recommended by the directors, be eligible for election to the office of director at any general meeting unless the requirements of *subsection (4)* as to his or her eligibility for that purpose have been complied with;
- (b) the directors of the company may from time to time appoint any person to be a director of the company, either to fill a casual vacancy or as an addition to the existing directors, but so that the total number of directors of the company shall not at any time exceed the number, if any, provided for in its constitution;
- (c) any director appointed as mentioned in *paragraph (b)* shall hold office only until the next following annual general meeting, and shall then be eligible for re-election;
- (d) the company may from time to time, by ordinary resolution, increase or reduce the number of directors;
- (e) the company may, by ordinary resolution, appoint another person in place of a director removed from office under *section [146]* and, without prejudice to the powers of the directors under *subsection (3)(b)*, the company in general meeting may appoint any person to be a director either to

fill a casual vacancy or as an additional director.

(4) The following are the requirements mentioned in *subsection (3)(a)* for the eligibility of a person (the “person concerned”) for election as a director at a general meeting, namely, not less than 3 nor more than 21 days before the day appointed for the meeting there shall have been left at the company’s registered office -

- (a) notice in writing signed by a member of the company duly qualified to attend and vote at the meeting for which such notice is given, of his or her intention to propose the person concerned for such election; and
- (b) notice in writing signed by the person concerned of his or her willingness to be so elected.

(5) [Subject to *subsection (1)*, in the case of]¹²⁴ a single-member company, the sole member may appoint a person to be a director of the company by serving a notice in writing on the company which states that the named person is appointed director and this applies notwithstanding anything in *subsection (3)* (save for the requirement of it that any limit for the time being on the number of the directors is to be observed) or *subsection (4)*.

Appointment of directors to be voted on individually.

[145]. (1) At a general meeting of a company, a motion for the appointment of 2 or more persons as directors of the company by a single resolution shall not be made, unless a resolution that it shall be so made has first been agreed to by the meeting without any vote being given against it.

(2) Subject to *subsections (3)* and *(4)*, a resolution moved in contravention of this section shall be void, whether or not its being so moved was objected to at the time.

(3) *Subsection (2)* shall not be taken as excluding the operation of *section [135]*.

(4) Where a resolution moved in contravention of this section is passed, no provision for the automatic re-appointment of retiring directors in default of another appointment shall apply.

(5) For the purposes of this section, a motion for approving a person’s appointment or for nominating a person for appointment shall be treated as a motion for his or her appointment.

(6) Nothing in this section shall apply to a resolution amending the company’s constitution.

Removal of directors.

[146]. (1) A company may by ordinary resolution remove a director before the expiration of his or her period of office notwithstanding anything in its constitution or in any agreement between it and him or her.

(2) *Subsection (1)* shall not authorise the removal of a director holding office for life.

(3) In the case of a resolution to remove a director under this section or to appoint somebody instead of the director so removed at the meeting at which he or she is removed the following provisions shall apply:

- (a) the company shall be given not less than 28 days’ notice of the intention to move any such resolution

¹²⁴ Substituted by point 61 of Report Amendments.

except when the directors of the company have resolved to submit it;

- (b) on receipt of notice of such an intended resolution, the company shall forthwith send a copy of it to the director concerned, and the director (whether or not he or she is a member of the company) shall be entitled to be heard on the resolution at the meeting; and
- (c) the company shall give its members notice of any such resolution at the same time and in the same manner as it gives notice of the meeting or, if that is not practicable, shall give them notice of it, either by advertisement in a daily newspaper circulating in the district in which the registered office of the company is situated or in any other manner allowed by this Act or by the constitution, not less than 21 days before the date of the meeting.

(4) Any such resolution that is passed that does not comply with the foregoing provisions shall, subject to *subsection (5)*, not be effective.

(5) If, after notice of the intention to move such a resolution has been given to the company, a meeting is called for a date 28 days or less after the notice has been given, the notice, though not given within the time required by *subsection (3)(a)*, shall be deemed to have been properly given for the purposes of that provision.

(6) Subject to *subsection (8)*, where notice is given of an intended resolution to remove a director under this section and the director concerned makes in relation to that resolution representations in writing to the company (not exceeding a reasonable length) and requests their notification to the members of the company, the company shall, unless the representations are received by it too late for it to do so -

- (a) in any notice of the resolution given to members of the company, state the fact of the representations having been made; and
- (b) send a copy of the representations to every member of the company to whom notice of the meeting is sent (whether before or after receipt of the representations by the company).

(7) If a copy of the representations is not sent as mentioned in *subsection (6)* (either because they were received too late or because of the company's default) the director concerned may, without prejudice to his or her right to be heard orally, require that the representations shall be read out at the meeting concerned.

(8) Copies of the representations need not be sent out, and the representations need not be read out at the meeting concerned, as mentioned in *subsection (6)* or *(7)*, if, on the application either of the company or of any other person who claims to be aggrieved, the court is satisfied that the rights conferred by this section are being abused to secure needless publicity for defamatory matter and orders that those things need not be done.

(9) The court may order the company's costs on such an application to be paid in whole or in part by the director concerned, notwithstanding that he or she is not a party to the application.

(10) A vacancy created by the removal of a director under this section may be filled at the meeting at which he or she is removed and, if not so filled, may be filled as a casual vacancy.

(11) A person appointed director in place of a person removed under this section shall be treated, for the purpose of determining the time at which he or she or any other director is to retire, as if he or she had become director on the day on which the person in whose place he or she is appointed was last appointed director.

Compensation for wrongful termination, other powers of removal not affected by *section [146]*.

[147]. Nothing in *section [146]* shall be taken -

- (a) as depriving a person removed under it of compensation or damages payable to him or her, or any other remedy available to the person, in respect of the termination of his or her appointment as director or of any appointment terminating with that as director; or
- (b) as derogating from any power to remove a director that may exist apart from that section.

Vacation of office.

[148]. (1) In addition to the case provided by *section [136]* (share qualification of directors), the office of director shall be vacated if the director -

- (a) is adjudicated bankrupt or being a bankrupt has not obtained a certificate of discharge in the relevant jurisdiction; or
- (b) becomes or is deemed to be subject to a disqualification order within the meaning of *Chapter 4 of Part 14*.

(2) Save to the extent that the company's constitution provides otherwise, the office of director shall be vacated if -

- (a) the director resigns his or her office by notice in writing to the company; or
- [(b) the health of the director is such that he or she can no longer be reasonably regarded as possessing an adequate decision making capacity; or]¹²⁵(c) a declaration of restriction is made in relation to the director and the directors, at any time during the currency of the declaration, resolve that his or her office be vacated; or
- (d) the director is sentenced to a term of imprisonment following conviction of an indictable offence; or
- (e) the director is for more than 6 months absent, without the permission of the directors, from meetings of the directors held during that period.

(3) In *subsection (2)(d)* the reference to a term of imprisonment includes a reference to such a term that is suspended.

Register of directors and secretaries.

[149]. (1) A company shall keep a register (the "register") of its directors and secretaries and, if any, its assistant and deputy secretaries.

¹²⁵ Substituted by point 36 of Seanad Committee Amendments.

(2) Subject to *subsection (4)* and section 150(11)¹²⁶, the register shall contain the following particulars relating to each director -

- (a) his or her present forename and surname and any former forename and surname;
- (b) his or her date of birth;
- (c) his or her usual residential address;
- (d) his or her nationality;
- (e) his or her business occupation, if any; and
- (f) particulars of any other directorships of bodies corporate, whether incorporated in the State or elsewhere, held by him or her or which have been held by him or her.

(3) *Sections [215] to [217]* (rights of inspection, requests for copies, etc.) apply to the register.

(4) It shall not be necessary for the register to contain on any day particulars of any directorship -

- (a) which has not been held by a director at any time during the 5 years preceding that day;
- (b) which is held or was held by a director in bodies corporate of which the company is or was the wholly owned subsidiary or which are or were the wholly owned subsidiaries either of the company or of another body corporate of which the company is or was the wholly owned subsidiary.

(5) Subject to *subsection (6)* and section 150(11)¹²⁷, the register shall contain the following particulars relating to the secretary or, where there are joint secretaries, in relation to each of them -

- (a) in the case of an individual -
 - (i) his or her present forename and surname and any former forename and surname;
 - (ii) his or her usual residential address; and
 - (iii) his or her date of birth,and
- (b) in the case of a body corporate, the corporate name and, if the body corporate is registered -
 - (i) its registered office;
 - (ii) the register in which it is registered; and
 - (iii) the number under which it is registered in that register.

(6) Where all the partners in a firm are joint secretaries of a company, the name and principal office of the firm may be stated instead of the particulars referred to in *subsection (5)*.

(7) In relation to any assistant or deputy secretary the same particulars shall be contained in the register as respects the assistant or deputy secretary as are required by *subsection (5)* to be contained in the register as respects a secretary or joint secretary.

(8) The company shall, within the period of 14 days after the date of the happening of -

- (a) any change among its directors or in its secretary or assistant or deputy secretary; or
- (b) any change in any of the particulars contained in the register,

¹²⁶ Inserted by point 37 of Seanad Committee Amendments.

¹²⁷ Inserted by point 38 of Seanad Committee Amendments.

send to the Registrar a notification in the prescribed form of the change and of the date on which it occurred.

(9) In the case of a person who is a director of more than one company (the “relevant companies”) the following provisions apply—

- (a) the person may send a notification in the prescribed form to the Registrar of a change in his or her usual residential address or of a change in his or her name and (in each case) of the date on which the change occurred;
- (b) if such a notification is sent to the Registrar and the relevant companies are listed in the notification as being companies of which the person is a director—
 - (i) each of the relevant companies shall be relieved, as respects, and only as respects, that particular change or, as the case may be, those particular changes, of the obligation under *subsection (8)* to send a notification of it or them to the Registrar; and
 - (ii) the Registrar may proceed to record the relevant change or changes concerning the person in relation to each of the relevant companies.

(10) A notification sent to the Registrar pursuant to *subsection (8)* of the appointment of a person as a director, secretary, joint secretary or assistant or deputy secretary of a company shall be accompanied by a consent signed by that person to act as director or secretary or assistant or deputy secretary or, where all the partners in a firm have been appointed joint secretaries of a company, by one partner on behalf of the firm, as the case may be.

(11) *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.

(12) For the purposes of this section -

- (a) in the case of a person usually known by a title different from his or her surname, the expression “surname” means that title;
- (b) references to a “former forename” or “surname” do not include—
 - (i) in the case of a person usually known by a title different from his or her surname, the name by which he or she was known previous to the adoption of or succession to the title; or
 - (ii) in the case of any person, a former forename or surname where that name or surname was changed or disused before the person bearing the name attained the age of 18 years or has been changed or disused for a period of not less than 20 years, or
 - [(iii) in the case of a married woman or civil partner, the name or surname by which he or she was known previously to his or her marriage or civil partnership.]¹²⁸

¹²⁸ Substituted by point 62 of Report Amendments.

Supplemental provisions (including offences) in relation to section [149].

[150]. (1) Without prejudice to the generality of section [149](8), a change among the directors for the purposes of that provision shall be deemed to include the case of a director's becoming 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; accordingly, in such a case, the notice under section [149](8) shall state, in relation to the director concerned -

- (a) the jurisdiction in which he or she has become so disqualified;
- (b) the date on which he or she has become so disqualified; and
- (c) the period for which he or she has become so disqualified.

(2) Without prejudice to subsection (1) and to the requirement under section [149](10) that the notification be accompanied by the consent there referred to, if -

- (a) the notification to be sent to the Registrar pursuant to section [149](8) is a notification of the appointment of a person as a director of a company; and
- (b) that person 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 shall ensure that the notification is accompanied by (but as a separate document from that notification) a statement in the prescribed form signed by the person specifying -

- (i) the jurisdiction in which he or she is so disqualified;
- (ii) the date on which he or she became so disqualified; and
- (iii) the period for which he or she is so disqualified.

(3) It shall be the duty of each director and secretary and assistant or deputy secretary, if any, of a company to give information in writing to the company as soon as may be of such matters as may be necessary to enable the company to comply with section 150 and the preceding subsections of this section.

(4) If default is made in complying with section [149](1),(2),(5),(7),(8) or (10), the company concerned and any officer of it who is in default shall be guilty of a category 3 offence.

(5) A person who fails to comply with subsection (1) shall be guilty of a category 3 offence.

(6) If the second mentioned person in subsection (2) fails to comply with that subsection, he or she shall be guilty of a category 3 offence.

(7) A person who fails to comply with subsection (3) shall be guilty of a category 3 offence.

(8) Without prejudice to subsection (3) or (6) and notwithstanding anything in subsection (2), it shall be the duty of a company to make reasonable enquiries of a person, on his or her appointment as director of the company, so as to ascertain whether the requirements of subsection (2) fall to be complied with by that person in relation to that appointment (but a failure of the company to do so does not relieve the person of his or her obligations under that subsection).

[9] If a person appointed a director of a company before the commencement of this section has, subsequent to his or her appointment but before that commencement, become 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 director or secretary of a body corporate or an undertaking, then *subsection (1)* shall apply to such a case as it applies to a case of a director becoming so disqualified after that commencement.

(10) For the purpose of the application of *subsection (1)* to the case first-mentioned in the preceding subsection, *section [149]* shall apply as if the following subsection were substituted for *subsection (8)*:

“(8) The company shall, within the period of 3 months after the commencement of this section, send to the Registrar a notification in the prescribed form of the change and of the date on which it occurred.”¹²⁹

[(11) The Minister may make regulations providing that any requirement of this Act that the usual residential address of an officer of a company appear on the register referred to in *section 149(1)* or the register kept by the Registrar shall not apply in relation to a particular person who is such an officer if—

- (a) in accordance with a procedure provided in the regulations for this purpose, it is determined that the circumstances concerning the personal safety or security of the person warrant the application of the foregoing exemption in respect of him or her; and
- (b) such other conditions (if any) as are specified in the regulations for the application of the foregoing exemption are satisfied.

(12) Regulations under *subsection (11)* may contain such incidental, consequential and supplemental provisions as appear to the Minister to be necessary or expedient, including provision—

- (a) so as to secure that there is not otherwise disclosed, by virtue of this Act’s operation, the usual residential address of a person in respect of whom the exemption referred to in that subsection applies; and
- (b) limiting the regulations’ application to a usual residential address that, but for the regulations’ operation, would fall to be entered, on a register referred to in that subsection, on or after a date specified in the regulations.]¹³⁰

Particulars to be shown on all business letters of company.

[151]. (1) Subject to [*subsection (5)*]¹³¹, a company shall, in all business letters on or in which the company’s name appears and which are sent by the company to any person, state in legible characters in relation to every director of the company the following particulars—

- (a) his or her present forename, or the initials thereof, and present surname;
- (b) any former forename and surnames of him or her; and
- (c) his or her nationality, if not Irish.

(2) A company shall further have the following particulars on all its business letters and order forms—

- (a) the name and legal form of the company;
- (b) the place of registration of the company and the number under which it is registered; and

¹²⁹ Inserted by point 63 of Report Amendments.

¹³⁰ Inserted by point 39 of Seanad Committee Amendments.

¹³¹ Substituted by point 38 of Committee Amendments.

(c) the address of its registered office.

(3) If on any business letters or order forms of a company there is reference to the share capital of the company, the company shall ensure that the reference is not stated otherwise than as a reference to the issued share capital of the company that is paid up.

(4) Where a company has a website, it shall display in a prominent and easily accessible place on that website the particulars referred to in *subsection (2)(a) to (c)* and if there is reference in such a website to the share capital of the company –

(a) the same requirement under *subsection (3)* applies to such a reference as it applies to such a reference on business letters and order forms; and

(b) the reference shall be displayed in a prominent and easily accessible place on the website.

(5) If special circumstances exist which render it, in the opinion of the Minister, expedient that such an exemption should be granted, the Minister may, subject to such conditions as he or she may think fit to impose and specifies in the exemption, grant, in writing, an exemption from the obligations imposed by *subsection (1)*.

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

(7) For the purposes of this section—

(a) “director” includes any person in accordance with whose directions or instructions the directors of the company are accustomed to act, and “officer” shall be read accordingly;

(b) “initials” includes a recognised abbreviation of a forename; and

(c) *section [149](12)* shall apply as it applies for the purposes of *section [149]*.

Entitlement to notify Registrar of changes in directors and secretaries if *section [149](8)* contravened.

[152]. (1) In this section “former director or secretary” means the person referred to in *subsection (2)*.

(2) This section applies where a company fails to send, in accordance with *section [149](8)*, a notification, in the prescribed form, to the Registrar of the fact of a person’s having ceased, for whatever reason, to be a director or secretary of the company and of the date on which that event occurred.

(3) Where this section applies, the former director or secretary may serve on the company a notice—

(a) requesting it to send forthwith the notification of the matters mentioned in *subsection (2)*, in the prescribed form, to the Registrar; and

(b) stating that if the company fails to comply with that request within 21 days after the date of service of the notice on it, he or she will forward to the Registrar and to every person who, to his or her knowledge, is an officer of the company a copy of any notice of resignation by him or her as a director or secretary of the company or any other documentary proof of his or her having ceased to be such a director or secretary, together with—

(i) in the case of the Registrar, such additional information as may be prescribed (which may include a declaration made by the person stating the names of the persons who, to the

knowledge of the person, are officers of the company); and

- (ii) in the case of every other person forwarded as mentioned above, a written request of the person that he or she take such steps as will ensure that the failure of the company to comply with the notice continues no further.

(4) If a company fails to comply with a request made of it under a notice referred to in *subsection (3)*, the former director or secretary may forward to the Registrar and to every person who, to his or her knowledge, is an officer of the company a copy of the notice of resignation or other documentary proof referred to in *subsection (3)(b)* if, but only if, there is forwarded together with that notice or proof –

- (a) in the case of the Registrar, the additional information referred to in *subsection (3)(b)(i)*; and
- (b) in the case of every other such person, the written request referred to in *subsection (3)(b)(ii)*.

(5) No notice of resignation or other documentary proof of a person's having ceased to be a director or secretary of a company which is forwarded to the Registrar by that person (other than such a notice or other proof which is forwarded by him or her under and in accordance with the preceding subsections or *section [139]*) shall be considered by the Registrar.

(6) No additional information referred to in *subsection (3)(b)(i)* that is –

- (a) included in a notice of resignation or other documentary proof referred to in this section; and
- (b) forwarded, under and in accordance with the foregoing provisions of this section, to the Registrar,

shall, of itself, be regarded as constituting defamatory matter.

Provisions as to assignment of office by directors.

[153]. (1) This section applies to any provision of –

- (a) the constitution of a company; or
- (b) any agreement entered into between a company and any person,

under which a director of the company is enabled to assign his or her office as such to another person.

(2) Any assignment of office made in pursuance of a provision to which this section applies shall, notwithstanding anything to the contrary contained in the provision, be of no effect unless and until it is approved by a special resolution of the company.

Chapter 3

Service contracts and remuneration

Copies of directors' service contracts.

[154]. (1) Subject to the provisions of this section, a company shall keep —

- (a) in the case of each director whose contract of service with the company is in writing, a copy of that contract;
- (b) in the case of each director whose contract of service with the company is not in writing, a written

memorandum setting out the terms of that contract;

- (c) in the case of each director who is employed under a contract of service with a subsidiary of the company, a copy of that contract or, if it is not in writing, a written memorandum setting out the terms of that contract;
- (d) a copy or written memorandum, as the case may be, of any variation of any contract of service referred to in *paragraph (a), (b) or (c)*,

and all copies and memoranda kept by a company in pursuance of this subsection shall be kept at the same place.

(2) *Sections [215] to [217] (rights of inspection, etc.)* apply to those copies and memoranda.

(3) Where a contract of service is only partially in writing, *paragraphs (a), (b), (c) and (d)*, as appropriate, of *subsection (1)*, and *subsection (4)* shall also apply to such a contract.

(4) *Subsection (1)* shall not apply in relation to a director's contract of service with the company or with a subsidiary of the company if that contract required him or her to work wholly or mainly outside the State, but the company shall keep a memorandum—

- (a) in the case of a contract of service with the company, setting out the name of the director and the provisions of the contract relating to its duration;
- (b) in the case of a contract of service with a subsidiary of the company, setting out the name of the director, the name and place of incorporation of the subsidiary and the provisions of the contract relating to its duration,

at the same place as copies and the memoranda are kept by the company in pursuance of *subsection (1)*.

(5) If default is made in complying with *subsection (1) or (4)*, the company concerned and any officer of it who is in default shall be guilty of a category 3 offence.

(6) This section shall not require to be kept -

- (a) a copy of, or memorandum setting out the terms of, a contract; or
- (b) a copy of, or memorandum setting out the terms of a variation of, a contract,

at a time at which the unexpired portion of the term for which the contract is to be in force is less than 3 years or at a time at which the contract can, within the next ensuing 3 years, be terminated by the company without payment of compensation.

Remuneration of directors.

[155]. (1) Each provision of this section applies save to the extent that the company's constitution provides otherwise.

(2) The remuneration of the directors of a company shall be such as is determined, from time to time, by the board of directors and such remuneration shall be deemed to accrue from day to day.

(3) The directors of a company may also be paid all travelling, hotel and other expenses properly incurred by them -

- (a) in attending and returning from –
 - (i) meetings of the directors or any committee referred to in *section [160](9)*; or
 - (ii) general meetings of the company,

or

- (b) otherwise in connection with the business of the company.

Prohibition of tax-free [payments]¹³² to directors.

[156]. (1) It shall not be lawful for a company to pay a director of the company remuneration (whether as director or otherwise) –

- (a) free of income tax[or the universal social charge]¹³³; or
- (b) otherwise calculated by reference to or varying with the amount of his or her income tax or to or with the rate of income tax,

except under a contract which was in force on 31 March 1962 and provides expressly and not by reference to the constitution for payment of remuneration in that manner.

(2) Any provision contained in -

- (a) a company's constitution;
- (b) any contract other than such a contract as is mentioned in *subsection (1)*; or
- (c) any resolution of a company or a company's directors,

for payment to a director of remuneration in the manner referred to in *subsection (1)* shall have effect as if it provided for payment, as a gross sum subject to income tax[and the universal social charge]¹³⁴, of the net sum for which it actually provides.

Chapter 4

Proceedings of directors

Sections [158] to [165] to apply save where constitution provides otherwise.

[157]. Each subsequent provision of this Chapter (other than *sections [166] and [167]*) applies save to the extent that the company's constitution provides otherwise.

General power of management and delegation.

[158]. (1) The business of a company shall be managed by its directors, who may pay all expenses incurred in promoting and registering the company and may exercise all such powers of the company as are not, by this Act or by the constitution, required to be exercised by the company in general meeting, but subject to –

- (a) any regulations contained in the constitution;
- (b) the provisions of this Act; and
- (c) such directions, not being inconsistent with the foregoing regulations or provisions, as the company in

¹³² Correction of typographical error from Bill as initiated

¹³³ Inserted by point 64 of Report Amendments.

¹³⁴ Inserted by point 65 of Report Amendments.

general meeting may (by special resolution) give.

(2) However, no direction given by the company in general meeting under *subsection (1)(c)* shall invalidate any prior act of the directors which would have been valid if that direction had not been given.

[(3) Without prejudice to the generality of that subsection, subsection (1) operates to enable, subject to a limitation (if any) arising under any of paragraphs (a) to (c) of it, the directors of the company to exercise all powers of the company to borrow money and to mortgage or charge its undertaking, property and uncalled capital, or any part thereof.]¹³⁵

([4] Without prejudice to *section 40*, the directors may delegate any of their powers to such person or persons as they think fit, including committees; any such committee shall, in the exercise of the powers so delegated, conform to any regulations that may be imposed on it by the directors.

([5] The reference in *subsection (1)* to a power of the company required to be exercised by the company in general meeting includes a reference to a power of the company that, but for the power of the members to pass a written resolution to effect the first-mentioned power's exercise, would be required to be exercised by the company in general meeting.

Managing director.

[159]. (1) The directors of a company may from time to time appoint one or more of themselves to the office of managing director (by whatever name called) for such period and on such terms as to remuneration and otherwise as they see fit, and, subject to the terms of any agreement entered into in any particular case, may revoke such appointment.

(2) Without prejudice to any claim the person so appointed may have for damages for breach of any contract of service between the person and the company, the person's appointment shall cease upon his or her ceasing, from any cause, to be a director of the company.

(3) A managing director of a company shall receive such remuneration whether by way of salary, commission or participation in the profits, or partly in one way and partly in another, as the directors may determine.

(4) Without prejudice to *section 40*, the directors may confer upon a managing director any of the powers exercisable by them upon such terms and conditions and with such restrictions as they may think fit.

(5) In conferring any such powers, the directors may specify that the conferral is to operate either -

- (a) so that the powers concerned may be exercised concurrently by them and the managing director; or
- (b) to the exclusion of their own such powers.

(6) The directors may -

- (a) revoke any conferral of powers under *subsection (4)*; or
- (b) amend any such conferral (whether as to the powers conferred or the terms, conditions or restrictions subject to which the conferral is made).

Meetings of directors and committees.

¹³⁵ Inserted by point 66 of Report Amendments.

[160]. (1) The directors of a company may meet together for the dispatch of business, adjourn and otherwise regulate their meetings as they think fit.

(2) Questions arising at any such meeting shall be decided by a majority of votes and where there is an equality of votes, the chairperson shall have a second or casting vote.

(3) A director may, and the secretary on the requisition of a director shall, at any time summon a meeting of the directors.

(4) All directors shall be entitled to reasonable notice of any meeting of the directors but, if the directors so resolve, it shall not be necessary to give notice of a meeting of directors to any director who, being resident in the State, is for the time being absent from the State.

(5) Nothing in *subsection (4)* or any other provision of this Act enables a person, other than a director of the company concerned, to object to the notice given for any meeting of the directors.

(6) The quorum necessary for the transaction of the business of the directors may be fixed by the directors, and unless so fixed shall be 2 but, where the company has a sole director, the quorum shall be one.

(7) The continuing directors may act notwithstanding any vacancy in their number but, if and so long as their number is reduced below the number fixed by or pursuant to this Act as the necessary quorum of directors, the continuing directors or director may act for the purpose of increasing the number of directors to that number or of summoning a general meeting of the company but for no other purpose.

(8) The directors may elect a chairperson of their meetings and determine the period for which he or she is to hold office, but if no such chairperson is elected, or, if at any meeting the chairperson is not present within 15 minutes after the time appointed for holding it, the directors present may choose one of their number to be chairperson of the meeting.

(9) The directors may establish one or more committees consisting in whole or in part of members of the board of directors.

(10) A committee established under *subsection (9)* (a "committee") may elect a chairperson of its meetings; if no such chairperson is elected, or if at any meeting the chairperson is not present within 15 minutes after the time appointed for holding it, the members of the committee present may choose one of their number to be chairperson of the meeting.

(11) A committee may meet and adjourn as it thinks proper.

(12) Questions arising at any meeting of a committee shall be determined by a majority of votes of the members of the committee present, and where there is an equality of votes, the chairperson shall have a second or casting vote.

Supplemental provisions about meetings (including provision for acting by means of written resolutions).

[

[161]. (1) A resolution in writing signed by all the directors of a company, or by all the members of a committee of them, and who are for the time being entitled to receive notice of a meeting of the directors or, as the case may be, of such a committee, shall be as valid as if it had been passed at a meeting of the directors or such a committee duly convened and held.]¹³⁶

¹³⁶ Substituted by point 67 of Report Amendments.

(2) Subject to *subsection (3)*, where one or more of the directors (other than a majority of them) would not, by reason of -

- (a) this Act or any other enactment;
- (b) the company's constitution; or
- (c) a rule of law,

be permitted to vote on a resolution such as is referred to in *subsection (1)*, if it were sought to pass the resolution at a meeting of the directors duly convened and held, then such a resolution, notwithstanding anything in *subsection (1)*, shall be valid for the purposes of that subsection if the resolution is signed by those of the directors who would have been permitted to vote on it had it been sought to pass it at such a meeting.

(3) In a case falling within *subsection (2)*, the resolution shall state the name of each director who did not sign it and the basis on which he or she did not sign it.

(4) For the avoidance of doubt, nothing in the preceding subsections dealing with a resolution that is signed by other than all of the directors shall be read as making available, in the case of an equality of votes, a second or casting vote to the one of their number who would, or might have been, if a meeting had been held to transact the business concerned, chairperson of that meeting.

(5) The resolution referred to in *subsection (1)* may consist of several documents in like form each signed by one or more directors and for all purposes shall take effect from the time that it is signed by the last director.

(6) A meeting of the directors or of a committee referred to in *section [160](9)* may consist of a conference between some or all of the directors or, as the case may be, members of the committee who are not all in one place, but each of whom is able (directly or by means of telephonic, video or other electronic communication) to speak to each of the others and to be heard by each of the others and:

- (a) a director or member of the committee taking part in such a conference shall be deemed to be present in person at the meeting and shall be entitled to vote and be counted in a quorum accordingly; and
- (b) such a meeting shall be deemed to take place –
 - (i) where the largest group of those participating in the conference is assembled;
 - (ii) if there is no such group, where the chairperson of the meeting then is;
 - (iii) if neither subparagraph (i) or (ii) applies, in such location as the meeting itself decides.

(7) Subject to the other provisions of this Act, a director may vote in respect of any contract, appointment or arrangement in which he or she is interested and he or she shall be counted in the quorum present at the meeting.

(8) The directors of a company may exercise the voting powers conferred by the shares of any other company held or owned by the company in such manner in all respects as they think fit and, in particular, they may exercise the voting powers in favour of any resolution –

- (a) appointing the directors or any of them as directors or officers of such other company; or
- (b) providing for the payment of remuneration or pensions to the directors or officers of such other company.

(9) Any director of the company may vote in favour of the exercise of such voting rights notwithstanding that he or she may be or may be about to become a director or officer of the other company referred to in *subsection (8)* and as such or in any other way is or

may be interested in the exercise of such voting rights in the foregoing manner.

Holding of any other office or place of profit under the company by director.

[162]. (1) A director of a company may hold any other office or place of profit under the company (other than the office of statutory auditor) in conjunction with his or her office of director for such period and on such terms as to remuneration and otherwise as the directors of the company may determine.

(2) No director of a company or intending such director shall be disqualified by his or her office from contracting with the company either with regard to his or her tenure of any such other office or place of profit or as vendor, purchaser or otherwise.

(3) In particular, neither shall –

- (a) any contract with respect to any of the matters referred to in *subsection (2)*, nor any contract or arrangement entered into by or on behalf of the company in which a director is in any way interested, be liable to be avoided; nor
- (b) a director so contracting or being so interested be liable to account to the company for any profit realised by any such contract or arrangement,

by reason of such director holding that office or of the fiduciary relation thereby established.

Counting of director in quorum and voting at meeting at which director is appointed.

[163]. A director of a company, notwithstanding his or her interest, may be counted in the quorum present at any meeting at which –

- (a) that director or any other director is appointed to hold any such office or place of profit under the company as is mentioned in *section [162](1)*; or
- (b) the terms of any such appointment are arranged,

and he or she may vote on any such appointment or arrangement other than his or her own appointment or the arrangement of the terms of it.

Signing, drawing, etc., of negotiable instruments and receipts.

[164]. Each –

- (a) cheque, promissory note, draft, bill of exchange or other negotiable instrument; and
- (b) receipt for moneys paid to the company,

shall be signed, drawn, accepted, endorsed or otherwise executed, as the case may be, by such person or persons and in such manner as the directors of the company shall from time to time by resolution determine.

Alternate directors.

[165]. (1) Any director (the “appointer”) of a company may from time to time appoint any other director of it or, with the approval of a majority of its directors, any other person to be an alternate director (the “appointee”) as respects him or her.

(2) Only one person may stand appointed at a particular time to be an alternate director as respects a particular director.

(3) The appointee, while he or she holds office as an alternate director, shall be entitled –

- (a) to notice of meetings of the directors of the company;
- (b) to attend at such meetings as a director; and
- (c) in place of the appointer, to vote at such meetings as a director,

but shall not be entitled to be remunerated otherwise than out of the remuneration of the appointer.

(4) Any appointment under this section shall be effected by notice in writing given by the appointer to the company.

(5) Any appointment so made may be revoked at any time by the appointer or by a majority of the other directors or by the company in general meeting.

(6) Revocation of such an appointment by the appointer shall be effected by notice in writing given by the appointer to the company.

Minutes of proceedings of directors.

[166]. (1) A company shall cause minutes to be entered in books kept for that purpose of —

- (a) all appointments of officers made by its directors;
- (b) the names of the directors present at each meeting of its directors and of any committee of the directors;
- (c) all resolutions and proceedings at all meetings of its directors and of committees of directors.

(2) Such minutes shall be entered in the foregoing books as soon as may be after the appointment concerned is made, the meeting concerned has been held or the resolution concerned has been passed.

(3) Any such minute, if purporting to be signed by the chairperson of the meeting at which the proceedings were had, or by the chairperson of the next succeeding meeting, shall be evidence of the proceedings.

(4) Where minutes have been made in accordance with this section of the proceedings at any meeting of directors or committee of directors, then, until the contrary is proved -

- (a) the meeting shall be deemed to have been duly held and convened;
- (b) all proceedings had at the meeting shall be deemed to have been duly had; and
- (c) all appointments of officers made by its directors at the meeting shall be deemed to be valid.

(5) A company shall, if required by the Director of Corporate Enforcement, produce to the Director for inspection the book or books kept in accordance with *subsection (1)* by it and shall give to the Director of Corporate Enforcement such facilities for inspecting and taking copies of the contents of the book or books as the Director may require.

(6) If a company fails to comply with *subsection (1)* or a with requirement made of it under *subsection (5)*, the company and any officer of it who is in default shall be guilty of a category 4 offence.

Audit committees.

[167]. (1) In this section —

“amount of turnover” and “balance sheet total” have the same meanings as they have in *section [350]*;

“large company” means either of the following—

- (a) a company that, in both the most recent financial year of the company and the immediately preceding financial year, meets the following criteria—
 - (i) the balance sheet total of that company exceeds for the year—
 - (I) subject to *clause (II)*, €25,000,000; or
 - (II) if an amount is prescribed under *section 945(1)(k)*, the prescribed amount;
 - and
 - (ii) the amount of turnover of that company exceeds for the year—
 - (I) subject to *clause (II)*, €50,000,000; or
 - (II) if an amount is prescribed under *section 945(1)(k)*, the prescribed amount;
- or
- (b) a company which has one or more subsidiary undertakings, if the company and all those subsidiary undertakings together, in both the most recent financial year of that company and the immediately preceding financial year, meet the criteria set out in *paragraph (a)*.

(2) The board of directors of a large company shall either—

- (a) establish a committee (an “audit committee”) that—
 - (i) has at least the responsibilities specified in *subsection (7)*; and
 - (ii) otherwise meets the requirements of this section; or
- (b) decide not to establish such a committee.

(3) The board of directors of a large company shall state in their report under *section [325]* -

- (a) whether the company has established an audit committee or decided not to do so;
- (b) if the company has decided not to establish an audit committee, the reasons for that decision.

(4) The members of the audit committee shall include at least one independent director of the large company, that is to say, a person who —

- (a) is a non-executive director of it; and
- (b) otherwise possesses the requisite degree of independence (particularly with regard to his or her satisfying the condition in *subsection (5)*) so as to be able to contribute effectively to the committee’s functions.

(5) The condition referred to in *subsection (4)(b)* is that the director there referred to does not have, and at no time during the period of 3 years preceding his or her appointment to the committee did have—

- (a) a material business relationship with the large company, either directly, or as a partner, shareholder, director (other than as a non-executive director) or senior employee of a body that has such a relationship with the company; or
- (b) a position of employment in the large company.

- (6) The director referred to in *subsection (4)* (or, where there is more than one director of the kind referred to in that subsection, one of them) shall be a person who has competence in accounting or auditing.
- (7) Without prejudice to the responsibility of the board of directors, the responsibilities of the audit committee shall include:
- (a) the monitoring of the financial reporting process;
 - (b) the monitoring of the effectiveness of the large company's systems of internal control, internal audit and risk management;
 - (c) the monitoring of the statutory audit of the large company's statutory financial statements; and
 - (d) the review and monitoring of the independence of the statutory auditors
- and in particular the provision of additional services to the large company.
- (8) If an audit committee is established, any proposal of the board of directors of the large company with respect to the appointment of a statutory auditors to the company shall be based on a recommendation made to the board by the audit committee.
- (9) The statutory auditors shall report to the audit committee of the large company on key matters arising from the statutory audit of the company, and, in particular, on material weaknesses in internal control in relation to the financial reporting process.
- (10) For the purposes of *subsections (4)* and *(5)(a)*, a non-executive director is a director who is not engaged in the daily management of the large company or body concerned, as the case may be.
- (11) Where a director of a large company fails to take all reasonable steps to comply with the requirements of *subsection (3)*, the director shall be guilty of a category 3 offence.

Chapter 5

Members

Definition of member.

- [168]. (1) The subscribers to the constitution of a company shall be deemed to have agreed to become members of the company, and, on its registration, shall be entered as members in its register of members.
- (2) Every other person who agrees to become a member of a company, and whose name is entered in its register of members, shall be a member of the company.

Register of members.

- [169]. (1) Subject to *subsection (5)*, a company shall keep a register of its members and enter in it the following particulars—
- (a) the names, addresses of the members and a statement of the shares held by each member, distinguishing each share by its number so long as the share has a number, and of the amount paid or agreed to be considered as paid on the shares of each member;
 - (b) the date at which each person was entered in the register as a member; and

(c) the date at which any person ceased to be a member.

(2) Sections [215] to [217] (rights of inspection, requests for copies, etc.) apply to the register of members.

(3) The entries required under paragraphs (a) and (b) of subsection (1) shall be made within 28 days after the date of conclusion of the agreement with the company to become a member or, in the case of a subscriber of the constitution, within 28 days after the date of registration of the company.

(4) The entry required under subsection (1)(c) shall be made –

(a) within 28 days after the date when the person concerned ceased to be a member; or

(b) if the person ceased to be a member otherwise than as a result of action by the company, within 28 days after the date of production to the company of evidence satisfactory to the company of the occurrence of the event whereby the person ceased to be a member.

(5) Where the company has converted any of its shares into stock and given notice of the conversion to the Registrar, the register shall show the amount of stock held by each member instead of the amount of shares and the particulars relating to shares specified in subsection (1)(a).

(6) Where a company makes default in complying with any of the requirements of subsection (1) or subsections (3) to (5), the company and any officer of it who is in default shall be guilty of a category 3 offence.

Trusts not to be entered on register of members.

[170]. No notice of any trust, express, implied or constructive, shall be entered –

(a) on the register of members or be receivable by the keeper of the register; or

(b) on any register kept by the Registrar.

Register to be evidence.

[171]. The register of members shall be *prima facie* evidence of any matters by this Act directed or authorised to be inserted in it.

Consequences of failure to comply with requirements as to register owing to agent's default.

[172]. (1) Where -

(a) by virtue of section [216](2) the register of members is kept by some person other than the company concerned; and

(b) by reason of any default of that other person a failure on the part of the company to comply with section [169] or [216], or with any requirements of this Act as to the production of the register, occurs amounting to the commission of an offence under this Act by the company,

that other person shall also be guilty of an offence and may be charged with and convicted of it whether or not proceedings for an offence are brought against the company.

(2) A person guilty of an offence under subsection (1) shall be liable on conviction to the same range of fines and other penalties provided in this Act that the company referred to in subsection (1) is or would be liable in respect of that offence.

(3) The power of the court under this Act to require compliance with the provision concerned shall extend to the making of orders against the person referred to in *subsection (1)* and his or her officers and servants.

Rectification of register.

[173]. (1) If—

- (a) the name of any person is, without sufficient cause, entered in the register of members or omitted from it, in contravention of [*subsections (1) and (2)*]¹³⁷ of *section [169]*; or
- (b) default is made in entering on the register, within the period fixed by [*subsection (4)*]¹³⁸ of *section [169]*, the fact of any person's having ceased to be a member,

the person aggrieved, or any member of the company, or the company, may apply to the court for rectification of the register.

(2) Where an application is made under this section, the court may either refuse the application or may order rectification of the register and payment by the company of compensation for any loss sustained by any party aggrieved.

(3) On an application under this section the court may decide any question relating to the title of any person who is a party to the application to have his or her name entered in or omitted from the register (whether the question arises between members or alleged members, or between members or alleged members on the one hand and the company on the other hand) and generally may decide any question necessary or expedient to be decided for rectification of the register.

(4) The court when making an order for rectification of the register shall by its order direct, if appropriate, notice of the rectification to be given to the Registrar.

(5) A company may, without application to the court, at any time rectify any error or omission in the register but such a rectification shall not adversely affect any person unless he or she agrees to the rectification made.

(6) The company shall, within 21 days after the date on which the rectification under *subsection (5)* has been made, give notice[, in the prescribed form,]¹³⁹ of the rectification to the Registrar if the error or omission referred to in *subsection (5)* also occurs in any document forwarded by the company to the Registrar.

(7) Without prejudice to the generality of *subsection (5)*, a rectification may be effected by the company under that subsection of an error or omission that relates to the amount of the company's issued share capital (whether it consists of an overstatement or understatement of it) and *subsection (6)* shall apply, in the circumstances there set out, in the event of such a rectification.

Power to close register.

[174]. A company may, on giving notice by advertisement in some newspaper circulating in the district in which the registered office of the company is situate, close the register of members for any time or times not exceeding in the whole 30 days in each year.

¹³⁷ Substituted by point 68 of Report Amendments.

¹³⁸ Substituted by point 69 of Report Amendments.

Chapter 6

General meetings and resolutions

Annual general meeting.

[175]. (1) Subject to *subsections* (2) and (3), a company shall in each year hold a general meeting as its annual general meeting in addition to any other meetings in that year and shall specify the meeting as such in the notices calling it and not more than 15 months shall elapse between the date of one annual general meeting of a company and that of the next.

(2) So long as a company holds its first annual general meeting within 18 months after the date of its incorporation, it need not hold it in the year of its incorporation or in the following year.

(3) A company need not hold an annual general meeting in any year where all the members entitled (at the date of the written resolution referred to in this subsection) to attend and vote at such general meeting sign, before the latest date for the holding of that meeting, a written resolution under *section* [193] —

- (a) acknowledging receipt of the financial statements that would have been laid before that meeting;
- (b) resolving all such matters as would have been resolved at that meeting; and
- (c) confirming no change is proposed in the appointment of the person (if any) who, at the date of the resolution, stands appointed as statutory auditor of the company.

(4) Without prejudice to any specific provision of this Act providing for the contingency of an annual general meeting being so dispensed with, where a provision of this Act requires that a thing is to be done at an annual general meeting, then, if the thing is dealt with in the foregoing resolution (whether by virtue of the matter being resolved in the resolution, the members' acknowledging receipt of a notice, report or other documentation or, as the case may require, howsoever otherwise), that requirement shall be regarded as having been complied with.

(5) If default is made in holding a meeting of the company in accordance with *subsection* (1), the Director of Corporate Enforcement may, on the application of any member of the company, call or direct the calling of a general meeting of the company and give such ancillary or consequential directions as the Director of Corporate Enforcement thinks expedient, including directions modifying or [supplementing the operation of the company's constitution in relation to the calling, holding and conducting of the meeting.]¹⁴⁰

(6) The directions which may be given under *subsection* (5) may include a direction that one member of the company present in person or by proxy shall be deemed to constitute a meeting.

(7) A general meeting held in pursuance of *subsection* (5) shall, subject to any directions of the Director of Corporate Enforcement and *subsection* (8), be deemed to be an annual general meeting of the company.

(8) Where a meeting so held is not held in the year in which the default in holding the company's annual general meeting occurred, the meeting so held shall not be treated as the annual general meeting for the year in which it is held unless, at that meeting, the company resolves that it shall be so treated.

¹³⁹ Inserted by point 39 of Committee Amendments.

¹⁴⁰ Substituted by point 40 of Committee Amendments.

(9) Where a company resolves that a meeting shall be so treated, a copy of the resolution shall, within 21 days after the date of passing of it, be delivered by it to the Registrar.

(10) If default is made in holding a meeting of the company in accordance with *subsection (1)*, or in complying with any direction of the Director of Corporate Enforcement under *subsection (5)*, the company and any officer of it who is in default shall be guilty of a category 3 offence.

(11) If default is made by a company in complying with *subsection (9)*, the company and any officer of it who is in default shall be guilty of a category 4 offence.

The location and means for holding general meetings.

[176]. (1) Subject to the provisions of this section, an annual general meeting of a company or an extraordinary general meeting of it may be held inside or outside of the State.

(2) If a company holds its annual general meeting or any extraordinary general meeting outside of the State then, unless all of the members entitled to attend and vote at such meeting consent in writing to its being held outside of the State, the company has the following duty.

(3) That duty is to make, at the company's expense, all necessary arrangements to ensure that members can by technological means participate in any such meeting without leaving the State.

(4) A meeting referred to in *subsection (1)* may be held in 2 or more venues (whether inside or outside of the State) at the same time using any technology that provides members, as a whole, with a reasonable opportunity to participate.

Extraordinary general meetings.

[177]. (1) All general meetings of a company, other than annual general meetings, shall be known, and in this Act are referred to, as "extraordinary general meetings".

(2) The directors of a company may, whenever they think fit, convene an extraordinary general meeting.

(3) If, at any time, there are not sufficient directors capable of acting to form a quorum, any director of the company or any member of it may convene an extraordinary general meeting in the same manner as nearly as possible as that in which meetings may be convened by the directors.

Convening of extraordinary general meetings by members.

[178]. (1) The rights conferred –

(a) by *subsection (2)* on a member or members have effect save where the constitution of the company provides otherwise; and

(b) by *subsections (3) to (7)* on a member or members (and the corresponding duties on the part of the directors) have effect notwithstanding anything in the constitution of the company.

(2) One or more members of a company holding, or together holding, at any time not less than 50 per cent (or such other percentage as may be specified in the constitution) of the paid up share capital of the company as, at that time, carries the right of voting at general

meetings of the company may convene an extraordinary general meeting of the company.

(3) The directors of a company shall, on the requisition of one or more members holding, or together holding, at the date of the deposit of the requisition, not less than 10 per cent of the paid up share capital of the company, as at the date of the deposit carries the right of voting at general meetings of the company, forthwith proceed duly to convene an extraordinary general meeting of the company.

(4) The requisition shall state the objects of the meeting and shall be signed by the requisitionists and deposited at the registered office of the company and may consist of several documents in like form each signed by one or more requisitionists.

(5) If the directors do not within 21 days after the date of the deposit of the requisition proceed duly to convene a meeting to be held within 2 months after that date (the "requisition date"), the requisitionists, or any of them representing more than 50 per cent of the total voting rights of all of them, may themselves convene a meeting, but any meeting so convened shall not be held after the expiration of 3 months after the requisition date.

(6) Any reasonable expenses incurred by the requisitionists by reason of the failure of the directors duly to convene a meeting shall be repaid to the requisitionists by the company and any sum so repaid shall be retained by the company out of any sums due or to become due from the company by way of fees or other remuneration in respect of their services to such of the directors as were in default.

(7) For the purposes of *subsections (3) to (6)*, the directors shall, in the case of a meeting at which a resolution is to be proposed as a special resolution, be deemed not to have duly convened the meeting if they do not give such notice of it as is required by *section [181]*.

(8) A meeting convened under *subsection (2) or (5)* shall be convened in the same manner as nearly as possible as that in which meetings are to be convened by directors.

Power of court to convene meeting.

[179]. (1) Subject to *subsection (2)*, the court may on application being made to it by any of the persons specified in *subsection (3)*, or of its own motion, make an order requiring a general meeting of a company to be called, held and conducted in any manner that the court thinks fit.

(2) An order shall not be made under *subsection (1)* unless the court is satisfied that for any reason it is impracticable or otherwise undesirable –

- (a) for any person to call a general meeting of the company in any manner in which meetings of that company may be called; or
- (b) to conduct a general meeting of the company in any manner provided by this Act or the company's constitution.

(3) The persons referred to in *subsection (1)* are:

- (a) a director of the company referred to in that subsection (the "company");
- (b) a member of the company who would be entitled to vote at a general meeting of it;
- (c) the personal representative of a deceased member of the company, which member would, but for his or her death, be entitled to vote at such a meeting; and
- (d) the assignee in bankruptcy of a bankrupt member of the company[, which member would be entitled to

vote at such a meeting].¹⁴¹

(4) Where an order under *subsection (1)* is made, the court may give such ancillary or consequential directions as it thinks expedient.

(5) Such directions may include a direction that one member of the company, or the personal representative of a deceased member of the company or the assignee in bankruptcy of a bankrupt member of it, present in person or by proxy, is a quorum.

(6) A meeting called, held and conducted in accordance with an order under *subsection (1)* is for all purposes to be taken as a meeting of the company duly called, held and conducted.

Persons entitled to notice of general meetings.

[180]. (1) Notice of every general meeting of a company (“relevant notice”) shall be given to —

- (a) every member;
- (b) the personal representative of a deceased member of the company, which member would, but for his or her death, be entitled to vote at the meeting;
- (c) the assignee in bankruptcy of a bankrupt member of the company[(being a bankrupt member who is entitled to vote at the meeting)]¹⁴²; and
- (d) the directors and secretary of the company.

(2) Relevant notice may, in the case of joint holders of a share, be given by giving the notice to the joint holder first named in the register in respect of the share.

(3) Relevant notice may be given by the company to the persons entitled to a share in consequence of the death or bankruptcy of a member by sending it through the post in a prepaid letter addressed to them by name or by the title of representatives of the deceased or assignee in bankruptcy or by any like description at the address supplied for the purpose by the persons claiming to be so entitled.

(4) Until such an address has been so supplied, relevant notice may be given to those persons by giving the notice in any manner in which it might have been given if the death or bankruptcy concerned had not occurred.

(5) Unless its constitution provides otherwise, no person, other than any person specified in the preceding subsections, shall be entitled to receive notices of general meetings of a company but this is without prejudice to *subsection (6)*.

(6) Unless the company is entitled to and has availed itself of the audit exemption under *section [360]* or *[365]* (and, where relevant, *section [399]* has been complied with in that regard), the statutory auditors of a company shall be entitled to –

- (a) attend any general meeting of a company;
- (b) receive all notices of, and other communications relating to, any general meeting which any member of the company is entitled to receive; and
- (c) be heard at any general meeting which they attend on any part of the business of the meeting which concerns them as statutory auditors.

¹⁴¹ Inserted by point 41 of Committee Amendments.

Notice of general meetings.

[181]. (1) Save where the constitution of the company makes provision for the giving of greater notice, a meeting of a company, other than an adjourned meeting, shall be called -

- (a) in the case of the annual general meeting or an extraordinary general meeting for the passing of a special resolution, by not less than 21 days' notice;
- (b) in the case of any other extraordinary general meeting, by not less than 7 days' notice.

(2) A meeting of a company shall, notwithstanding that it is called by shorter notice than that specified in *subsection (1)*, be deemed to have been duly called if it is so agreed by -

- (a) all the members entitled to attend and vote at the meeting; and
- (b) unless no statutory auditors of the company stand appointed in consequence of the company availing itself of the audit exemption under *section [360]* or *[365]* (and, where relevant, *section [399]* has been complied with in that regard), the statutory auditors of the company.

[(3) Where notice of a meeting is given by posting it by ordinary prepaid post to the registered address of a member, then, for the purposes of any issue as to whether the correct period of notice for that meeting has been given, the giving of the notice shall be deemed to have been effected on the expiration of 24 hours following posting.]¹⁴³(4) In determining whether the correct period of notice has been given by a notice of a meeting, neither the day on which the notice is served nor the day of the meeting for which it is given shall be counted.

(5) The notice of a meeting shall specify -

- (a) the place, the date and the time of the meeting;
- (b) the general nature of the business to be transacted at the meeting;
- (c) in the case of a proposed special resolution, the text or substance of that proposed special resolution; and
- (d) with reasonable prominence a statement that -
 - (i) a member entitled to attend and vote is entitled to appoint a proxy using the form set out in *section [184]* or, where that is allowed, one or more proxies, to attend, speak and vote instead of him or her;
 - (ii) a proxy need not be a member; and
 - (iii) the time by which the proxy must be received at the company's registered office or some other place within the State as is specified in the statement for that purpose.

(6) Save to the extent that the company's constitution provides otherwise, the accidental omission to give notice of a meeting to, or the non-receipt of notice of a meeting by, any person entitled to receive notice shall not invalidate the proceedings at the meeting.

Quorum.

¹⁴² Inserted by point 70 of Report Amendments.

[182]. (1) No business shall be transacted at any general meeting of a company unless a quorum of members is present at the time when the meeting proceeds to business.

(2) Save to the extent that its constitution provides otherwise or in a case falling within *subsection (3)*, 2 members of a company present in person or by proxy at a general meeting of it shall be a quorum.

(3) In the case of a single-member company, one member of the company present in person or by proxy at a general meeting of it shall be a quorum.

[4] Subsection ([5]) shall apply unless the company's constitution provides otherwise.]¹⁴⁴

[5] [Save to the extent that the company's constitution provides otherwise, if]¹⁴⁵ within 15 minutes after the time appointed for a general meeting a quorum is not present, then -

- (a) where the meeting has been convened upon the requisition of members, the meeting shall be dissolved;
- (b) in any other case -
 - (i) the meeting shall stand adjourned to the same day in the next week, at the same time and place or to such other day and at such other time and place as the directors may determine; and
 - (ii) if at the adjourned meeting a quorum is not present within half an hour after the time appointed for the meeting, the members present shall be a quorum.

Proxies.

[183]. (1) Subject to *subsection (3)*, any member of a company entitled to attend and vote at a meeting of the company shall be entitled to appoint another person (whether a member or not) as his or her proxy to attend and vote instead of him or her.

(2) A proxy so appointed shall have the same right as the member to speak at the meeting and to vote on a show of hands and on a poll.

(3) Unless the company's constitution otherwise provides, a member of a company shall not be entitled to appoint more than one proxy to attend on the same occasion.

(4) The instrument appointing a proxy (the "instrument of proxy") shall be in writing -

- (a) under the hand of the appointer or of his or her attorney duly authorised in writing; or
- (b) if the appointer is a body corporate, either under seal of the body corporate or under the hand of an officer or attorney of it duly authorised in writing.

(5) The instrument of proxy and the power of attorney or other authority, if any, under which it is signed, or a notarially certified copy of that power or authority, shall be deposited at the registered office of the company concerned or at such other place within the State as is specified for that purpose in the notice convening the meeting, and shall be so deposited not later than the following time.

(6) That time is -

- (a) 48 hours (or such lesser period as the company's constitution may provide) before the time for holding

¹⁴³ Substituted by point 40 of Seanad Committee Amendments.

¹⁴⁴ Inserted by point 71 of Report Amendments.

¹⁴⁵ Substituted by point 42 of Committee Amendments.

- the meeting or adjourned meeting at which the person named in the instrument proposes to vote; or
- (b) in the case of a poll, 48 hours (or such lesser period as the company's constitution may provide) before the time appointed for the taking of the poll.

[\[\(7\) The depositing of the instrument of proxy referred to in subsection \(5\) may, rather than its being effected by sending or delivering the instrument, be effected by communicating the instrument to the company by electronic means, and this subsection likewise applies to the depositing of anything else referred to in subsection \(5\).\]](#)¹⁴⁶

~~[(87)]~~ If subsection (5) or (6) is not complied with, the instrument of proxy shall not be treated as valid.

~~[(98)]~~ Subject to subsection ~~[(109)]~~, a vote given in accordance with the terms of an instrument of proxy shall be valid notwithstanding the previous death or insanity of the appointer or revocation of the proxy or of the authority under which the proxy was executed or the transfer of the share in respect of which the proxy is given.

~~[(109)]~~ Subsection ~~[(98)]~~ does not apply if notice in writing of such death, insanity, revocation or transfer as is mentioned in that subsection is received by the company concerned at its registered office before the commencement of the meeting or adjourned meeting at which the proxy is used.

~~[(114)]~~ Subject to subsection ~~[(124)]~~, if, for the purpose of any meeting of a company, invitations to appoint as proxy a person or one of a number of persons specified in the invitations are issued at the company's expense to some only of the members entitled to be sent a notice of the meeting and to vote at it by proxy, any officer of the company who knowingly and intentionally authorises or permits their issue in that manner shall be guilty of a category 3 offence.

~~[(124)]~~ An officer shall not be guilty of an offence under subsection ~~[(114)]~~ by reason only of the issue to a member, at his or her request in writing, of a form of appointment naming the proxy or of a list of persons willing to act as proxy if the form or list is available on request in writing to every member entitled to vote at the meeting by proxy.

Form of proxy.

[184]. An instrument appointing a proxy shall be in the following form or a form as near to it as circumstances permit -

[name of company] ("the Company")

[name of member] ("the Member") of [address of member] being a member of the Company hereby appoint/s [name and address of proxy] or failing him or her

[name and address of alternative proxy] as the proxy of the Member to attend, speak and vote for the Member on behalf of the Member at the (annual or extraordinary, as the case may be) general meeting of the Company to be held on the [date of meeting] and at any adjournment of the meeting.

The proxy is to vote as follows:

Voting Instructions to Proxy			
(choice to be marked with an 'x')			
Number or description of resolution:	In Favour	Abstain	Against
1			

¹⁴⁶ [Inserted by point 20 of Seanad Report Amendments.](#)

2			
3			
Unless otherwise instructed the proxy will vote as he or she thinks fit.			
Signature of member:.....			
Dated: [date].....			

Representation of bodies corporate at meetings of companies.

[185]. (1) A body corporate may, if it is a member of a company, by resolution of its directors or other governing body authorise such person (in this section referred to as an “authorised person”) as it thinks fit to act as its representative at any meeting of the company or at any meeting of any class of members of the company.

(2) A body corporate may, if it is a creditor (including a holder of debentures) of a company, by resolution of [its]¹⁴⁷ directors or other governing body authorise such person (in this section also referred to as an “authorised person”) as it thinks fit to act as its representative at any meeting of any creditors of the company held in pursuance of this Act or the provisions contained in any debenture or trust deed, as the case may be.

(3) An authorised person shall be entitled to exercise the same powers on behalf of the body corporate which he or she represents as that body corporate could exercise if it were an individual member of the company, creditor or holder of debentures of the company.

(4) The chairperson of a meeting may require a person claiming to be an authorised person within the meaning of this section to produce such evidence of the person’s authority as such as the chairperson may reasonably specify and, if such evidence is not produced, the chairperson may exclude such person from the meeting.

The business of the annual general meeting.

[186]. The business of the annual general meeting shall include -

- (a) the consideration of the company’s statutory financial statements and the report of the directors and, unless the company is entitled to and has availed itself of the audit exemption under *section [360]* or *[365]*, the report of the statutory auditors on those statements and that report;
- (b) the review by the members of the company’s affairs;
- (c) save where the company’s constitution provides otherwise -
 - (i) the declaration of a dividend (if any) of an amount not exceeding the amount recommended by the directors; and
 - (ii) the authorisation of the directors to approve the remuneration of the statutory auditors (if any);
- (d) where the company’s constitution so provides, the election and re-election of directors;
- (e) save where the company is entitled to and has availed itself of the exemption referred to in *paragraph*

- (a), the appointment or re-appointment of statutory auditors; and
- (f) where the company's constitution so provides, the remuneration of the directors.

Proceedings at meetings.

- [187]. (1) Each provision of this section applies save to the extent that the company's constitution provides otherwise.
- (2) The chairperson, if any, of the board of directors shall preside as chairperson at every general meeting of the company, or if there is no such chairperson, or if he or she is not present within 15 minutes after the time appointed for the holding of the meeting or is unwilling to act, the directors present shall elect one of their number to be chairperson of the meeting.
- (3) If at any meeting no director is willing to act as chairperson or if no director is present within 15 minutes after the time appointed for holding the meeting, the members present shall choose one of their number to be chairperson of the meeting.
- (4) The chairperson may, with the consent of any meeting at which a quorum is present, and shall if so directed by the meeting, adjourn the meeting from time to time and from place to place.
- (5) However no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.
- (6) When a meeting is adjourned for 30 days or more, notice of the adjourned meeting shall be given as in the case of an original meeting but, subject to that, it shall not be necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.
- (7) Unless a poll is demanded in accordance with *section [189]*, at any general meeting -
- (a) a resolution put to the vote of the meeting shall be decided on a show of hands; and
 - (b) a declaration by the chairperson that a resolution has, on a show of hands, been carried or carried unanimously, or by a particular majority, or lost, and an entry to that effect in the book containing the minutes of the proceedings of the company shall be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against such resolution.
- (8) Where there is an equality of votes, whether on a show of hands or on a poll, the chairperson of the meeting at which the show of hands takes place or at which the poll is demanded, shall be entitled to a second or casting vote.

Votes of members.

- [188]. (1) Each provision of this section applies save to the extent that the company's constitution provides otherwise.
- (2) Subject to any rights or restrictions for the time being attached to any class or classes of shares, where a matter is being decided -
- (a) on a show of hands, every member present in person and every proxy shall have one vote, but so that no individual member shall have more than one vote; and
 - (b) on a poll, every member shall, whether present in person or by proxy, have one vote for each share of which he or she is the holder or for each €15 of stock held by him or her, as the case may be.

¹⁴⁷ Correction of typographical error from Bill as initiated

(3) Where there are joint holders of a share, the vote of the senior who tenders a vote, whether in person or by proxy, shall be accepted to the exclusion of the votes of the other joint holders; and for this purpose, seniority shall be determined by the order in which the names of the joint holders stand in the register of members.

(4) Each of the following -

- (a) a member of unsound mind;
- (b) a member who has made an enduring power of attorney;
- (c) a member in respect of whom an order has been made by any court having jurisdiction in cases of unsound mind,

may vote, whether on a show of hands or on a poll, by his or her committee, donee of an enduring power of attorney, receiver, guardian or other person appointed by the foregoing court.

(5) Any such committee, donee of an enduring power of attorney, receiver, guardian, or other person may speak and vote by proxy, whether on a show of hands or on a poll.

(6) No member shall be entitled to vote at any general meeting of a company unless all calls or other sums immediately payable by him or her in respect of shares in the company have been paid.

(7) No objection shall be raised to the qualification of any voter except at the meeting or adjourned meeting at which the vote objected to is given or tendered, and every vote not disallowed at such meeting shall be valid for all purposes.

(8) Any such objection made in due time shall be referred to the chairperson of the meeting, whose decision shall be final and conclusive.

Right to demand a poll.

[189]. (1) At a meeting, a poll may be demanded in relation to a matter (whether before or on the declaration of the result of the show of hands in relation to it).

(2) A demand for such a poll may be made by -

- (a) the chairperson of the meeting;
- (b) at least 3 members present in person or by proxy;
- (c) any member or members present in person or by proxy and representing not less than 10 per cent of the total voting rights of all the members of the company concerned having the right to vote at the meeting; or
- (d) a member or members holding shares in the company concerned conferring the right to vote at the meeting, being shares on which an aggregate sum has been paid up equal to not less than 10 per cent of the total sum paid up on all the shares conferring that right.

(3) A demand for such a poll may be withdrawn by the person or persons who have made the demand.

(4) Subject to *subsection (5)*, if a poll is duly demanded it shall be taken in such manner as the chairperson of the meeting directs, and the result of the poll shall be deemed to be the resolution, in relation to the matter concerned, of the meeting at which the poll was demanded.

(5) A poll demanded with regard to the election of a chairperson or on a question of adjournment shall be taken forthwith.

(6) A poll demanded on any other question shall be taken at such time as the chairperson of the meeting directs, and any business other than that on which a poll is demanded may be proceeded with pending the taking of the poll.

(7) The instrument appointing a proxy to vote at a meeting of a company shall be deemed also to confer authority to demand or join in demanding a poll, and for the purposes of *subsections (2) and (3)*, a demand by a person as proxy for a member shall be the same as a demand by the member.

Voting on a poll.

[190]. On a poll taken at a meeting of a company or a meeting of any class of members of a company, a member, whether present in person or by proxy, entitled to more than one vote need not, if he or she votes -

- (a) use all his or her votes; or
- (b) cast all the votes he or she uses in the same way.

Resolutions – ordinary resolutions, special resolutions, etc. – meaning.

[191]. (1) In this Act “ordinary resolution” means a resolution passed by a simple majority of the votes cast by members of a company as, being entitled to do so, vote in person or by proxy at a general meeting of the company.

(2) In this Act “special resolution” means a resolution -

- (a) that is referred to as such in this Act, or is required (whether by this Act or by a company’s constitution or otherwise) to be passed as a special resolution; and
- (b) that satisfies the condition specified in *subsection (3)*; and
- (c) without prejudice to *subsections (4) and (5)*, as respects which notice of the meeting at which the resolution is proposed to be passed has been given in accordance with section [181](1)(a) and (5).

(3) The condition referred to in *subsection (2)(b)* is that the resolution is passed by not less than 75 per cent of the votes cast by such members of the company concerned as, being entitled to do so, vote in person or by proxy at a general meeting of it.

(4) Notwithstanding section [181](1)(a), for the purposes of *subsection (2)(c)* a resolution may be proposed and passed as a special resolution at a meeting of which less than 21 days’ notice has been given if it is so agreed by a majority in number of the members having the right to attend and vote at any such meeting, being a majority either -

- (a) together holding not less than 90 per cent in nominal value of the shares giving that right; or
- (b) together representing not less than 90 per cent of the total voting rights at that meeting of all the members.

(5) Nothing in either *subsection (2)(c)* (as it relates to section [181](1)(a)) or (4) prevents a special resolution from being regarded as having been passed (in a case where less than 21 days’ notice of the meeting has been given) in the following circumstances -

- (a) the agreement referred to in section [181](2) exists as regards the meeting; and
- (b) the condition specified in *subsection (3)* is satisfied in relation to the resolution.

(6) The terms of any resolution (whether special or otherwise) before a general meeting may be amended by ordinary resolution

moved at the meeting provided that the terms of the resolution as amended will still be such that adequate notice of the intention to pass the same can be deemed to have been given.

(7) Any reference to an extraordinary resolution contained in any statute which was passed or document which existed before 1 April 1964 shall, in relation to a resolution passed on or after that date, be deemed to be a reference to a special resolution.

(8) In this Act “written resolution” means either an ordinary resolution or a special resolution passed in accordance with *section [193]* or *[194]*.

Resolutions passed at adjourned meetings.

[192]. Where a resolution is passed at an adjourned general meeting, the resolution shall for all purposes be treated as having been passed on the date on which it was in fact passed and shall not be deemed to have been passed on any earlier date.

Unanimous written resolutions.

[193]. (1) Notwithstanding any provision to the contrary in this [Act]¹⁴⁸ -

- (a) a resolution in writing signed by all the members of a company for the time being entitled to attend and vote on such resolution at a general meeting (or being bodies corporate by their duly appointed representatives) shall be as valid and effective for all purposes as if the resolution had been passed at a general meeting of the company duly convened and held; and
- (b) if described as a special resolution shall be deemed to be a special resolution within the meaning of this Act.

(2) For the avoidance of doubt, the reference in *subsection (1)* to a provision to the contrary includes a reference to a provision that stipulates that the company in general meeting, or the members of the company in general meeting, must have passed the resolution concerned.

(3) A resolution passed in accordance with *subsection (1)* may consist of several documents in like form each signed by one or more members.

(4) A resolution passed in accordance with *subsection (1)* shall be deemed to have been passed at a meeting held on the date on which it was signed by the last member to sign, and, where the resolution states a date as being the date of his or her signature thereof by any member, the statement shall be *prima facie* evidence that it was signed by him or her on that date.

(5) If a resolution passed in accordance with *subsection (1)* is not contemporaneously signed, the company shall notify the members, within 21 days after the date of delivery to it of the documents referred to in *subsection (6)*, of the fact that the resolution has been passed.

(6) The signatories of a resolution passed in accordance with *subsection (1)* shall, within 14 days after the date of its passing, procure delivery to the company of the documents constituting the written resolution; without prejudice to the use of the other means of delivery generally permitted by this Act, such delivery may be effected by electronic mail or the use of a facsimile machine.

- (7) The company shall retain those documents as if they constituted the minutes of the [proceedings]¹⁴⁹ of a general meeting of the company; without prejudice to the requirement (by virtue of *section [199](1)*) that the terms of the resolution concerned be entered in books kept for the purpose, the requirement under this subsection that the foregoing documents be retained shall be read as requiring those documents to be kept with the foregoing books.
- (8) It is immaterial, as regards the resolution's validity, whether *subsection (5), (6) or (7)* is complied with.
- (9) If a company fails to comply with *subsection (5)*, the company and any officer of it who is in default shall be guilty of a category 4 offence.
- (10) If a signatory fails to take all reasonable steps to procure the delivery to the company, in accordance with *subsection (6)*, of the documents referred to in that subsection, the signatory shall be guilty of a category 4 offence.
- (11) This section does not apply to –
- (a) a resolution to remove a director;
 - (b) a resolution to effect the removal of a statutory auditor from office, or so as not to continue him or her in office, as mentioned in *section [382](2), [383](2)(b) or [394]*.
- (12) Nothing in this section affects any rule of law as to –
- (a) things done otherwise than by passing a resolution;
 - (b) circumstances in which a resolution is or is not treated as having been passed; or
 - (c) cases in which a person is precluded from alleging that a resolution has not been duly passed.

Majority written resolutions.

[194]. (1) Notwithstanding any provision to the contrary in this [Act]¹⁵⁰, a resolution in writing -

- (a) that is -
 - (i) described as being an ordinary resolution; and
 - (ii) signed by the requisite majority of members of the company concerned;
- and
- (b) in respect of which the condition specified in *subsection (7)* is satisfied,

shall be as valid and effective for all purposes as if the resolution had been passed at a general meeting of the company duly convened and held.

(2) For the avoidance of doubt, the reference in *subsection (1)* to a provision to the contrary includes a reference to a provision that stipulates that the company in general meeting, or the members of the company in general meeting, must have passed the resolution concerned.

¹⁴⁸ Substituted by point 41 of Seanad Committee Amendments.

¹⁴⁹ Substituted by point 42 of Seanad Committee Amendments.

¹⁵⁰ Substituted by point 43 of Seanad Committee Amendments.

(3) In *subsection (1)* “requisite majority of members” means a member or members who alone or together, at the time of the signing of the resolution concerned, represent more than 50 per cent of the total voting rights of all the members who, at that time, would have the right to attend and vote at a general meeting of the company (or being bodies corporate by their duly appointed representatives).

(4) Notwithstanding any provision to the contrary in this [Act]¹⁵¹, a resolution in writing -

(a) that is -

- (i) described as being a special resolution; and
- (ii) signed by the requisite majority of members;

and

(b) in respect of which the condition specified in *subsection (7)* is satisfied,

shall be as valid and effective for all purposes as if the resolution had been passed at a general meeting of the company duly convened and held.

(5) For the avoidance of doubt, the reference in *subsection (4)* to a provision to the contrary includes a reference to a provision that stipulates that the company in general meeting, or the members of the company in general meeting, must have passed the resolution concerned.

(6) In *subsection (4)* “requisite majority of members” means a member or members who alone or together, at the time of the signing of the resolution concerned, represent at least 75 per cent of the total voting rights of all the members who, at that time, would have the right to attend and vote at a general meeting of the company (or being bodies corporate by their duly appointed representatives).

(7) The condition referred to in *subsections (1)(b)* and *(4)(b)* is that all members of the company concerned entitled to attend and vote on the resolution referred to in *subsection (1)* or *(4)*, as the case may be, have been circulated, by the directors or the other person proposing it, with the proposed text of the resolution and an explanation of its main purpose.

(8) A resolution passed in accordance with *subsection (1)* or *(4)* may consist of several documents in like form each signed by one or more members.

(9) Without prejudice to *section [195](5)*, a resolution passed -

- (a) in accordance with *subsection (1)*, shall be deemed to have been passed, subject to *subsection (10)*, at a meeting held 7 days after the date on which it was signed by the last member to sign; or
- (b) in accordance with *subsection (4)*, shall be deemed to have been passed, subject to *subsection (10)*, at a meeting held 21 days after the date on which it was signed by the last member to sign,

and where the resolution states a date as being the date of his or her signature thereof by any member the statement shall be *prima facie* evidence that it was signed by him or her on that date.

(10) Without prejudice to *section [195](5)*, if –

- (a) a date earlier than that referred to in *subsection (9)(a)* or *(b)* (not being earlier than the date on which the resolution was signed by the last member to sign) is specified in the resolution referred to in *subsection (1)* or *(4)* as the date on which it shall have been deemed to have been passed;

¹⁵¹ Substituted by point 44 of Seanad Committee Amendments.

- (b) all members of the company concerned entitled to attend and vote on that resolution state, in a written waiver signed by each of them, that the application of *subsection (9)* is waived; and
- (c) there accompanies the delivery to the company under *subsection (3)* of *section [195]* of the documents referred to in that subsection that written waiver (which may be so delivered to the company by any of the means referred to in that subsection),

then the resolution shall be deemed to have been passed on the date specified in it.

(11) A written waiver under *subsection (10)* may consist of several documents in like form each signed by one or more members.

Supplemental provisions in relation to *section [194]*.

[195]. (1) *Section [194]* does not apply to –

- (a) a resolution to remove a director;
- (b) a resolution to effect the removal of a statutory auditor from office, or so as not to continue him or her in office, as mentioned in *section [382](2)*, *[383](2)(b)* or *[394]*.

(2) Within 3 days after the date of the delivery to it of the documents referred to in *subsection (3)*, the company shall notify every member of -

- (a) the fact of the resolution concerned having been signed by the requisite majority of members (within the meaning of *section 195 (3)* or *(6)*, as the case may be); and
- (b) the date that the resolution will, by virtue of *section [194]*, be deemed to have been passed.

(3) The signatories of a resolution passed in accordance with *section [194](1)* or *(4)* shall procure delivery to the company of the documents constituting the written resolution; without prejudice to the use of the other means of delivery generally permitted by this Act, such delivery may be effected by electronic mail or the use of a facsimile machine.

(4) The company shall retain those documents as if they constituted the minutes of the [proceedings]¹⁵² of a general meeting of the company; without prejudice to the requirement (by virtue of *section [199](1)*) that the terms of the resolution concerned be entered in books kept for the purpose, the requirement under this subsection that the foregoing documents be retained shall be read as requiring those documents to be kept with the foregoing books.

(5) Unless and until *subsection (3)* is complied with, a resolution passed in accordance with *section [194](1)* or *(4)* shall not have effect; however it is immaterial, as regards the resolution's validity, whether *subsection (2)* or *(4)* is complied with.

(6) Where *subsection (10)* of *section [194]* applies, the reference in *subsection (5)* to *subsection (3)* shall be read as including a reference to *paragraph (c)* of that *subsection (10)*.

(7) If a company fails to comply with *subsection (2)*, the company and any officer of it who is in default shall be guilty of a category 4 offence.

¹⁵² Substituted by point 45 of Seanad Committee Amendments.

Single-member companies – absence of need to hold general meetings, etc.

[196]. (1) In this Act “single-member company” means a company which, for whatever reason, has, for the time being, a sole member[(and this applies notwithstanding a stipulation in the constitution that there be 2 members, or a greater number)]¹⁵³.

(2) Subject to *subsection (3)*, all the powers exercisable by a company in general meeting under this Act or otherwise shall be exercisable, in the case of a single-member company, by the sole member without the need to hold a general meeting for that purpose; for the avoidance of doubt this subsection extends to the exercise of the power under *section [146]* to remove a director and, accordingly, any of the procedures under that section concerning notice to the director or the making of representations by the director shall not apply in the case of a single-member company but this is without prejudice to the application of the requirements of procedural fairness to the exercise of that power of removal by the sole member and *section [147]*.

(3) *Subsection (2)* shall not empower the sole member of a single-member company to exercise the powers under *section [382](2)*, *[383](2)(b)* or *[394]* to remove a statutory auditor from, or not continue a statutory auditor in, office without holding the requisite meeting provided for in the section concerned.

(4) Subject to *subsection (3)*, any provision of this Act which -

- (a) enables or requires any matter to be done or to be decided by a company in general meeting; or
- (b) requires any matter to be decided by a resolution of the company,

shall be deemed to be satisfied, in the case of a single-member company, by a decision of the member which is drawn up in writing and notified to the company in accordance with this section.

(5) Where the sole member of a single-member company takes any decision which has effect, pursuant to *subsections (2)* and *(4)*, as if agreed by the company in general meeting, the member shall provide the company with a written record of that decision, unless the decision is taken by way of written resolution which the member has already forwarded to the company.

(6) Where the sole member notifies to the company of which he or she is such member a decision taken by way of written resolution, or, pursuant to *subsection (5)*, a written record of a decision taken by him or her, the notification shall be recorded and retained by the company in a book or by some other suitable means maintained for the purpose, and the one or more records so retained shall –

- (a) be deemed to be the books kept by the company pursuant to *section [199]*; or
- (b) where (at any subsequent or prior time when the company is, or was, not a single-member company) that section has or had application to proceedings of its members, be kept with the books kept by the company pursuant to *section [199]*,

and, either case, *subsection (5)* of that section applies to those records as it applies to books generally of a company under that section.

(7) Where –

- (a) the sole member of a single member company exercises or discharges, by virtue of this section, any power, right or obligation; and
- (b) such exercise or discharge involves or consists of the passing of a resolution, or the sole member’s

¹⁵³ Inserted by point 46 of Seanad Committee Amendments.

agreeing to a thing, to which *section [198]* applies,

such exercise or discharge shall, within 15 days after the date of the exercise or discharge, be notified by the company in writing to the Registrar and be recorded by the Registrar.

(8) If -

- (a) the sole member fails to comply with *subsection (5)*; or
- (b) a company fails to comply with *subsection (6)* or *(7)*,

then (irrespective of whether the case falls within *paragraph (a)* or *(b)*) the sole member, the company and any officer of it who is in default shall be guilty of a category 4 offence.

(9) Failure by the sole member to comply with *subsection (5)* shall not affect the validity of any decision referred to in that subsection.

Application of this Part to class meetings.

[197]. (1) The provisions of this Part, and the provisions of the constitution of a company relating to general meetings, shall, as far as applicable, apply in relation to any meeting of any class of member of the company.

(2) *Subsection (1)* operates so that all of *section [198]*, in so far as it relates to *subsection (4)(c)* of that section, applies in relation to any meeting of any class of member of the company but does not operate to apply (if those provisions would otherwise be so applicable) the provisions of that section apart from the foregoing to any such meeting.

Registration of, and obligation of company to supply copies of, certain resolutions and agreements.

[198]. (1) A copy of every resolution or agreement to which this section applies shall, within 15 days after the date of passing or making of it, be forwarded by the company concerned to the Registrar and recorded by the Registrar.

(2) A copy of every such resolution or agreement for the time being in force shall be embodied in, or annexed to, every copy of the constitution of the company concerned issued by it after the passing of the resolution or the making of the agreement.

(3) A copy of every such resolution or agreement shall be forwarded by the company concerned to any member of it, at his or her request, on payment of €10.00 or such lessersum as the company may direct.

(4) This section applies to -

- (a) resolutions that are required by this Act or a company's constitution to be special resolutions;
- (b) resolutions which have been agreed to by all the members of a company, but which, if not so agreed to, would not have been effective for their purpose unless they had been passed as special resolutions;
- (c) resolutions or agreements which have been agreed to by all the members of some class of shareholders but which if not so agreed to, would not have been effective for their purpose unless they had been passed by some particular majority or otherwise in some particular manner, and all resolutions or agreements which effectively bind all the members of any class of shareholders though not agreed to by all those members;
- (d) resolutions increasing or decreasing the authorised share capital (if any) of a company;

- (e) resolutions conferring authority for the allotment of shares;
- (f) resolutions that a company be wound up voluntarily passed under *section [580]*;
- (g) resolutions attaching rights or restrictions to any share;
- (h) resolutions varying any such right or restriction;
- (i) resolutions classifying any unclassified share;
- (j) resolutions converting shares of one class into shares of another class;
- (k) resolutions converting share capital into stock and resolutions converting stock into share capital.

(5) If a company fails to comply with *subsection (1), (2) or (3)*, the company and any officer of it who is in default shall be guilty of a category 4 offence.

(6) For the purposes of *subsection (5)*, a liquidator of a company shall be deemed to be an officer of the company.

Minutes of proceedings of meetings of a company.

[199]. (1) A company shall, as soon as may be after their holding or passing, cause -

- (a) minutes of all proceedings of general meetings of it; and
- (b) the terms of all resolutions of it,

to be entered in books kept for that purpose; all such books kept by a company in pursuance of this subsection shall be kept at the same place.

(2) *Sections [215] to [217]* (rights of inspection, requests for copies, etc.) apply to those books.

(3) Any such minute, if purporting to be signed by the chairperson of the meeting at which the proceedings were had, or by the chairperson of the next succeeding meeting, shall be evidence of the proceedings.

(4) Where minutes have been made in accordance with this section of the proceedings at any general meeting of a company then, until the contrary is proved -

- (a) the meeting shall be deemed to have been duly held and convened;
- (b) all proceedings had at the meeting shall be deemed to have been duly had; and
- (c) all appointments of directors or liquidators shall be deemed to be valid.

(5) A company shall, if required by the Director of Corporate Enforcement, produce to the Director for inspection the book or books kept in accordance with *subsection (1)* by it and shall give the Director of Corporate Enforcement such facilities for inspecting and taking copies of the contents of the book or books as the Director may require.

(6) If a company fails to comply with *subsection (1)* or with a requirement made of it under *subsection (5)*, the company and any officer of it who is in default shall be guilty of a category 4 offence.

Chapter 7

Summary Approval Procedure

Interpretation (Chapter 7).

[200]. (1) In this Chapter -

“common draft terms of merger” means the common draft terms of merger referred to in *section [466](1)*;

“declaration” means a declaration referred to in *section [202](1)(b)*;

“merger” means a merger under *Chapter 3 of Part 9*;

“merging companies” has the same meaning as it has in *Chapter 3 of Part 9*;

“restricted activity” means an activity that is specified in -

- (a) *section [82]* (financial assistance for acquisition of shares);
- (b) *section [84]* (reduction in company capital);
- (c) *section [91]* (variation of company capital on reorganisations);
- (d) *section [118]* (prohibition on pre-acquisition profits or losses being treated in holding company’s financial statements as profits available for distribution);
- (e) *section [239]* (prohibition of loans, etc., to directors and connected persons);
- (f) *section [464]* (merger may not be put into effect save in accordance with the relevant provisions of this Act); or
- (g) *section [579]* (procedure for and commencement of members’ voluntary winding up),

the carrying on of which is expressed by a provision of this Act to be either -

- (i) prohibited unless carried on in accordance with the Summary Approval Procedure; or
- (ii) authorised subject to a specified requirement that the Summary Approval Procedure be employed or, in the case of *section [84], [91]* or *[464]*, that the Summary Approval Procedure be employed if the alternative procedure specified in *section [84](2)(b), [91](4)(b)* or, as the case may be, *[464](1)(b)* is not employed;

“Summary Approval Procedure” shall be read in accordance with *section [202]*;

“written means for passing the resolution” means –

- (a) other than in the case of a merger, the means under *section [193]* or *[194](4)* for passing a special resolution;
- (b) in the case of a merger, the means under *section [193]* for passing a unanimous resolution.

(2) A reference in the definition of “restricted activity” in *subsection (1)* to an activity –

- (a) subject to *paragraph (b)*, includes a reference to a procedure, transaction or arrangement;
- (b) in the case of the activity falling within *paragraph (g)* of that definition, is a reference to the commencement of a members’ voluntary winding up.

Chapter 7 – what it does.

[201]. (1) This Chapter sets out the way in which a company can, by -

- (a) its members passing a special resolution; and
- (b) its directors making a certain declaration,

either –

- (i) permit the carrying on of a restricted activity (not being a merger) that is otherwise prohibited; or
- (ii) fulfil the requirement specified in the provision concerned for the restricted activity (not being a merger) to be authorised,

as the case may be.

(2) In a case where the restricted activity is a merger, this Chapter sets out the way in which each of the merging companies can, by –

- (a) every member of it entitled to vote at a general meeting of the company voting in favour of a resolution at such a meeting; and
- (b) its directors making a certain declaration,

authorise, as provided in *section [464](1)*, the merger to be put in effect without certain procedures under *Chapter 3 of Part 9* having to be employed.

[(3) The provisions of this Chapter shall be read and shall operate so that a restricted activity may be carried on at a time falling before compliance with the requirement (arising under *section [203], [204], [205], [206] or [207]* as the case may be) that a copy of the appropriate declaration be delivered to the Registrar; however — should a failure to comply with that requirement occur — that failure then invalidates the carrying on of the activity, but this is without prejudice to the power of validation conferred subsequently by this Chapter on the court.]¹⁵⁴

Summary Approval Procedure.

[202]. (1) In this Act “Summary Approval Procedure” means the procedure whereby the following conditions are satisfied -

- (a) authority for the carrying on of the restricted activity has been conferred by -
 - (i) other than in the case of a merger, a special resolution of the company; or
 - (ii) in the case of a merger, a resolution of each of the merging companies which every member of the company entitled to vote at a general meeting of it has voted in favour of (a “unanimous resolution”),
 being a special resolution or unanimous resolution passed not more than, subject to *subsections (2) and (3)*, 12 months prior to the commencement of the carrying on by the company, or as the case may be, by each of the merging companies of the activity; and
- (b) either -
 - (i) the company or, as the case may be, each of the merging companies has forwarded with each notice of the meeting at which the special resolution or other foregoing resolution is to be considered; or
 - (ii) if the written means for passing the resolution is used, the company or, as the case may be, each of the merging companies has appended to the proposed text of the resolution, a copy of a declaration which complies with *subsection (6)* and the other relevant provisions of this Chapter

¹⁵⁴ Substituted by point 43 of Committee Amendments.

as regards its contents or the documents to be attached to it.

(2) In computing the period of 12 months referred to in *subsection (1)(a)* there shall be disregarded, where an application is made in accordance with *section [211]* to cancel the special resolution, the period beginning on the date of the making of that application and ending on –

- (a) the date of confirmation of the special resolution by the court on that application ; or
- (b) if such an application so made is withdrawn, the date of that withdrawal.

(3) If the restricted activity is that referred to in *paragraph (d)* of the definition of that expression in *section [200](1)*, the reference in *subsection (1)(a)* to 12 months shall be read as a reference to –

- (a) subject to *paragraph (b)*, 60 days; or
- (b) if –
 - (i) one or more members who hold, or together hold, more than 90 per cent in nominal value of each class of issued shares of the company and entitled to vote at general meetings of the company have voted in favour of the special resolution referred to in *subsection (1)(a)*; or
 - (ii) that resolution has been passed by the means provided under *section [193]*,
30 days,

but *subsection (2)* applies as regards computing that period of 60 or 30 days as it applies as regards computing the period of 12 months referred to in *subsection (2)*.

(4) *Subsection (1)* is, in the case of a merger, without prejudice to the procedures set out in *Chapter 3 of Part 9* that must be followed before the resolution referred to in *paragraph (a)(ii)* of that subsection may be passed.

(5) In the case of a merger, on the delivery, in accordance with *section [206]*, to the Registrar of each declaration referred to in that section, the Registrar shall register the dissolution of the transferor company or companies concerned.

(6) The declaration referred to in *subsection (1)(b)* is a declaration in writing that is made at a meeting of the directors held –

- (a) not earlier than 30 days before the date of the meeting referred to in *subsection (1)(b)*; or
- (b) if the written means for passing the resolution is used, not earlier than 30 days before the date of the signing of the resolution by the last member to sign,

and that is made by the directors or, in the case of a company having more than 2 directors, by a majority of the directors.

(7) The terms of the resolution referred to in *subsection (1)(a)(ii)* (which deals with a case of a merger) shall be that the common draft terms of merger are approved.

Declaration to be made in the case of financial assistance for acquisition of shares or transaction with directors.

[203]. (1) Where the restricted activity is a transaction or arrangement that would otherwise be prohibited by *section [82](2)* or *[239]*, the declaration shall state -

- (a) the circumstances in which the transaction or arrangement is to be entered into;

- (b) the nature of the transaction or arrangement;
- (c) the person or persons to or for whom the transaction or arrangement is to be made;
- (d) the purpose for which the company is entering into the transaction or arrangement;
- (e) the nature of the benefit which will accrue to the company directly or indirectly from entering into the transaction or arrangement; and
- (f) that the declarants have made a full inquiry into the affairs of the company and that, having done so, they have formed the opinion that the company, having entered into [the transaction or arrangement (the “relevant act”), will be able to pay or discharge its debts and other liabilities in full as they fall due during the period of 12 months after the date of the relevant act.]¹⁵⁵

(2) For the purposes of a declaration under this section, in determining whether or not a company will be able to pay or discharge its debts and other liabilities in full, the declarants shall not be required to assume (in circumstances where the following are relevant) either that the company will be called upon to pay moneys on foot of a guarantee given or, as the case may be, that security given will be realised.

(3) A copy of the declaration under this section shall be delivered to the Registrar not later than 21 days after the date on which the carrying on of the restricted activity concerned is commenced.

[(4) On application to it by any interested party, the court may, in any case where there has been a failure to comply with *subsection* (3), declare that the carrying on of the restricted activity concerned shall be valid for all purposes if the court is satisfied that it would be just and equitable to do so.]¹⁵⁶

Declaration to be made in the case of a reduction in company capital or variation of company capital on reorganisation.

[204]. (1) Where the restricted activity is a reduction in company capital referred to in *section* [84](1) or a transfer or disposal referred to in *section* [91](1), the declaration shall state -

- (a) the circumstances in which the transaction or arrangement is to be entered into;
- (b) the nature of the transaction or arrangement;
- (c) the person or persons to or for whom the transaction or arrangement is to be made;
- (d) the total amount of the company’s assets and liabilities as at the latest practicable date before the date of making of the declaration and in any event at a date not more than 3 months before the date of that making;
- (e) the anticipated total amount of the company’s assets and liabilities immediately after the restricted activity having taken place;
- (f) that the declarants have made a full inquiry into the affairs of the company and that, having done so, they have formed the opinion that the company [, after the restricted activity has taken place, will be able to pay or discharge its debts and other liabilities[(being the debts and liabilities identified for the

¹⁵⁵ Substituted by point 44 of Committee Amendments.

purposes of paragraph (d) and so far as not already paid or discharged)]¹⁵⁷ in full as they fall due during the period of 12 months after the date of that event; and]¹⁵⁸

- (g) that the declarants do not have actual or constructive notice that the company will incur any material, extraordinary, future liability within the period of 12 months after the date of the making of the declaration.

(2) A copy of the declaration under this section shall be delivered to the Registrar not later than 21 days after the date on which the carrying on of the restricted activity concerned is [commenced; if a failure to comply with this subsection occurs, a like power to that under *section [203](4)* is available to the court to declare valid for all purposes the carrying on of the activity].¹⁵⁹

Declaration to be made in the case of treatment of pre-acquisition profits or losses in a manner otherwise prohibited by *section [118](1)*.

[205]. (1) Where the restricted activity is to provide in a company's financial statements a treatment that is otherwise prohibited by *section [118](1)* of the profits or losses attributable to shares of a subsidiary of the company for the period referred to in *section [118](2)* as the "pre-acquisition period", the declaration shall state -

- (a) the amount of the profits or losses that will be subject to the alternative treatment and the amount so stated is referred to in this section as the "proposed distribution";
- (b) the total amount of the company's assets and liabilities as stated in its last statutory financial statements or interim financial statements properly prepared as of a date specified in the declaration, and the date so specified shall be the date which is the latest practicable date before the date of making of the declaration and in any event shall not be a date more than 3 months before the date of such making;
- (c) that the declarants have made a full inquiry into the affairs of the company and that, having done so, they have formed the opinion that, if the company were to make the proposed distribution within 2 months after the date of the making of the declaration, the company would be able to pay or discharge its debts and other liabilities included in the financial statements referred to in *paragraph (b)* as they fall due [during the period of 12 months after the date of that distribution].¹⁶⁰

(2) In determining whether or not a company will be able to pay or discharge its debts and other liabilities as they fall due, the declarants shall be required to consider the likelihood (in circumstances where the following are relevant) either that the company will be called upon to pay moneys on foot of a guarantee given or, as the case may be, that security given will be realised.

(3) The reference in *subsection (1)(b)* to a company's last statutory financial statements or interim financial statements or to their being properly prepared shall be read in accordance with *section [121]*.

(4) A copy of the declaration under this section shall be delivered to the Registrar not later than 21 days after the date on which the

¹⁵⁶ Inserted by point 45 of Committee Amendments.

¹⁵⁷ Inserted by point 72 of Report Amendments.

¹⁵⁸ Substituted by point 46 of Committee Amendments.

¹⁵⁹ Substituted by point 47 of Committee Amendments.

¹⁶⁰ Inserted by point 48 of Committee Amendments.

carrying on of the restricted activity concerned is[commenced; if a failure to comply with this subsection occurs, a like power to that under *section [203](4)* is available to the court to declare valid for all purposes the carrying on of the activity].¹⁶¹

Declaration to be made in the case of merger of company.

[206]. (1) Where the restricted activity is to effect a merger, each declaration (that is to say, each declaration by the directors (or a majority of them) of each merging company) shall state -

- (a) the total amount of the assets and liabilities of the merging company in question as at the latest practicable date before the date of making of the declaration and in any event at a date not more than 3 months before the date of that making; and
- (b) that the declarants have made a full inquiry into the affairs of the company and the other merging companies and that, having done so, they have formed the opinion that the successor company (within the meaning of *Chapter 3 of Part 9*) will be able to pay or discharge the debts and other liabilities of it and the transferor company or companies in full as they fall due [during the period of 12 months after the date on which the merger takes effect].¹⁶²

(2) A copy of each declaration under this section shall be delivered to the Registrar not later than 21 days after the date on which the carrying on of the restricted activity concerned is[commenced; if a failure to comply with this subsection occurs, a like power to that under *section [203](4)* is available to the court to declare valid for all purposes the carrying on of the activity].¹⁶³

Declaration to be made in the case of members' winding up of solvent company.

[207]. (1) Where the restricted activity is to wind up a company in a members' voluntary winding up under *section [579]*, the declaration shall state -

- (a) the total amount of the company's assets and liabilities as at the latest practicable date before the date of making of the declaration and in any event at a date not more than 3 months before the date of that making; and
- (b) that the declarants have made a full inquiry into the affairs of the company and that, having done so, they have formed the opinion that the company will be able to pay or discharge its debts and other liabilities in full within such period not exceeding 12 months after the commencement of the winding up as may be specified in the declaration.

(2) A copy of the declaration under this section shall be delivered to the Registrar not later than 21 days after the date on which the carrying on of the restricted activity concerned is[commenced; if a failure to comply with this subsection occurs, a like power to that under *section [203](4)* is available to the court to declare valid for all purposes the carrying on of the activity].¹⁶⁴

¹⁶¹ Substituted by point 49 Committee Amendments.

¹⁶² Inserted by point 50 of Committee Amendments.

¹⁶³ Substituted by point 51 of Committee Amendments.

¹⁶⁴ Substituted by point 52 of Committee Amendments.

Condition to be satisfied common to declarations referred to in section [204], [205] or [207].

[208]. A declaration referred to in section [204], [205] or [207] shall have no effect for the purposes of this Act unless it is accompanied by a report -

- (a) drawn up in the prescribed form, by a person who is qualified at the time of the report to be appointed, or to continue to be, the statutory auditor of the company; and
- (b) which shall state whether, in the opinion of that person, the declaration is not unreasonable.

Condition to be satisfied in relation to declaration referred to in section [206].

[209]. (1) A declaration referred to in section [206] shall have no effect for the purposes of this Act unless it is accompanied by a document prepared by the declarants either –

- (a) confirming that the common draft terms of merger provide for such particulars of each relevant matter as will enable each of the prescribed effects provisions to operate without difficulty in relation to the merger; or
- (b) specifying such particulars of each relevant matter as will enable each of those effects provisions to operate without difficulty in relation to the merger.

(2) In subsection (1) “prescribed effects provisions” means subsection (3)(a) to (i) of section [480] as that subsection has effect by virtue of section [472](2).

Civil sanctions where opinion as to solvency stated in declaration without reasonable grounds.

[210]. (1) Where a director of a company makes a declaration without having reasonable grounds for the opinion referred to in section [203](1)(f), [204](1)(f), [205](1)(c), [206](1)(b) or [207](1)(b), as the case may be, the court, on the application of -

- (a) a liquidator, creditor, member or contributory of the company or, in the case of the opinion referred to in section [206](1)(b), of the successor company (within the meaning of Chapter 3 of Part 9); or
- (b) the Director of Corporate Enforcement,

may declare that the director shall be personally responsible, without any limitation of liability, for all or any of the debts or other liabilities of the company or successor company, as the case may be.

(2) If a company or, as the case may be, a successor company (within the foregoing meaning) is wound up within 12 months after the date of the making of a declaration and its debts are not paid or provided for in full within 12 months after the commencement of the winding up, it shall be presumed, until the contrary is shown, that each director of, as appropriate –

- (a) the company; or
- (b) the merging companies,

who made the declaration did not have reasonable grounds for the opinion referred to in section [203](1)(f), [204](1)(f), [205](1)(c), [206](1)(b) or [207](1)(b), as the case may be.

(3) If the court makes a declaration under subsection (1), it may give such further directions as it thinks proper for the purpose of

giving effect to the declaration.

Moratorium on certain restricted activities being carried on and applications to court to cancel special resolution.

[211]. (1) This section shall apply unless the restricted activity –

- (a) is to effect a merger; or
- (b) has the authority of a special resolution referred to in *section [202](1)(a)(i)* passed by the means provided under *section [193]*.

(2) Unless one or more members who hold, or together hold, more than 90 per cent in nominal value of each class of issued shares of the company and entitled to vote at general meetings of the company have voted in favour of the special resolution referred to in *section [202](1)(a)*, the company shall not proceed to carry on the restricted activity -

- (a) subject to *paragraph (b)*, until the expiry of 30 days after[the]¹⁶⁵ date on which the special resolution has been passed; or
- (b) if an application under *subsection (3)* is made, until the application has been disposed of by the court (and then only (unless the application is withdrawn) to the extent, if any, that authority for its being proceeded with is provided by a confirmation of the special resolution by the court on that application).

(3) An application may be made to the court in accordance with this section for the cancellation of the special resolution.

(4) Subject to *subsection (5)*, an application under *subsection (3)* may be made by one or more members who held, or together held, not less than 10 per cent in nominal value of the company's issued share capital, or any class thereof, at the date of the passing of the special resolution and hold, or together hold, not less than that percentage in nominal value of the foregoing on the date of the making of the application.

(5) An application shall not be made under *subsection (3)* by a person who has consented to, or voted in favour of, the special resolution.

(6) An application under *subsection (3)* shall be made within 30 days after the date on which the special resolution was passed and may be made on behalf of the persons entitled to make the application by such one or more of their number as they may appoint in writing for the purpose.

(7) On the hearing of an application under *subsection (3)*, the court may, as it thinks fit -

- (a) confirm the special resolution;
- (b) confirm the special resolution as respects only specified parts or aspects of the restricted activity to which it relates; or
- (c) cancel the special resolution.

¹⁶⁵ Inserted by point 47 of Seanad Committee Amendments.

Chapter 8

Protection for minorities

Remedy in case of oppression.

[212]. (1) Any member of a company who complains that the affairs of the company are being conducted or that the powers of the directors of the company are being exercised -

- (a) in a manner oppressive to him or her or any of the members (including himself or herself); or
- (b) in disregard of his or her or their interests as members,

may apply to the court for an order under this section.

(2) If, on an application under *subsection (1)*, the court is of opinion that the company's affairs are being conducted or the directors' powers are being exercised in a manner that is mentioned in *subsection (1)(a)* or *(b)*, the court may, with a view to bringing to an end the matters complained of, make such order or orders as it thinks fit.

(3) The orders which a court may so make include an order -

- (a) directing or prohibiting any act or cancelling or varying any transaction;
- (b) for regulating the conduct of the company's affairs in future;
- (c) for the purchase of the shares of any members of the company by other members of the company or by the company and, in the case of a purchase by the company, for the reduction accordingly of the company's capital; and
- (d) for the payment of compensation.

(4) Where an order under this section makes any amendment of any company's constitution, then, notwithstanding anything in any other provision of this Act, but subject to the provisions of the order, the company concerned shall not have power, without the leave of the court, to make any further amendment of the constitution, inconsistent with the provisions of the order.

(5) However, subject to the foregoing subsection, the amendment made by the order shall be of the same effect as if duly made by resolution of the company, and the provisions of this Act shall apply to the constitution as so amended accordingly.

(6) A certified copy of any order under this section amending or giving leave to amend a company's constitution shall, within 21 days after the date of the making of the order, be delivered by the company to the Registrar.

(7) If a company fails to comply with *subsection (6)*, the company and any officer of it who is in default shall be guilty of a category 4 offence.

(8) Each of the following -

- (a) the personal representative of a person who, at the date of his or her death, was a member of a company;
or
- (b) any trustee of, or person beneficially interested in, the shares of a company by virtue of the will or intestacy of any such person,

may apply to the court under *subsection (1)* for an order under this section and, accordingly, any reference in that subsection to a member of a company shall be read as including a reference to any such personal representative, trustee or person beneficially

interested as mentioned in *paragraph (a)* or *(b)* or to all of them.

(9) If, in the opinion of the court, the hearing of proceedings under this section would involve the disclosure of information the publication of which would be seriously prejudicial to the legitimate interests of the company, the court may order that the hearing of the proceedings or any part of them shall be *in camera*.

Chapter 9

Form of registers, indices and minute books

Form of registers, minutes, etc.

[213]. (1) Any register, index or minute book required by this Act to be kept by a company or by the Registrar may be kept either by making entries in bound books or by recording the matters in question in any other manner.

(2) Where any register, index or minute book to be kept by a company is not kept by making entries in a bound book but by some other means, adequate precautions shall be taken for guarding against falsification and facilitating discovery of such falsification, should it occur.

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

Use of computers, etc., for certain company records.

[214]. (1) Subject to *subsections (2)* and *([6])*, the power conferred on a company by *section [213](1)* to keep a register or other record by recording the matters in question otherwise than by making entries in bound books includes power to keep the register or other record by recording the matters in question otherwise than in a legible form so long as the recording is capable of being reproduced in a legible form.

(2) *Subsection (1)* does not apply to the books required to be kept by *section [199]* for the purpose mentioned in *subsection (1)* of that section.

(3) Any provision of an instrument made by a company before 3 April 1978 which requires a register of holders of debentures of the company to be kept in a legible form shall be read as requiring the register to be kept in a legible or non-legible form (but so that, if it is kept in non-legible form, it shall be capable of being reproduced in legible form).

(4) If the power under *subsection (1)* is availed of by a company, any duty imposed on the company by or under this Act to allow inspection of, or to furnish a copy of, the register or other record concerned kept by the company otherwise than in legible form, or any part of it, shall be treated as a duty to allow inspection of, or to furnish, a reproduction of the recording or of the relevant part of it in a legible form.

[5] *Subsection ([6])* does not apply –

- (a) if the services to the other computer there mentioned are provided by means of the technology commonly known as cloud computing or by any other distance hosting solution; or

(b) to the extent that regulations under *subsection (17)* provide that it shall not apply.¹⁶⁶

(16) ~~[Save where regulations under *subsection (17)* provide otherwise, any~~ Any¹⁶⁷ computer (the “server computer”) that provides services to another computer, being services the provision of which to the latter is necessary so that the information of the kind referred in *subsection (1)* stored in the latter can be accessed at all times, shall be kept in a place in the State.

(17) The Minister may, by regulations, make such provision, being provision in addition to *subsection (4)*, as he or she considers appropriate in connection with such registers or other records as are mentioned in that subsection and are kept as there mentioned ~~[and may also, by regulations, provide for such exceptions to *subsection (6)* as he or she considers appropriate].~~¹⁶⁸

Chapter 10

Inspection of registers, provision of copies of information in them and service of notices.

Definitions for purposes of *section [216]* concerning registers, etc. and construction of reference to company keeping registers, etc.

[215]. In –

(a) *section [216]* –

“copies of directors’ service contracts and memoranda” means the copies of directors’ service contracts and memoranda kept by the company pursuant to *section [154]*;

“copies of instruments creating charges” means the copies of instruments creating charges kept by the company pursuant to *section [418]* (including copies of any relevant judgment mortgage documentation referred to in that section) ;

“directors’ and secretaries’ register” means the register of directors and secretaries kept by the company pursuant to *section [149]*;

“disclosable interests register” means the register of interests kept by the company pursuant to *section [267]*;

“members’ register” means the register of members kept by the company pursuant to *section [169]*;

“minutes of meetings” means the books kept by the company pursuant to *section [199]* (including any records referred to in *section [196](6)*) and –

(i) the documents, if any, required by *section [193](7)* (documents relating to unanimous written resolutions);

and

(ii) the documents, if any, required by *section [195](4)* (documents relating to majority written resolutions), to be kept with those books;

(b) this section a reference to any foregoing register or document being kept by the company includes a reference to the register or document being kept by another on the company’s behalf pursuant to *section [216](2)*;

(c) this section and *section [216]* a reference to keeping includes a reference to maintaining; and

¹⁶⁶ Inserted by point 73 of Report Amendments.

¹⁶⁷ [Substituted by point 21 of Seanad Report Amendments.](#)

- (d) *section [216](3)* the requirement thereunder to keep a register or other document at a place shall be deemed to be complied with if, by means of any computer, the register or document is (at that place) capable of being reproduced in legible form and inspected in that form, and references elsewhere in *section [216]* and this Chapter to the keeping of a register or other document, and the inspection of it, shall be read accordingly].¹⁶⁹

Where registers and other documents to be kept, right to inspect them, etc.

[216]. (1) This section applies to:

- (a) the copies of directors' service contracts and memoranda;
- (b) the copies of instruments creating charges;
- (c) the directors' and secretaries' register;
- (d) the disclosable interests register;
- (e) the members' register; and
- (f) the minutes of meetings.

(2) An obligation imposed on a company under this Act to keep a register or document to which this section applies may be discharged by another person keeping, on its behalf, the register or document.

(3) Subject to *subsections (4) and (5)*, a register or document to which this section applies shall be kept at –

- (a) the registered office of the company;
- (b) its principal place of business within the State; or
- (c) another place within the State.

(4) Where the register or document is kept by another person on behalf of the company pursuant to *subsection (2)*, the place at which that register or document is kept by that person shall be a place within the State.

(5) In a case where a company keeps several of the registers or documents (or both) to which this section applies at a place other than that referred to in *subsection (3)(a) or (b)*, those registers or documents (or both) shall kept by it at a single place.

(6) Where a register or document to which this section applies is kept at a place referred to in *subsection (3)(b) or (c) or subsection (4)*, the company shall send a notice to the Registrar in the prescribed form of that place and of any change in that place.

(7) A register or document to which this section applies shall, during business hours (except, in the case of the members' register, when it is closed under *section [174]*), be open to inspection in accordance with *subsections (8) to (10)*.

(8) Every such register or document shall be open to the inspection of any member of the company without charge.

(9) The following shall be open to the inspection of any other person, on payment of the relevant fee:

- (a) the directors' and secretaries' register;
- (b) the disclosable interests register;
- (c) the members' register.

(10) The copies of instruments creating charges shall be open to the inspection of any creditor of the company without charge.

¹⁶⁸ [Inserted by point 22 of Seanad Report Amendments.](#)

(11) A member of the company may request a copy, or a copy of any part, of:

- (a) the directors' and secretaries' register;
- (b) the disclosable interests register;
- (c) the members' register; or
- (d) the minutes of meetings.

(12) Any other person may request a copy, or a copy of any part, of:

- (a) the directors' and secretaries' register;
- (b) the disclosable interests register; or
- (c) the members' register.

(13) A company shall, within 10 days after the date of receipt of a request under *subsection (11)* or *(12)* and on payment to it of the relevant fee by the requester, cause to be sent to the requester the copy, or part of it, concerned.

Supplemental provisions in relation to *section [216]* – “relevant fee”, power to alter the amount of it, offences, etc.

[217]. (1) In *section [216]* “relevant fee” means:

- (a) in a case falling within *subsection (9)* of that section:
 - (i) where one register is inspected, €10.00 or such less sum as the company may determine; or
 - (ii) subject to *subsection (2)*, where more than one register is inspected on the same day or in any period of 24 consecutive hours, €15.00 or such less sum as the company may determine;
- (b) in a case falling within *subsection (13)* of that section, €10.00 per copy or such less sum as the company may determine.

(2) *Subsection (1)(a)(ii)* only applies if –

- (a) the inspections concerned are made by, or on behalf of, the same person; and
- (b) at the time the first request for inspection is made (by, or on behalf of, the same person) during the period concerned it is indicated to the company that more than one register will be inspected (by, or on behalf of, that person) during that period.

(3) If a company fails to comply with any of *subsections (3) to (10)*, or *subsection (13)*, of *section [216]*, the company and any officer of it who is in default shall be guilty of a category 3 offence.

(4) The court may, on application being made to it, make the following orders:

- (a) in the case of a failure to comply with any of *subsections (7) to (10)* of *section [216]*, an order compelling an immediate inspection of the register or document concerned;
- (b) in the case of a failure to comply with *section [216](13)*, an order directing that the copy requested be sent to the person requesting it.

(5) Subject to *subsections (6) to (8)*, the Minister may, by order, alter a sum specified in *paragraph (a) or (b)* of the definition of

¹⁶⁹ Substituted by point 53 of Committee Amendments.

“relevant fee” in this section.

(6) An order under *subsection (5)* may only be made, at a particular time (the “relevant time”), if it appears to the Minister the changes in the value of money generally in the State that have occurred during the period beginning –

- (a) on this Act’s passing; or
- (b) if the powers under that subsection have previously been exercised, immediately after their last previous exercise,

and ending at the relevant time warrant the exercise of powers under that subsection for the following purpose.

(7) That purpose is to relieve companies of an additional financial expense that that they would otherwise incur (by reason of the foregoing changes) in complying with the provisions specified in the definition of “relevant fee” in this section if the powers under *subsection (5)* were not exercised at the relevant time.

(8) Without prejudice to *subsections (6)* and *(7)*, in making any order under *subsection (5)*, the Minister shall take into account the general costs incurred by a company in facilitating the inspection, or providing copies, of the registers or other documents referred to in the provisions specified in the definition of “relevant fee” in this section.

Service of notices on members.

[[218]. (1) *Subsections (3)* and *(4)* shall apply to any case in which a provision of this Act[, or of the company’s constitution]¹⁷⁰ requires or authorises a notice to be served on or given to a member of [the company]¹⁷¹ by the company, or an officer of it, but save to the extent that the constitution[...]¹⁷² provides otherwise.

(2) *Subsection (5)* shall only apply if there is contained in the company’s constitution a provision to the effect that it shall apply (but nothing in this subsection shall prevent alternative and reasonable provision being made in the constitution with regard to one or more of the matters set out in that subsection and, to the extent that such alternative and reasonable provision is made, that provision shall apply instead of that subsection).

(3) A notice referred to in *subsection (1)* shall, save where the means of serving or giving it specified in *paragraph (d)* is used, be in writing and may be served on or given to the member in one of the following ways:

- (a) by delivering it to the member;
- (b) by leaving it at the registered address of the member;
- (c) by sending it by post in a prepaid letter to the registered address of the member; or
- (d) if the company’s constitution permits the use of electronic means to serve or give the notice or the conditions specified in *subsection (4)* are satisfied, by electronic means.

(4) The conditions referred to in *subsection (3)(d)* are—

- (a) the member has consented in writing to the company, or the officer of it, using electronic means to serve or give notices in relation to him or her;
- (b) at the time the electronic means are used to serve or give the notice in relation to the member, no notice in writing

¹⁷⁰ Inserted by point 48 of Seanad Committee Amendments.

¹⁷¹ Substituted by point 49 of Seanad Committee Amendments.

¹⁷² Deleted by point 50 of Seanad Committee Amendments.

has been received by the company or the officer concerned from the member stating he or she has withdrawn the consent referred to in paragraph (a); and

(c) the particular means used to serve or give the notice electronically are those that the member has consented to.

(5) Any notice served or given in accordance with *subsection (3)* shall be deemed, in the absence of any agreement to the contrary between the company (or, as the case may be, the officer of it) and the member, to have been served or given—

(a) in the case of its being delivered, at the time of delivery (or, if delivery is refused, when tendered);

(b) in the case of its being left, at the time that it is left;

(c) in the case of its being posted (to an address in the State) on any day other than a Friday, Saturday or Sunday, 24 hours after despatch and in the case of its being posted (to such an address)—

(i) on a Friday — 72 hours after despatch; or

(ii) on a Saturday or Sunday — 48 hours after despatch;

(d) in the case of electronic means being used in relation to it, 12 hours after [despatch, but this subsection is without prejudice to *section 181(3)*]¹⁷³]¹⁷⁴

[[([6]) In this section “registered address”, in relation to a member, means the address of the member as entered in the register of members.]¹⁷⁵

¹⁷³ Substituted by point 51 of Seanad Committee Amendments.

¹⁷⁴ Substituted by point 74 of Report Amendments.

¹⁷⁵ Substituted by point 54 of Committee Amendments.

