

---

# Part A1 – Preliminary and Interpretation

## Contents of Part A1

---

1. Short title and commencement
  2. Defined terms and expressions
  3. Periods of time
  4. Repeal and savings
  5. Construction of references in other Acts to companies registered under the Companies (Consolidation) Act 1908 and the Companies Act 1963
  6. Definition of "subsidiary"
- Schedule - Enactments Repealed

# Part A1 – Preliminary and Interpretation

## Head 1 Short title and commencement

- (1) This Act may be cited as the Companies Consolidation Act 2007.
- (2) This Act shall come into operation on such day as the Minister may appoint by order.

### **Explanatory note**

*This head is based on Section 1 of the Companies Act, 1963.*

## Head 2 Defined terms and expressions

- (1) In this Bill, unless the context otherwise requires—

**“accounts”** includes a company’s group accounts whether prepared in the form of accounts or not;

**“Acting Director”** means a person appointed under Part A14, Head 52 as the Acting Director of Corporate Enforcement;

**“agent”** does not include a person’s counsel acting as such;

**“annual general meeting”** means the meeting provided for in Part A4, Head 46 ;

**“annual return”** means the return required to be made under Part A6, Head 52 [equivalent of Section 125 of the Companies Act, 1963];

**“annual return date”** means the date in each year not later than that to which the annual return shall be made up, the calculation of which is provided for in Part A6, Head 53 [equivalent of Section 127 of the Companies Act, 1963];

**“the appointed day”** means [to be decided following clarification of transitional arrangements];

**“balance sheet date”**, in relation to a balance sheet, means the date as at which the balance sheet was prepared;

**“the Bankruptcy Acts”** means the Bankruptcy Act, 1988;

**“book and paper”** and **“book or paper”** include accounts, deeds, writings and documents;

**“books and documents”** and **“books or documents”** include accounts, deeds, writings and records made in any other manner;

**“called-up share capital”**, in relation to a company, means so much of its share capital as equals the aggregate amount of the calls made on its shares, whether or not those calls have been paid, together with any share capital paid up without being called and any share capital to be paid on a specified future date under the articles, the terms of allotment of the relevant shares or any other arrangements for payment of those shares, and **“uncalled share capital”** shall be construed accordingly;

**“child”** includes a step-child and an adopted child and **“son”**, **“daughter”** and **“parent”** shall be construed accordingly;

**“constitution”** means the constitution of a company as provided for in Part A2, Head 3;

**“contravention”** includes failure to comply;

**“contributory”** has the meaning assigned to it by Part A11, Head 1 [equivalent of Section 208 of the 1963 Act];

**“company”** means a company formed and registered under this Bill, or an existing company;

**“the court”**, used in any provision of this Bill in relation to a company, means—

- (a) the High Court: or
- (b) where another court is prescribed for the purposes of that provision, that court;

**“debenture”** includes debenture stock, bonds and any other securities of a company whether constituting a charge on the assets of the company or not;

**“director”** includes any person occupying the position of director by whatever name called;

**“the Director”** means the Director of Corporate Enforcement appointed under Part A14, Head 48 and includes an Acting Director while so acting and, in relation to a particular power of the Director, a delegate to whom the power is delegated under Part A14, Head 54;

## Part A1- Preliminary and Interpretation

---

**“document”** includes summons, notice, order and other legal process, and register;

**“enactment”** means a statute or an instrument made under a power conferred by a statute;

**“examiner”** means an examiner appointed under Part A10, Head 2 [equivalent of Section 2 of the Companies (Amendment) Act, 1990];

**“existing company”** means a company formed and registered in a register kept in the State under the Joint Stock Companies Acts, the Companies Act 1862, the Companies (Consolidation) Act, 1908 or the Companies Act, 1963;

**“extended notice”** has the meaning assigned to it by Part A6, head 95 [equivalent of section 142 of the 1963 Act];

**“extraordinary general meeting”** means a meeting of the type provided for in Part A4, Head 48;

**“financial year”** means, in relation to any body corporate, the period in respect of which any profit and loss account of the body corporate laid before it in general meeting is made up, whether that period is a year or not;

**“functions”** includes powers and duties;

**“the general transitional period”** means the period of 18 months commencing on [the appointed day for the 1983 Act];

**“hire-purchase agreement”** has the same meaning as in the Hire Purchase Act, 1946;

**“insolvency proceedings”** means insolvency proceedings opened under Article 3 of the Insolvency Regulation in a member state of the European Communities other than the State and Denmark where the proceedings relate to a body corporate;

**“Insolvency Regulation”** means Council Regulation (EC) No 1346/2000 of 29 May 2000 on insolvency proceedings;

**“Joint Stock Companies Acts”** means the Joint Stock Companies Act, 1856, the Joint Stock Companies Acts, 1856, 1857, the Joint Stock Banking Companies Act, 1857 and the Act to enable Joint Stock Banking Companies to be formed on the principle of limited liability, or any one or more of those Acts as the case may require, but does not include the Act 7 & 8 Victoria, Chapter 110;

**“management company”** means a company that is wholly and exclusively formed and operated to manage the common areas of a residential, retail or industrial development and whose members are the owners from time to time of a freehold or leasehold estate or interest in land being a part of such development;

**“members’ voluntary winding up”** has the meaning assigned to it by Part A11 Head 20 [equivalent of Section 256(11) of the Companies Act, 1963];

**“the Minister”** means the Minister for Enterprise, Trade and Employment;

**“non-cash asset”** means any property or interest in property other than cash (including foreign currency);

**“officer”** in relation to a body corporate includes a director or secretary;

**“officer of the Director”** means

- (a) an officer of the Minister assigned to the Director;
- (b) a member of An Garda Síochána seconded to the Director; or
- (c) a person employed by the Minister or the Director under a contract for service or otherwise, to assist the Director in carrying out functions of the Director under the Companies Acts or any other Act;

**“ordinary resolution”** means a resolution of the type provided for in Part A4, Head 62(1);

**“the operative date”** means the date on which this Act comes into operation;

**“prescribed”** means, prescribed by order or regulations made by the Minister;

**“printed”** includes reproduced in any legible and durable form approved by the Registrar;

**“private company”** means a company formed and registered under Part A2, Head 2 or an existing private company that becomes a private company under Part A2, Head 37;

**“prospectus”** means a document or documents in such form and containing such information as may be required by or under Irish prospectus law or EU prospectus law, howsoever the document or documents are constituted, but does not include any advertisements in newspapers or journals derived from the foregoing;

## Part A1- Preliminary and Interpretation

---

**“public holiday”** means a day which is a public holiday under the Organisation of Working Time Act, 1997;

**“public limited company”** means a PLC as defined by Part B2, Head 1;

**“registered office”**, in relation to a company, means the office provided for in Head A2, Head 33;

**“the Registrar”** means the Registrar of Companies appointed under Part A14, Head 7;

**“resolution for reducing share capital”** has the meaning assigned to it by Part A3, Head 17 [equivalent of Section 72(3) of the 1963 Act];

**“a resolution for voluntary winding-up”** has the meaning assigned to it by Part A11, Head 20 [equivalent of Section 251(2) of the 1963 Act];

**“Review Group”** means the Company Law Review Group established by Part A14, Head 60;

**“shadow director”** has the meaning assigned to it in Part A5, Head 3;

**“share”** means share in the share capital of a company, and includes stock except where a distinction between stock and shares is express or implied;

**“bearer share”** has the meaning assigned to it by Part A3, Head 29 [equivalent of Section 88(2) of the Companies Act, 1963];

**“special resolution”** means a resolution of the type provided for in Part A4, Head 62 (2);

**“undischarged bankrupt”** means a person who is declared bankrupt by a court of competent jurisdiction, within the State or elsewhere, and who has not obtained a certificate of discharge or its equivalent in the relevant jurisdiction;

**“validation procedure”** means the procedure provided for in Part A4, Head 71;

**“written resolution”** means a resolution of the type provided for in Part A4, Heads 64 and 65;

- (2) References in this Bill to a body corporate or to a corporation shall be construed as not including a corporation sole, but as including a company incorporated outside the State.
- (3) Any provision of this Bill overriding or interpreting a company’s constitution shall, except as provided by this Bill, apply in relation to the constitution in force on the operative date as well as to articles coming into force thereafter.

(4) For the purposes of this Bill—

- (a) any reference to a balance sheet or to a profit and loss account shall include a reference to any notes thereon or document annexed thereto giving information which is required by the Companies Acts or by international financial reporting standards and is thereby allowed to be so given;
- (b) any reference to the transfer or acquisition of a non-cash asset includes a reference to the creation or extinction of an estate or interest in, or a right over, any property and also a reference to the discharge of any person’s liability, other than a liability for a liquidated sum; and
- (c) the net assets of a company are the aggregate of its assets less the aggregate of its liabilities;

and in paragraph (c) “liabilities” includes—

- (i) any provision (within the meaning of the First Schedule to Part A6 [equivalent for these purposes to the Sixth Schedule to the Companies Act 1963]) that is made in Companies Act entity financial statements except to the extent that that provision is taken into account in calculating the value of any asset to the company,
- (ii) any provision for liabilities within the meaning of paragraph 79 of Part V of the First Schedule to Part A6 [equivalent of paragraph 70 of the Schedule to the Companies (Amendment) Act, 1986] that is made in Companies Act entity financial statements, and
- (iii) any provision that is made in IFRS entity financial statements.

(5) References in this Bill to any enactment shall, unless the context otherwise requires, be construed as references to that enactment as amended or extended by any subsequent enactment including this Bill.

(6) In this Bill, a reference to a Part, head or schedule is to a Part, head or schedule of this Bill, unless it is indicated that reference to some other enactment is intended.

## Part A1- Preliminary and Interpretation

(7) In this Bill, a reference to a subsection, paragraph, subparagraph or other division is to the subsection, paragraph, subparagraph or other division of the provision in which the reference occurs, unless it is indicated that reference to some other provision is intended.

### **Explanatory note**

*“accounts”*: existing definition in Section 2 of the 1963 Act;

*“Acting Director”*: existing definition in Section 11 of the Company Law Enforcement Act, 2001;

*“agent”*: existing definition from Section 2 of the Companies Act, 1963;

*“annual general meeting”*, *“extraordinary general meeting”*: new definition;

*“articles”* : existing definition deleted (to be replaced by constitution);

*“balance sheet date”*: existing 1983 Act definition;

*“the Bankruptcy Acts”*: check if all Statutes in existing definition have been replaced by the Bankruptcy Act, 1988;

*“book and/or paper”* [taken from 1963 Act] this may need to be updated to take account of new data recording technologies: *“book and/or document”* is from the 1990 Act;

*“called-up share capital”*: existing 1983 Act definition;

*“child”*: existing 1990 Act definition;

*“constitution”*: new definition;

*“contravention”*: existing 1990 Act definition;

*“company”*: definition will have to be amended when final decision is made on transitional arrangements re existing companies;

*“the court”*: existing or new;

*“creditors’ voluntary winding up”*: existing definition; is this to be updated to a new term or should it be localised in the Winding-Up Chapters only?

*“enactment”* : new definition;

*“examiner”* this is an existing 1990 Amendment Act definition;

*“existing company”*: this is the current definition updated to include the 1963 Act;

*“extended notice”*: existing definition in Companies Act, 1963;

*“extraordinary general meeting”*: source;

*“financial year”*: source;

*“functions”*:source;

*“the general transitional period”*: source;

*“hire-purchase agreement”* : existing 1983 Act definition;

*“group accounts”*, *“holding company”*: existing 1963 Act definitions, Section 2 of the 1963 Act;

*“insolvency proceedings”*, *“Insolvency Regulation”*, *“property”*: inserted by Art. 3 of the European Communities (Corporate Insolvency) Regulations 2002 (S.I. No. 333 of 2002), which came into effect on July 1, 2002;

*“Irish prospectus law and EU prospectus law”* : definitions provided by Section 38 of the Investment Funds, Companies and Miscellaneous Provisions Act, 2005;

*“Joint Stock Companies Acts”* : existing definition;

*“management company”*: this definition is drawn from para 3.6.6. of CLRG First Report with minor amendments;

*“members’ voluntary winding up”*: existing definition;

*“the Minister”*: existing definition;

*“non-cash asset”* : existing 1983 Act definition;

*“old public limited company”* : existing 1983 Act definition;

*“officer”*: existing definition in Section 2 of the Companies Act, 1963;

*“offer of the Director”*: existing definition in Company Law Enforcement Act, 2001;

*“the operative date”*: new definition;

*“ordinary resolution”*: new definition;

*“printed”*: this may need to be updated to take account of e-commerce requirements;

*“private company”* :Section 33(1) of the 1963 Act;

*“property”*:

## Part A1- Preliminary and Interpretation

---

- (a) in relation to proceedings opened in the State under Article 3(l) of the Insolvency Regulation, includes property situated outside the State; and
- (b) in relation to proceedings so opened under Article 3(2) of the Regulation, does not include property so situated;

*“public company”*: 1983 Act definition;

*“public limited company”*: defined in view of intermittent reference in Pillar A Parts;

*“public holiday”*: new definition to replace “bank holiday”;

*“prospectus”*: definition provided by Section 38 of the Investment Funds, Companies and Miscellaneous Provisions Act, 2005;

*“recognised stock exchange”*: existing definition;

*“stock exchange nominee”*: this definition provided by Section (1) of the Companies (Amendment) Act, 1977;

*“registered office”*: new definition;

*“the Registrar”*: this is an updated definition;

*“the re-registration period”*: existing 1983 Act definition;

*“resolution for reducing share capital”*: existing definition;

*“resolution for voluntary winding-up”*: existing definition;

*“shadow director”*: this is a new definition taken from Section 27 of the 1990 Act and Section 2(2) of the 1963 Act;

*“share”*: this definition may have to be amended if it is decided to extirpate references to stock;

*“special resolution”, “ordinary resolution”, “written resolution”*: new definitions;

*“Table A” and “Tábla A”*: these existing definitions are not repeated on the basis that the contents are now being exported into primary legislation;

*“validation procedure”*: new definition;

Subheads (2) and (3) are a restatement of Section 2 of the Companies Act, 1963;

Subhead (4) is a restatement of Section 2 (4) of the Companies (Amendment) Act, 1983;

Subheads (5)- (7) are based on Sections 2(5) - (7) of the Companies Act, 1963;

---

### Head 3 Periods of time

---

- (1) Where the time limited by any provision of this Bill for the doing of anything expires on a Saturday, Sunday or public holiday, the time so limited shall extend to and the thing may be done on the first following day that is not a Saturday, Sunday or public holiday.
- (2) Where in this Bill anything is required or allowed to be done within a number of days not exceeding six, a day that is a Saturday, Sunday or public holiday shall not be reckoned in computing that number.

#### **Explanatory note**

This head is based on Section 4 of the Companies Act, 1990.

---

### Head 4 Repeal and savings

---

- (1) The enactments mentioned in the Schedule to this Part are hereby repealed to the extent specified in the third column of that Schedule.
- (2) Nothing in this Bill shall affect any Order in Council, order, rule, regulation, appointment, conveyance, mortgage, deed or agreement made, resolution passed, direction given, proceeding taken, instrument issued or thing done under any former enactment relating to companies, but any such Order in Council, order, rule, regulation, appointment, conveyance, mortgage, deed, agreement, resolution, direction, proceeding, instrument or thing shall, if in force immediately before the operative date, continue in force, and so far as it could have been made, passed, given, taken, issued or done under this Bill shall have effect as if made, passed, given, taken, issued or done under this Bill.
- (3) Any document referring to any former enactment relating to companies shall be construed as referring to the corresponding enactment of this Bill.
- (4) Any person, appointed to any office under or by virtue of any former enactment relating to companies, who is in office immediately before the operative date shall be deemed to have been appointed to that office under or by virtue of this Bill.



## Part A1- Preliminary and Interpretation

---

- (5) Any register, kept under any former enactment relating to companies, shall be deemed part of the register to be kept under the corresponding provisions of this Bill.
- (6) All funds and accounts constituted under this Bill shall be deemed to be in continuation of the corresponding funds and accounts constituted under the former enactments relating to companies.
- (7) The repeal by this Bill of any enactment shall not affect the incorporation of any company registered under any enactment hereby repealed.
- (8) Where any offence, being an offence for the continuance of which a penalty was provided, has been committed under any former enactment relating to companies, proceedings may be taken under this Bill in respect of the continuance of the offence after the operative date, in the same manner as if the offence had been committed under the corresponding provisions of this Bill.
- (9) In this head “former enactment relating to companies” means any enactment repealed by this Bill and any enactment repealed by the Companies Act, 1963 or the Companies (Consolidation) Act, 1908.

### **Explanatory note**

*This head is based on Section 3 of the Companies Act, 1963.*

*Subhead (1) is an amended reenactment of Section 3(1).*

*Subhead (2) is an identical reenactment of Section 3(2).*

*Subhead(3) is an amended reenactment of Section 3(5).*

*Subhead (4) is an identical reenactment of Section 3(6).*

*Subhead (5) is an identical reenactment of Section 3(7).*

*Subhead (6) is an identical reenactment of Section 3(8).*

*Subhead (7) is an amended reenactment of Section 3(9) – references to the Joint Stock Companies Act, 1856; the Companies Act, 1862; and the Companies (Consolidation) Act, 1908 have been omitted.*

*Subhead (8) is an identical reenactment of Section 3(10).*

---

*Subhead (9) is an amended reenactment of Section 3(11) – a reference to enactments repealed by the Companies Act, 1963 has been added.*

*Sections 3(3) and 3(4) have been deliberately omitted.*

---

## **Head 5 Construction of references in other Acts to companies registered under the Companies (Consolidation) Act, 1908 and the Companies Act, 1963**

---

Notwithstanding paragraph 26 (2) (f) of the Interpretation Act, 2005, (which provides that where an Act repeals and re-enacts, with or without modification, any provisions of a former Act, references in any other Act to the provisions so repealed shall, unless the contrary intention appears, be read as references to the provisions of the new Act relating to the same subject-matter as that of the former Act) references in any Act other than this Bill to a company formed and registered, or registered, under the Companies (Consolidation) Act, 1908 or the Companies Act, 1963, shall, unless the contrary intention appears, be construed as references to a company formed and registered, or registered, under that Act or this Bill.

### **Explanatory note**

*This head is based on Section 4 of the Companies Act, 1963.*

*The text has been amended to account for the Interpretation Act, 2005, which replaced the Interpretation Act, 1937.*

*A reference to companies registered under the Companies Act, 1963 has been added.*

---

## **Head 6 Definition of subsidiary**

---

- (1) For the purposes of this Bill, a company shall, subject to Subhead (3), be deemed to be a subsidiary of another if, but only if—
- (a) that other—
- (i) is a shareholder or member of it and controls the composition of its board of directors, or

## Part A1- Preliminary and Interpretation

---

- (ii) holds more than half in nominal value of its equity share capital, or
  - (iii) holds more than half in nominal value of its shares carrying voting rights (other than voting rights which arise only in specified circumstances), or
  - (iv) holds a majority of the shareholders' or members' voting rights in that other company, or
  - (v) is a shareholder or member of it and controls alone, pursuant to an agreement with other shareholders or members, a majority of the shareholders' or members' voting rights; or
- (b) the first-mentioned company is a subsidiary of any company which is that other's subsidiary; or
  - (c) that other has the power to exercise, or actually exercises, dominant influence or control over it—
    - (i) by virtue of provisions contained in its constitution, or
    - (ii) by virtue of a control contract; or
  - (d) that other and the subsidiary undertaking are managed on a unified basis.
- (2) For the purposes of Subhead (1) (a) (i), the composition of a company's board of directors shall be deemed to be controlled by another company if, but only if, that other company by the exercise of some power exercisable by it without the consent or concurrence of any other person can appoint or remove the holders of all or a majority of the directorships; but for the purposes of this provision that other company shall be deemed to have power to appoint to a directorship in relation to which any of the following conditions is satisfied—
- (a) that a person cannot be appointed thereto without the exercise in his favour by that other company of such a power as aforesaid; or
  - (b) that a person's appointment thereto follows necessarily from his appointment as director of that other company.
- (3) In determining whether one company is a subsidiary of another—
- (a) any shares held or power exercisable by that other in a fiduciary capacity shall be treated as not held or exercisable by it;
  - (b) subject to paragraphs (c) and (d), any shares held or power exercisable—
    - (i) by any person as a nominee for that other (except where that other is concerned only in a fiduciary capacity), or
    - (ii) by, or by a nominee for, a subsidiary of that other, not being a subsidiary which is concerned only in a fiduciary capacity; shall be treated as held or exercisable by that other;
  - (c) any shares held or power exercisable by any person by virtue of the provisions of any debentures of the first-mentioned company or of a trust deed for securing any issue of such debentures or otherwise held by way of security shall be disregarded;
  - (d) any shares held or power exercisable by, or by a nominee for, that other or its subsidiary (not being held or exercisable as mentioned in paragraph (c)) shall be treated as not held or exercisable by that other if the ordinary business of that other or its subsidiary, as the case may be, includes the lending of money and the shares are held or power is exercisable as aforesaid by way of security only for the purposes of a transaction entered into in the ordinary course of that business.
- (4) For the purposes of Subhead (1) (a) (iv) and (v), the total of the voting rights of the shareholders or members in the subsidiary shall be reduced by the following -
- (a) the voting rights attached to shares held by the subsidiary in itself; and
  - (b) the voting rights attached to shares held in the subsidiary by any of its subsidiaries, and
  - (c) the voting rights attached to shares held by a person acting in his own name but on behalf of the subsidiary or one of the subsidiary's own subsidiaries;



- (5) For the purposes of Subhead (1) (b), a company shall not be regarded as having the right to exercise a dominant influence over another company unless it has a right to give directions with respect to the operating and financial policies of that other company which its directors are obliged to comply with.
- (6) A “control contract” as referred to in Subhead (1)(b) means a contract in writing conferring such a right which—
- (a) is of a kind authorised by the constitution of the company in relation to which the right is exercisable; and
  - (b) is permitted by the law under which that company is established.
- (7) Subhead (5) shall not be read as affecting the construction of the expression “actually exercises a dominant influence” in Subhead 1(c).
- (8) For the purposes of this Bill, a company shall be deemed to be another’s holding company if, but only if, that other is its subsidiary.
- (9) In this head “company” includes any body corporate and “equity share capital” means, in relation to a company, its issued share capital excluding any part thereof which, neither as respects dividends nor as respects capital, carries any right to participate beyond a specified amount in a distribution.
- (10) A “wholly owned subsidiary” means, in relation to a company, a subsidiary of the company which has no members except that company or that company’s wholly-owned subsidiaries and its or their nominees.
- (11) A “group of companies” means a parent company and its and their subsidiaries provided that in all cases there is at least one parent company and at least one subsidiary company.

### **Explanatory note**

*This is a new head and aims to merge the two current concepts of ‘subsidiary’ as defined by the Companies Act, 1963 and ‘subsidiary undertaking’ as defined by Regulation 4 of the European Communities (Companies: Group Accounts) Regulation, 1992. This will align the definition within accounting practice also.*

## Part A1- Preliminary and Interpretation

### SCHEDULE - ENACTMENTS REPEALED

Session and Chapter or Number and Year	Short title	Extent of Repeal
No. 33 of 1963	Companies Act, 1963	The whole Act.
S.I. No. 163 of 1973	European Communities (Companies) Regulations, 1973	The whole Statutory Instrument.
No. 31 of 1977	Companies (Amendment Act), 1977.	The whole Act.
No. 10 of 1982	Companies (Amendment) Act, 1982.	The whole Act.
No. 13 of 1983	Companies (Amendment) Act, 1983.	The whole Act.
S.I. No. 282 of 1984	European Communities (Stock Exchange) Regulations, 1984.	<b>[omitted in CCB]</b>
No. 31 of 1985	Designated Investment Funds Act, 1985.	Section 6. <b>[omitted in CCB]</b>
No. 25 of 1986	Companies (Amendment) Act, 1986.	The whole Act.
S.I. No. 137 of 1987	European Communities (Mergers and Divisions of Companies) Regulations, 1987.	The whole Statutory Instrument.
No. 27 of 1990	Companies (Amendment) Act, 1990.	The whole Act.
No. 33 of 1990	Companies Act, 1990.	The whole Act.
S.I. No. 201 of 1992	European Communities (Companies: Group Accounts) Regulations, 1992.	The whole Statutory Instrument.
S.I. No. 294 of 1992	European Communities (Credit Institutions: Accounts) Regulations 1992.	<b>[omitted in CCB]</b>
S.I. No. 395 of 1993	European Communities (Branch Disclosures) Regulations, 1993.	The whole Statutory Instrument.
S.I. No. 396 of 1993	European Communities (Accounts) Regulations, 1993.	The whole Statutory Instrument. <b>[omitted in CCB]</b>
S.I. No. 275 of 1994	European Communities (Single Member Private Limited Companies) Regulations, 1994.	The whole Statutory Instrument.
S.I. No. 311 of 1995	European Communities (Stock Exchange) (Amendment) Regulations, 1995.	<b>[omitted in CCB]</b>
S.I. No. 23 of 1996	European Communities (Insurance Undertakings: Accounts) Regulations, 1996.	<b>[omitted in CCB]</b>
S.I. No. 68 of 1996	Companies Act, 1990 (Uncertificated Securities) Regulations, 1996.	The whole Statutory Instrument
S.I. No. 67 of 1997	European Communities (Public Limited Companies Subsidiaries) Regulations, 1997.	The whole Statutory Instrument.
No. 8 of 1999	Companies (Amendment) Act, 1999.	The whole Act.
No. 30 of 1999	Companies (Amendment) (No. 2) Act 1999.	The whole Act.
S.I. No. 437 of 2001	European Communities (Single-Member Private Limited Companies Regulations, 1994 (Amendment) Regulations, 2001.	The whole Statutory Instrument. <b>[omitted in CCB]</b>

## Part A1- Preliminary and Interpretation

S.I. No. 333 of 2002	European Communities (Corporate Insolvency) Regulations, 2002.	The whole Statutory Instrument.
No. 44 of 2003	Companies (Auditing and Accounting) Act, 2003.	The whole Act.
S.I. No. 720 of 2004	European Communities (Credit Institutions) (Fair Value Accounting) Regulations, 2004.	<b>[omitted in CCB]</b>
S.I. No. 765 of 2004	European Communities (Fair Value Accounting) Regulations, 2004.	The whole Statutory Instrument.[omitted in CCB]
S.I. No. 839 of 2004	European Communities (Companies) Regulations, 2004.	The whole Statutory Instrument.[omitted in CCB]
S.I. No. 116 of 2005	European Communities (International Financial Reporting Standards and Miscellaneous Amendments) Regulations, 2005.	The whole Statutory Instrument.[omitted in CCB]
S. I. No. 840 of 2005	European Communities (Adjustment of Non-Comparable Amounts in Accounts and Distributions by Certain Investment Companies) Regulations, 2005.	The whole Statutory Instrument.[omitted in CCB]
No. 12 of 2005	Investment Funds, Companies and Miscellaneous Provisions Act, 2005.	Parts 3,4 and 5

### **Explanatory note**

*The following Companies Acts have previously been repealed:*

- European Communities (Stock Exchange) (Amendment) Regulations, 1991 (S.I. No. 18 of 1991) – repealed by Prospectus (Directive 2003/71/EC) Regulations, 2005, Reg.110 (1);
- Companies Act, 1990 (Auditors) Regulations, 1992 (S.I. No. 259 of 1992) – repealed by Companies (Auditing and Accounting) Act, 2003, Section 59;
- European Communities (Transferable Securities and Stock Exchange) Regulations, 1992 (S.I. No. 202 of 1992) – repealed by Prospectus (Directive 2003/71/EC) Regulations, 2005, Reg.110 (1);
- European Communities (Stock Exchange) (Amendment) Regulations, 1994 (S.I. No. 234 of 1994) – repealed by Prospectus (Directive 2003/71/EC) Regulations, 2005, Reg.110 (1).

The Investment Intermediaries Act, 1995 (No. 11 of 1995), Section 80 is not included, since it merely amends the Companies Act, 1990.



---

# Part A2 – Incorporation and Registration

## Content of Part A2

---

### Chapter 1 – Preliminary and Interpretation

1 Defined terms and expressions

### Chapter 2 – Incorporation and Consequential Matters

2 Way of forming company limited by shares  
3 The form of the constitution  
4 Restriction on alteration of constitution  
5 Registration of constitution  
6 Statement to be delivered with the constitution  
7 Declaration to be made to Registrar  
8 Effect of registration  
9 Provisions as to names of companies  
10 Trading under a misleading name  
11 Reservation of a company name  
12 Extension of the period of reservation  
13 Change of name  
14 Effect of constitution  
15 Alteration of constitution by special resolution  
16 Language of documents filed with Registrar  
17 Authorisation of an electronic filing agent  
18 Revocation of the authorisation of an electronic filing agent  
19 Copies of constitution to be given to members

### Chapter 3 – Corporate Capacity and Authority

20 Capacity of a private company limited by shares.  
21 Registered person  
22 Persons or bodies of persons authorised to bind a company  
23 Powers of attorney

### Chapter 4 – Contracts and Other Transactions

24 Form of contracts  
25 The common seal  
26 Power for company to have official seal for use abroad  
27 Official seal for sealing securities  
28 Pre-incorporation contracts  
29 Bills of exchange and promissory notes  
30 Liability for use of incorrect company name  
31 Authentication of documents

### Chapter 5 - Company name, registered office and legal proceedings

32 Publication of name by company  
33 Registered office of company  
34 Service of proceedings  
35 Security for costs  
36 Enforcement of orders and judgments against companies and their officers

### Chapter 6 – Conversion of an existing company to a company limited by shares

37 Conversion of existing companies or re-registration as Designated Activity Companies  
38 Relief where there is a failure to re-register as a Designated Activity Company  
39 Applicable laws during transition  
40 Adoption of new constitution by members  
41 Certification of new constitution by directors  
42 Deemed constitution



# First Schedule Model Form of Constitution for Companies Limited by Shares.

## Part A2 - Incorporation and Registration

### Chapter 1

#### Interpretation

##### Head 1 Defined terms

(1) In this Part, unless the context otherwise requires—

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

**“existing private company”** means a private company limited by shares that was incorporated under the Companies Acts, 1963 to 2003 or previous enactments and which is in existence at the commencement of this section and which has not re-registered as another company type;

**“registered person”** means a person notified pursuant to Part A2, Head 21;

**“relevant classification system”** means NACE Rev. 1, that is to say, the common basis for statistical classifications of economic activities within the European Community set out in the Annex to Council Regulation (EEC);

**“status date”** means the date six months after the commencement of this head;

**“transition period”** means the period expiring twelve months after the status date.

(2) If, in any respect, any difficulties arise in the operation of the provisions of the Bill which necessitate the giving of more time for affected or interested parties to undertake any necessary actions or procedures in the periods provided for in the definitions of “status date” or the ending of the “transition period” in Subhead (1), the Minister may, by regulation, extend the period specified in each or either instance by periods not exceeding six months or eighteen months respectively.

#### Explanatory note

*This head is a new head which contains provisions for the interpretation of certain terms used in this Part of the Bill. The head takes account of the recommendations of the First Report of the Company Law Review Group which provided that greater use should be made of defined terms in order to make the legislation more succinct.*

*The definitions of both “activity” and “relevant classification system” are taken from Section 42(7) of the Companies (Amendment)(No 2) Act, 1999.*

*The head defines two new dates, the status date and the end of the transition period. Between those two dates an existing private company limited by shares (governed by memorandum and articles of association) can convert to the status of new model private company limited by shares (governed by a single document constitution). At the end of the transition period if an existing private company has not so converted, or has not converted to a DAC (designated activity company) it is deemed to have the default constitution set out in the schedule (to be appended). The head also defines what is considered to be an existing private company for these purposes.*

*The purpose of Subhead 2 is to give the Minister a limited degree of flexibility to extend the period in question by the limits proposed.*

*It is considered to be in the interests of all concerned that the change over to the new regime being provided for the existing private companies limited by shares in Pillar A should be undertaken and completed as quickly as possible. Accordingly, it is proposed that in the 12 month period between the “status date” (which is six months after the commencement of the relevant provisions) and the end of the “transition period”, all existing private limited companies will have decided to register as a private company (with a “tailored” constitution), or register as a DAC.*

*At the end of the period, if they have done neither of the foregoing, they will automatically become a private company with the default constitution.*

## Part A2- Incorporation and Registration

---

*However, this will be a significant change for all concerned and no matter how well in advance people are advised of the coming changes (eg through CLRG report, publication of the Bill, CRO, IAASA and ODCE publicity etc.), there is no certainty that company personnel or their advisers (legal, accounting or secretarial) will be able to deal with the issues arising for all of the companies affected.*

*Further definitions may be identified and set out in this head.*

# Chapter 2

## Incorporation and Consequential Matters

### Head 2 Way of forming a company limited by shares

- (1) A company may be formed for any lawful purpose by any person or persons subscribing to a constitution and complying with the registration requirements in this Bill.
- (2) The liability of a member at any time shall be limited to the amount, if any, unpaid on the shares registered in the member's name at that time.
- (3) Subhead (2) is without prejudice to any other liability to which a member may be subject as provided by this Bill.
- (4) The number of members of a company is limited to—
  - (a) 99 persons; and
  - (b) current and/or former employees of the company; or
  - (c) in the case of a company that is a management company, persons who are the owners of a freehold or leasehold estate or interest in the land that is managed by that company.
- (5) A company shall not be formed or registered unless it appears to the Registrar that the company, when registered, will carry on an activity in the State.

#### **Explanatory note**

*This head sets out the manner in which a private company limited by shares may be formed and further delimits the liability of any member of such a company. The text of the head is drawn from Head 5 of the Companies Act, 1963; it is amended to allow a private company limited by shares to be formed by one person as is currently permitted under Regulation 4 of the EC (Single Member Private Limited Companies) Regulation 1994.*

*The head reflects the recommendation of the First Report of the Company Law Review Group that any one or more persons may, by subscribing their names to an application for incorporation in a form prescribed for that purpose, form a private company limited by shares.*

*The references to the memorandum and articles of association are replaced by the term 'constitution'. This is in accordance with the recommendation of the First Report of the Review Group, which provided that the current two-document constitution of the private company limited by shares should be replaced by a single-document constitution.*

*Subhead (4) limits the number of members of a private company limited by shares to 99. This increases the limit on membership from 50 as currently prescribed in Head 33(1) of the Companies Act, 1963. In its First Report the Review Group recommended that the maximum number of members be increased to 150. This figure had to be subsequently revised in the light of requirement in Directive 2003/71/EC of the European Parliament and of the Council (i.e. the Prospectus Directive) which requires a company to issue a prospectus where shares are offered to 100 or more persons.*

*Subhead (5) is an amended re-enactment of section 42(1) of the Companies (Amendment) (No 2) Act, 1999.*

### Head 3 The form of the constitution

- (1) The constitution of the company shall state—
  - (a) its name;
  - (b) that it is a private company limited by shares, registered under this Part;
  - (c) If the company adopts supplemental regulations, those regulations;
  - (d) its authorised share capital, being the amount of share capital with which the company proposes to be registered, and the division thereof into shares of a fixed amount.
- (2) The constitution shall—
  - (a) be in a form in accordance with the form set out in [the First Schedule to this Part] or as near thereto as circumstances permit;

- (b) be divided into paragraphs numbered consecutively;
- (c) be signed by each subscriber in the presence of at least one witness who must attest the signature.

### **Explanatory note**

*This head is a new head. It gives effect to the idea that the constitution is the single document of incorporation of the private company limited by shares. As such, Sections 8-16 of the Companies Act, 1963 are no longer of any relevance to the private company limited by shares - they will be of relevance to other corporate entities dealt with in Pillar B of the Bill.*

*The new form of the constitution corresponds with the structure envisaged by the First Report of the Company Law Review Group, which provides a simplified form of application for incorporation of private companies.*

*Subhead (1) retains a requirement similar to that at Section 6 of the Companies Act, 1963, that the constitution of private companies must state the name of the company. The constitution is also required to state that the company is a private company limited by shares, i.e. a private company.*

*Subhead (1)(c) requires the constitution of private companies to state the supplemental regulations, if any, which have been adopted.*

*Subhead (1)(d) implements Section 6(4) of the Companies Act, 1963 for CLSs.*

*Subhead (2)(a) sets out the form that the constitution must take and this essentially replicates what is said in Section 16 of the Companies Act, 1963 (in relation to the memorandum and articles of association) to the effect that it must correspond to the form as set out in (Schedule 000) or as near thereto as circumstances permit.*

*Subheads (2)(b) and (2)(c) further add to the form that the constitution must take. The requirements of numbered paragraphs and an attested signature of each member reflect the existing Section 14 of the Companies Act, 1963 in relation to the articles of association.*

---

## **Head 4      Restriction on alteration of constitution**

---

A company may not alter the provisions contained in its constitution except in the cases, in the mode and to the extent for which express provision is made in this Bill.

### **Explanatory note**

*This head is based on Section 9 of the Companies Act, 1963.*

---

## **Head 5      Registration of constitution**

---

- (1) The constitution of a company shall be delivered for registration to the Registrar together with the statement, and where appropriate the documents, described in Part A2, Head 6 and the declaration described in Part A2, Head 7.
- (2) Where any constitution is delivered for registration under this head [equivalent of Section 17 of the Companies Act, 1963], the Registrar shall not register the constitution unless he is satisfied that all the requirements of the Companies Acts in respect of registration and of matters precedent and incidental thereto have been complied with.

### **Explanatory note**

*This is a new head, which relates to the registration of the constitution of private companies. This new head is composed of a re-enactment of Section 17 of the Companies Act, 1963, Subsection (1) of Section 5 of the Companies (Amendment) Act, 1983 and some subsections added in accordance with the recommendations of the Company Law Review Group. References to 'memorandum and articles of association' have been replaced by 'constitution'.*

*Furthermore, the words 'if any' have been deleted. Under Section 17 of the Companies Act, 1963 there is no requirement that the articles must be registered in the case of a private company limited by shares and in such companies the model articles in the First Schedule apply. This amendment was necessitated by the fact that the new regime for a private company involves a single-document constitution. A default constitution is provided for further on in this Part.*

*Section 17 was itself amended by Section 83 of the Company Law Enforcement Act, 2001 which dealt specifically with the Registrar accepting for registration a document containing text from the objects clause of the memorandum or from the articles of association and the numbering thereof. Such amendments have not been included in Subhead(1) for the reason that we are now dealing with a single document constitution.*

*Subhead (2) is a slightly amended re-enactment of Section 5(1) of the Companies (Amendment) Act, 1983. The references to the memorandum and articles of association have been replaced by a reference to the constitution of private companies.*

## Part A2- Incorporation and Registration

---

### Head 6 Statement to be delivered with the constitution

---

- (1) The statement required to be delivered pursuant to Part A2, Head 5(1) shall be in the prescribed form and shall contain the name and the particulars of the following—
  - (a) the person who is, or the persons who are, to be the first director or directors of the company;
  - (b) the person who is, or the persons who are, to be the first secretary or joint secretaries of the company; and
  - (c) the address of the company's registered office;
  - (d) the place, whether in the State or not, where the central administration of the company will normally be carried on.
- (2) Where the constitution is delivered to the Registrar pursuant to Part A2, Head 5 [equivalent of Section 17 of the Companies Act, 1963] by a person as agent for the subscribers to the memorandum the statement required to be delivered to the Registrar pursuant to this head shall so specify and shall specify the name and address of the person by whom the constitution is delivered.
- (3) If any of the persons named in the statement to be delivered pursuant to Part A2, Head 5 as directors of the company concerned is a person who is disqualified under the law of another state (whether pursuant to an order of a judge or a tribunal or otherwise) from being appointed or acting as a director or secretary of a body corporate or an undertaking, that person shall ensure that that statement is accompanied by (but as a separate document from that statement) a statement in the prescribed form signed by him specifying—
  - (a) the jurisdiction in which he is so disqualified;
  - (b) the date on which he became so disqualified; and
  - (c) the period for which he is so disqualified.
- (4) This head is without prejudice to Subhead (6) [equivalent of Section 3(3) of the Companies (Amendment) Act, 1982] or the requirements of any other enactment with regard to the registration of companies
- (5) Where no person in paragraph (a) of Subhead (1) is resident in Ireland there shall be delivered for registration a bond as provided by Part A4, Head 11 [the equivalent of Section 43 of the Companies (Amendment) (No.2) Act, 1999].
- (6) In respect of the activity, or one of the activities, to be carried out by the company in the State, a statement delivered pursuant to Part A2, Head 5 shall contain the following particulars—
  - (a) if it appears to the person making the statement that the activity belongs to a division, group and class appearing in the relevant classification system—
    - (i) the general nature of the activity, and
    - (ii) the division, group and class in that system to which the activity belongs;
  - (b) if it appears to the said person that the activity does not belong to any such division, group and class, a precise description of the activity,
  - (c) the place or places in the State where it is proposed to carry on the activity;
- (7) For the purposes of Subhead (6), if the purpose or one of the purposes for which the company is being formed is the carrying on of two or more activities in the State, the particulars in respect of the matters referred to in paragraphs (a) to (c) of that subhead to be given in the statement, shall be the particulars that relate to whichever of those activities the person making the declaration considers to be the principal activity for which the company is being formed to carry on in the State.
- (8) The statement shall be signed by or on behalf of the subscribers and shall be accompanied by a consent signed by each of the persons named in it as a director, secretary or joint secretary to act in that capacity.

#### **Explanatory note**

*This is a new head, however, it substantially re-enacts, in amended form, Section 3 of the Companies (Amendment) Act, 1982.*



*Subhead (1) is slightly amended re-enactment of Section 3(1) of the Companies (Amendment) Act, 1982. The main amendment is the addition of paragraph (d), which is a new requirement.*

*Subhead (2) is a re-enactment of Section 3(4) of the Companies (Amendment) Act, 1982.*

*Subhead (3) is a slightly modified re-enactment of which was inserted by section 101 of the Company Law Enforcement Act, 2001.*

*Subhead (5) was previously introduced by Section 43 of the Companies (Amendment) (No2) Act, 1999.*

*Subhead (6) is an amended re-enactment of Section 42(2) of the Companies (Amendment) (No 2) Act, 1999.*

*Subhead (7) is a re-enactment of Section 42(3) of the Companies (Amendment) (No 2) Act, 1999.*

*Subhead(8) is a re-enactment of Section 3(3) of the Companies (Amendment) Act, 1982.*

*Section 3(2) of the Companies (Amendment) Act, 1982 has been deleted on the basis that the particulars are set out in a prescribed form and therefore do not need to be specified in the legislation.*

---

### Head 7 Declaration to be made to Registrar

---

- (1) The Registrar may accept as sufficient evidence—
  - (a) that the requirements mentioned in Part A2, Head 6 [the equivalent of Section 3 of the Companies Act, 1982] have been complied with; and
  - (b) that a company, when registered, will carry on an activity in the State, a declaration pursuant to this head.
- (2) The declaration shall state—
  - (a) that all the requirements in respect of registration and of matters precedent and incidental thereto have been complied with;
  - (b) that the purpose for which the company is being formed is the carrying out by it of an activity in the State;
  - (c) that the particulars contained in the statement delivered pursuant to Part A2, Head 5 are correct.

- (3) The declaration referred to in Subhead (1) shall be made either by—
  - (a) one of the persons named in the statement delivered pursuant to Part A2, Head 5 as directors of the company;
  - (b) the person or, as the case may be, one of the persons named in the said statement as secretary or joint secretaries of the company; or
  - (c) the solicitor, if any, engaged in the formation of the company.

#### **Explanatory note**

*This is a new head. It substantially re-enacts in amended form Section 5 of the Companies (Amendment) Act, 1983.*

*Subhead (1) re-enacts part of Section 5(5) of the Companies (Amendment) Act, 1983, specifically that the Registrar may accept a declaration made under this head as sufficient evidence of the requirements under Head 6. The provisions relating to who may make the declaration are now set out separately in Subhead (3).*

*Paragraph (2)(a) requires a declaration of compliance with the registration related requirements of the Bill. This is essentially a re-enactment of the requirements found in Section 5 of the Companies (Amendment) Act, 1982 when Subheads (1) and (5) are read together.*

*Paragraph (2)(b) gives effect to requirements currently found in Section 42(2) of the Companies (Amendment) (No 2) Act, 1999 Paragraph (2)(c) is new.*

*Subhead (3) is a slightly amended re-enactment of Section 5(5) of the Companies (Amendment) Act, 1983. The reference to 'statutory declaration' in the current provision is replaced by an unsworn declaration, reflecting the recommendation of the First Report of the Review Group, to move away from the requirement of a statutory declaration, where such currently exists.*

---

### Head 8 Effect of registration

---

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

## Part A2- Incorporation and Registration

- (2) From the date of incorporation mentioned in the certificate of incorporation, the subscriber or subscribers of the constitution, together with such other persons as may from time to time become members of the company, shall be a body corporate with the name contained in the constitution, having perpetual succession and a common seal.
- (3) The certificate of incorporation issued under Subhead (1) shall state that the company is a company limited by shares (CLS).
- (4) A certificate of incorporation given under Subhead (1) shall be conclusive evidence that the requirements mentioned in Part A2, Head 5 [equivalent of Section 3 of the Companies Act, 1982] have been complied with, and that the company is duly registered under this Bill.
- (5) The persons who are specified in the statement required to be delivered to the Registrar pursuant to Part A2, Head 5 [equivalent of Section 3 of the Companies Act, 1982] as the director or directors, secretary or joint secretaries of the company to which the statement refers shall, on the incorporation of the company, be deemed to have been appointed as the first director or directors, or secretary, as the case may be, of the company, and any indication in the constitution specifying a person as a director or secretary of a company shall be void unless such person is specified as a director or as secretary in the said statement.

### **Explanatory note**

*This head is new. It re-enacts Section 18 of the Companies Act, 1963 and Section 3(5) of the Companies (Amendment) Act, 1982 has also been included. It is also stated to be imperative that the Registrar shall issue a certificate “for and to” the company, since this is so important to proof of existence. The conclusive evidence is related back specifically to Section 5 of the Companies (Amendment) Act, 1983. Furthermore, “under his hand” has been dropped from Subhead (1) as it is seen as arcane and “Association” has also been dropped from Subhead (2) in view of the single-member incorporation. References to the memorandum and articles of association have been replaced by “constitution”.*

*Subhead (3) re-enacts Section 5(3) of the Companies (Amendment) Act, 1983 for a CLS.*

---

## **Head 9 Provisions as to names of companies**

---

- (1) The last word of the name of a company shall be “Limited” or “Teoranta”.
- (2) The words “Limited” or “Teoranta” may be abbreviated to “Ltd” or “Teo” in any usage after its registration by any person including the company.
- (3) Every company carrying on business under a name other than its corporate name shall register in the manner directed by law for the registration of business names but the use of the abbreviation “Ltd.” for “ Limited” or “Teo.” for “Teoranta” shall not of itself render such registration necessary.
- (4) No company shall be registered on incorporation, re-registration, merger or division, by a name which, in the opinion of the Registrar, is undesirable but an appeal shall lie to the court against a refusal to register.

### **Explanatory note**

*This is a new head. The text of the head is drawn from Section 6 (1)(b) of the Companies Act, 1963, Section 21 of the Companies Act, 1963 as amended by Section 86 of the Company Law Enforcement Act, 2001 and Section 22 of the Companies Act, 1963.*

*Subhead (4) has been amended insofar as the phrase “...on continuance, incorporation, re-registration, merger or division ...” has been newly inserted in accordance with the view of the Company Law Review Group.*

*Subhead (5) gives effect to a recommendation of the First Report of the Review Group that persons engaged in the formation of a company ought to be permitted to reserve a company name for a limited period of time.*

---

## **Head 10 Trading under a misleading name**

---

- (1) A person who is not a CLS and, if that person is a company, any officer of the company who is in default shall be guilty of a category three offence if he carries on any trade, profession or business under a name which includes, as its last part, the words “company limited by shares” or abbreviations of those words.

(2) A CLS and any officer of the CLS who is in default shall be guilty of a category three offence if, in circumstances in which the fact that it is a CLS is likely to be material to any person, it uses a name which may reasonably be expected to give the impression that it is a company other than a CLS.

- (3) Subhead (1) shall not apply to any company-
- (a) to which Part B7 [equivalent of Part XI of the Companies Act, 1963] applies; and
  - (b) which has provisions in its constitution that would entitle it to rank as a CLS if it had been registered in the State.

### **Explanatory note**

*An amended re-enactment of Sections 56(1), (2) and (4) of the Companies (Amendment) Act, 1983.*

---

## **Head 11 Reservation of a company name**

---

(1) In this head—

“reserved” means reserved under Subhead (4) for the purpose mentioned in Subhead (3);

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

- (2) During the specified period and any extension under Part A2, Head 12 of that period, a company shall not be incorporated with a particular reserved name save on application of the person in whose favour that name has been reserved.
- (3) A person may apply to the Registrar to reserve a specified name for the following purpose, namely, the purpose of a company that is proposed to be formed by that person being incorporated with that name; such an application shall be accompanied by the prescribed fee.
- (4) On the making of such an application, the Registrar may, subject to Subhead (6), determine that the name specified in the application shall be reserved for the purpose mentioned in Subhead (3).
- (5) That determination shall be notified to the applicant by the Registrar and that notification shall specify the period (which shall not be greater than 28 days and which shall be expressed to begin on the making of the notification) for which the name is reserved.

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

### **Explanatory note**

*This is a re-enactment of Section 59 of the Investment Funds, Companies and Miscellaneous Provisions Act, 2005.*

---

## **Head 12 Extension of the period of reservation**

---

- (1) A person in whose favour a name has been reserved under Part A2, Head 11 may, before the expiry of the specified period, apply to the Registrar for an extension of the specified period; such an application shall be accompanied by the prescribed fee.
- (2) On the making of such an application, the Registrar may, if he or she considers it appropriate to do so, extend the specified period for such number of days (not exceeding 28 days) as the Registrar determines and specifies in a notification of the determination to the applicant.
- (3) If an application for the incorporation of a company with a name that has been reserved under Part A2, Head 11 is received by the Registrar during the specified period from the person in whose favour the name has been so reserved, the fee payable to the Registrar in respect of that incorporation shall be reduced by an amount equal to the amount of the fee paid under Part A2, Head 11(3) in respect of the reservation of that name.
- (4) In this head ‘specified period’ has the same meaning it has in Part A2, Head 11.

### **Explanatory note**

*Re-enactment of Section 60 of the Investment Funds, Companies and Miscellaneous Provisions Act, 2005.*

---

## **Head 13 Change of name**

---

- (1) A company may, by special resolution and with the approval of the Registrar, signified in writing, change its name.

## Part A2- Incorporation and Registration

---

- (2) If, through inadvertence or otherwise, a company on its first registration, or on its registration by a new name, is registered by a name which, in the opinion of the Registrar, is too like the name by which a company in existence is already registered, the first-mentioned company may change its name with the approval of the Registrar and, if he so directs within 6 months of its being registered by that name, shall change it within a period of 6 weeks from the date of the direction or such longer period as the Registrar may think fit to allow.
- (3) Where a company changes its name under this head, the Registrar shall enter the new name in the register in place of the former name, and shall issue a certificate of incorporation altered to meet the circumstances of the case.
- (4) A change of name by a company under this head shall not affect any rights or obligations of the company, or render defective any legal proceedings by or against the company, and any legal proceedings which might have been continued or commenced against it by its former name may be continued or commenced against it by its new name.
- (5) A company which was registered by a name specified by statute, may, notwithstanding anything contained in that statute, change its name in accordance with Subhead (1), but if the Registrar is of the opinion that any Minister is concerned in the administration of the statute which specified the name of the company he shall not approve of the change of name save after consultation with that Minister.
- (6) Where the winding up of a company commences within one year after the company has changed its name, the former name as well as the existing name of the company shall appear on all notices and advertisements in relation to the winding-up.
- (7) If a company fails to comply with Subhead (2), the company and every officer in default shall be guilty of a category four offence.

### **Explanatory note**

*This head is a re-enactment of Section 23 of the Companies Act, 1963, as amended by Section 87 of the Company Law Enforcement Act, 2001. Subhead (2) has been amended by replacing "sanction of the Minister" with "approval of the Registrar". Subhead (7) has been deleted.*

---

## Head 14 Effect of constitution

---

- (1) Subject to the provisions of this Bill, the constitution shall, when registered, bind the company and the members thereof to the same extent as if they respectively had been signed and sealed by each member, and contained covenants by each member to observe all the provisions of the constitution and any provision of the Companies Acts as to the governance of the company.
- (2) All money payable by any member to the company under the constitution shall be a debt due from him to the company.
- (3) An action to recover a debt created by this head shall not be brought after the expiration of 12 years from the date on which the cause of action accrued.
- (4) Where any provision of this Bill provides with respect to any matter, that—
  - (a) the constitution of a company may 'provide otherwise'; and
  - (b) the constitution does not, with respect to such matter, provide otherwise,

then those provisions of this Bill shall be deemed to pertain to the governance of the company.

### **Explanatory note**

*This head is a re-enactment, in a slightly amended form, of Section 25 of the Companies Bill, 1963. References to the memorandum and articles of association have been replaced with references to the "constitution".*

---

## Head 15 Alteration of constitution by special resolution

---

- (1) Subject to the provisions of this Bill, a company may by special resolution amend its constitution.
- (2) Any amendment so made in the constitution shall, subject to the provisions of this Bill, be as valid as if originally contained therein, and be subject in like manner to amendment by special resolution.



- (3) Where any amendment is made to a company's constitution notice of which the company is required to publish under Part A2, Head 16 [equivalent of Regulation 4 European Communities (Companies) Regulation 1973 (S.I. No.163 of 1973)], the company shall deliver to the Registrar, in addition to the alteration, a copy of the text of the constitution as so amended.
- (4) Subject to Subhead (5), and notwithstanding anything in the constitution of a company, no member of the company shall be bound by an amendment made to the constitution after the date on which he became a member, if and so far as the amendment requires him to take or subscribe for more shares than the number held by him at the date on which the amendment is made, or in any way increases his liability as at that date to contribute to the share capital of, or otherwise to pay money to, the company.
- (5) Subhead (4) shall not apply in any case where the member agrees in writing, either before or after the amendment is made, to be bound thereby.

### **Explanatory note**

*This head provides that the constitution of a private company is alterable by special resolution. This head is a new head which substantially reproduces Section 15 of the Companies Act, 1963 subject to necessary amendments. It is also drawn from Regulation 5 of S.I. 163/1973 and Section 27 of the Companies Act, 1963.*

*Subheads (1) and (2) adopt the provisions in Section 15 of the Companies Act, 1963, relating to the alteration of the articles, as the mode for the alteration of the constitution. References to the memorandum and articles of association are replaced by references to the constitution of private companies. Furthermore, "alteration or addition" was replaced by "amendment".*

*Subhead (3) re-enacts, in a slightly amended form, Regulation 5 of European Communities (Companies) Regulation 1973 (S.I. No.163 of 1973). References to the articles and memorandum of association are replaced by references to the "constitution" of the company.*

*Subheads (4) & (5) re-enact, in a slightly amended form, Section 27 of the Companies Act, 1963. References to the memorandum and articles of association are again replaced by references to the "constitution" of the company.*

---

## **Head 16 Language of documents filed with Registrar**

---

- (1) Without prejudice to any other provisions on the language of documents, any document filed with the Registrar shall be in the Irish or English language.
- (2) A translation of any such document may be filed in any official language of the European Community.
- (3) Every translation to which Subhead (2) refers shall be certified, in a manner approved by the Registrar, to be a correct translation.
- (4) In cases of discrepancy between the documents filed pursuant to Subhead (1) and a translation filed pursuant to Subhead (2) the latter may not be relied upon as against third parties. Third parties may nevertheless rely on said translation, unless the company proves that the third parties had knowledge of the version filed pursuant to Subhead (2).

### **Explanatory note**

*This is a new head.*

---

## **Head 17 Authorisation of an electronic filing agent**

---

- (1) A company may authorise a person (who shall be known and is in this Bill referred to as an "electronic filing agent") to do the following acts on its behalf.
- (2) Those acts are—
  - (a) the electronic signing of documents that are required or authorised, by or under this Bill or any other enactment, to be delivered by the company to the Registrar; and
  - (b) the delivery to the Registrar, by electronic means, of those documents so signed.



## Part A2- Incorporation and Registration

---

- (3) Subject to the following conditions being complied with, an act of the foregoing kind done by such an agent on behalf of a company pursuant to an authorisation by the company under this head that is in force, shall be as valid in law as if it had been done by the company (and the requirements of this Bill or the other enactment concerned with respect to the doing of the act have otherwise been complied with (such as with regard to the period within which the act is to be done)).
- (4) The conditions mentioned in Subhead (3) are—
  - (a) that prior to the first instance of the electronic filing agent's doing of an act of the kind referred to in Subhead (2), pursuant to an authorisation by the company concerned under this head, the authorisation of the agent has been notified by the company to the Registrar in the prescribed form; and
  - (b) the doing of the act complies with any requirements of the Registrar of the kind referred to in Sections 12(2)(b) and 13(2)(a) of the Electronic Commerce Act, 2000.
- (5) It shall be the joint responsibility of a company and the electronic filing agent authorised by it under this head to manage the control of the documents referred to in Subhead (2).
- (6) An electronic filing agent shall not, by virtue of his or her authorisation under this head to act as such, be regarded as an officer or servant of the company concerned for the purposes of Head 104 (a) of Part A6 [equivalent of Section 187 (2) (a) of the Companies Act, 1990].
- (2) Such a revocation by a company shall be notified by it, in the prescribed form, to the Registrar.
- (3) Unless and until the revocation is so notified to the Registrar, the authorisation concerned shall be deemed to subsist and, accordingly, to be still in force for the purposes of Head 17 of this Part [equivalent of Section 57(3) of the Investment Funds, Companies and Miscellaneous Provisions Act, 2005].
- (4) If a revocation, in accordance with this head, of an authorisation under Head 17 of this Part [equivalent of Section 57 of the Investment Funds, Companies and Miscellaneous Provisions Act, 2005] constitutes a breach of contract or otherwise gives rise to a liability being incurred—
  - (a) the fact that it constitutes such a breach or otherwise gives rise to a liability being incurred does not affect the validity of the revocation for the purposes of Head 17 of this Part [equivalent of Section 57 of the Investment Funds, Companies and Miscellaneous Provisions Act, 2005]; and
  - (b) the fact of the revocation being so valid does not remove or otherwise affect any cause of action in respect of that breach or the incurring of that liability.

### **Explanatory note**

*This head re-enacts Section 57 of the Investment Funds, Companies and Miscellaneous Provisions Act, 2005.*

---

## **Head 18 Revocation of the authorisation of an electronic filing agent**

---

- (1) A company may revoke an authorisation by it under Head 17 of this Part [equivalent of Section 57 of the Investment Funds, Companies and Miscellaneous Provisions Act, 2005] of an electronic filing agent.

### **Explanatory note**

*This head re-enacts Section 58 of the Investment Funds, Companies and Miscellaneous Provisions Act, 2005.*

---

## **Head 19 Copies of constitution to be given to members**

---

- (1) A company shall, on being so required by any member, send to him a copy of the constitution, and in the event of a second or subsequent request, on payment of €5.
- (2) Where an alteration is made in the constitution of a company, every copy of the constitution issued after the date of the alteration shall be in accordance with the alteration.
- (3) If a company makes default in complying with this head, the company and every officer of the company who is in default shall be guilty of a category four offence.

### **Explanatory note**

*This head is a re-enactment of Section 29 and Section 30 of the Companies Act, 1963.*

## Part A2- Incorporation and Registration

---

*Subhead (1) is an amended re-enactment of Section 29(1) of the Companies Act, 1963. This subhead was amended insofar as it no longer requires the company to forward copies of Acts of the Oireachtas, which alter its constitution to its members. References to the memorandum and articles of association have been replaced with references to the “constitution” of the company.*

*Subhead (2) is a re-enactment, in a slightly amended form, of Section 30(1) of the Companies Act, 1963. References to the memorandum and articles of association have been replaced with references to the “constitution” of the company.*

*Subhead (3) is a re-enactment of Section 29(2) of the Companies Act, 1963.*

*Subsection (4) has been deleted.*

# Chapter 3

## Corporate Capacity and Authority

### Head 20 Capacity of a private company limited by shares

- (1) Subject to Subhead (2), notwithstanding anything contained in its constitution a company shall have, whether acting inside or outside of the State –
  - (a) full and unlimited capacity to carry on and undertake any business or activity, do any act or enter into any transaction; and,
  - (b) for the purposes of paragraph (a) of this subhead, full rights powers and privileges.
- (2) Nothing in Subhead (1) shall relieve a company from any duty or obligation under any enactment or the general law.

#### **Explanatory note**

*This is a new head which gives effect to the recommendation in the First Report of the Company Law Review Group that private companies limited by shares should be granted the legal capacity of a natural person with the consequent effect that the doctrine of ultra vires is disapplied from private companies. The head is modelled on Section 16(1) of the New Zealand Companies Act, 1993*

*The Review Group recognised that nearly 90 per cent of registered companies are private companies limited by shares and the majority of these were closely-held companies. Accordingly, the Review Group believes that such companies should not be required to set out any objects or powers; such companies should be empowered with the capacity of a natural person. Thus, it recommended that, except where otherwise specifically required by a company's promoters, private companies limited by shares should have the legal capacity of a natural person.*

*Subhead (1) provides that private companies shall have the capacity to carry on and undertake any business activity, do any act or enter any transaction and for these purposes it is given full rights, powers and privileges.*

*Subhead (2) is a safety provision stating that private companies are not relieved from their duties or obligations under any enactment or the general law as a result of Subhead (1).*

### Head 21 Registered person

Where a company appoints any person (a "registered person") as a person entitled to bind the company it shall notify the Registrar in the prescribed form.

#### **Explanatory note**

*This is a new head. The concept is drawn from Regulation 6(3) of the EC (Companies) Regulations, 1973 (although it is not a direct re-enactment).*

### Head 22 Persons or bodies of persons authorised to bind a company

- (1) For the purposes of any question whether a transaction fails to bind a company because of lack of authority on the part of the person exercising (or purporting to exercise) the company's powers, the board of directors of a company and any registered person shall be deemed to have authority to—
  - (a) exercise any power of the company; and
  - (b) authorise others to do so,and this applies regardless of any limitations in the company's constitution on the board's authority or a registered person's authority, but subject to Subheads (4) and (6).
- (2) Subhead (1) shall not be taken to prevent the exercise of a company's powers otherwise than by the board, a registered person or a person authorised by the board or by a registered person, where authority for that exercise exists.
- (3) Subhead (1) does not affect a director's duties (including his duty to observe any limitations in the company's constitution on the board's authority), or his or any other person's liability (including the liability of a registered person) in respect of any breach of those duties.
- (4) Where a company is purportedly a party to a transaction –
  - (a) in connection with which the board of directors exceeded limitations in the company's constitution on their authority; and
  - (b) to which a person falling within Subhead (5) is also a party,

Subhead (1) does not apply in favour of the party falling within Subhead (5).

- (5) A person falls within this subhead if he is –
- (a) a director or shadow director of the company or of its holding company; or
  - (b) a person connected with such a director; or
  - (c) a registered person; or
  - (d) a person connected with a registered person

and in this subhead, references to a person's being "connected" with another person are to be read in accordance with Part A5, Head 2 [equivalent of Section 26 of the Companies Act, 1990, as amended by Section 76 of the Company Law Enforcement Act, 2001].

- (6) Subhead (1) does not apply in relation to a power of the company which this Bill requires to be exercised otherwise than by the board.
- (7) Without prejudice to Subhead (2), in determining any question whether a person had ostensible authority to exercise any of a company's powers in a given case, no reference may be made to the company's constitution.
- (8) In this head, references to limitations in the company's constitution include references to limitations deriving from –
- (a) a resolution of the company or of any class of members; or
  - (b) any agreement between the members of the company or of any class of members;

and "transaction" includes any act or omission.

### **Explanatory note**

*This is a new head. The head sets out those persons who are authorised to bind a company and draws on the provision in the UK White Paper Modernising Company Law, July 2002 at 6.2 p 50.*

*Subhead (1) is a new provision aimed at enhancing clarity and certainty in relation to the issue of the authority of the Board of Directors to bind the company. It is similar to the current Model Article 80 of Part I of Table A of the First Schedule to the Companies Act 1963. Subheads (2), (3), (4), (5), (6), (7) and (8) are all new provisions which further elaborate on authority to bind the company.*

## **Head 23 Powers of Attorney**

- (1) A company may, by writing under its common seal, empower any person, either generally or in respect of any specified matters, as its attorney, to execute deeds or do any other matter on its behalf in any place whether inside or outside the State.
- (2) A deed signed by such attorney on behalf of the company and under his seal shall bind the company and have the same effect as if it were under its common seal.

### **Explanatory note**

*This head is an amended re-enactment of Section 40 of the Companies Act, 1963.*

*Subhead (1) is an amended re-enactment of Section 40(1) of the Companies Act, 1963. It was amended in accordance with the recommendation of the First Report of the Company Law Review Group that Section 40 should be amended to expressly declare that the power to appoint an attorney (i) is regardless of any provision in the constitution, and (ii) extends to acts done within the State.*

*A further amendment was also made whereby the words "or to do any other matter" were added which extends the powers of the attorney to act on behalf of the company.*

*Subhead (2) is a re-enactment of Section 40(2) of the Companies Act, 1963.*

# Chapter 4

## Contracts and Other Transactions

### Head 24 Form of contracts

- (1) Contracts on behalf of a company may be made as follows—
  - (a) a contract which, if made between natural persons, would be by law required to be in writing and to be under seal, may be made on behalf of the company in writing under the common seal of the company;
  - (b) a contract which, if made between natural persons, would be by law required to be in writing, signed by the parties to be charged therewith, may be made on behalf of the company in writing, signed by any person acting under its authority, express or implied;
  - (c) a contract which if made between natural persons would by law be valid although made by parol only, and not reduced into writing may be made by parol on behalf of the company by any person acting under its authority, express or implied.
- (2) A contract made according to this head shall bind the company and its successors and all other parties thereto.
- (3) A contract made according to this head may be varied or discharged in the same manner in which it is authorised by this head to be made.

#### **Explanatory note**

*This head is an amended re-enactment of Section 38 of the Companies Act, 1963. Subhead (1) is a slightly amended re-enactment of Section 38(1) of the Companies Act, 1963. The reference to “private persons” has been replaced by a reference to “natural persons”.*

*Subheads (2) & (3) are re-enactments of Sections 38(2) & 38(3) of the Companies Act, 1963 respectively.*

### Head 25 The Common Seal

- (1) Every company shall have a common seal or seals that shall state the company’s name, engraved in legible characters.

- (2) Save as otherwise provided by this Bill or by the constitution of a company, the seal shall be used only by the authority of the directors or of a committee of directors authorised by the directors in that behalf, and every instrument to which the seal shall be affixed shall be signed by a director and shall be countersigned by the secretary or by a second director or by some other person appointed by the directors for the purpose.
- (3) Where a company has a registered person within the meaning of Part A2, Head 21 [equivalent of Reg.6(2) of EC (Companies) Regulations, 1973], the seal may be used by such person, and when so used every instrument to which the seal shall be affixed shall be signed by such person.

#### **Explanatory note**

*This head is new. The requirement to have a common seal is currently found in Subsection (2) of Section 18 of the Companies Act, 1963. The Company Law Review Group, in its First Report, advised that the requirement to have a common seal be retained.*

*Subhead (1) is a re-enactment, in a slightly amended form, of Section 114(1)(b) of the Companies Act, 1963. A company may have more than one seal.*

*Subhead (2) is drawn from Model Article 115 of Part I of Table A of the First Schedule to the Companies Act, 1963. It is amended insofar as the requirement that the seal shall be used only by the authority of the directors of the company or by the authority of a committee of directors is subject to where otherwise provided by this Bill or by the constitution of the company.*

*Subhead (3) gives effect to the recommendation of the First Report of the Review Group that a person registered under Regulation 6(2) of the EC (Companies) Regulations, 1973 should be deemed to be a person appointed by the directors to affix the seal and sign the instrument under seal and in such a case no counter-signature is required.*

### Head 26 Power for company to have official seal for use abroad

- (1) A company may, if authorised by its constitution, have for use in any territory, district or place not situate in the State, an official seal which shall resemble the common seal of the company with the addition on its face of the name of every territory, district or place where it is to be used.



- (2) A deed or other document to which an official seal is duly affixed shall bind the company as if it had been sealed with the common seal of the company.
- (3) A company having an official seal for use in any such territory, district or place, may, by writing under its common seal, authorise any person appointed for the purpose in that territory, district or place to affix the official seal to any deed or other document to which the company is party in that territory, district or place.
- (4) The authority of any such agent shall, as between the company and any person dealing with the agent, continue during the period, if any, mentioned in the instrument conferring the authority, or, if no period is there mentioned, then until the notice of revocation or determination of the agent's authority has been given to the person dealing with him.
- (5) The person affixing any such official seal shall, by writing under his hand, certify on the deed or other instrument to which the seal is affixed, the date on which and the place at which it is affixed.

### **Explanatory note**

*This head is a re-enactment, in a slightly amended form, of section 41 of the Companies Act, 1963. Subhead (1) is an amended re-enactment of Section 41(1) of the Companies Act, 1963. It has been amended by removing the phrase "whose objects require or comprise the transaction of business outside the State". This amendment was necessitated by the fact that a private company no longer has an objects clause and is now deemed to have the capacity of a natural person in accordance with the recommendation of the First Report of the Company Law Review Group. References to the memorandum and articles of association have been replaced with references to the "Constitution" of the company.*

*Subhead (2) is a re-enactment of Section 41(2) of the Companies Act, 1963.*

*Subhead (3) is a re-enactment of Section 41(3) of the Companies Act, 1963.*

*Subhead(4) is a re-enactment of Section 41(4) of the Companies Act, 1963.*

*Subhead (5) is a re-enactment of Section 41(5) of the Companies Act, 1963.*

---

## **Head 27 Official seal for sealing securities**

---

- (1) A company may have for use, for sealing securities issued by the company and for sealing documents creating or evidencing securities so issued, an official seal which is a facsimile of the common seal of the company with the addition on its face of the word "Securities" or the word "Urrúis".
- (2) A company which was incorporated before the commencement of this Bill and which has such an official seal as is mentioned in Subhead (1) of this head may use the seal for sealing such securities and documents as are mentioned in that subhead notwithstanding anything in any instrument constituting or regulating the company or in any instrument made before such commencement which relates to any securities issued by the company, and any provision of such an instrument which requires any such securities or documents to be signed shall not apply to the securities or documents if they are sealed with that seal.

### **Explanatory note**

*This head is a re-enactment of Section 3 of the Companies (Amendment) Act, 1977.*

---

## **Head 28 Pre-incorporation contracts**

---

- (1) Any contract or other transaction (including any application to any lawful authority) purporting to be entered into by a company prior to its formation or by any person on behalf of the company prior to its formation may be ratified by the company after its formation and thereupon the company shall become bound by it and entitled to the benefit thereof as if it had been in existence at the date of such contract or other transaction and had been a party thereto.
- (2) Prior to ratification by the company the person or persons who purported to act in the name or on behalf of the company shall, in the absence of express agreement to the contrary, be personally bound by the contract or other transaction and entitled to the benefit thereof.
- (3) Where a contract or other transaction is so ratified, any taxation exigible in respect of such transaction shall be payable by the company alone.



## Part A2- Incorporation and Registration

---

### **Explanatory note**

*This head is a re-enactment of Sections 37 (1) & 37(2) of the Companies Act, 1963. Section 37(3) has been deleted as obsolete.*

---

### **Head 29 Bills of exchange and promissory notes**

---

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

### **Explanatory note**

*This head is a re-enactment of Section 39 of the Companies Act, 1963.*

---

### **Head 30 Liability for use of incorrect company name**

---

Where an officer of a company or any person on its behalf—

- (a) uses or authorises the use of any seal purporting to be a seal of the company whereon its name is not so engraved in legible characters on its seal; or
- (b) issues or authorises the issue of any business letter of the company or any notice or other official publication of the company, or signs or authorises to be signed on behalf of the company any bill of exchange, promissory note, endorsement, cheque or order for money or goods wherein its name is not mentioned in manner described in Part A2, Head 32 (1) (b) [equivalent of Section 114(1)(c) of the Companies Act, 1963]; or
- (c) issues or authorises the issue of any invoice, receipt or letter of credit of the company wherein its name is not mentioned in manner described in Part A2, Head 32 [equivalent of Section 114 of the Companies Act, 1963], such officer or person shall be—
  - (i) guilty of a category three offence, and

- (ii) be personally liable to the holder of the bill of exchange, promissory note, cheque or order for money or goods for the amount thereof unless it is duly paid by the company or it appears to the court that no injustice will be done by imposing liability therefore on the company.

### **Explanatory note**

*This head is a re-enactment, in a slightly amended form, of Section 114(4) of the Companies Act, 1963.*

*Subhead (a) is an amended re-enactment of Section 114(4)(a) of the Companies Act, 1963. "As aforesaid" is deleted and replaced by "in legible characters on its seal". This was necessitated due to the fact that Subsection (4) is now a head in itself and the cross reference to the earlier text is thus rendered useless.*

*Subhead (b) is an amended re-enactment of Section 114(4)(b) of the Companies Act, 1963. "In manner aforesaid" is deleted and replaced by "in manner described in Part A2, Head 32 (1)". This was necessitated due to the fact that Subsection (4) is now a head in itself and the cross reference to the earlier text is thus rendered useless.*

*Subhead (c) is a re-enactment of Section 114(4)(c) of the Companies Act, 1963.*

---

### **Head 31 Authentication of Documents**

---

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

### **Explanatory note**

*This head is a re-enactment of Section 42 of the Companies Act, 1963.*

---

## Chapter 5

### Company Name, Registered Office and Legal Proceedings

#### Head 32 Publication of name by company

- (1) Every company—
- (a) shall display its name in a conspicuous position, in letters easily legible on the outside of every office or place in which its business is carried on, including at its registered office; and
  - (b) shall have its name mentioned in legible characters in all business letters of the company and in all notices and other official publications of the company, and in all bills of exchange, promissory notes, endorsements, cheques and orders for money or goods purporting to be signed by or on behalf of the company and in all invoices, receipts and letters of credit of the company.
- (2) If a company does not display its name in manner directed by this Bill, the company and every officer of the company who is in default shall be guilty of a category four offence, and if a company does not keep its name displayed in manner so directed, the company and every officer of the company who is in default shall be guilty of a category four offence
- (3) The use of the abbreviation “Ltd” instead of “Limited” or “Teo” instead of “Teoranta” shall not be a breach of the provisions of this head.

**Explanatory note**

*This head is a re-enactment, in a slightly amended form, of Sections 114(1), 114(2) & 114(3) of the Companies Act, 1963. Subhead (1)(a) is an amended re-enactment of Section 114(1)(a) of the Companies Act, 1963. The amendments made include replacing “Shall paint or affix and keep painted or affixed” with “shall display” for the reason that it was more straightforward.*

*The requirement that the company name shall be displayed at the company’s registered office was also added in Subhead (1)(a)(ii). The purpose of this is to facilitate the service of a document on the company, which, under Section 379(1) of the Companies Act, 1963, may be carried out by “leaving it at or sending it by post to the registered office”. It has been brought to the attention of the Review Group that the CRO has encountered many problems in relation to the service of documents on companies for the simple reason that the company name is not displayed at the registered office of the company. For the purpose of completeness and to ensure greater service of documents on companies, it was thought that this amendment was desirable.*

*Subhead (1)(b) is a re-enactment of Section 114(1)(c) of the Companies Act, 1963.*

*Subhead (2) is a re-enactment of Section 114(2) of the Companies Act, 1963, amended to replace “paint or affix” with “display”.*

*Subhead (3) is a re-enactment, in a slightly amended form, of Section 114(3) of the Companies Act, 1963. The reference to PLCs has been deleted given that private companies are the only companies relevant in this Part.*

#### Head 33 Registered office of company

- (1) A company shall, at all times, have a registered office in the State to which all communications and notices may be addressed.
- (2) Particulars of the situation of the company’s registered office shall be specified in the statement delivered pursuant to Part A2, Head 6 [equivalent of Section 3 of the Companies (Amendment) Act, 1982], prior to the incorporation of the company.
- (3) Notice of any change in the situation of the registered office of a company shall be given in the prescribed form within fourteen days after the date of the change to the Registrar who shall record the same.
- (4) A company’s registered office may be care of an agent approved for this purpose by the Registrar.
- (5) The notification by that agent of any change in his address will satisfy the company’s requirements under Subhead (3).

## Part A2- Incorporation and Registration

---

- (6) If default is made in complying with this head, the company and every officer of the company who is in default shall be guilty of a category four offence.

### **Explanatory note**

*This head is an amended re-enactment of Section 113 of the Companies Act, 1963, as amended by Section 4 of the Companies (Amendment) Act, 1982.*

*Subheads (1) – (3) are re-enactments of Sections 113(1), (2) and (3), of the Companies Act, 1963. Section 113(3) has been amended as the statement that inclusion of particulars in an annual return does not satisfy the requirement has been omitted.*

*Subhead (6) is a re-enactment of Section 113 (5).*

*Section 113(4) has been deleted as obsolete.*

*Subheads (4) & (5) are new subheads which provide for the company's registered office being an office of a professional firm.*

---

## Head 34 Service of proceedings

---

- (1) A document may be served on a company—
- (a) by leaving it at or sending it by post to the registered office of the company or;
  - (b) if the company has not given notice to the Registrar of the situation of its registered office or if the particulars of the situation of a registered office as notified to the Registrar are not such as to identify the exact location, by delivering it to the Registrar.
- (2) For the purposes of this head, any document left at or sent by post to the place for the time being recorded by the Registrar as the situation of the registered office of a company, shall be deemed to have been left at or sent by post to the registered office of the company notwithstanding that the situation of its registered office may have changed.

### **Explanatory note**

*This is a re-enactment of Section 379 of the Companies Act, 1963.*

---

## Head 35 Security for costs

---

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

### **Explanatory note**

*This head is a re-enactment, in a slightly amended form, of Section 390 of the Companies Act, 1963. The words "limited company" have been replaced by "company" given that only private companies limited by shares are covered in this part.*

*The word "sufficient" has been deleted. The effect of this will be to give the court a discretion as to the amount of security that is required to be provided. The current position is that the Court is required to order that "full security" for costs is given; in other circumstances and, traditionally, 1/3 of the costs was the norm.*

---

## Head 36 Enforcement of orders and judgments against companies and their officers

---

- (1) Any judgment or order against a company wilfully disobeyed may, by leave of the court, be enforced by sequestration against the corporate property, or by attachment against the directors or other officers thereof, or by order of sequestration of their property.
- (2) In order for an application to be made for the attachment of directors or other officers or for the sequestration of their property, a "penal notice" must be included in the court order.
- (3) The meaning of "attachment against the directors" and "sequestration" shall be as provided for, from time to time, and at any time, in the Rules of the Superior Courts.

### **Explanatory note**

*This is a new head which is aimed at enhancing the enforcement of orders and judgments against companies and their officers.*

## Part A2- Incorporation and Registration

---

*Subhead (1) is drawn from Order 42, Rule 32 of the Rules of the Superior Courts, 1986. This provision was considered to be such a fundamental exception to the principle of separate legal personality of a corporate entity that it needed to be stated in primary legislation and not merely in the Rules of the Superior Courts.*

*Subhead (2) is new and is designed to put the officers of the company on notice that if the company fails to comply with the order or judgment, then they may be attached and their assets sequestered.*

*Subhead (3) is a new provision referring to the Rules of the Superior Courts. This is necessary in light of the origins of Subhead (1).*

### Chapter 6

#### Conversion of an Existing Company to a Company Limited by Shares

##### Head 37 Conversion of existing companies or re-registration as Designated Activity Companies

- (1) Every existing private company shall at the end of the transition period become a “company limited by shares” to which Pillar A applies.
- (2) An existing private company may re-register as a designated activity company by passing an ordinary resolution before the status date resolving that the company be so registered and must comply with the provisions contained in Pillar B, Part 3, Chapter 2.
- (3) An existing private company that has published a prospectus or that has obtained an admission to trading on a regulated market for its debentures, which shall include debenture stock, bonds and any other debt instruments of a company or any forms of securitised debt, including depositary receipts in respect of such securities, whether constituting a charge on the assets of the company or note, must register as a DAC and the provisions of Part B3 shall apply to such companies.

##### **Explanatory note**

*This is a new head. The head provides a transitional regime whereby an existing private company limited by shares is to be converted to a private company at the end of the transition period unless it has re-registered as a designated activity company before the status date.*

*Both the “transition period” and “status date” are defined in Head 1 of this Part for these purposes. A definition of an “existing private company” is also contained in that provision.*

*Subhead (3) ensures that only a DAC (and not a private company to which Pillar A applies) may publish a prospectus to be admitted to trading.*

##### Head 38 Relief where there is a failure to re-register as a designated activity company

- (1) Where an existing private company does not re-register as a designated activity company, any qualifying member or creditor may apply to the court for an order that it should be re-registered as a designated activity company and the Court shall, unless cause is shown to the contrary, make the order sought or make such other order as seems just.
- (2) A qualifying member or creditor means —
  - (a) the holder of not less in the aggregate than 15 per cent in nominal value of the company’s issued share capital or any class thereof or
  - (b) the holder of not less than 15 per cent of the Company’s debentures entitling the holder to object to any alteration in the company’s objects clause.

##### **Explanatory note**

*This is a new head. The head provides a safeguard for both creditors and members of a company that fails to elect to become a DAC, thus becoming a private company with no objects clause. The head is based on Section 10 of the Companies Act, 1963. Subhead (1) permits a qualifying member or creditor to apply to the court for an order that the company should be re-registered as a DAC. The Court is given discretion in deciding whether to grant such relief.*

*Subhead (2) sets out who is a qualifying member or creditor for the purpose of Subhead (1).*

##### Head 39 Applicable laws during transition

- (1) Pending the end of the transition period, the provisions contained in Pillar B, Part 3 shall apply to an existing private company, unless and until it delivers a constitution to the Registrar.
- (2) The provisions contained in Part A2 shall apply to an existing private company either—
  - (a) upon the expiry of the transition period; or



- (b) upon the delivery by such a company of a constitution to the Registrar in accordance with Part A2, Head 5 [equivalent of Section 17 of the Companies Act, 1963].

### **Explanatory note**

*This is a new head. The head sets out the applicable laws during the transition period. It was considered by the Company Law Review Group to be fundamentally important that every existing private company limited by shares knows precisely what the law applicable to them is at any time.*

*Subhead (1) provides that the provisions in Pillar B shall apply to an existing private limited company pending the end of the transition period unless it delivers a constitution to the Registrar. During this period the law applicable to existing private companies limited by shares is that which will apply to DACs in the future. The law applicable to DACs will be kept as similar as possible to the current law applicable to private companies limited by shares to ensure a smooth transition. It is the view of the Review Group that major reform of the DAC, at this stage, should be sacrificed in the interests of certainty for existing private companies during this transition stage.*

*Subhead (2) provides that the provisions of Pillar A relating to a private company are not applicable until the expiration of the transition period unless the existing private company limited by shares delivers a constitution to the Registrar. This will provide further certainty for existing private companies during the transition period.*

---

## **Head 40 Adoption of new constitution by members**

---

- (1) An existing private company may, on or after the status date, by special resolution passed in accordance with its existing memorandum and articles of association and subject to compliance with this Bill as to the variation of rights and obligations of members, adopt a new constitution in the form specified at Part A2, Head 6 [equivalent of Section 3 of the Companies (Amendment) Act, 1982].
- (2) An existing private company that has adopted, in whole or in part, the regulations of Table A Part II of the First Schedule to the Companies Act, 1963 as its articles of association, will continue to be governed by those regulations after the repeal of that Act, and those regulations shall be interpreted according to the form in which they existed on the date of repeal.

### **Explanatory note**

*This is a new head. This head sets out the manner in which an existing private company limited by shares may adopt a new constitution, which may subsequently be delivered to the Registrar for the purpose of converting to a private company.*

---

## **Head 41 Certification of new constitution by directors**

---

- (1) The directors of an existing private company shall, unless it has already adopted a constitution in accordance with Part A2, Head 40—
- (a) prepare a constitution in the form specified at Part A2, Head 3 [equivalent of Sections 6-16 of the Companies Act, 1963];
  - (b) deliver a copy of such constitution to each member;
  - (c) deliver the constitution to the Registrar for registration,  
  
before the end of the transition period.
- (2) The directors shall, in compliance with Subhead (1), ensure that such constitution does not alter the rights and obligations of the members of the existing company and, without prejudice to the generality of the foregoing, does not alter the rights and obligations of members of the existing company as set out in its memorandum and articles of association in relation to -
- (a) rights and duties on the transfer or transmission of shares;
  - (b) voting at meetings of members;
  - (c) the appointment and removal of directors;
  - (d) preferential or fixed entitlements to distributions;
  - (e) liability to pay calls on shares; or
  - (f) the distribution of surplus assets of the company,
- and accordingly the constitution shall contain such supplemental regulations as are necessary to give effect to the foregoing.



## Part A2- Incorporation and Registration

---

- (3) The constitution need not contain any supplemental regulations, to the extent that the provisions of Pillar A of this Bill regulate the matters which would be governed by those regulations.

### **Explanatory note**

*This is a new head. The head facilitates the conversion of existing private companies limited by shares into a private company. The board of directors is permitted to take such a decision under this provision. Such a decision would normally be taken by the members in general meeting in accordance with the normal principles of corporate governance. The reason for giving this power to the directors is that such an expedient measure is believed to be in the best interests of directors to convert the existing private company limited by shares.*

*Subhead (1) sets out what is required of the directors.*

*Subhead (2) contains a safeguard whereby a duty is imposed on the directors to ensure that the rights of all the members are safeguarded when they exercise this discretion.*

*Subhead (3) is aimed at keeping the constitution of the private company as simple as possible.*

---

## Head 42 Deemed constitution

---

A company which has not delivered a constitution for registration within the transition period shall be deemed, from the expiry of that period, to have a constitution in accordance with the Schedule to this Part in place of its existing memorandum and articles of association and the Registrar shall register same in the name of the company and shall send to the company its registered constitution.

### **Explanatory note**

*This is a new head. The head applies a pro forma, de minimis constitution which is to be set out in a Schedule to this Part. Such a constitution will apply in place of the old memorandum and articles of association, where either the members or the directors fail to deliver a constitution for registration before the end of the transition period.*

*This was considered by the Review Group to be, on balance, a proportionate and reasonable measure given that the private company will be a preferable alternative for a large majority of existing private companies. Furthermore, there are two built-in safeguards in this Part for aggrieved members and creditors: Head 38 affords relief to both members and creditors where there is a failure to re-register as a DAC and Head 43 affords relief to both members and creditors where a constitution prejudices their interests.*

---

## Head 43 Relief for members and creditors

---

- (1) Provide that any member of a company who considers that his rights or obligations have been prejudiced may apply to the court for an order under Part A4, Head 72 [equivalent of Section 205 of the Companies Act, 1963] and in any such application it shall be presumed, until the contrary is proven that the directors have exercised their powers in a manner oppressive to such member or in disregard of his interests as a member where the directors have failed to comply with Part A2, Head 41 (1) and (2) unless the members of the company adopt a new constitution in accordance with Part A2, Head 40.
- (2) Provide that a qualifying creditor can apply to court for relief where a constitution (howsoever coming into being – whether adopted by members, certified by directors or deemed by law) prejudices their interests, provided that they have a legal or equitable right to that interest.

In this head “qualifying creditor” has the same meaning as in Part A2, Head 38(2).

### **Explanatory note**

*This is a new head. The head provides a mechanism by which both members and creditors may be entitled to relief. The provision is seen as a justification for the provision of a “deemed constitution” in Head 59 where an existing private company fails to deliver a constitution for registration before the end of the transition period. Subhead (1) expressly permits a member to apply to the court for relief where his rights or interests have been prejudiced, under Section 205 of the Companies Act, 1963. In such circumstances there is a presumption that the directors have exercised their powers in an oppressive manner or in disregard of their interests as a member.*

*Subhead (2) states that a creditor may apply to the court for relief where a constitution prejudices their interests, regardless of the manner in which the constitution came into being.*

---

# First Schedule

## MODEL FORM OF CONSTITUTION OF A PRIVATE COMPANY LIMITED BY SHARES

---

1. The name of the company is: BUNYIP LIMITED
2. The company is a company limited by shares, registered under Part A2 of the [Companies Consolidation Act, 2007].
3. The liability of the members is limited.
4. [The share capital of the company is €100 divided into 100 shares of €1 each.]

We, the several persons whose names and addresses are subscribed, wish to be formed into a company in pursuance of this constitution, and we agree to take the number of shares in the capital of the company set opposite our respective names.

<i>Names and Addresses of Subscribers</i>	<i>Number of Shares taken by each Subscriber</i>
1. Brent Todd Address:	50
2. Christine Anu Address:	50
Total shares taken:	100

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_

Witness to the above Signatures:

Name:

Address:

SUPPLEMENTAL REGULATIONS



---

# Part A3 – Share Capital

## Contents of Part A3

---

### Chapter 1 – Preliminary and Interpretation

- 1 Defined terms and expressions
- 2 Shares
- 3 Numbering of shares

### Chapter 2 – Offers of Securities to the Public

- 4 Limitation on offer of securities to the public

### Chapter 3 – Allotment of shares

- 5 Allotment of shares
- 6 Payment for the allotment of shares
- 7 Merger relief
- 8 Relief in respect of group reconstructions
- 9 Provisions supplementing Part A3, Heads 7 and 8
- 10 Provision for extending or restricting relief from Part A3, Head 6
- 11 Calls on shares
- 12 Different times and amounts of calls
- 13 Lien
- 14 Forfeiture of shares
- 15 Financial assistance

### Chapter 4 – Variation in capital

- 16 Variation of company capital
- 17 Reduction of company capital
- 18 Application to court for confirming order, objections by creditors and settlement of list of objecting creditors
- 19 Registration of order and minute of reduction
- 20 Liability of members in respect of reduced shares
- 21 Variation of rights attached to special classes of shares
- 22 Rights of holders of special classes of shares
- 23 Registration of particulars of special rights
- 24 Variation of company capital on reorganisations
- 25 Notice to registrar of certain alterations of share capital
- 26 Notice of increase of share capital

### Chapter 5 – Transfer of shares

- 27 Transfer of shares and debentures
- 28 Restrictions on transfer
- 29 Bearer shares
- 30 Transmission of shares
- 31 Certification of transfers
- 32 Share certificates
- 33 Transfer of shares: management companies
- 34 Rectification of dealings in shares
- 35 Penalty for personation of a shareholder

### Chapter 6 – Acquisition of own shares

- 36 Restriction on company acquiring its own shares
- 37 Shares of company held by nominee of company
- 38 Acquisition of own shares
- 39 Assignment or release of company's right to purchase own shares
- 40 Power to redeem preference shares issued before 5<sup>th</sup> May 1959
- 41 Treasury shares
- 42 Incidental payments with respect to acquisition of own shares
- 43 Effect of company's failure to redeem or purchase
- 44 Retention and inspection of documents

## Part A3 - Share Capital

---

- 45 Membership of holding company
- 46 Holding by subsidiary of shares in its holding company
- 47 Civil liability for improper purchase in holding company
- 48 Return to be made to Registrar

### **Chapter 7 – Distributions**

- 49 Profits available for distribution
- 50 Development costs shown as an asset of a company to be set off against company's distribution profits
- 51 The relevant accounts
- 52 Consequences of making unlawful distribution
- 53 Ancillary provisions
- 54 Procedural matters
- 55 Bonus issues

### **Chapter 8 Investments in companies by trustees of designated investment funds**

- 56 Trustees of designated investment funds required to enter into specified agreement prior to investing moneys of fund in companies

# Part A3 – Share Capital

## Chapter 1

### Preliminary and Interpretation

#### Head 1 Defined terms and expressions

(1) In this Part

**“the appropriate rate”** in relation to interest, means five per cent per annum or such other rate as may be specified by order made by the Minister under Part A3, Head 1 (6) [the equivalent of Section 2(7) of the Companies (Amendment) Act, 1983];

**“called-up share capital”** in relation to a company, means so much of its share capital as equals the aggregate amount of the calls made on its shares, whether or not those calls have been paid, together with any share capital paid up without being called and any share capital to be paid on a specified future date under the articles, the terms of allotment of the relevant shares or any other arrangements for payment of those shares, and “uncalled share capital” shall be construed accordingly;

**“capital conversion reserve fund”** in relation to a company means the amount equivalent to the aggregate diminution in share capital consequential upon renominalisation of share capital under Section 25 of the Economic and Monetary Union Act, 1998;

**“capital redemption reserve fund”** in relation to a company, means the amount equivalent to the aggregate nominal value of the company’s shares redeemed or purchased by the company, where redeemed or purchased wholly or partly out of profits available for distribution and includes any amount credited to capital redemption reserve fund prior to the effective date;

**“cash”** includes funds in any currency or currencies;

**“company capital”** in relation to a company, means the aggregate value, expressed as a currency amount, of the consideration received by the company in respect of the allotment of shares and shall include the amounts standing to the credit of the share premium account, the capital redemption reserve fund and the capital conversion reserve fund;

**“employees’ share scheme”** means any scheme for the time being in force, in accordance with which a company encourages or facilitates the holding of shares or debentures in the company or its holding company by or for the benefit of employees or former employees of the company or of any subsidiary of the company including any person who is or was a director holding a salaried employment or office in the company or any subsidiary of the company;

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

**“nominal value”** means, in relation to a share, a monetary amount, expressed as an amount, multiple, fraction or percentage of any currency or currencies or combination thereof;

**“parent public company”** means:

- (i) a public limited company which has one or more public company subsidiaries, or
- (ii) a company registered in another EU Member State which is one of the types listed in Article 1 of the Second Council Directive of 13 December 1976 (77/91/EEC) on coordination of safeguards which, for the protection of the interests of members and others, are required by Member States of companies within the meaning of the second paragraph of Article 58 of the Treaty, in respect of the formation of public limited liability companies and the maintenance and alteration of their capital;

**“public company subsidiary”** means:

- (i) a subsidiary of a parent public company,



## Part A3 - Share Capital

---

- (ii) a limited company of which the parent public company is itself a shareholder or member and controls alone, pursuant to an agreement with other shareholders or members, a majority of the shareholders' or members' voting rights in the limited company in question, where the limited company is a company—
  - (a) to which Article 1 of the Directive of 1968 [68/151/EEC] applies, or
  - (b) which is incorporated other than in a Member State of the European Union and is of a legal form comparable to the type of company referred to in paragraph (a);

**“redeemable shares”** includes shares which are liable at the option of the company or the shareholder to be redeemed.

**“securities”** means:

- (a) shares in a company;
- (b) debentures of a company, which shall include debenture stock, bonds and any other debt instruments of a company whether constituting a charge on the assets of the company or not;
- (c) those classes of securities which are negotiable on the capital market, such as:
  - (i) shares in bodies corporate and other securities equivalent to shares in bodies corporate, partnerships or other entities, and depositary receipts in respect of shares
  - (ii) bonds or other forms of securitised debt, including depositary receipts in respect of such securities
  - (iii) any other securities giving the right to acquire or sell any such transferable securities or giving rise to a cash settlement determined by reference to transferable securities, currencies, interest rates or yields, commodities or other indices or measureswith the exception of instruments of payment;

**“share”** means a share in the company capital of a company and includes stock;

**“share capital”** means the aggregate amount or value of the nominal value of shares;

**“share premium account”** in relation to a company means the aggregate amount or value, whether of cash or otherwise, received by a company in respect of the allotment of shares in excess of the aggregate nominal value of those shares and includes any amount credited to share premium account prior to the effective date;

**“undenominated capital”** in relation to a company, means the amount of the company capital from time to time which is in excess of the nominal value of its shares;

**“subsidiary”** has the meaning set out in Part A1, Head 6 ;

**“wholly owned subsidiary”** has the meaning set out in Part A1, Head 2.

- (2) A share in a company shall be taken to have been paid up (as to its nominal value or any premium on it) in cash or allotted for cash if the consideration for the allotment or the payment up is:
  - (a) cash received by the company; or
  - (b) a cheque received by the company in good faith which the directors have no reason for suspecting will not be paid; or
  - (c) the release of a liability of the company for a liquidated sum; or
  - (d) an undertaking to pay cash to the company at an identified or identifiable future date.
- (3) In relation to the allotment or payment up of any shares in a company, references in this Bill to consideration other than cash and to the payment up of shares and premiums on shares otherwise than in cash include references to the payment of, or an undertaking to pay, cash to any person other than the company
- (4) The reference to redeemable preference shares in Head 25 of this Part [equivalent of Section 69(1)(e)] shall be construed as a reference to redeemable shares.
- (5) Save to the extent that a company's constitution otherwise provides —

- (a) The company may, by ordinary resolution, convert any paid up shares into stock and reconvert any stock into paid up shares of any denomination;
- (b) the holders of stock may transfer the same, or any part thereof, in the same manner and subject to the same regulations as, and subject to which the shares from which the stock arose might, previously to conversion, have been transferred, or as near thereto as circumstances admit, and the directors may from time to time fix the minimum amount of stock transferable so that such minimum shall not exceed the nominal amount of each share from which the stock arose;
- (c) the holders of stock shall, according to the amount of stock held by them, have the same rights, privileges and advantages in relation to dividends, voting at meetings of the company and other matters as if they held the shares from which the stock arose, but no such right, privilege or advantage (except participation in the dividends and profits of the company and in the assets on winding-up) shall be conferred by an amount of stock which would not, if existing shares have conferred that right, privilege or advantage;
- (d) Such of the regulations of the company as are applicable to paid up shares shall apply to stock, and the words "share" and "shareholder" therein shall include "stock" and "stockholder"; and
- (e) For the purposes of this subhead "the directors" means the directors for the time being of the company or the directors present at a meeting of the board of directors and includes any person occupying the position of director by whatever name called.
- (6) The Minister may, by order, specify that the appropriate rate of interest for the purposes of this Bill shall be a rate other than five per cent. per annum.
- Subhead (1) is comprised of some previous interpretative provisions and some new interpretative provisions:*
- "appropriate rate" is the existing definition under Section 2(7) of the Companies (Amendment) Act, 1983;*
- "Capital conversion reserve fund" is new. It was necessary to introduce this concept as a result of the renominatisation of share capital under Section 25 of the Economic and Monetary Union Act, 1998;*
- "Capital redemption reserve fund" is taken from Section 64(1)(d) of the Companies Act, 1963 and Section 208 of the Companies Act, 1990;*
- "Cash" is taken from Section 2(1) of the Companies (Amendment) Act, 1983;*
- "Company Capital" is new. This concept is comprised of the share capital of the company, the share premium account, the capital conversion reserve fund and the capital redemption reserve fund of the company. As a result the funds contained in each of these are now inter-changeable;*
- "equity security" is the existing definition under Section 23(13) of the Companies Act, 1983;*
- "Parent Public Company" and "Public Subsidiary Company" are both new. These were introduced in accordance with the requirement to clearly distinguish between private companies and all other companies - this equally applies to groups of companies in this Part;*
- "Redeemable Shares" are defined as in Section 206 of the Companies Act, 1990;*
- "Securities" is new. Subhead (b) is slightly amended version of the definition of debentures in Section 2 of the Companies Act, 1963. Subhead (c) is drawn from the definition of 'securities' contained in the Markets in Financial Instruments Directive [2004/39/EC];*
- "Share" is defined as in Section 2(1) of the Companies Act, 1963;*
- "Share Capital" is new and replaces what was previously the "issued share capital" of the company;*
- "Share Premium Account" is defined as in Section 62 of the Companies Act, 1963;*
- "Sister Company" is new. It refers to a fellow subsidiary of a holding company;*
- "Subsidiary" is defined by reference to Part A1, Head 2;*
- "Wholly Owned Subsidiary" is taken from Section 150(5) of the Companies Act, 1963.*

### **Explanatory note**

*This head is a new head which contains provisions for the interpretation of certain terms used in this Part. This head takes account of the recommendations of the First Report of the Company Law Review Group which provided that greater use should be made of the defined terms in order to make the legislation more succinct.*

## Part A3 - Share Capital

---

*"Undenominated Capital" is new.*

*Subhead (2) is a slightly amended re-enactment of Section 2(3)(a) of the Companies (Amendment) Act, 1983.*

*Subhead (3) is a re-enactment of Section 2(3)(b) of the Companies (Amendment) Act, 1983.*

*Subhead (4) is an amended re-enactment of Section 221 of the Companies Act, 1990. Paragraph (b) is relevant only to PLCs and therefore has been moved to Pillar B.*

*Subhead (5) imports Model Regulations 41-43 of Part I of Table A of the First Schedule to the Companies Act, 1963.*

*Subhead (6) re-enacts Section 2(7) of the Companies (Amendment) Act, 1983.*

---

### Head 2 Shares

---

- (1) Shares in the capital of a company shall have a nominal value.
- (2) A company may allot shares—
  - (a) of different nominal values;
  - (b) of different currencies; and / or
  - (c) with different amounts payable thereon.
- (3) Without prejudice to any special rights previously conferred on the holders of any existing shares or class of shares, any share in the company may be issued with such preferred, deferred or other special rights or such restrictions, whether in regard to dividend, voting, return of capital or otherwise, as the company may from time to time by ordinary resolution determine.
- (4) Unless the constitution of the company provides otherwise, a company may allot redeemable shares.
- (5) The shares or other interest of any member in a company shall be personal estate and shall not be of the nature of real estate.

(6) Except as required by law, no person shall be recognised by the company as holding any share upon any trust and the company shall not be bound by or be compelled in any way to recognise (even when having notice thereof) any equitable, contingent, future or partial interest in any share or any interest in any fractional part of a share or (except only as by this Bill or by law otherwise provided) any other rights in respect of any share, except an absolute right to the entirety thereof in the registered holder.

(7) Save to the extent that its constitution otherwise provides, Subhead (6) shall not preclude the company from requiring the members or a transferee of shares to furnish the company with information as to the beneficial ownership of any share when such information is reasonably required by the company.

#### **Explanatory note**

*This head is new. The head is drawn from a number of different provisions of the Companies Acts, 1963-2001.*

*Subhead (1) is taken, in substance, from Section 80 of the Companies Act, 1963. The current obligation to number shares, as contained in Section 80, has been replaced by an option to number the shares. The nominal value of the shares is also given recognition at this point.*

*Subhead (2) is new. Paragraph (c) is a corollary of Model Regulation 20 of Part 1 of Table A of the First Schedule to the Companies Act, 1963.*

*Subhead (3) imports Model Regulation 2 of Part 1 of Table A of the First Schedule to the Companies Act, 1963.*

*Subhead (4) is an amended re-enactment of Section 207(1) of the Companies (Amendment) Act, 1990. The reference to the "Articles" has been changed to the "Constitution".*

*The requirement for 10 per cent non-redeemable shares has been removed. The reasons for this change are that the 2nd EC Company Law Directive applies to PLCs only and it would otherwise be a nonsense in light of the new definition of company capital.*

*Subhead (5) is an amended re-enactment of Section 79 of the Companies Act, 1963. The reference to shares being transferable in a manner provided by the articles of the company has been deleted.*

*Subhead (6) imports the first phrase of Regulation 7 of Part 1 of Table A of the First Schedule to the Companies Act, 1963.*

*Subhead (7) imports the second phrase of Regulation 7 of Part 1 of Table A of the First Schedule to the Companies Act, 1963.*

---

### Head 3    Numbering of shares

---

- (1) Subject to Subheads (2) and (3), each share in a company shall be distinguished by its appropriate number.
  
- (2) If at any time, all the issued shares in a company or all the issued shares therein of a particular class are fully paid up and rank *pari passu* for all purposes, none of those shares need thereafter have a distinguishing number, so long as it remains fully paid up and ranks *pari passu* for all purposes with all shares of the same class for the time being issued and fully paid up.
  
- (3) Where new shares are issued by a company on the terms that, within a period not exceeding 12 months, they will rank *pari passu* for all purposes with all the existing shares, or all the existing shares of a particular class in the company, neither the new shares nor the corresponding existing shares need have distinguishing numbers so long as all of them are fully paid up and rank *pari passu*, but the share certificates of the new shares shall, if not numbered, be appropriately worded or en faced.

***Explanatory note***

*This head is based on Section 80 of the Companies Act, 1963.*

## Chapter 2

### Offers of Securities to the Public

#### Head 4 Limitation on offer of securities to the public

- (1) A company may not make—
- (a) an offer of securities to the public in respect of which a prospectus must be prepared under Regulation 12 of the Prospectus (Directive 2003/71/EC) Regulations 2005; and
  - (b) any other offer of securities to the public in circumstances where the offer is made to more than 99 people.
- (2) Subhead (1) does not apply to the following offers or allotments (wheresoever made):
- (a) an offer of non-equity securities addressed or allotment made solely to qualified investors;
  - (b) an offer of non-equity securities addressed to fewer than 100 persons, other than qualified investors;
  - (c) an offer of non-equity securities addressed to investors where the minimum consideration payable pursuant to the offer is at least €50,000 per investor, for each separate offer;
  - (d) an offer of non-equity securities whose denomination per unit amounts to at least €50,000;
  - (e) an offer of non-equity securities where the offer expressly limits the amount of the total consideration for the offer to less than €100,000; or
  - (f) an offer of those classes of instruments which are normally dealt in on the money market (such as treasury bills, certificates of deposit and commercial papers) having a maturity of less than 12 months;
  - (g) an offer of equity securities addressed to—
    - (i) qualified investors, or
    - (ii) 99 or fewer persons, or

(iii) both qualified investors and 99 or fewer other persons;

- (h) an allotment of equity securities or non-equity securities, or an agreement to make such an allotment, with a view to those equity securities or non-equity securities being the subject of any one or more of the offers referred to in paragraphs (a) to (g).
- (3) A word or expression that is used in this head and is also used in the Prospectus (Directive 2003/71/EC) Regulations 2005 (S.I. No. 324 of 2005) shall have in this head the same meaning as it has in those Regulations.
- (4) Nothing in this head shall affect the validity of any allotment or sale of shares or debentures or of any agreement to allot or sell shares or debentures.
- (5) The contravention of Subhead (1) is a category two offence.

#### **Explanatory note**

*This head is new. The effect of the head is to apply prospectus law and prevent a private company from issuing shares or debts to the public where a prospectus would be needed.*

*Under the Companies Act, 1963, the general approach in relation to offers of securities to the public was to prevent private companies making such offers.*

*Thus, Section 33 (c) of the Companies Act, 1963 provides that a private company must, by its articles, prohibit any invitation to the public to subscribe for any shares or debentures of the company. The company must also, by its articles, restrict the right to transfer its shares.*

*Separately, Section 44(3) of the Companies Act, 1963 provided that it shall not be lawful to issue any form of application for shares in or debentures of a company, unless the form is issued with a prospectus which requires a company to publish a prospectus which complied with the provisions of Part III of the Companies Act, 1963.*

*Section 61 of the Companies Act, 1963 sets out what was to be regarded as an offer to the public.*

*The 2nd EU Company Law Directive contained provisions relevant to offers by Public Limited Companies and these were given effect in the Companies (Amendment) Act, 1983.*



*In this regard, Section 21 of the Companies (Amendment) Act, 1983 created a criminal offence where a private company directly or indirectly offered its shares to the public (This closed a lacuna that existed in the 1963 Act where there was no specific offence for non-compliance with Section 33 of that Act).*

*As a result of three EU Directives dealing with Admission to Listing, Listing Particulars and Ongoing Disclosure, national company law was amended by the European Communities (Stock Exchange) Regulations, 1984 (S.I. 282).*

*A further EU Directive dealing with offers to the Public led to the enactment of the European Communities (Transferable Securities and Stock Exchange) Regulations 1992 (S.I. 202).*

*These EU Directives have been substantially replaced by the EU Prospectus Directive 2003/71 and the associated Commission Regulations and Directives, as well as the Transparency Directive 2004/109.*

*The Prospectus Directive applies to all offers of securities generally and not to offers by a particular form of company.*

*Some types of offers fall outside the scope of the Directive (Art 1.2).*

*The Directive also contains exemptions from the obligation to publish a prospectus (Art 3.2).*

*The characteristics of a private company are set out in Part A2 of the proposed CLRG Consolidation and Reform Bill.*

*These include the provision that a private company shall have no more than 99 members*

*This is more limited than the threshold that would give rise to the publication of a prospectus under the EU Prospectus Directive, which provides exemption as long as the offer is limited to less than 100 per Member State (which theoretically could result in 2,500 members if there were 100 members from each of the 25 Member States of the EU).*

*Aside from retaining that limitation of 99 members, it is proposed to permit private companies to make offers of their shares or debentures to the public subject to the proviso that they may not make such offers where to do so would result in an obligation to publish a prospectus pursuant to Regulation 12 of the Prospectus Regulation (S.I. 324/2005 – which together with Part 5 of the 2005 Act transposed the EU Prospectus Directive).*

*This approach is seen as adopting, for national application, a balanced approach between retaining the inherent limitations on and differences between, the private company compared with a public company, while at the same time enabling private companies to access capital by way of share participation or raising debt, without doing so in a manner that public companies are required to comply with.*



## Chapter 3

### Allotment of shares

#### Head 5 Allotment of shares

- (1) No shares may be allotted by a company unless the allotment is authorised, either specifically or pursuant to a general authority, by ordinary resolution or by the constitution.
- (2) The constitution of a company may state an authorised share capital, in which case no shares may be allotted by the company unless those shares are comprised in the authorised but unissued share capital.
- (3) An ordinary resolution for the purposes of Subhead (1) or the constitution may stipulate a period during which the allotment may occur, in which event allotments outside that period are not thereby authorised.
- (4) Unless the constitution of a company otherwise provides—
  - (a) shares of a company may only be allotted by the directors of the company;
  - (b) the directors of the company may allot, grant options over or otherwise dispose of shares to such persons, on such terms and conditions and at such times as they may consider to be in the best interests of the company and its shareholders;
  - (c) for the purposes of this head “the directors” means the directors for the time being of the company, or the directors present at a meeting of the board of directors and includes any person occupying the position of director by whatever name called.
- (5) Subject to Subhead (6), a company proposing to allot any shares—
  - (a) shall not allot any of those shares, on any terms, to any person, unless it has made an offer to each person who holds shares to allot to him on the same or more favourable terms a proportion of those shares which is, as nearly as practicable, equal to the proportion in nominal value held by him of the aggregate of the shares of that class; and
  - (b) shall not allot any of those shares to any person unless the period during which any such offer may be accepted (not being less than 14 days) has expired or the company has received notice of the acceptance or refusal of every offer so made.
- (6)
  - (a) Where the provisions of a company’s constitution require that a company, when preparing to allot shares of a particular class, must not allot those shares unless it makes an offer of those shares to existing holders of shares of that class, then Subhead (5) shall not apply to all allotments made in compliance with such provisions;
  - (b) Save where Subhead (6) (b) applies—
    - (i) the minimum period during which the offer may be accepted shall not be less than 14 days;
    - (ii) notices will be served in accordance with the provisions for the giving of notice in Heads 51 and 52 of Part A4.
- (7) Subhead (5) shall not apply—
  - (a) to allotments of shares which, as respects dividends and capital, carry a right to participate only up to a specified amount in a distribution;
  - (b) to the extent that the constitution of the company, a special resolution or the terms of issue of already allotted shares provide, either generally or in respect of a particular allotment or class of allotments;
  - (c) to allotments of shares for a consideration wholly or partly paid for, otherwise than in cash;
  - (d) the shares taken by the subscribers to the company’s constitution before incorporation, which shares are allotted to those subscribers upon incorporation;
  - (e) to shares allotted under an employees’ share scheme.

- (8) Securities which a company has offered to allot to a holder of relevant shares or relevant employee shares may be allotted to him or anyone in whose favour he has renounced his right to their allotment, without contravening Subhead (1) (b).
- (9) Notwithstanding that any such power or resolution has expired, the directors may allot equity securities in pursuance of an offer or agreement previously made by the company, if the power or resolution enabled the company to make an offer or agreement which would or might require equity securities to be allotted after it expired.
- (10) For the purposes of Subheads (1) to (7):
- (a) "allot" shall include "agreement to allot" (other than an agreement made subject to the passing of an ordinary or special resolution) and "shares" shall include a right to subscribe for shares and Subheads (3) to (5) will not apply to an allotment of shares pursuant to (i) an agreement to allot those shares entered into in compliance with Subheads (1) to (7) or (ii) the exercise of a right to subscribe for shares granted in compliance with Subheads (1) to (7);
- (b) References in this head (however expressed) to the holder of shares of any description shall be read as including references to any person who held shares of that description on the day within the period of twenty-eight days ending with the day immediately preceding the date of the offer which is specified by the directors as being the record date for the purposes of the offer.
- (11) Where a company allots shares, the shares shall be taken, for the purposes of this Bill, to be allotted when a person acquires the unconditional right to be included in the company's register of members in respect of those shares.
- (12) Where a company allots shares, it shall, within one month of the allotment, deliver particulars of the allotment in the prescribed form to the Registrar for registration.
- (13) Nothing in this head shall affect the validity of any allotment of shares.
- (14) Where there is a contravention of this head the company and every officer of the company who knowingly authorised or permitted the contravention, shall be jointly and severally liable to compensate any person to whom an offer should have been made under the subhead or provision contravened for any loss, damage, costs or expenses which that person has sustained or incurred by reason of the contravention, but no proceedings to recover any such loss, damage, costs or expenses shall be commenced after the expiration of two years from the delivery to the Registrar of the return of allotments in question or, where shares are agreed to be allotted the agreement.

### **Explanatory note**

*This head is a new head. The head is drawn from a number of different provisions of the Companies Acts, 1963-2001. The head also imports various Model Regulations of Part I of Table A of the First Schedule to the Companies Act, 1963.*

*Subheads (1) & (3) are new. These substantially re-enact provisions contained in Section 20 of the Companies (Amendment) Act, 1983.*

*Subhead (4) is new. Paragraph (a) substantially re-enacts Section 20 of the Companies (Amendment) Act, 1983. Paragraph (b) is an amended import of Regulation 5 of Part 1 of Table A of the First Schedule to the Companies Act, 1963.*

*Subheads (5) - (7) are new. They are a simplified re-enactment, in substance, of Sections 23 - 25 of the Companies (Amendment) Act, 1983. They have been amended to deal with the following:*

*(i) shares issued other than for cash and employees share scheme shares are not now exempt from pre-emption,*

*(ii) all shares of any class must be offered pre-emptively,*

*(iii) shares are offered pre-emptively to all the holders of voting shares.*

*The period of 21 days for a pre-emptive offer has been reduced to 14 days, to be aligned with the period in the Second Company Law Directive, Article 29.3, on which these provisions were originally based.*

*Subhead (9) is a re-enactment of Section 23(4) of the Companies (Amendment) Act, 1983.*

*Subhead (10) is new. It is taken, in substance, from Section 23 of the Companies (Amendment) Act, 1983.*

*Subhead (11) is a re-enactment of Section 2 (2) of the Companies (Amendment) Act, 1983.*

## Part A3 - Share Capital

---

*Subhead (12) is taken, in substance, from Section 58 of the Companies Act, 1963.*

*Subhead (13) is a re-enactment of Section 20(8) of the Companies (Amendment) Act, 1983.*

*Subhead (14) is a slightly amended re-enactment of Section 23(11) of the Companies (Amendment) Act, 1983. The cross-references have been amended in light of the structure of the new head. Paragraph (b) is amended to make it clear that the directors may specify a record date by reference to which the shares may be offered to existing holders.*

*Subhead (15) is taken from Section 21(1) of the Companies (Amendment) Act, 1983.*

---

### Head 6 Payment for the allotment of shares

---

- (1) Shares may be paid up in money or money's worth (including goodwill and expertise).
- (2) Shares of a company shall not be allotted at a discount to their nominal value.
- (3) Where shares are allotted in contravention of Subhead (2), the allottee shall be liable to pay the company an amount equal to the amount of the discount and interest thereon at the appropriate rate.
- (4) Subheads (1) and (2) shall not prevent a company from allotting bonus shares as provided by Head 55 of this Part.
- (5) Any value received in respect of the allotment of a share in excess of its nominal value shall be credited to and form part of undenominated capital, subject to hHads 7 to 10 of this Part.
- (6) Where any person becomes a holder of any shares in respect of which—
  - (a) there has been a contravention of this head; and

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

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

- (7) Where a company contravenes any of the provisions of this head, the company and any officer of the company who is in default shall be guilty of a category three offence.

#### **Explanatory note**

*This head is new. The head is taken, in substance, from various provisions of the Companies Act, 1963-2001.*

*Subhead (1) is an amended re-enactment of Section 26(1) of the Companies (Amendment) Act, 1983.*

*Subhead (2) is an amended re-enactment of Section 27(1) of the Companies (Amendment) Act, 1983. "...At a discount" has now been replaced by "...At a discount to their nominal value".*

*Subhead (3) is a re-enactment of Section 27(2) of the Companies (Amendment) Act, 1983.*

*Subhead (4) is an amended re-enactment of Section 26(5) of the Companies (Amendment) Act, 1983. The application of the subhead has now been extended insofar as it now also restricts the application of Subhead (2).*

*Subhead (6) effectively re-enacts Head 27 (3) of the Companies (Amendment) Act, 1983, by transposing the text of Head 26 (4) for this head.*

*Subhead (7) is a partial re-enactment of Section 36 (1) of the Companies (Amendment) Act, 1983.*

---

### Head 7 Merger relief

---

- (1) This head applies where the issuing company has secured at least a 90 per cent equity share capital holding in another company in pursuance of an arrangement providing for the allotment of equity share capital in the issuing company, on terms that the consideration for the shares allotted is to be provided—

- (a) by the issue or transfer to the issuing company of equity shares in the other company; or
- (b) by the cancellation of any such shares not held by the issuing company.
- (2) If the equity shares in the issuing company, allotted in pursuance of the arrangement in consideration for the acquisition or cancellation of equity shares in the other company, are issued at a premium, Head 6 (5) of this Part does not apply to the premiums on those shares.
- (3) Where the arrangement also provides for the allotment of any shares in the issuing company on terms that the consideration for those shares is to be provided by the issue or transfer to the issuing company of non-equity shares in the other company or by the cancellation of any such shares in that company not held by the issuing company, relief under Subhead (2) extends to any shares in the issuing company allotted on those terms in pursuance of the arrangement.
- (4) Subject to the next subhead, the issuing company is to be regarded for purposes of this head as having secured at least a 90 per cent equity holding in another company in pursuance of such an arrangement as is mentioned in Subhead (1) if in consequence of an acquisition or cancellation of equity shares in that company (in pursuance of that arrangement) it holds equity shares in that company (whether all or any of those shares were acquired in pursuance of that arrangement, or not) of an aggregate nominal value equal to 90 per cent or more of the nominal value of that company's equity share capital (excluding any shares in that company held as treasury shares).
- (5) Where the equity share capital of the other company is divided into different classes of shares, this head does not apply unless the requirements of Subhead (1) are satisfied in relation to each of those classes of shares taken separately.
- (6) Shares held by a company which is the issuing company's holding company or subsidiary, or a subsidiary of the issuing company's holding company, or by its or their nominees, are to be regarded for purposes of this head as held by the issuing company.
- (7) In relation to a company and its shares and capital, the following definitions apply for purposes of this head—
- (a) "equity shares" means shares comprised in the company's equity share capital; and
- (b) "non-equity shares" means shares (of any class) not so comprised,
- and "arrangement" means any agreement, scheme or arrangement (including an arrangement sanctioned under Part A9, Head 2 [the equivalent of Section 201 of the Companies Act, 1963] or Part A11, Head 40 [the equivalent of Section 260 of the Companies Act, 1963].
- (8) The relief allowed by this head does not apply if the issue of shares took place before the effective date

**Explanatory note**

*Equivalent of UK Companies Act, 1985, Section 131 as originally enacted.*

---

### Head 8 Relief in respect of group reconstructions

---

- (1) This head applies where the issuing company—
- (a) is a wholly-owned subsidiary of a body corporate ("the holding company");
- and
- (b) allots shares to the holding company or to another wholly-owned subsidiary of the holding company in consideration for the transfer to the issuing company of assets other than cash, being assets of any body corporate ("the transferor") which is a member of the group which comprises the holding company and all its wholly-owned subsidiaries.
- (2) Where the shares in the issuing company, allotted in consideration for the transfer, are issued at a premium, the issuing company is not required to transfer any amount in excess of the minimum premium value to the share premium account.
- (3) In Subhead (2), "the minimum premium value" means the amount (if any) by which the base value of the consideration for the shares allotted exceeds the aggregate nominal value of those shares.

## Part A3 - Share Capital

---

- (4) For the purposes of Subhead (3), the base value of the consideration for the shares allotted is the amount by which the base value of the assets transferred exceeds the base value of any liabilities of the transferor assumed by the issuing company as part of the consideration for the assets transferred.
- (5) For the purposes of Subhead (4)—
- (a) the base value of assets transferred is to be taken as—
- (i) the cost of those assets to the transferor, or
- (ii) the amount at which those assets are stated in the transferor's accounting records immediately before the transfer, whichever is the less and
- (b) the base value of the liabilities assumed is to be taken as the amount at which they are stated in the transferor's accounting records immediately before the transfer.
- (6) Head 7 of this Part does not apply in a case falling within this head.

### **Explanatory note**

*Equivalent of UK Companies Act 1985 Section 132 as originally enacted, without Subsections (6) and (7) which relate to shifts in UK law not relevant to the law as currently proposed.*

---

## Head 9 Provisions supplementing Part A3, Head 7 and Head 8

---

- (1) An amount corresponding to one representing the premiums or part of the premiums on shares issued by an issuing company which, by virtue of Head 7 or 8 of this Part, is not included in the issuing company's share premium account may also be disregarded in determining the amount at which any shares or other consideration provided for the shares issued is to be included in the company's balance sheet.
- (2) References in this Chapter (however expressed) to—
- (a) the acquisition by a company of shares in a body corporate; and
- (b) the issue or allotment of shares to, or the transfer of shares to or by, a company or body corporate,

include (respectively) the acquisition of any of those shares by, and the issue or allotment or (as the case may be) the transfer of any of those shares to or by, nominees of that company or body corporate; and the reference in Head 7 to the body corporate transferring the shares is to be construed accordingly.

- (3) References in this Chapter to the transfer of shares in a body corporate include the transfer of a right to be included in the body corporate's register of members in respect of those shares.

### **Explanatory note**

*Equivalent of UK Companies Act 1985, Section 133 as originally enacted, without Subsection (4) which deemed "company" to include body corporate. Instead this text uses body corporate where such rule of interpretation would have applied.*

---

## Head 10 Provision for extending or restricting relief from Part A3, Head 6

---

- (1) The Minister may, by regulations in a statutory instrument, make such provision as appears to him to be appropriate—
- (a) for relieving companies from the requirements of Head 6 of this Part in relation to premiums other than cash premiums; or
- (b) for restricting or otherwise modifying any relief from those requirements provided by Heads 7 to 10 of this Part.
- (2) Regulations under this head may make different provision for different cases or classes of case and may contain such incidental and supplementary provisions as the Minister thinks fit.
- (3) No such regulations shall be made unless a draft of the instrument containing them has been laid before the Oireachtas and approved by a resolution of the Dáil.

### **Explanatory note**

*Equivalent of Section 134 of the UK Companies Act, 1985.*



---

## Head 11 Calls on Shares

---

Save to the extent that a company's constitution provides otherwise—

- (a) the directors may from time to time make calls upon the members in respect of any moneys unpaid on their shares (whether on account of the nominal value of the shares or by way of premium) and not by the conditions of allotment thereof made payable at fixed times, provided that no call shall exceed 25 per cent of the nominal value of the share or be payable at less than one month from the date fixed for the payment of the last preceding call, and each member shall (subject to receiving at least 14 days' notice specifying the time or times and place of payment) pay to the company at the time or times and place so specified the amount called on the shares;
- (b) a call may be revoked or postponed, as the directors may determine;
- (c) a call shall be deemed to have been made at the time when the resolution of the directors authorising the call was passed and may be required to be paid by instalments;
- (d) the joint holders of a share shall be jointly and severally liable to pay all calls in respect thereof;
- (e) if a sum called in respect of a share is not paid before or on the day appointed for payment thereof, the person from whom the sum is due shall pay interest on the sum from the day appointed for payment thereof to the time of actual payment of such rate, not exceeding 5 per cent per annum, as the directors may determine, but the directors shall be at liberty to waive payment of such interest wholly or in part;

- (f) any sum which by the terms of issue of a share becomes payable on allotment or at any fixed date, whether on account of the nominal value of the share or by way of premium, shall, for the purposes of this Bill, be deemed to be a call duly made and payable on the date on which, by the terms of issue, the same becomes payable, and in case of non payment all the relevant provisions of this Bill as to payment of interest and expenses, forfeiture or otherwise, shall apply as if such sum had become payable by virtue of a call duly made and notified;
- (g) the directors may, on the issue of shares, differentiate between the holders of different classes as to the amount of calls to be paid and the times of payment;
- (h) the directors may, if they think fit, receive from any member willing to advance the same, all or any part of the moneys uncalled and unpaid upon any shares held by him, and upon all or any of the money so advanced may (until the same would, but for such advance, become payable) pay interest at such rate not exceeding (unless the company in a general meeting otherwise directs) 5 per cent. per annum, as may be agreed upon between the directors and the member paying such sum in advance;
- (i) for the purposes of this head "the directors" means the directors for the time being of the company or the directors present at a meeting of the board of directors and includes any person occupying the position of director by whatever name called.

### **Explanatory note**

*This head is a new head. The head imports, in a slightly amended manner, Model Regulations 15-21 of Part 1 of Table A of the First Schedule to the Companies Act, 1963.*

---

## Head 12 Different times and amounts of calls

---

Save to the extent that a company's constitution provides otherwise, a company may—

- (a) make arrangements on the issue of shares for a difference between the shareholders in the amounts and times of payment of calls on their shares;



## Part A3 - Share Capital

---

- (b) accept from any member the whole or a part of the amount remaining unpaid on any shares held by him, although no part of that amount has been called up;
  - (c) pay a dividend in proportion to the amount paid up on each share where a larger amount is paid up on some shares than on others; and
  - (d) by special resolution determine that any portion of its share capital which has not been already called up shall not be capable of being called up except in the event and for the purposes of the company being wound up, and thereupon that portion of its share capital shall not be capable of being called up except in the event and for the purposes aforesaid.
- (c) the company may sell, in such manner as the directors think fit, any shares on which the company has a lien, but no sale shall be made unless a sum in respect of which the lien exists is immediately payable, nor until the expiration of 14 days after a notice in writing, stating and demanding payment of such part of the amount in respect of which the lien exists as is immediately payable, has been given to the registered holder for the time being of the share, or the person entitled thereto by reason of his death or bankruptcy;
  - (d) to give effect to any such sale, the directors may authorise some person to transfer the shares sold to the purchaser thereof. The purchaser shall be registered as the holder of the shares comprised in any such transfer and he shall not be bound to see to the application of the purchase money, nor shall his title to the shares be affected by any irregularity or invalidity in the proceedings in reference to the sale;
  - (e) the proceeds of the sale shall be received by the company and applied in payment of such part of the amount in respect of which the lien exists as is immediately payable, and the residue, if any, shall (subject to a like lien for sums not immediately payable as existed upon the shares before the sale) be paid to the person entitled to the shares at the date of the sale;
  - (f) for the purposes of this Head "the directors" means the directors for the time being of the company or the directors present at a meeting of the board of directors and includes any person occupying the position of director by whatever name called.

### **Explanatory note**

*This head is new. The head is comprised of a slightly amended re-enactment of Sections 66 and 67 of the Companies Act, 1963. References to the "articles" of the company have been replaced with references to the "constitution" of the company.*

*Paragraphs (a) to (c) are a re-enactment of section 66 of the Companies Act, 1963.*

*Paragraph (d) is a re-enactment of Section 67 of the Companies Act, 1963.*

---

## Head 13 Lien

---

Save to the extent that a company's constitution provides otherwise—

- (a) the company shall have a first and paramount lien on every share (not being a fully paid share) for all moneys (whether immediately payable or not) called or payable at a fixed time in respect of that share and the company shall also have a first and paramount lien on all shares (other than fully paid shares) standing registered in the name of a single person, for all moneys immediately payable by him or his estate to the company, but the directors may at any time declare any share to be wholly or in part exempt from the provisions of this regulation;
- (b) the company's lien on a share shall extend to all dividends payable thereon;

### **Explanatory note**

*This head is a new head. The head imports Model Regulations 11-14 of Part 1 of Table A of the First Schedule to the Companies Act, 1963.*

## Head 14 Forfeiture of shares

Save to the extent that a company's constitution provides otherwise—

- (a) if a member fails to pay any call or instalment of a call on the day appointed for payment thereof, the directors may, at any time thereafter during such time as any part of the call or instalment remains unpaid, serve a notice on him requiring payment of so much of the call or instalment as is unpaid, together with any interest which may have accrued;
- (b) the notice shall name a further day (not earlier than the expiration of 14 days from the date of service of the notice) on or before which the payment required by the notice is to be made, and shall state that in the event of non-payment at or before the time appointed, the shares in respect of which the call was made will be liable to be forfeited;
- (c) if the requirements of any such notice as aforesaid are not complied with, any share in respect of which the notice has been given may at any time thereafter, before the payment required by the notice has been made, be forfeited by a resolution of the directors to that effect;
- (d) a forfeited share may be sold or otherwise disposed of on such terms and in such manner as the directors think fit, and at any time before a sale or disposition the forfeiture may be cancelled on such terms as the directors think fit;
- (e) a person whose shares have been forfeited shall cease to be a member in respect of the forfeited shares, but shall, notwithstanding, remain liable to pay to the company all moneys which, at the date of forfeiture, were payable by him to the company in respect of the shares, but his liability shall cease if and when the company shall have received payment in full of all such moneys in respect of the shares;
- (f) a statement made for the purposes of Part A13, Head 62 [equivalent of Section 242 of the Companies Act, 1990] that the declarant is a director or the secretary of the company, and that a share in the company has been duly forfeited on a date stated in the declaration, shall be conclusive evidence of the facts therein stated as against all persons claiming to be entitled to the share;
- (g) the company may receive the consideration, if any, given for the share on any sale or disposition thereof and may execute a transfer of the share in favour of the person to whom the share is sold or disposed of and he shall thereupon be registered as the holder of the share and shall not be bound to see to the application of the purchase money, if any, nor shall his title to the share be affected by any irregularity or invalidity in the proceedings in reference to the forfeiture, sale or disposal of the share;
- (h) the provisions of this head as to forfeiture shall apply in the case of non-payment of any sum which, by the terms of issue of a share, becomes payable at a fixed time, whether on account of the nominal value of the share or by way of premium, as if the same had been payable by virtue of a call duly made and notified;
- (i) for the purposes of this head, "the directors" means the directors for the time being of the company or the directors present at a meeting of the board of directors and includes any person occupying the position of director by whatever name called.

### Explanatory note

*This head is a new head. The head imports, in a slightly amended manner, Model Regulations 33-39 of Part 1 of Table A of the First Schedule to the Companies Act, 1963.*

*The reference to a statutory declaration in paragraph (f) has been replaced with by "a statement made for the purposes of Part A13, Head 62 [equivalent of Section 242 of the Companies Act, 1990]". Furthermore, the reference to "the provisions of these regulations" has been amended to read "the provisions of this head".*

### Head 15 Financial assistance

- (1) It shall not be lawful for a company to give, whether directly or indirectly, and whether by means of a loan, guarantee, the provision of security or otherwise, any financial assistance for the purpose of or in connection with an acquisition (whether by subscription, purchase, exchange, redemption or otherwise) made or to be made by any person of or for any shares in the company, or, where the company is a subsidiary company, in its holding company, unless it is given in compliance with the succeeding subheads of this head.
- (2) Subhead (1) does not prohibit—
- (a) the giving of financial assistance in accordance with the validation procedure defined in Part A4, Head 71;
  - (b) the payment of a dividend or making of any distribution out of profits available for distribution;
  - (c) the discharge by a company of a liability lawfully incurred by it;
  - (d) where the lending of money is part of the ordinary business of the company, the lending of money by the company in the ordinary course of its business;
  - (e) the provision by a company, in accordance with any scheme for the time being in force, of money for the purchase of, or subscription for, fully paid shares in the company or its holding company, being a purchase or subscription of or for shares to be held by or for the benefit of employees or former employees of the company or of any subsidiary of the company including any person who is or was a director holding a salaried employment or office in the company or any subsidiary of the company;
  - (f) the making by a company of loans to persons, other than directors, bona fide in the employment of the company or any subsidiary of the company with a view to enabling those persons to purchase or subscribe for fully paid shares in the company or its holding company to be held by themselves as beneficial owners thereof;
  - (g) (i) the provision of a loan, a guarantee, the provision of security or otherwise to discharge or refinance an existing financial assistance (whether by means of a loan, guarantee, the provision of security or otherwise) where the financial assistance (whether by means of a loan, guarantee, the provision of security or otherwise) had occurred pursuant to the validation procedure
  - (ii) the provision of any subsequent or successive financial assistance (whether by way of a loan, guarantee or the provision of security or otherwise) in connection with subsequent or successive refinancings;
  - (h) the giving by a company of warranties to an acquirer of shares in itself or in its holding company for the purpose of or in connection with that acquisition;
  - (i) the payment by a company of fees and expenses of the advisers to the company and of any subscriber for shares incurred in connection with that subscription;
  - (j) the incurring of expense by a company in order to facilitate the admission to or continuance of a trading facility of securities of the company on a stock exchange or securities market, including the expenses associated with the preparation of and filing of any documents required under the laws of any jurisdiction in which the securities in question are admitted to trading or are afforded a trading facility;
  - (k) the incurring of any expense by a company or its subsidiary in order to ensure compliance with Irish Takeover Panel Act, 1997;
  - (l) the reimbursement by an offeree company or by a subsidiary of an offeree company of expenses of an offeror pursuant to an agreement approved by or in terms approved of by Irish Takeover Panel.
  - (m) in connection with an allotment of shares, the payment of commissions not exceeding 10 per cent of the money received in respect of such allotment to intermediaries and the payment of professional fees.

- (3)
- (a) Subject to Subhead (3)(b), a public company subsidiary shall not provide financial assistance in accordance with Subhead (2)(a) for the purposes of or in connection with the acquisition of shares in its parent public company;
- (b) The Minister may, by regulation, specify circumstances where a public company subsidiary may avail itself of the validation procedure.
- (4) Any transaction in breach of this head shall be voidable at the instance of the company against any person (whether a party to the transaction or not) who had actual or imputed notice of the facts which constitute such breach.
- (5) If a company acts in contravention of this head every officer of the company who is in default shall be guilty of a category two offence.
- Subheads 2(g) - 2(m) are new. They give effect to the views of the Company Law Review Group in its First Report that, owing to the width of Section 60, many bona fide transactions are prohibited. The Review Group considered that a number of transactions, specifically Head (2) should be exempt from the prohibition and, thus, from the requirement to be effected through a validation procedure.*
- Subhead (3) is new. It is taken from the EC (PLC Subsidiaries) Regulations, 1997, in relation to financial assistance.*
- Subhead (4) is a re-enactment of Section 60(14) of the Companies Act, 1963.*
- Subhead (5) is a slightly amended re-enactment of Section 60(15) of the Companies Act, 1963.*

### **Explanatory note**

*This head is an amended re-enactment of Section 60 of the Companies Act, 1963, as amended by Regulation 10 of the First Schedule of the Companies (Amendment) Act, 1983, and Section 89 of the Company Law Enforcement Act, 2001.*

*Subhead (1) is an amended re-enactment of Section 60(1). The reference to "purchase or subscription" has been replaced by "...Acquisition (whether by subscription, purchase, exchange, redemption or otherwise)". The reference to "...Subject to the following subsections" has been deleted and replaced by "...Unless it has been given in accordance with the succeeding subheads of this head". This is due to the fact that Sections. 60(2)-(11) have been deleted and instead there is now a more generalised validation procedure provided for in Part IV of the Bill.*

*Subhead (2)(a) refers to the single validation procedure now contained in Part IV. This new validation procedure was introduced in accordance with the views of the First Report of the Company Law Review Group. It replaces the procedures contained in Sections 60(2) to 60(11) of the Companies Act, 1963, Section 256 of the Companies Act, 1963 and Section 31 of the Companies Act, 1990.*

*Subheads (2)(b) & (2)(c) are a re-enactment of Section 60(11) of the Companies Act, 1963.*

*Subheads 2(d) - 2(f) are a re-enactment of Section 60(13) of the Companies Act, 1963.*

## Chapter 4

### Variation in Capital

#### Head 16 Variation of company capital

- (1) Save to the extent that its constitution otherwise provides, a company may, by ordinary resolution, do any one or more of the following, from time to time—
- (a) consolidate and divide all or any of its shares into shares of a larger nominal value than its existing shares;
  - (b) convert all or any of its paid up shares into stock, and re-convert that stock into paid up shares of any denominations;
  - (c) subdivide its shares, or any of them, into shares of a smaller nominal value, so however, that in the subdivision the proportion between the amount paid and the amount, if any, unpaid on each reduced share shall be the same as it was in the case of the share from which the reduced share is derived;
  - (d) increase the nominal value of any of its shares by the addition thereto of any undenominated capital;
  - (e) reduce the nominal value of any of its shares by the deduction therefrom of any part of that value, subject to the crediting of the amount of the deduction to undenominated capital;
  - (f) convert any undenominated capital into shares for allotment as bonus shares to holders of existing shares;
  - (g) where the company has an authorised share capital—
    - (i) do, with respect to its authorised share capital, any of the matters referred to in paragraphs (a) to (f)
    - (ii) cancel shares of its authorised share capital which, at the date of the passing of the resolution have not been taken or agreed to be taken by any person, and diminish the amount of its authorised share capital by the amount of the shares so cancelled, which cancellation shall be deemed not to be a reduction of share capital within the meaning of this Bill.
- (2) Save to the extent that its constitution otherwise provides, a company may, by special resolution, and subject to the provisions of the Act governing the variation of rights attached to classes of shares and the alteration of a company's constitution a company may convert any of its shares into redeemable shares, provided that—
- (a) such a conversion shall not have effect with respect to any shares, the holder of which notifies the company, before the date of conversion, of his unwillingness to have his shares converted but, subject to that and the other provisions of this subhead, the conversion shall have effect according to its terms;
  - (b) paragraph (a) shall not, where a shareholder objects to a conversion, prejudice any right he may have under the Bill or otherwise to invoke the jurisdiction of the court to set aside the conversion or otherwise provide relief in respect thereof.
- (3) A company must deliver particulars in the prescribed form, of any resolution described by this head, to the Registrar within one month of its being passed.
- (4) If a company acts in contravention of Subhead (3) the company and every officer of the company who is in default shall be guilty of a category three offence.

#### **Explanatory note**

*This head is a new head. The body of the head is taken from a number of different provisions of the Companies Acts 1963-2006.*

*Subhead (1) is an amended re-enactment of section 68 of the Companies Act, 1963. The form of the text has been changed and the references to the memorandum and articles of association have been replaced with references to the "constitution" of the company. Paragraph (a) of Section 68 has been deleted in light of the abolition of "authorised-nominal capital".*



*Subhead (1)(a) is a re-enactment of paragraph (b) of Section 68 of the Companies Act, 1963. Subhead (1)(b) is an amended re-enactment of paragraph (c) of Section 68. It has been amended insofar as "...Into shares of smaller amount than is fixed by the memorandum" has been deleted and replaced by "... Into shares of smaller nominal value".*

*Subhead (1)(c) is a re-enactment of paragraph (d) of Section 68.*

*Subheads (1)(d)-(g) are new and replace paragraph (e) of Section 68 which has been deleted.*

*Subhead (2) is an amended re-enactment of Section 210 of the Companies Act, 1990. References to the memorandum and articles of association have been replaced by references to the constitution of the company.*

*Paragraphs (a) and (b) are re-enactments of Sections 210(2) and (3) of the Companies Act, 1990. The requirement for 10 per cent non-redeemable shares has been removed. The reasons for this change are that the 2nd EC Company Law Directive applies to PLCs only and it would otherwise be a nonsense in light of the new definition of company capital.*

*Subheads (3) and (4) are new subheads. They are taken, in substance, from Section 69 of the Companies Act, 1963.*

## Head 17 Reduction of company capital

- (1) Save to the extent that its constitution otherwise provides, a company may, subject to the provisions of this head, reduce its company capital in any way and without prejudice to the generality of the foregoing, may thereby—
- (a) extinguish or reduce the liability on any of its shares in respect of share capital not paid up; or
  - (b) either with or without extinguishing or reducing liability on any of its shares, cancel any paid up company capital which is lost or unrepresented by available assets; or
  - (c) either with or without extinguishing or reducing liability on any of its shares, pay off any paid up share capital which is in excess of the wants of the company.

- (2) A reduction of share capital under this head shall be effected either by—

- (a) the validation procedure; or

- (b) a special resolution confirmed by the court.

- (3) Where the reduction has been approved by the validation procedure, the reduction shall take effect upon delivery for registration of particulars of the validation procedure in the prescribed form to the Registrar.

- (4) Where a special resolution has been passed—

- (a) the resolution shall not be valid until it has been confirmed by order of the court;

- (b) the reduction shall take effect upon delivery for registration of particulars of the special resolution and confirmatory order in the prescribed form to the Registrar.

- (5) A company shall deliver particulars in the prescribed form of any resolution described by this head to the Registrar within one month of it being passed.

- (6) A company shall not purport to reduce its company capital otherwise than as described in this head.

- (7) Any transaction in breach of this head shall be voidable at the instance of the company against any person (whether a party to the transaction or not) who had actual or imputed notice of the facts which constitute such breach.

- (8) If a company purports to act in contravention of this head, the company and every officer in default shall be guilty of a category three offence.

### Explanatory note

*This is a new head. The head gives effect, in substance, to Section 72 of the Companies Act 1963. The amendments were necessary in order to express the ability to reduce share capital as a positive entitlement rather than as an exception to a prohibition on the reduction of share capital of the company. It was also necessary to make reference to the validation procedure as a means of effecting such a reduction of share capital.*

*Subhead (1) is drawn from Sections 72(1) and (2) of the Companies Act, 1963.*

*Subhead (2) is new. It accommodates both the validation procedure and the special resolution of the company approved by court as the means of reducing the share capital of the company.*



## Part A3 - Share Capital

---

*Subhead (3) is new. This is designed to accommodate the reduction of share capital through the use of the validation procedure.*

*Subheads (4) and (5) are new. These are designed to accommodate the reduction of share capital through the use of the special resolution approved by the court. It states expressly that the resolution is not valid until confirmed by the court. The approved reduction takes effect when the resolution and order are filed rather than the "minute" which can be very troublesome, requiring court and Registrar approval of those documents.*

*Subheads (6), (7) and (8) are also new. These subheads restrict the methods of reduction of share capital of a company to the aforementioned. Any transaction in breach of this head is voidable at the instance of the company. Where a company acts in contravention of this head both the company and every officer in default shall be guilty of an offence.*

---

### **Head 18 Application to court for confirming order, objections by creditors and settlement of list of objecting creditors**

---

- (1) Where a company has passed a special resolution to reduce its share capital it may apply to the court for an order confirming the resolution.
- (2) A company which proposes to apply to the court for such an order shall cause notice of the passing of the resolution—
  - (a) to be advertised once at least in 2 daily newspapers circulating in the district where the registered office or principal place of business of the company is situated; and
  - (b) to be notified by ordinary post to all creditors outside the State,

and no further advertisement of the passing of the special resolution shall be required.

- (3) Where the proposed reduction of share capital involves either diminution of liability in respect of unpaid company capital, or the payment to any shareholder of any paid up company capital, and in any other case if the court so directs, the following provisions shall have effect, subject nevertheless to Subhead (4)—

- (a) every creditor of the company who, at the date fixed by the court, is entitled to any debt or claim which, if that date were the commencement of the winding-up of the company, would be admissible in proof against the company, shall be entitled to object to the confirmation;
  - (b) the court shall settle a list of creditors so entitled to object, and for that purpose shall ascertain, as far as possible without requiring an application from any creditor, the names of those creditors and the nature and amount of their debts or claims, and may publish notices fixing a day or days within which creditors not entered on the list are to claim to be so entered or are to be excluded from the right of objecting to the confirmation;
  - (c) where a creditor entered on the list whose debt or claim is not discharged or has not determined does not consent to the reduction, the court may, if it thinks fit, dispense with the consent of that creditor, on the company securing payment of his debt or claim by appropriating, as the court may direct, the following amount—
    - (i) if the company admits the full amount of the debt or claim, or, though not admitting it, is willing to provide for it, then the full amount of the debt or claim
    - (ii) if the company does not admit and is not willing to provide for the full amount of the debt or claim, or, if the amount is contingent or not ascertained, then an amount fixed by the court after the like inquiry and adjudication as if the company were being wound up by the court.
- (4) Where a proposed reduction of company capital involves either the diminution of any liability in respect of unpaid share capital or the payment to any shareholder of any paid up share capital, the court may, if, having regard to any special circumstances of the case, it thinks proper so to do, direct that Subhead (3) shall not apply as regards any class or any classes of creditors.

- (5) The court, if satisfied in relation to every creditor of the company who, under this head is entitled to object to the confirmation, that either his consent to the confirmation has been obtained or that his debt or claim has been discharged or has determined, or has been secured, may make an order confirming the resolution on such terms and conditions as it thinks fit.
- (6) Where the court makes any such order, it may make an order requiring the company to publish, as the court directs, the reasons for reduction or such other information in regard thereto as the court may think expedient, with a view to giving proper information to the public, and if the court thinks fit, the causes which led to the reduction.

**Explanatory note**

*This is a new head. The head is comprised of a re-enactment of Sections 73 and 74 of the Companies Act 1963. A new provision has also been added.*

*Subhead (1) is a re-enactment of Section 73(1) of the Companies Act, 1963.*

*Subhead (2) is new. This limits the requirement to advertise the passing of the special resolution to two daily newspapers in the State and notification by post to creditors outside the State. This removes the requirement for one application to court and will assist in streamlining the court procedure.*

*Subhead (3) is an amended re-enactment of Section 73(2) of the Companies Act, 1963. References to "Share capital" have been replaced by references to "Company capital". References to "Reduction" have also been replaced by references to "Confirmation", where necessary, in order to express the ability to reduce share capital as a positive entitlement rather than as a exception to a prohibition on the reduction of share capital of the company.*

*Subhead (4) is re-enactment of Section 73(3) of the Companies Act, 1963. The cross-reference has been amended in accordance with the re-numbering of the subsections.*

*Subhead (5) is an amended re-enactment of Section 74(1) of the Companies Act, 1963. The reference to "Reduction" has been replaced by a reference to "confirmation" in order to express the ability to reduce share capital as a positive entitlement rather than as a exception to a prohibition on the reduction of share capital of the company.*

*Subhead (6) is a re-enactment of Section 74(2)(b) of the Companies Act, 1963.*

---

## Head 19 Registration of order and minute of reduction

---

- (1) The Registrar, on production to him of an order of the court confirming the reduction of the share capital of a company, and the delivery to him of a copy of the order and of a minute approved by the court showing, with respect to the share capital of the company as altered by the order, the amount of the share capital, the number of shares into which it is to be divided and the amount of each share, and the amount, if any, at the date of the registration deemed to be paid up on each share, shall register the order and minute.
- (2) On the registration of the order and minute and not before, the resolution for reducing share capital as confirmed by the order so registered shall take effect.
- (3) Notice of the registration shall be published in such manner as the court may direct.
- (4) The Registrar shall certify under his hand the registration of the order and minute, and his certificate shall be conclusive evidence that all the requirements of this Bill relating to reduction of share capital have been complied with, and that the share capital of the company is such as is stated in the minute.
- (5) The minute, when registered, shall be deemed to be substituted for the corresponding part of the constitution and shall be valid and alterable as if it had been originally contained therein.
- (6) The substitution of any such minute as aforesaid for part of the constitution of the company shall be deemed to be an alteration of the constitution within the meaning of Head 19 of Part A2.

**Explanatory note**

*This head is based on Section 75 of the Companies Act, 1963.*

---

### Head 20 Liability of members in respect of reduced calls

---

- (1) Subject to Subhead (2), in the case of a reduction of share capital where future calls have been reduced, a member of the company, past or present, shall not be liable in respect of any share to any call or contribution exceeding in amount the difference, if any, between the amount of the share, as fixed by the special resolution and the amount paid, or the reduced amount, if any, which is to be deemed to have been paid, on the share, as the case may be.
- (2) If any creditor entitled, in respect of any debt or claim, to object to the reduction of the share capital, is, by reason of his ignorance of the proceedings for reduction or of their nature and effect with respect to his debt or claim, not entered on the list of creditors, and, after the reduction, the company is unable within the meaning of the provisions of this Bill relating to winding-up by the court, to pay the amount of his debt or claim, then—
  - (a) every person who was a member of the company at the date of the delivery for registration of the order for reduction and minute, shall be liable to contribute for the payment of that debt or claim an amount not exceeding the amount which he would have been liable to contribute if the company had commenced to be wound up on the day before the said date; and
  - (b) if the company is wound up, the court, on the application of any such creditor and proof of his ignorance as aforesaid, may, if it thinks fit, settle accordingly a list of persons so liable to contribute, and make and enforce calls and orders on the contributories settled on the list, as if they were ordinary contributories in a winding-up.
- (3) Nothing in this head shall affect the rights of the contributories among themselves.
- (4) If any officer of the company—
  - (a) wilfully conceals the name of any creditor entitled to object to the reduction; or
  - (b) wilfully misrepresents the nature or amount of the debt or claim of any creditor,

he shall be guilty of a category two offence.

#### **Explanatory note**

*This head is new. The head is comprised of Sections 76 and 77 of the Companies Act, 1963.*

*Subheads (1) to (3) are an amended version of Section 76 of the Companies Act, 1963. Subhead (1) and the title of the head have been clarified.*

*Subhead (4) is a slightly amended re-enactment of section 77 of the Companies Act, 1963.*

---

### Head 21 Variation of rights attached to special classes of shares

---

- (1) This head shall have effect with respect to the variation of the rights attached to any class of shares in a company whose share capital is divided into shares of different classes, whether or not the company is being wound up.
- (2) Where the rights are attached to a class of shares in the company otherwise than by the constitution, and the constitution does not contain provisions with respect to the variation of the rights, those rights may be varied if, but only if—
  - (a) the holders of 75 per cent, in nominal value, of the issued shares of that class, consent in writing to the variation; or
  - (b) a special resolution passed at a separate general meeting of the holders of that class, sanctions the variation;and any requirement (howsoever imposed) in relation to the variation of those rights is complied with, to the extent that it is not comprised in paragraphs (a) and (b).
- (3) Where—
  - (a) the rights are attached to a class of shares in the company by the constitution or otherwise;
  - (b) the constitution contains provision for the variation of those rights; and

- (c) the variation of those rights is connected with the giving, variation, revocation or renewal of an authority for the purposes of Head 5 of this Part [equivalent to Section 20 of the Companies (Amendment) Act, 1983] or with a reduction of the company's share capital under Head 17 of this Part [equivalent to Section 72 of the Companies Act, 1963]

those rights shall not be varied unless—

- (i) the condition mentioned in Subhead (2) (a) or (b) is satisfied, and
  - (ii) any requirement of the constitution in relation to the variation of rights of that class is complied with to the extent that it is not comprised in the condition in subparagraph (i).
- (4) Where the rights are attached to a class of shares in the company by the constitution or otherwise and—
- (a) where they are so attached by the constitution, it contains provision with respect to their variation which had been included in the constitution at the time of the company's original incorporation; or
  - (b) where they are so attached otherwise, the constitution contains such provision (whenever first so included), and in either case the variation is not connected as mentioned in Subhead (3)(c), those rights may only be varied in accordance with that provision of the constitution.
- (5) Where the rights are attached to a class of shares in the company by the constitution and it does not contain provisions with respect to the variation of the rights, those rights may be varied if all the members of the company agree to the variation.
- (6) Where a resolution is to be proposed at a meeting of members holding a particular class of shares—
- (a) the necessary quorum at any such meeting, other than an adjourned meeting, shall be two persons holding or representing by proxy at least one-third in nominal value of the issued shares of the class in question and at an adjourned meeting one person holding shares of the class in question or his proxy;

- (b) any holder of shares of the class in question present in person or by proxy may demand a poll.

- (7) Any alteration of a provision contained in the constitution of a company for the variation of the rights attached to a class of shares or the insertion of any such provision into the company's constitution shall itself be treated as a variation of those rights.
- (8) In this head and except where the context otherwise requires, in any provision for the variation of the rights attached to a class of shares contained in the company's constitution, references to the variation of those rights shall include references to their abrogation.
- (9) Nothing in Subheads (2) to (5) shall be construed as derogating from the powers of the court under Part B6, Head 4 [equivalent to Section 15 of the Companies (Amendment) Act, 1983] or Part B2 Head 11, Part B3 Head 8, Part B4 Head 10, Part B5 Head 11, Part A9, Head 2, Part A9, Head 4 and Part A4, Head 72 [equivalent to Sections 10, 201, 203 and 205 of the Companies Act, 1963].
- (10) The rights conferred upon the holders of the shares of any class issued with preferred or other rights shall not, unless otherwise expressly provided by the terms of issue of the shares of that class, be deemed to be varied by the creation or issue of further shares ranking *pari passu* therewith.

### **Explanatory note**

*This head is an amended re-enactment of Section 38 of the Companies Act, 1963. References to the memorandum and articles of association have been replaced by references to the "constitution" of the company.*

*Subheads (1) to (7) are re-enactments of Sections 38(1) to 38(7). Subsection (1) has been amended insofar as the phrase "whether or not the company is being wound up" has been newly inserted. Subsection (6) has also been amended.*

*Subhead (8) is a re-enactment of Section 38(9). Subhead (9) is a re-enactment of Section 38(10). Subhead (10) imports Model Regulation 4 of Part 1 of Table A of the First Schedule to the Companies Act, 1963.*



---

### Head 22 Rights of holders of special classes of shares

---

- (1) If in the case of a company, the share capital of which is divided into different classes of shares, the rights attached to any such class of shares are at any time varied pursuant to Head 24 of Part A2 [equivalent of Section 38 of the Companies Act, 1963], the holders of not less, in the aggregate, than 10 per cent. of the issued shares of that class, being persons who did not consent to or vote in favour of the resolution for the variation, may apply to the court to have the variation cancelled and, where any such application is made, the variation shall not have effect unless and until it is confirmed by the court.
- (2) An application under this head must be made within 28 days (or such longer period as the court, on application made to it by any shareholder before the expiry of the said 28 days, may allow) after the date on which the consent was given or the resolution was passed, as the case may be, and may be made on behalf of the shareholders entitled to make the application by such one or more of their number as they may appoint in writing for the purpose.
- (3) On any such application the court, after hearing the applicant and any other persons who apply to the court to be heard and appear to the court to be interested in the application, may, if it is satisfied having regard to all the circumstances of the case that the variation would unfairly prejudice the shareholders of the class represented by the applicant, disallow the variation and shall, if not so satisfied, confirm the variation.
- (4) The decision of the court on any such application shall be final but an appeal shall lie to the Supreme Court from the determination of the court on a question of law.
- (5) The company shall, within 21 days after the making of an order by the court on any such application, forward a copy of the order to the Registrar.
- (6) If a company contravenes Subhead (5), the company and every officer in default shall be guilty of a category four offence.
- (7) In this head “variation” includes abrogation, and “varied” shall be construed accordingly.

#### **Explanatory note**

*This is a slightly amended re-enactment of Section 78 of the Companies Act, 1963.*

*Subhead (1) has been amended insofar as it now expressly refers to Head 16 which permits the variation of rights attached to class shares.*

*The reference to a fine in Subhead (6) has been replaced by a reference to an offence.*

---

### Head 23 Registration of particulars of special rights

---

- (1) Where a company allots shares with rights which are not stated in its constitution or in any resolution or agreement to which Part A4, Head 68 [equivalent of Section 143 of the Companies Act, 1963] applies, the company shall, unless the shares are in all respects uniform with shares previously allotted, deliver to the Registrar within one month from allotting the shares, a statement in the prescribed form containing particulars of those rights.
- (2) Shares allotted with such rights shall not be treated for the purposes of Subhead (1) as different from shares previously allotted by reason only of the fact that the former do not carry the same rights to dividends as the latter during the twelve months immediately following the former's allotment.
- (3) Where the rights attached to any shares of a company are varied otherwise than by an amendment of the company's constitution or by resolution or agreement to which the said Part A4, Head 68 [equivalent of Section 143 of the Companies Act, 1963] applies, the company shall within one month from the date on which the variation is made, deliver to the Registrar a statement in the prescribed form containing particulars of the variation.
- (4) Where a company (otherwise than by any such amendment, resolution or agreement as is mentioned in Subhead (3)) assigns a name or other designation, or a new name or other designation, to any class of its shares it shall, within one month from doing so, deliver to the Registrar a notice in the prescribed form giving particulars thereof.
- (5) If a company fails to comply with this head, the company and every officer of the company who is in default shall be guilty of a category four offence.

**Explanatory note**

*This head is a slightly amended re-enactment of Section 39 of the Companies (Amendment) Act, 1983. References to the memorandum and articles of association have been replaced by references to the “constitution” of the company.*

**Head 24 Variation of company capital on reorganisations**

- (1) Subject to Subhead (2) a company may dispose of an asset, an undertaking or part of an undertaking or a combination of assets and liabilities to a body corporate, on terms that the consideration therefor, being shares or other securities of such body corporate, are allotted to the members of the company or of its holding company rather than to the company (and whether with or without the payment of any cash to such members or the company).
- (2) A transaction to which Subhead (1) applies must be—
  - (a) approved by the company by the validation procedure; or
  - (b) by special resolution confirmed by the court under Head 18 of this Part.
- (3) The company capital shall be deemed reduced by the book value of the disposed asset, undertaking or part of an undertaking as aforesaid.
- (4) The transaction shall take effect upon delivery for registration of particulars of the validation procedure or the confirmed special resolution in the prescribed form to the Registrar.
- (5) Any transaction in breach of this head shall be voidable at the instance of the company against any person (whether a party to the transaction or not) who had actual or imputed notice of the facts which constitute such breach.

**Explanatory note**

*This head is new. The head implements Recommendation 7.11.9 of the Second Report of the CLRG and enables the company to vary its capital on re-organisation. The head permits a company to enter into a transaction to dispose of assets, undertakings or liabilities, or a combination thereof, to a body corporate in return for shares or securities being allotted to the members of the company as consideration.*

*Such transactions are only given effect following the approval by the company under the validation procedure in Part A4 or by special resolution passed, confirmed by the court.*

**Head 25 Notice to registrar of certain alterations of share capital**

- (1) If a company having a share capital has—
  - (a) consolidated and divided its share capital into shares of larger amount than its existing shares; or
  - (b) converted any shares into stock; or
  - (c) reconverted stock into shares; or
  - (d) subdivided its shares or any of them; or
  - (e) redeemed any redeemable preference shares; or
  - (f) redeemed any preference shares; or
  - (g) cancelled any shares, otherwise than in connection with a reduction of share capital under Head 17 of this Part,

it shall, within one month after so doing, give notice thereof to the Registrar specifying, as the case may be, the shares consolidated, divided, converted, subdivided, redeemed or cancelled, or the stock reconverted.

- (2) If default is made in complying with this head, the company and every officer of the company who is in default shall be guilty of a category three offence.

**Explanatory note**

*This head is based on Section 69 of the Companies Act, 1963.*

**Head 26 Notice of increase of share capital**

- (1) Where a company, having a share capital, whether its shares have or have not been converted into stock, has increased its share capital above the registered capital, it shall, within 15 days after the passing of the resolution increasing its share capital, give to the Registrar notice of the increase and the Registrar shall record the increase.



## Part A3 - Share Capital

---

- (2) The notice to be given as aforesaid shall include such particulars as may be prescribed with respect to the classes of shares affected, and the conditions subject to which the new shares have been or are to be issued.
- (3) If default is made in complying with this head, the company and every officer of the company who is in default shall be guilty of a category three offence.

**Explanatory note**

*This head is based on Section 70 of the Companies Act, 1963.*

## Chapter 5

### Transfer of Shares

#### Head 27 Transfer of Shares and Debentures

- (1) Subject to any restrictions in the company's constitution and this head, a member may transfer all or any of his shares in the company by instrument in writing in any usual or common form or any other form which the directors may approve.
- (2) The instrument of transfer of any share shall be executed by or on behalf of the transferor and where the constitution so states or where the shares are partly paid, the transferee and the transferor shall be deemed to remain the holder of the share until the name of the transferee is entered in the register in respect thereof.
- (3) It shall not be lawful for the company to register a transfer of shares in or debentures of the company unless a proper instrument of transfer has been delivered to the company.
- (4) Nothing in Subhead (3) shall prejudice any power of the company to register as shareholder or debenture holder, any person to whom the right to any shares in, or debentures of the company, has been transmitted by operation of law.
- (5) A transfer of the share or other interest of a deceased member of a company made by his personal representative shall, although the personal representative is not himself a member of the company, be as valid as if he had been such a member at the time of the execution of the instrument of transfer.
- (6) On application of the transferor of any share or interest in a company, the company shall enter in its register of members, the name of the transferee in the same manner and subject to the same conditions as if the application for the entry were made by the transferee.

#### **Explanatory note**

*This head is new. The head is comprised of re-enactments of a number of provisions of the Companies Act, 1963 and some subheads import various Model Regulations of Part I of Table A of the First Schedule to the Companies Act, 1963.*

*Subhead (1) imports, in a slightly amended manner, Model Regulation 23 of Part I of Table A of the First Schedule to the Companies Act, 1963. It has been amended insofar as "Subject to such of the restrictions of these regulations as may be applicable..." has been replaced by "Subject to any restrictions in the company's constitution and this head..."*

*Subhead (2) imports, in a slightly amended manner, Model Regulation 22 of Part I of Table A of the First Schedule to the Companies Act, 1963. It has been amended insofar as "Where the constitution so states..." has been inserted.*

*Subhead (3) is a slightly amended re-enactment of Section 81(1) of the Companies Act, 1963. "Subject to subsection (2), and not withstanding anything in the articles of the company..." has been deleted.*

*Subhead (4) is a slightly amended re-enactment of Section 81(2) of the Companies Act, 1963.*

*Subhead (5) is a re-enactment of Section 82 of the Companies Act, 1963.*

*Subhead (6) is a re-enactment of Section 83 of the Companies Act, 1963.*

#### Head 28 Restrictions on transfer

- (1) Save where the constitution of the company otherwise provides—
  - (a) the directors may in their absolute discretion and without assigning any reason therefore, decline to register the transfer of any share;
  - (b) the directors' power to decline to register a transfer of shares lapses two months following the delivery to the company of the instrument of transfer of the share.
- (2) The directors may decline to recognise any instrument of transfer unless—
  - (a) a fee of €10 or such lesser sum as the directors may from time to time require, is paid to the company in respect thereof; and
  - (b) the instrument of transfer is accompanied by the certificate of the shares to which it relates and such other evidence as the directors may reasonably require to show the right of the transferor to make the transfer; and

## Part A3 - Share Capital

---

- (c) the instrument of transfer is in respect of one class of share only.
- (3) If the directors refuse to register a transfer they shall, within 2 months after the date on which the transfer was lodged with the company, send to the transferee notice of the refusal.
- (4) The registration of transfers may be suspended at such times and for such periods, not exceeding in the whole 30 days in each year, as the directors may from time to time determine.
- (5) For the purposes of this head “the directors” means the directors for the time being of the company or the directors present at a meeting of the board of directors and includes any person occupying the position of director by whatever name called.

### **Explanatory note**

*This is a new head. The head imports, in an amended manner, various Model Regulations of Part I & II of Table A of the First Schedule to the Companies Act, 1963.*

*Subhead (1)(a) imports Model Regulation 3 of Part II of Table A of the First Schedule to the Companies Act 1963. Subhead (1)(b) is a newly inserted provision. This is declaratory of the common law. An example of where the transferee’s right to become registered as a member was resurrected in the face of directors’ inertia is *Re Hackney Pavilion Ltd* [1924] 1 Ch 276. In that case the executrix of a deceased member sought to be registered as a member of the company. The directors of the company had an absolute right to decline registration under the company’s articles. A meeting of the company’s board of directors was called, but the two-man board was divided on the issue, there being no provision for a casting vote. Accordingly, the resolution was neither approved nor rejected. *Astbury J* held that the directors had not declined to register the executrix’s shares as the directors’ powers to decline registration must actively be exercised by a vote of the board of directors. In such a case the right of the transferee to be registered is resurrected and this is the status quo which has precedence where the directors’ powers are not exercised.*

*It is generally accepted that a period of two months from the date on which the transfer is lodged for registration is reasonable. This is because Section 84 of the Companies Act, 1963 requires the company to notify a transferee within two months that his application has been refused by the directors, if that be the case. In *Re Swaledale Cleaners Ltd* [1968] 1 WLR 1710, where the directors had delayed in either effecting or declining registration for four months, it was held that the directors’ power to decline to register a transfer had lapsed and that the transferee was entitled to be registered as a member of the company. This rule continues to be applied.*

*Subhead (2) imports Model Regulation 25 of Part I of Table A of the First Schedule to the Companies Act 1963. The fee has been raised to €10.*

*Subhead (3) is a slightly amended re-enactment of Section 84 of the Companies Act, 1963.*

*Subhead (4) is an enactment of Model Regulation 27 of Part I of Table A of the First Schedule to the Companies Act, 1963.*

---

## Head 29 Bearer Shares

---

- (1) A company if so authorised by its constitution, may, in relation to any fully paid up shares, issue under its common seal an instrument stating that the bearer of the instrument is entitled to the shares therein specified, and may provide by coupons or otherwise for the payment of the future dividends on the shares included in the instrument.
- (2) Such an instrument as aforesaid is in this Bill referred to as “a bearer share”.
- (3) Any such instrument shall entitle the bearer thereof to the shares therein specified and the shares may be transferred by delivery of the instrument.
- (4) Any such instrument may, by statement on the face of such instrument, restrict the persons who may be or become entitled to such shares.
- (5) Head 27 of this Part shall not apply to the transfer of a bearer share

### **Explanatory note**

*Restatement of Section 88 of the Companies Act, 1963, but providing for restrictions on the transfer of the shares concerned.*

---

## Head 30 Transmission of Shares

---

- (1) Save to the extent that a company's constitution provides otherwise—
- (a) In the case of the death of a member, the survivor or survivors where the deceased was a joint holder, and the personal representatives of the deceased where he was a sole holder, shall be the only persons recognised by the company as having any title to his interest in the shares, but nothing herein contained shall release the estate of a deceased joint holder from any liability in respect of any share which had been jointly held by him with other persons;
  - (b) Any person becoming entitled to a share in consequence of the death or bankruptcy of a member may, upon such evidence being produced as may from time to time properly be required by the directors and subject as hereinafter provided, elect either to be registered himself as holder of the share or to have some person nominated by him registered as the transferee thereof, but the directors shall, in either case, have the same right to decline or suspend registration as they would have had in the case of a transfer of the share by that member before his death or bankruptcy, as the case may be;
  - (c) If the person so becoming entitled elects to be registered himself, he shall deliver or send to the company a notice in writing signed by him stating that he so elects. If he elects to have another person registered, he shall testify his election by executing to that person a transfer of the share. All the limitations, restrictions and provisions of this Chapter relating to the right to transfer and the registration of transfers of shares shall be applicable to any such notice or transfer as aforesaid as if the death or bankruptcy of the member had not occurred and the notice or transfer were a transfer signed by that member;
  - (d) A person becoming entitled to a share by reason of the death or bankruptcy of the holder shall be entitled to the same dividends and other advantages to which he would be entitled if he were the registered holder of the share, except that he shall not, before being registered as a member in respect of the share, be entitled in respect of it to exercise any right conferred by membership in relation to meetings of the company, so however, that the directors may at any time give notice requiring any such person to elect either to be registered himself or to transfer the share, and if the notice is not complied with within 90 days, the directors may thereupon withhold payment of all dividends, bonuses or other moneys payable in respect of the share until the requirements of the notice have been complied with;
  - (e) The company shall be entitled to charge a fee not exceeding €10 on the registration of every probate, letters of administration, certificate of death or marriage, power of attorney, notice as to stock or other instrument or order;
  - (f) For the purposes of this subhead, "the directors" means the directors for the time being of the company or the directors present at a meeting of the board of directors and includes any person occupying the position of director by whatever name called.
- (2) The production to a company of any document which is by law sufficient evidence of probate of the will or letters of administration of the estate of a deceased person having been granted to some person shall be accepted by the company, notwithstanding anything in its constitution, as sufficient evidence of the grant.

### **Explanatory note**

*This head is new.*

*Subhead (1) imports Model Regulations 28-32 of Part I of Table A of the First Schedule to the Companies Act, 1963.*

*Paragraph (a) imports Model Regulation 29 of Part I of Table A of the First Schedule to the Companies Act, 1963.*

*Paragraph (b) imports Model Regulation 30 of Part I of Table A of the First Schedule to the Companies Act, 1963.*

## Part A3 - Share Capital

*Paragraph (c) imports Model Regulation 31 of Part I of Table A of the First Schedule to the Companies Act, 1963.*

*Paragraph (d) imports Model Regulation 32 of Part I of Table A of the First Schedule to the Companies Act, 1963.*

*Subhead (2) is a re-enactment of Section 87(2) of the Companies Act, 1963*

---

### Head 31 Certification of transfers

---

- (1) The certification by a company of any instrument of transfer of shares in, or debentures of the company shall be taken as a representation by the company, to any person acting on the faith of the certification that there have been produced to the company such documents as on the face of them show a prima facie title to the shares or debentures in the transferor named in the instrument of transfer, but not as a representation that the transferor has any title to the shares or debentures.
- (2) Where any person acts on the faith of a false certification by a company made negligently, the company shall be under the same liability to him as if the certification had been made fraudulently.
- (3) For the purposes of this head—
  - (a) an instrument of transfer shall be deemed to be certificated if it bears the words “certificate lodged” or words to the like effect;
  - (b) the certification of an instrument of transfer shall be deemed to be made by a company if—
    - (i) the person issuing the instrument is a person authorised to issue certificated instruments of transfer on the company’s behalf, and
    - (ii) the certification is signed by a person authorised to certificate transfers on the company’s behalf or by any officer or servant either of the company or of a body corporate so authorised;
  - (c) a certification shall be deemed to be signed by any person if—
    - (i) it purports to be authenticated by his signature or initials (whether handwritten or not), and

- (ii) it is not shown that the signature or initials was or were placed there neither by himself nor by any person authorised to use the signature or initials for the purpose of certificating transfers on the company’s behalf.

#### **Explanatory note**

*This head is a re-enactment of Section 85 of the Companies Act, 1963.*

---

### Head 32 Share certificates

---

- (1) A certificate under the common seal of the company or the seal kept by the company (not being a private company) by virtue of Head 27 of Part A2 [equivalent of Section 3 of the Companies (Amendment) Act, 1977], specifying any shares held by any member shall be prima facie evidence of the title of the member to the shares.
- (2) Every company shall, within 2 months after the allotment of any of its shares, debentures or debenture stock, and within 2 months after the date on which a transfer of any such shares, debentures or debenture stock is lodged with the company, complete and have ready for delivery the certificates of all shares, the debentures, and the certificates of all debenture stock allotted or transferred, unless the conditions of issue of the shares, debentures or debenture stock otherwise provide.

The expression “transfer” for the purpose of this subhead means a transfer duly stamped and otherwise valid and does not include such a transfer as the company is, for any reason, entitled to refuse to register and does not register.
- (3) If any company on which a notice has been served requiring the company to make good any default in complying with the provisions of Subhead (1), fails to make good the default within 10 days after the service of the notice, the court may, on the application of the person entitled to have the certificates or the debentures delivered to him, make an order directing the company and any officer of the company to make good the default within such time as may be specified in the order, and any such order may provide that all costs of and incidental to the application shall be borne by the company or by any officer of the company responsible for the default.



- (4) If a share certificate is defaced, lost or destroyed, it may be renewed on payment of €10 or such less sum and on such terms (if any) as to evidence and indemnity and the payment of out-of-pocket expenses of the company of investigating evidence as the directors think fit.
- (5) Where a member of a company so requests, the members shall be entitled to receive from the company one or more certificates for one or more shares upon payment of €10 or such lesser sum as the directors think fit.
- (6) In respect of a share or shares held jointly by several persons, a company shall not be bound to issue more than one certificate and delivery of a certificate for a share to one or several joint holders shall not be sufficient delivery to all such holders.
- (7) If default is made in complying with this head, the company and every officer of the company who is in default shall be guilty of a category four offence.

**Explanatory note**

*This head is a new head. The head is comprised of a re-enactment of Section 86 and Section 87(1) of the Companies Act, 1963 and imports Model Regulations 8 and 9 of Part I of Table A of the First Schedule to the Companies Act, 1963.*

---

**Head 33 Transfer of shares: management companies**

---

- (1) Where the constitution of a residential management company stipulates that the only holders of shares are to be the holders of a particular estate or interest in land, then the conveyance, assignment or transfer (other than by way of security) of such holder's estate or interest shall operate to transfer the shares of that holder.
- (2) Any transferee of a share or shares pursuant to Subhead (1) shall deliver a copy of the conveyance, assignment or transfer to the company within two months of its date, and the company shall treat such document as a transfer of the relevant share or shares.

**Explanatory note**

*This is a newly inserted provision, intended to liberalise the transfer of shares in a private company that is also a residential management company.*

---

**Head 34 Rectification of dealings in shares**

---

- (1) If a company has created, allotted or acquired (by redemption, purchase, surrender, forfeiture or otherwise) or cancelled any of its shares and if there is reason to apprehend that such shares were invalidly created, allotted, acquired or cancelled as aforesaid, the court may, on the application of the company, any holder or former holder of such shares or any member or former member or creditor, or the liquidator, of the company, declare that such creation, allotment or acquisition shall be valid for all purposes if the court is satisfied that it would be just and equitable to do so and thereupon such shares shall from the creation, issue or acquisition thereof, as the case may be, be deemed to have been validly created, allotted or acquired.
- (2) The grant of relief by the court under this head shall, if the court so directs, not have the effect of relieving the company or its officers of any liability incurred under the Bill.

**Explanatory note**

*This is an amended re-enactment of Section 89 of the Companies Act, 1963, as amended by Section 227 of the Companies Act, 1990. Section 89(2) has been deleted given that the courts are precluded from exercising such a discretion. This is due to the fact that those circumstances which may lead to an exercise of such a discretion cannot now arise given the definition of "new capital".*

*Subhead (1) is an amended re-enactment of Section 89(1) of the Companies Act, 1963. "If a company has created, allotted or acquired (by redemption, purchase surrender, forfeiture or otherwise) any of its shares..." replaces "If a company has created or issued shares in its capital, or acquired any of its shares by a redemption or purchase in purported compliance with Part XI of the Companies Act, 1990...". Furthermore, "allotted" replaces "issued" and "allotment" also replaces "acquisition".*

*Subhead (2) is an amended re-enactment of Section 89(3) of the Companies Bill, 1983. The cross-reference to "...any liability incurred under Section 41(3) of the Companies (Amendment) Act, 1983..." has been replaced by "...any liability incurred under the Bill".*

### **Head 35    Penalty for personation of shareholder**

---

If any person falsely and deceitfully personates any owner of any share or interest in any company or of any instrument constituting a bearer share issued in pursuance of this Bill and thereby obtains or endeavours to obtain any such share or interest or instrument constituting a bearer share or receives or endeavours to receive any money due to any such owner or votes at any meeting as if the offender were the true and lawful owner he shall be guilty of a category two offence.

***Explanatory note***

*This is an amended re-enactment of Section 90 of the Companies Act, 1963. References to "...any share warrant or coupon issued under this Act" have been removed and replaced with "...any instrument constituting a bearer share".*

## Chapter 6

### Acquisition of own shares

#### Head 36 Restriction on company acquiring its own shares

- (1) Subject to the provisions of this Chapter, a company may acquire its own fully paid shares—
- (a) by transfer or surrender to the company otherwise than for valuable consideration;
  - (b) by forfeiture, or the acceptance of any shares surrendered in lieu for failure to pay any sum payable in respect of those shares;
  - (c) by cancellation pursuant to a reduction of company capital under Heads 17 to 20 of this Part [equivalent of Sections 60-72 of the Companies Act, 1963];
  - (d) pursuant to an order of the court under Part A4, Head 72 [equivalent of Section 205 of the Companies Act, 1963];
  - (e) where those shares are redeemable shares, by redemption or purchase under Head 38 of this Part [equivalent of Sections 207 and 211 of the Companies Act, 1990];
  - (f) by purchase under Head 38 of this Part [equivalent of Section 211 of the Companies Act, 1990];
- (2) A company may not acquire any of its shares otherwise than as described in Subhead (1), and if a company purports to act in contravention of this head the company and every officer of the company who is in default shall be guilty of a category two offence and the purported acquisition is void.
- (3) A public company subsidiary shall not—
- (a) subscribe for the shares of its parent public company, or
  - (b) purchase shares in its parent public company which are not fully paid.
- (4) If a public company subsidiary purports to act in contravention of Subhead (3)(a), it shall be guilty of a category two offence and the purported subscription shall be void.
- (5) Where shares in a parent public company are subscribed for by a nominee of a public company subsidiary in contravention of Subhead (3), then for all purposes the shares shall be treated as held by the nominee on his own account and the public company subsidiary shall be regarded as having no beneficial interest in them, and the provisions of Head 37 of this Part [equivalent to Subsections (2) to (6) of Section 42 of the Companies (Amendment) Act, 1983], shall, with any necessary modifications, apply.
- (6) Without prejudice to any other requirements contained in or penalties imposed by this Bill, where a public company subsidiary purchases, subscribes for or holds shares in its parent public company, and—
- (a) the shares were not fully paid when they were purchased; or
  - (b) the authorisation required by Head 46 of this Part [Section 224 (3) of the Companies Act, 1990] has not been obtained; or
  - (c) the shares are held as treasury shares in excess of the limit referred to in Head 41 of this Part [equivalent of Section 209 (2) of the Companies Act, 1990]; or
  - (d) the purchase or subscription was in contravention of paragraph (2) (c),
- then, unless the shares or any interest of the public company subsidiary in them are previously disposed of, the provisions of Part B2, Head 31 [equivalent of Section 43 (3) of the Companies (Amendment) Act, 1983], shall, with the modification that the “relevant period” in relation to any shares shall be 12 months and with any other necessary modifications, apply to the public company subsidiary in respect of such shares.
- (7) This head shall not affect or prohibit—
- (a) the subscription for, acquisition or holding of shares in its parent public company by a public company subsidiary where the public company subsidiary, is concerned as personal representative or where it is concerned as trustee, unless the parent public company or a subsidiary thereof is beneficially interested under the trust and is not so interested only by way of security for the purposes of a transaction entered into by it in the ordinary course of a business which includes the lending of money;

- (b) the allotment to, or holding by a public company subsidiary of shares in its parent public company in the circumstances set out in Head 45 (5) of this Part [equivalent of Section 32 (5) of the Companies Act, 1963], but where the shares so allotted are held as treasury shares and the nominal value of treasury shares held by the public company subsidiary exceeds the limit referred to in Head 41 of this Part [equivalent of Section 209 (2) of the Companies Act, 1990] then, unless the shares or any interest of the public company subsidiary in them are previously disposed of, the provisions of [Part B2, Head 31 (3) equivalent of Section 43 (3) of the Companies (Amendment) Act, 1983], shall with the modification that the relevant period in relation to any shares shall be 3 years and with any other necessary modifications, apply to the public company subsidiary in respect of such shares;
- (c) the subscription, acquisition or holding of shares in its parent public company by a public company subsidiary where the subscription, acquisition or holding is effected on behalf of a person other than the person subscribing, acquiring or holding the shares, who is neither the parent public company itself nor a subsidiary within the meaning of Part A1, Head 6 [equivalent of Part XI of the Companies Act, 1990] of the said parent public company;
- (d) the subscription, acquisition or holding of shares in its parent public company by a public company subsidiary which is a member of an approved stock exchange specified in Section 17 (2) of the Stock Exchange Act, 1995 (No. 9 of 1995), acting in its capacity as a professional dealer in securities in the normal course of its business.
- (8)
- (a) Where an offence under this head has been committed by a public company subsidiary and is proved to have been committed with the consent or connivance of or to be attributable to any neglect on the part of a person being a director, secretary or other similar officer of the public company subsidiary, or a person who was purporting to act in any such capacity, that person as well as the body corporate shall be guilty of a category two offence and shall be liable to be proceeded against and punished as if he or she were guilty of the first-mentioned offence;
- (b) Where the affairs of a public company subsidiary are managed by its members, paragraph (a) shall apply in relation to the acts and defaults of a member in connection with his or her functions of management as if he or she were a director of the public company subsidiary.

### **Explanatory note**

*This head is a new head. The head is comprised of an amended re-enactment of Section 41 of the Companies Act, 1983 and an enactment of Model Regulation 5 of the EC (PLC Subsidiaries) Regulations, 1997.*

*Subhead (1) is an amended re-enactment of Section 41 of the Companies (Amendment) Act, 1983, as amended by Section 232 of the Companies Act, 1990. The subhead replicates, in substance, Section 41 of the Companies Act, 1983. However, positive language is used here in order to express the right of the company to acquire its own shares as an entitlement of the company as opposed to an exception to a general prohibition.*

*Paragraph (a) is, in substance, an amended re-enactment of Section 41(2) of the Companies Act, 1983.*

*Paragraph (b) is, in substance, an amended re-enactment of Section 41(4)(d) of the Companies Act, 1983.*

*Paragraph (c) is, in substance, an amended re-enactment of Section 41(4)(b) of the Companies Act, 1983.*

*Paragraph (d) is, in substance, an amended re-enactment of Section 41(4)(c) of the Companies Act, 1983.*

*Parts of the subsection related only to PLCs and accordingly have been moved to Part B2.*

*Paragraphs (e) & (f) are, in substance, an amended re-enactment of Section 41(4)(a) of the Companies Act, 1983.*

*Subhead(2) is, in substance, an amended re-enactment of Section 41(3) of the Companies Act, 1983. Again, the amendments were necessitated in order to express the right of the company to acquire its own shares as an entitlement of the company as opposed to an exception to a general prohibition. This head continues the prohibition on the company acquiring its own shares except as permitted under Subhead (1) and the civil and criminal consequences which may follow.*

*Subheads (3) to (9) are amended enactments of Regulations 5(2)-(8) of the EC (PLC Subsidiaries) Regulations, 1997.*

---

## Head 37 Shares of company held by nominee of company

---

- (1) Subject to Subhead (5) where shares are issued to a nominee of a company referred to in Head 36 [equivalent of Section 41 of Companies Act, 1983], or are acquired by a nominee of such a company from a third party as partly paid up, then, for all purposes the shares shall be treated as held by the nominee on his own account and the company shall be regarded as having no beneficial interest in them.
- (2) If a person is called on to pay any amount for the purpose of paying up, or paying any premium on, any shares in any such company which were issued to him, or which he otherwise acquired, as the nominee of the company and he fails to pay that amount within 21 days from being called on to do so, then—
- (a) if the shares were issued to him as a subscriber to the constitution by virtue of an undertaking of his in the constitution, the other subscribers to the constitution; or
  - (b) if the shares were otherwise issued to or acquired by him, the directors of the company at the time of the issue or acquisition,
- shall be jointly and severally liable with him to pay that amount.
- (3) If in proceedings for the recovery of any such amount from any such subscriber or director under this head, it appears to the court that he is or may be liable to pay that amount, but that he has acted honestly and reasonably and that, having regard to all the circumstances of the case, he ought fairly to be excused from liability, the court may relieve him, either wholly or partly, from his liability on such terms as the court thinks fit.
- (4) Where any such subscriber or director has reason to apprehend that a claim will or might be made for the recovery of any such amount from him, he may apply to the court for relief and on the application the court shall have the same power to relieve him as it would have had in proceedings for the recovery of that amount.
- (5) Subheads (1) and (2) shall not apply—
- (a) to shares acquired by a nominee of a company where the company has no beneficial interest in those shares (disregarding any right which the company itself may have as trustee, whether as personal representative or otherwise, to recover its expenses or be remunerated out of the trust property); or
  - (b) to shares issued in consequence of an application made before the appointed day or transferred in pursuance of an agreement to acquire them made before that day.

### Explanatory note

*This head is an amended re-enactment of Section 42 of the Companies (Amendment) Act, 1983. Section 42(5) has been deleted as it only relates to PLCs.*

*Subhead (1) is a slightly amended re-enactment of Section 42(1). The cross-references to other subsections have been amended in accordance with the re-numbering of the subsections.*

*Subhead (2) is a slightly amended re-enactment of Section 42(2) of the Companies (Amendment) Act, 1983. The words "Subject to subsection (6)..." have been removed. References to the "memorandum" have also been replaced by references to the "constitution" of the company.*

*Subhead (3) is a re-enactment of Section 42(3) of the Companies (Amendment) Act, 1983.*

*Subhead (4) is a re-enactment of Section 42(4) of the Companies (Amendment) Act, 1983.*

*Subhead (5) is a re-enactment of Section 42(6) of the Companies (Amendment) Act, 1983.*



### Head 38 Acquisition of own shares

(1) A company may acquire its shares by purchase, and in the case of redeemable shares, by redemption or purchase, subject to payment in full therefor on acquisition out of profits available for distribution or the proceeds of a fresh issue of shares.

(2) Where the shares were issued at a premium, some or all of the premium payable on their acquisition may be paid out of:

- (a) the aggregate of the premiums received by the company on the issue of the shares redeemed, or
- (b) the current amount of the company's undenominated capital,

whichever is the less, and in any such case the amount of the company's undenominated capital shall, notwithstanding anything in Head 6 (5) of this Part [equivalent of Section 62 (1) of the Companies Act, 1963], be reduced by a sum corresponding (or by sums in the aggregate corresponding) to the amount of any payment made by virtue of this subhead out of the proceeds of the issue of the new shares.

(3) The acquisition of shares may be effected on such terms and in such manner as may be provided by—

- (a) the constitution of the company;
- (b) the rights attaching to the shares in question; or
- (c) a special resolution.

(4) A special resolution under Subhead (2) shall not be effective for the purposes of this head if any member of the company holding shares to which the resolution relates exercises the voting rights carried by any of those shares in voting on the resolution and the resolution would not have been passed if he had not done so.

(5) Notwithstanding anything contained in Head 60 of Part A4 [equivalent of Section 137 of the Companies Act, 1963] or in a company's constitution, any member of the company may demand a poll on a special resolution under Subhead (2).

(6) Where an acquisition of shares is authorised by special resolution—

(a) the proposed contract of purchase or, if the contract is not in writing, a written memorandum of its terms must be furnished to the members or made available for inspection by members of the company at the registered office of the company from the date of the notice of the meeting and at the meeting itself;

(b) any memorandum of the terms of the contract of purchase made available for the purposes of this head must include the names of any members holding shares to which the contract relates, and any copy of the contract made available for those purposes must have annexed to it a written memorandum specifying any such names which do not appear in the contract itself;.

(7) A company may agree to a variation of an existing contract of purchase approved under this head only if the variation is authorised by special resolution of the company before it is agreed to, and Subhead (3) shall apply in relation to that authority, save that a copy or memorandum (as the case may require) of the existing contract must also be available for inspection in accordance with Subhead (3).

(8) A company shall only make a purchase of its own shares in pursuance of an option of the company or a third party if the terms of the option have been authorised by a special resolution of the company in accordance with Subhead (3).

(9) Shares acquired under this head may be cancelled or retained as treasury shares.

(10) Where the shares are—

- (a) redeemed wholly out of the profits available for distribution; or
- (b) redeemed wholly or partly out of the proceeds of a fresh issue and the aggregate amount of those proceeds (disregarding any part of those proceeds used to pay any premium on redemption) is less than the aggregate nominal value of the shares redeemed ("the aggregable difference"),

then a sum equal to, in the case of paragraph (a), the nominal value of the shares redeemed and, in the case of paragraph (b), the aggregable difference shall be transferred to undenominated capital.

(11) Where a company—

- (a) has redeemed and cancelled shares or is about to redeem shares and cancel them upon redemption; and
  - (b) within one month before or after such redemption and cancellation it allots new shares up to the nominal value of the shares redeemed or to be redeemed those newly allotted shares shall be deemed never to have been issued for the purposes of Section 117 of the Stamp Duties Consolidation Act, 1999 unless the actual value of the shares so issued exceeds the actual value of the shares redeemed at the date of their redemption, in which event the amount on which stamp duty on the relevant statement relating to that transaction is chargeable under Section 117 of the Stamp Duties Consolidation Act, 1999, shall be the difference between—
    - (i) the amount on which the duty would be so chargeable if the shares had not been issued in place of shares redeemed under this head, and
    - (ii) the value of the shares redeemed at the date of their redemption;
  - (c) Where new shares are issued before the redemption of the old shares, the new shares shall not, so far as it relates to stamp duty, be deemed to have been issued in pursuance of paragraph (b) unless the old shares are redeemed within one month after the issue of the new shares.
- (12) The amount by which the acquisition price of redeemable preference shares allotted before 1 February 1990 exceeds their original subscription price may be paid from undenominated capital.

**Explanatory note**

*This head is a new head. The head deals with the acquisition by the company of its own shares. It is drawn from a number of provisions of the Companies Act, 1990.*

*Subhead (1) substantially reproduces Section 207(1) of the Companies Act, 1990, in relation to the power to issue redeemable shares. It is also drawn, in substance, from Section 211(1) of the Companies Act, 1990 in relation to the power of the company to purchase its own shares.*

*Subhead (2) re-enacts paragraph 207 (2) (f) of the Companies Act, 1990.*

*Subhead (3) substantially reproduces Sections 207(2), 211(2) and 213(2) of the Companies Act, 1990.*

*Subhead (6)(a) substantially reproduces Section 213(5) of the Companies Act, 1990. The requirement for 21 days display of the repurchase contract has been removed. Instead the display period will be for the duration of the notice of the meeting.*

*Subhead (6)(b) substantially reproduces Section 213(6) of the Companies Act, 1963.*

*Subhead (7) is an amended re-enactment of Section 213(7) of the Companies Act, 1990. The cross-references to the other subsections have been amended accordingly.*

*Subhead (8) substantially reproduces Section 214 of the Companies Act, 1990. The expression “contingent purchase contract” is replaced by the word “option”. This is more in accordance with everyday practice.*

*Subhead (9) substantially reproduces Section 208(a) & 209(1) of the Companies Act, 1990 in relation to the cancellation of shares or their retention as treasury shares.*

*Subhead (10) is an amended re-enactment of Section 208(b) of the Companies Act, 1990. Instead of the “aggregable difference” being transferred to the “capital redemption reserve fund”, it is now transferred to “undenominated capital”.*

*Subhead (11) is an amended re-enactment of Sections 208(c) and (d) of the Companies Act, 1990. The references to sections of the Finance Act, 1968 have been replaced by references to sections of the Stamp Duties Consolidation Act, 1999. Note for Parliamentary Counsel – consider whether this subhead is necessary.*

*Subhead (12) substantially reproduces Section 220 of the Companies Act, 1990. The excess in price for the redemption of shares is now said to be payable out of the “undenominated capital” of the company instead of being payable out of the share premium account or the profits available for distribution.*

---

**Head 39 Assignment or release of company’s right to purchase own shares**

---

- (1) Any purported assignment of the rights of a company under any contract authorised under Head 38 of this Part [equivalent of Sections 213 and 214 of the Companies Act, 1990] shall be void.

## Part A3 - Share Capital

---

- (2) Nothing in Subhead (1) shall prevent a company from releasing its right under any contract authorised under Head 38 of this Part [equivalent of Sections 213 and 214 of the Companies Act, 1990] provided that the release has been authorised by special resolution of the company before the release is entered into, and any such purported release by a company which has not been authorised as aforesaid shall be void.
- (3) Heads 38 (1) to (4) of this Part [equivalents of Sections 213 (2) to (7) of the Companies Act, 1990] shall apply to a resolution under subhead (2).
- (e) notice of the meeting at which the special resolution referred to in paragraph (d) is to be proposed and a copy of the said resolution must be published in CRO Gazette and in at least one daily newspaper circulating in the district in which the registered office of the company is situated not less than 14 days and not more than 30 days before the date of the meeting;
- (f) no holder of such shares shall be obliged to accept redemption thereof;
- (g) in the case of a private company the redemption must have been sanctioned by the court.

### **Explanatory note**

*This head re-enacts Head 217 of the Companies Act, 1990 as it applies to purchases under Head 38.*

---

## **Head 40 Power to redeem preference shares issued before 5th May 1959**

---

- (1) Subject to the provisions of this head, a company limited by shares may, if so authorised by its articles, redeem any preference shares issued by it before the 5th day of May 1959, so, however that-
- (a) no such shares shall be redeemed unless they are fully paid;
- (b) no such shares shall be redeemed except out of profits of the company which would otherwise be available for distribution or out of the proceeds of a fresh issue of shares made for the purposes of the redemption;
- (c) no such shares shall be redeemed at a sum greater than the issue price of such shares;
- (d) the redemption of such shares and the term and the manner thereof must have been authorised by a special resolution of the company;
- (2) The powers conferred by this head may be availed of only by means of an offer made to all the holders of the preference shares concerned.
- (3) Where any such shares are redeemed otherwise than out of the proceeds of a fresh issue, there shall, out of profits which would otherwise have been available for distribution, be transferred to a reserve fund to be called "the capital redemption reserve fund", a sum equal to the nominal amount of the shares redeemed, and the provisions of this Bill relating to the reduction of the share capital of a company shall, except as provided in this head, apply as if the capital redemption reserve fund were paid up share capital of the company.
- (4) Subject to the provisions of this head, the redemption of preference shares under this head may be effected on such terms and in such manner as may be provided by the special resolution referred to in paragraph (d) of Subhead (1).
- (5) The redemption of preference shares under this head by a company shall not be taken as reducing the amount of the company's authorised share capital.
- (6) Subject to Subhead (7), where in pursuance of this head a company has redeemed or is about to redeem any preference shares, it shall have power to issue shares up to the nominal amount of the shares redeemed or to be redeemed as if those shares had never been issued, and accordingly the share capital of the company shall not for the purposes of any enactments relating to stamp duty be deemed to be increased by the issue of shares in pursuance of this subhead.

- (7) Where new shares are issued before the redemption of the old shares, the new shares shall not, so far as relates to stamp duty, be deemed to have been issued in pursuance of Subhead (6) unless the old shares are redeemed within one month after the issue of the new shares.
- (8) The capital redemption reserve fund may, notwithstanding anything in this head, be applied by the company in paying up unissued shares of the company (other than redeemable preference shares) to be issued to members of the company as fully paid bonus shares.
- (a) cancelled by the company in which case the provisions of Head 38 [equivalent of Section 208 of the Companies Act, 1990] shall apply as if the shares had been cancelled on redemption; or
- (b) subject to Subheads (4) and (5), re-issued as shares of any class or classes.
- (4) A re-issue of shares under this head shall be deemed for all the purposes of the Companies Acts to be an issue of shares but the issued share capital of the company shall not be regarded for any purpose (including the purposes of any enactments relating to stamp duties) as having been increased by the re-issue of the shares;

**Explanatory note**

*This head is an amended re-enactment of Section 65 of the Companies Act, 1963. The references to Iris Oifigiúil have been changed to CRO Gazette.*

---

**Head 41 Treasury shares**

---

- (1)
  - (a) The nominal value of treasury shares held by a company may not, at any one time, exceed ten per cent of the company capital of the company.
  - (b) For the purposes of this head the following shall also be deemed to be treasury shares held by the company—
    - (i) shares held in the company by any subsidiary in pursuance of Head 46 [equivalent of Section 224 of the Companies Act, 1990], and
    - (ii) shares held in the company by any person acting in his own name but on the company's behalf.
- (2) For so long as the company holds shares as treasury shares—
  - (a) the company shall not exercise any voting rights in respect of those shares and any purported exercise of those rights shall be void; and
  - (b) no dividend or other payment (including any payment in a winding-up of the company) shall be payable to the company in respect of those shares.
- (3) Treasury shares may either be—
  - (a) The maximum and minimum prices at which treasury shares may be re-issued (“the re-issue price range”) shall be determined in advance by the company in general meeting in accordance with paragraphs (b), (c) and (d) and such determination may fix different maximum and minimum prices for different shares.
  - (b) Where the treasury shares to be re-issued are derived in whole or in part from shares purchased by the company in accordance with the provisions of this Part the re-issue price range of the whole or such part (as the case may be) of those shares shall be determined by special resolution of the company passed at the meeting at which the resolution authorising the said purchase has been passed and such determination shall, for the purposes of this subhead, remain effective with respect to those shares for the requisite period;
  - (c) Where the treasury shares to be re-issued are derived in whole or in part from shares redeemed by the company in accordance with the provisions of this Part, the re-issue price range of the whole or such part (as the case may be) of those shares shall be determined by special resolution of the company passed before any contract for the re-issue of those shares is entered into and such determination shall, for the purposes of this subhead, remain effective with respect to those shares for the requisite period;



## Part A3 - Share Capital

---

- (d) The company may from time to time, by special resolution, vary or renew a determination of re-issue price range under paragraph (b) or (c) with respect to particular treasury shares before any contract for re-issue of those shares is entered into and any such variation or renewal shall, for the purposes of this subhead, remain effective as a determination of the re-issue price range of those shares for the requisite period.
- (6) A re-issue by a company of treasury shares in contravention of any of the provisions of Subhead (5) shall be unlawful.
- (b) the variation of a contract authorised under Head 38 of this Part [equivalent of Sections 213 and 214 of Companies Act, 1990]; or
- (c) the release of any of the company's obligations with respect to the purchase of any of its own shares under a contract authorised under Head 38 of this Part [equivalent of Sections 213, 214 and 215 of the Companies Act, 1990]
- shall be unlawful if any such payment is made otherwise than out of distributable profits of the company or the proceeds of a new issue of shares.

### **Explanatory note**

*This head is an amended re-enactment of Sections 209(2)-(7) of the Companies Act, 1990.*

*Subhead (1) is an amended re-enactment of Section 209(2) of the Companies Act, 1990. References to "issued share capital" have also been changed to "company capital" of the company. Section 209(b)(ii) has been deleted.*

*Subhead (2) is a re-enactment of Section 209(3) of the Companies Act, 1990.*

*Subhead (3) is a slightly amended re-enactment of Section 209(4) of the Companies Act, 1990. The cross-reference was amended in accordance with the new provisions.*

*Subhead (4) is a re-enactment of Section 209(5) of the Companies Act, 1990.*

*Subhead (5) is a slightly amended re-enactment of Section 209(6) of the Companies Act, 1990. The text of the subsection has been deleted to remove references to market issue or purchase as those concepts are relevant only to PLCs and not private companies which are dealt with here.*

---

## **Head 42 Incidental payments with respect to acquisition of own shares**

---

- (1) Any payment made by a company in consideration of—
- (a) acquiring any right with respect to the purchase of its own shares in pursuance of a contract authorised under Head 38 of this Part [equivalent of Section 213 of the Companies Act, 1990], or

- (2) If the requirements of Subhead (1) are not satisfied in relation to a contract—

- (a) in a case to which paragraph (a) of that subhead applies, no purchase by the company of its own shares in pursuance of that contract shall be lawful under this Part;
- (b) in a case to which paragraph (b) of that subhead applies, no such purchase following the variation shall be lawful under this Part; and
- (c) in a case to which paragraph (c) of that subhead applies, the purported release shall be void.

### **Explanatory note**

*This is an amended re-enactment of Section 218 of the Companies Act, 1990. The cross-references have been amended in accordance with the new provisions. Furthermore, any incidental payments, in consideration of the transactions specified, otherwise than out of the distributable reserves or the proceeds of a new issue of shares are stated to be unlawful. Previously, only payments otherwise than out of the distributable reserves of the company were stated to be unlawful.*

---

## **Head 43 Effect of company's failure to redeem or purchase**

---

- (1) This head applies to—
- (a) redeemable shares issued after 1 February 1991;
- (b) shares which have been converted into redeemable shares;



- 
- (c) shares which a company has agreed to purchase pursuant to Head 38 of this Part [equivalent of Sections 213, 214 and 215 of the Companies Act, 1990].
- (2) Without prejudice to any other right of the holder of any shares to which this head applies, a company shall not be liable in damages in respect of any failure on its part to redeem or purchase any such shares.
- (3) The court shall not grant an order for specific performance of the terms of redemption or purchase of the shares to which this head applies if the company shows that it is unable to meet the cost of redeeming or purchasing the shares out of profits available for distribution.
- (4) Where at the commencement of the winding-up of a company, any shares to which this head applies have not been redeemed or purchased then, subject to Subheads (5), (6) and (7), the terms of redemption or purchase may be enforced against the company and the shares when so redeemed or purchased under this subhead shall be treated as cancelled.
- (5) Subhead (4) shall not apply if—
- (a) the terms of redemption or purchase provided for the redemption or purchase to take place at a date later than that of the commencement of the winding-up; or
  - (b) during the period beginning with the date on which the redemption or purchase was to have taken place and ending with the commencement of the winding-up, the company could not at any time have lawfully made a distribution equal in value to the price at which the shares were to have been redeemed or purchased.
- (6) There shall be paid in priority to any amount for which the company is liable by virtue of Subhead (4) to pay in respect of any shares—
- (a) all other debts and liabilities of the company other than any due to members in their capacity as such; and
  - (b) if other shares carry rights, whether as to capital or to income, which are preferred to the rights as to capital attaching to the first mentioned shares, any amount due in satisfaction of those preferred rights, but subject as aforesaid, any such amount shall be paid in priority to any amounts due to members in satisfaction of their rights (whether as to capital or income) as members.
- (7) Where by virtue of the application by Part A11, Head 56 [equivalent of Section 284 of the Companies Act, 1963] of the rules of bankruptcy in the winding-up of insolvent companies, a creditor of a company is entitled to payment of any interest only after payment of all other debts of the company, the company's debts and liabilities shall for the purposes of Subhead(6) include the liability to pay that interest.
- Explanatory note**  
*This head is a slightly amended re-enactment of Section 219 of the Companies Act, 1990. The cross-references have been amended in accordance with the new provisions.*
- 
- ### Head 44 Retention and inspection of documents
- 
- (1) Every company which enters into a contract under Head 38 of this Part [equivalent of Sections 213, 214 and 215 of the Companies Act, 1990] shall, until the expiration of ten years after the contract has been fully performed, keep at its registered office a copy of that contract or, if it is not in writing, a memorandum of its terms.
- (2) Every document required to be kept under Subhead (1) shall during business hours (subject to such reasonable restrictions as the company in general meeting may impose, so that not less than 2 hours in each day be allowed for inspection) be open to the inspection of any member.
- (3) In the case of a refusal of an inspection of a document required under Subhead (2), the court may, on the application of a person who has requested an inspection and has been refused, by order require the company to allow the inspection of that document.
- (4) If a company fails to comply with this head, the company and every officer of the company who is in default shall be guilty of a category three offence.
- Explanatory note**  
*This head is an amended re-enactment of Section 222 of the Companies Act, 1990. The reference to PLCs in Subsection (2) has been deleted as these will be dealt with in Pillar B. The cross-references have been amended in accordance with the new provisions.*
-

---

### Head 45 Membership of holding company

---

- (1) Subject to the provisions of this Bill, a company cannot be a member of a company which is its holding company, and any allotment or transfer of shares in a company to its subsidiary shall be void.
- (2) Nothing in this head shall apply where the subsidiary is concerned as personal representative, or where it is concerned as trustee, unless the holding company or a subsidiary thereof is beneficially interested under the trust and is not so interested only by way of security for the purposes of a transaction entered into by it in the ordinary course of a business which includes the lending of money.
- (3) This head shall not prevent a subsidiary which on the 5th day of May, 1959, was a member of its holding company, from continuing to be a member.
- (4) This head shall not prevent a company which, at the date on which it becomes a subsidiary of another company is a member of that other company, from continuing to be a member.
- (5) This head shall not prevent a subsidiary which is a member of its holding company from accepting and holding further shares in the capital of its holding company if such further shares are allotted to it in consequence of a capitalisation by such holding company and if the terms of such capitalisation are such that the subsidiary is not thereby involved in any obligation to make any payment or to give other consideration for such further shares.
- (6) Subject to Subhead (2), a subsidiary which is a member of its holding company shall have no right to vote at meetings of the holding company or any class of members thereof.
- (7) Subject to Subhead (2), this head shall apply in relation to a nominee for a body corporate which is a subsidiary, as if references therein to such a body corporate included references to a nominee for it.
- (8) Where a holding company makes an offer of shares to its members, it may sell, on behalf of a subsidiary, any such shares which the subsidiary could, but for this head, have taken by virtue of shares already held by it in the holding company and pay the proceeds of sale to the subsidiary.

- (9) In relation to a holding company which is a CLG or unlimited company that has no share capital, the reference in this head to shares shall be construed as including a reference to the interests of its members as such, whatever the form those interests take.

#### **Explanatory note**

*This head is based on Section 32 of the Companies Act, 1963.*

---

### Head 46 Holding by subsidiary of shares in its holding company

---

- (1) Notwithstanding Head 45 of this Part [equivalent of Section 32 of the Companies Act, 1963 or Head 37 of Part A5 [equivalent of Section 60 of the Companies Act, 1990], a company may, subject to the provisions of this head, acquire and hold shares in a company which is its holding company.
- (2) The acquisition and holding by a subsidiary under Subhead (1) of shares in its holding company shall be subject to the following conditions—
  - (a) The consideration for the acquisition of such shares shall be provided for out of the profits of the subsidiary available for distribution;
  - (b) Upon the acquisition of such shares and for so long as the shares are held by the subsidiary—
    - (i) the profits of the subsidiary available for distribution shall for all purposes be restricted by a sum equal to the total cost of the shares acquired
    - (ii) the shares shall, for the purposes of the consolidated accounts prepared by the holding company in accordance with Heads 15 and 16 of Part A6 [equivalent of Sections 150 and 152 of the Companies Act, 1963], be treated in the same manner as is required in respect of shares held as treasury shares under Head 33 of this Part [equivalent of Section 43A of the Companies Act, 1983 (inserted by Section 232 (c) of the 1990 Act)],

- (iii) the subsidiary shall not exercise any voting rights in respect of the shares and any purported exercise of those rights shall be void.
- (3) A contract for the acquisition (whether by allotment or transfer) by a subsidiary, of shares in its holding company shall not be entered into without being authorised in advance both by the subsidiary and its holding company and the provisions of Heads 38 to 39 of this Part [equivalent of Sections 212 to 217 of the Companies Act, 1990] shall apply, with the necessary modifications to the granting, variation, revocation and release of such authority.
- (4) For the purposes of this head, a subsidiary's profits available for distribution shall not include the profits attributable to any shares in the subsidiary for the time being held by the subsidiary's holding company, so far as they are profits for the period before the date on or from which the shares were acquired by the holding company.
- (5) This head shall not apply to shares held by a subsidiary in its holding company in the circumstances permitted by Head 45 of this Part [equivalent of Section.32 of Companies Act, 1963].

**Explanatory note**

*This head is an amended re-enactment of Section 224 of the Companies Act, 1990. The cross-references have been amended in accordance with the new provisions. Section 224(6), which refers to the Insurance Act 1990, has not been included.*

---

## Head 47 Civil liability for improper purchase in holding company

---

- (1) Where the winding-up of a company which has acquired shares in its holding company in accordance with Head 46 of this Part [equivalent of Section 224 of the Companies Act, 1990] commences within six months after such acquisition and the company is at the time of the commencement of the winding-up, unable to pay its debts (taking into account the contingent and prospective liabilities), the court may, on the application of a liquidator, creditor, employee or contributory of the company, subject to Subhead (2), declare that the directors of the company shall be jointly and severally liable to repay to the company the total amount paid by the company for the shares.

- (2) Where it appears to the court that any person in respect of whom a declaration has been sought under Subhead (1) believed on reasonable grounds that the said purchase was in the best interests of the company, the court may relieve him, either wholly or in part, from personal liability on such terms as it may think fit.

**Explanatory note**

*This head is a slightly amended re-enactment of Section 225 of the Companies Act, 1990. The cross-reference in Subhead (1) has been amended in accordance with the new provisions.*

---

## Head 48 Return to be made to Registrar

---

- (1) Every company which has acquired shares pursuant to this Part shall, within 28 days after delivery to the company of those shares, deliver to the Registrar for registration, a return in the prescribed form stating, with respect to shares of each class purchased, the number and nominal value of those shares and the date on which they were delivered to the company.
- (2) Particulars of shares delivered to the company on different dates and under different contracts may be included in a single return to the Registrar.
- (3) If a company fails to comply with the requirements of this head, the company and every officer who is in default shall be guilty of a category three offence.

**Explanatory note**

*This head is an amended re-enactment of Section 226 of the Companies Act, 1990. Furthermore, Section 226(2) has not been included as it relates to PLCs and the subsections have been amended accordingly.*

# Chapter 7

## Distributions

### Head 49 Profits available for distribution

- (1) A company shall not make a distribution (as defined by Head 53 (2) of this Part [equivalent of Section 51 of the Companies (Amendment) Act, 1983]) except out of profits available for the purpose.
- (2) For the purposes of this Part, a company's profits available for distribution are its accumulated, realised profits, so far as not previously utilised by distribution or capitalisation, less its accumulated, realised losses, so far as not previously written off in a reduction or reorganisation of capital duly made.
- (3) A company shall not apply an unrealised profit in paying up debentures or any amounts unpaid on any of its issued shares.
- (4) For the purposes of Subheads (2) and (3) -
  - (a) where the company prepares Companies Act individual accounts, any provision (within the meaning of the First Schedule to Part A6 [equivalent to the Sixth Schedule to the Companies Act, 1963] or paragraph 79 of the First Schedule to Part A6 [equivalent of paragraph 70 of the Schedule to the Companies (Amendment) Act, 1986]), other than one in respect of any diminution in value of a fixed asset appearing on a revaluation of all the fixed assets or of all the fixed assets other than goodwill of the company, shall be treated as a realised loss; and
  - (b) where the company prepares IFRS individual accounts, a provision of any kind shall be treated as a realised loss.
- (5) Subject to Head 51 of this Part [equivalent of Section 49(8) of the Companies (Amendment) Act, 1983], any consideration by the directors of a company of the value at any particular time of any fixed asset of the company shall be treated as a revaluation of that asset for the purposes of determining whether any such revaluation of the company's fixed assets as is required for the purposes of the exception from Subhead (4) has taken place at that time, but where any such assets which have not actually been revalued are treated as revalued for those purposes by virtue of this subhead, that exception shall only apply if the directors are satisfied that their aggregate value at the time in question is not less than the aggregate amount at which they are for the time being stated in the company's individual accounts.
- (6) If, on the revaluation of a fixed asset, an unrealised profit is shown to have been made and on or after the revaluation, a sum is written off or retained for depreciation of that asset over a period, then an amount equal to the amount by which that sum exceeds the sum which would have been so written off or retained for depreciation of that asset over that period if that profit had not been made, shall be treated for the purposes of Subheads (2) and (3) as a realised profit made over that period.
- (7) Where there is no record of the original cost of an asset of a company (whether acquired before, on or after the appointed day) or any such record cannot be obtained without unreasonable expense or delay, then, for the purposes of determining whether the company has made a profit or loss in respect of that asset, the cost of the asset shall be taken to be the value ascribed to it in the earliest available record of its value made on or after its acquisition by the company.
- (8) Where the directors of a company are, after making all reasonable enquiries, unable to determine whether a particular profit made before the appointed day is realised or unrealised, they may treat the profit as realised and where, after making such enquiries they are unable to determine whether a particular loss so made is realised or unrealised, they may treat the loss as unrealised.
- (9) In this head "fixed asset" includes any other asset which is not a current asset.

(10)

- (a) Subject to paragraph (c), the profits or losses attributable to any shares in a subsidiary for the time being held by a holding company or any other of its subsidiaries shall not, for any purpose, be treated in the holding company's accounts as realised profits or losses so far as they are profits or losses for the period ("the pre-acquisition period") before the date on or as from which the shares were acquired by the company or any of its subsidiaries;
- (b) For the purpose of determining whether any profits or losses are to be treated as profits or losses for the pre-acquisition period, the profit or loss for any financial year of the subsidiary may, if it is not practicable to apportion it with reasonable accuracy by reference to the facts, be treated as accruing from day to day during that year and be apportioned accordingly.;
- (c) The profits or losses attributable to any shares in a subsidiary may be treated in a manner otherwise than in accordance with paragraph (a) where such treatment is approved by the validation procedure.

**Explanatory note**

*This head is a slightly amended re-enactment of Section 45 of the Companies (Amendment) Act, 1983. The cross-references have been amended in accordance with the new provisions.*

*Subhead (10) inserts Section 149(5) of the Companies Act, 1963, replacing auditor certification with the validation procedure.*

---

**Head 50    Development costs shown as an asset of a company to be set off against company's distribution profits**

---

- (1) Subject to the following provisions of this head, where development costs are shown as an asset in a company's accounts, any amount shown in respect of those costs shall be treated for the purposes of the Head 49 of this Part [equivalent of Section 45 of Companies (Amendment) Act, 1983] as a realised loss.
- (2) Subhead (1) shall not apply to any part of the amount aforesaid representing an unrealised profit made on revaluation of those costs.

(3) Subhead (1) shall not apply if -

- (a) there are special circumstances justifying the directors of the company concerned in deciding that the amount mentioned in respect thereof in the company's accounts shall not be treated as required by that subhead; and
- (b) it is stated -
  - (i) where the company prepares Companies Act individual accounts, in the note to the accounts required by paragraph 22 (2) of Section B, Part II of Schedule 1 to Part A6 [equivalent of paragraph 8(2) of the Schedule to the Companies (Amendment) Act 1986], or
  - (ii) where the company prepares IFRS individual accounts, in any note to the accounts,

that that amount is not to be so treated, and the note explains the circumstances relied upon to justify the decision of the directors to that effect.

**Explanatory note**

*This head is an amended re-enactment of Section 45A of the Companies (Amendment) Act, 1983, as inserted by Section 20 of the Companies (Amendment) Act, 1986. Section 1(b) has not been included here as it relates to investment companies.*

*The cross-reference in Subsection (3) has also been amended in accordance with the new provisions.*

---

**Head 51    The relevant accounts**

---

- (1) Subject to the following provisions of this head, the question whether a distribution may be made by a company without contravening Head 49 of this Part [equivalent of Section 45 of the Companies (Amendment) Act, 1983], Part B2, Head 57 [equivalent of Section 46 of the Companies (Amendment) Act, 1983] or Part B9, Head 40 [equivalent of Section 47 of the Companies (Amendment) Act, 1983] and the amount of any distribution which may be so made shall be determined by reference to the relevant items as stated in the relevant head accounts, and the relevant shall be treated as contravened in the case of a distribution unless the requirements of this head about those accounts are complied with in the case of that distribution.



## Part A3 - Share Capital

---

- (2) The relevant accounts for any company in the case of any particular distribution are—
- (a) except in a case falling within paragraph (b) or (c), the last accounts, that is to say, the accounts prepared in accordance with the requirements of Part A6, (and, where applicable, in accordance with the requirements of Article 4 of the IAS Regulation) which were laid in respect of the last preceding financial year in respect of which accounts so prepared were laid;
  - (b) if that distribution would be found to contravene the relevant head if reference were made only to the last annual accounts, such accounts (interim accounts) as are necessary to enable a reasonable judgement to be made as to the amounts of any of the relevant items;
  - (c) if that distribution is proposed to be declared during the company's first financial year or before any accounts are laid in respect of that financial year, such accounts (initial accounts) as are necessary as aforesaid.
- (3) The following requirements apply where the last accounts of a company constitute the only relevant accounts in the case of any distribution, that is to say—
- (a) those accounts must have been properly prepared or have been so prepared subject only to matters which are not material for the purpose of determining, by reference to the relevant items as stated in those accounts, whether that distribution would be in contravention of the relevant head;
  - (b) save where Part A6, Head 66(2) [equivalent of Section 32(2) of the Companies Amendment (No. 2) Act, 1999] applies, the auditors of the company must have made a report under Part A6, Head 92 [revision of Section 193 (2) of the Companies Act, 1990] in respect of those accounts;
  - (c) if, by virtue of anything referred to in that report, the report is not an unqualified report, the auditors must also have stated in writing (either at the time the report was made or subsequently) whether, in their opinion, that thing is material for the purpose of determining, by reference to the relevant items as stated in those accounts, whether that distribution would be in contravention of the relevant head; and
  - (d) a copy of any such statement must have been laid before the company in general meeting.
- (4) A statement under Subhead (3) (c) suffices for the purposes of a particular distribution, not only if it relates to a distribution which has been proposed, but also if it relates to distributions of any description which include that particular distribution, notwithstanding that at the time of the statement it has not been proposed.
- (5) For the purpose of determining by reference to particular accounts whether a proposed distribution may be made by a company, this head shall have effect, in any case where one or more distributions have already been made in pursuance of determinations made by reference to those same accounts, as if the amount of the proposed distribution was increased by the amount of the distributions so made.
- (6) Where Subhead (3)(a) applies to the relevant accounts, Head 49 of this Part [equivalent of Section 45(5) of the Companies (Amendment) Act, 1983] shall not apply for the purposes of determining whether any revaluation of the company's fixed assets affecting the amount of the relevant items as stated in those accounts has taken place, unless it is stated in a note to those accounts—
- (a) that the directors have considered the value at any time of any fixed assets of the company without actually revaluing those assets;
  - (b) that they are satisfied that the aggregate value of those assets at the time in question is or was not less than the aggregate amount at which they are or were for the time being stated in the company's accounts; and

- (c) that the relevant items affected are accordingly stated in the relevant accounts on the basis that a revaluation of the company's fixed assets which by virtue of Head 49 of this Part [equivalent of Section 45(5) of the Companies (Amendment) Act, 1983] included the assets in question took place at that time.

(7) In this head—

“properly prepared” means, in relation to any accounts of a company, that the following conditions are satisfied in relation to those accounts, that is to say—

that they have been properly prepared in accordance with the provisions of Part A6;

“relevant item” means any of the following, that is to say profits, losses, assets, liabilities, provisions (within the meaning of the First Schedule to Part A6 [equivalent of the Sixth Schedule to the Companies Act, 1963]), share capital and reserves;

“unqualified report” in relation to any accounts of a company, means a report without qualification, to the effect that in the opinion of the person making the report, the accounts have been properly prepared, and for the purposes of this head, accounts are laid if Part A6 Head 12 [equivalent of Section 148 of the Companies Act, 1963] has been complied with in relation to those accounts.

- (8) For the purpose of the definition of “properly prepared” in Subhead 7 of this head, and in the First Schedule to Part A6 [equivalent of the Sixth Schedule to the Companies Act, 1963] shall be deemed to have effect in relation to interim and initial accounts with such modifications as are necessary by reason of the fact that the accounts are prepared otherwise than in respect of a financial year.

**Explanatory note**

*This head is an amended re-enactment of Section 49 of the Companies (Amendment) Act, 1983. Sections 49(5) and 49(6) have not been included as they apply only to PLCs. The references to those subsections in the new Subhead (6) have also been deleted as a result. The numbering of the subheads has also been changed where necessary.*

---

**Head 52 Consequences of making unlawful distribution**

---

- (1) Where a distribution or part of one, made by a company to one of its members, is made in contravention of the provisions of this Part and at the time of the distribution, he knows or has reasonable grounds for believing that it is so made, he shall be liable to repay it or that part, as the case may be, to the company or (in the case of a distribution made otherwise than in cash) to pay the company a sum equal to the value of the distribution or part at that time.
- (2) The provisions of this head are without prejudice to any obligation imposed apart from this head on a member of a company to repay a distribution unlawfully made to him.

**Explanatory note**

*This head is a re-enactment of Section 50 of the Companies (Amendment) Act, 1983.*

---

**Head 53 Ancillary provisions**

---

- (1) Where immediately before the appointed day, a company is authorised by any provision of its constitution to apply its unrealised profits in paying up, in full or in part, unissued shares to be allotted to members of the company as fully or partly paid bonus shares, that provision shall, subject to any subsequent alteration of the constitution, continue to be construed as authorising those profits to be so applied after the appointed day.
- (2) In this Part “distribution” means every description of distribution of a company's assets to members of the company, whether in cash or otherwise, except distributions made by way of—
- (a) an issue of shares as fully or partly paid bonus shares;
  - (b) the redemption of preference shares pursuant to Head 40 of this Part [equivalent of Section 65 of the Companies Act, 1963] out of the proceeds of a fresh issue of shares made for the purposes of redemption;

## Part A3 - Share Capital

---

- (c) the redemption or purchase of shares pursuant to Heads 36 to 48 of this Part [equivalent of Part XI of the Companies Act, 1990] out of the proceeds of a fresh issue of shares made for the purposes of the redemption or purchase and the payment of any premium out of the company's share premium account on a redemption pursuant to Head 38 (12) of this Part [equivalent of Section 220 of the Companies Act, 1990];
  - (d) the reduction of share capital by extinguishing or reducing the liability of any of the members on any of its shares in respect of share capital not paid up or by paying off paid up share capital; and
  - (e) a distribution of assets to members of the company on its winding-up.
- (3) In this Part "capitalisation", in relation to any profits of a company, means any of the following operations, whether carried out before, on or after the appointed day, that is to say, applying the profits in wholly or partly paying up unissued shares in the company to be allotted to members of the company as fully or partly paid bonus shares or transferring the profits to the capital redemption reserve fund.
- (4) In this Part reference to profits and losses of any description are references respectively to profits and losses of that description made at any time, whether before, on, or after the appointed day and, except where the context otherwise requires, are references respectively to revenue and capital profits and revenue and capital losses.
- (5) The provisions of this Part are without prejudice to any enactment or rule of law or any provision of a company's constitution restricting the sums out of which, or the cases in which, a distribution may be made.
- (6) Where a company makes a distribution of or including a non-cash asset and any part of the amount at which that asset is stated in the accounts relevant for the purposes of the distribution in accordance with this chapter represents an unrealised profit, that profit is to be treated as a realised profit -
- (a) for the purpose of determining the lawfulness of the distribution in accordance with this chapter (whether before or after the distribution takes place); and
  - (b) for the purpose of the application of the First Schedule to Part A6, [equivalent of Schedule to Companies (Amendment) Act, 1986] only realised profits to be included in or transferred to the profit and loss account in relation to anything done with a view to or in connection with the making of that distribution.

### **Explanatory note**

*This head is an amended re-enactment of Section 51 of the Companies (Amendment) Act, 1983. References to the memorandum and articles of the company have been replaced by references to the "constitution" of the company. Section 51(6) of the Companies Act, 1983 has not been included as it applies only to PLCs.*

*Subhead (6) is new. It is taken from Section 276 of the UK Companies Act, 1985.*

---

## Head 54 Procedural matters

---

Save to the extent that the constitution of a company provides otherwise,

- (a) the company may, by ordinary resolution, declare dividends but no dividend shall exceed the amount recommended by the directors;
- (b) The directors may from time to time—
  - (i) pay to the members such interim dividends as appear to the directors to be justified by the profits of the company, subject to Head 49 of this Part [equivalent of Section 45 of the Companies (Amendment Act), 1983]
  - (ii) before recommending any dividend, set aside out of the profits of the company such sums as they think proper as a reserve or reserves which shall, at the discretion of the directors, be applicable for any purpose to which the profits of the company may be properly applied, and pending such application may, at the like discretion either be employed in the business of the company or be invested in such investments as the directors may lawfully determine,
  - (iii) without placing the same to reserve, carry forward any profits which they may think prudent not to distribute;

- (c) Subject to the rights of persons, if any, entitled to shares with special rights as to dividend, all dividends shall be declared and paid according to the amounts paid or credited as paid on the shares in respect whereof the dividend is paid, but no amount paid or credited as paid on a share in advance of calls should be treated for the purposes of this regulation as paid on the share. All dividends shall be apportioned and paid proportionally to the amounts paid or credited as paid on the shares during any portion or portions of the period in respect of which the dividend is paid, but if any share is issued on terms providing that it shall rank for a dividend as from a particular date, such share shall rank for dividend accordingly;
- (d) The directors may deduct from any dividend payable to any member, all sums of money (if any) immediately payable by him to the company on account of calls or otherwise in relation to the shares of the company;
- (e) Any general meeting declaring a dividend or bonus may direct payment of such dividend or bonus wholly or partly by the distribution of specific assets and in particular paid up shares, debentures or debenture stock of any other company or in any one or more of such ways, and the directors shall give effect to such resolution, and where any difficulty arises in regard to such distribution, the directors may settle the same as they think expedient and in particular may issue fractional certificates and fix the value for distribution of such specific assets or any part thereof and may determine that cash payments shall be made to any members upon the footing of the value so fixed, in order to adjust the rights of all the parties, and may vest any such specific assets in trustees as may seem expedient to the directors;
- (f) Any dividend, interest or other moneys payable in cash in respect of any shares may be paid—
- (i) by cheque or negotiable instrument sent through the post directed to or otherwise delivered to the registered address of the holder, or where there are joint holders, to the registered address of that one of the joint holders who is first named on the register or to such person and to such address as the holder or the joint holders may in writing direct, or
- (ii) by agreement with the payee, by direct transfer to a bank account nominated by the payee,
- Any such cheque or negotiable instrument shall be made payable to the order of the person to whom it is sent.
- Any one of two or more joint holders may give effectual receipts for any dividends, bonuses or other moneys payable in respect of the shares held by them as joint holders, whether paid by cheque or negotiable instrument or direct transfer;
- (g) No dividend shall bear interest against the company;
- (h) For the purposes of this head “the directors” means the directors for the time being of the company or the directors present at a meeting of the board of directors and includes any person occupying the position of director by whatever name called.

### **Explanatory note**

*This head is a new head. The head imports, in a slightly amended manner, various provisions of the Model Regulations of Part 1 of Table A of the First Schedule to the Companies Act, 1963.*

*Paragraph (a) imports, in a slightly amended manner, Model Regulation 116 of Part 1 of Table A of the First Schedule to the Companies Act, 1963. The words “...in general meeting” have been replaced by “...by ordinary resolution”.*

*Paragraph (b)(i) imports, in a slightly amended manner, Model Regulation 117 of Part 1 of Table A of the First Schedule to the Companies Act, 1963. It is expressed to be subject to the provisions on profits available for distribution contained in Part A3, Head 49 [Section 45 of the Companies (Amendment) Act, 1983]. References to the directors of the company have also been amended to allow for the possibility of a single-director private company.*

## Part A3 - Share Capital

---

Paragraph (b)(ii) imports, in a slightly amended manner, Model Regulation 119 of Part 1 of Table A of the First Schedule to the Companies Act, 1963.

Paragraph (c) imports Model Regulation 120 of Part 1 of Table A of the First Schedule to the Companies Act, 1963.

Paragraph (d) imports, in a slightly amended manner, Model Regulation 121 of Part 1 of Table A of the First Schedule to the Companies Act, 1963.

Paragraph (e) imports Model Regulation 122 of Part 1 of Table A of the First Schedule to the Companies Act, 1963.

Paragraph (f) imports Model Regulation 123 of Part 1 of Table A of the First Schedule to the Companies Act 1963.

Paragraph (g) imports Model Regulation 124 of Part 1 of Table A of the First Schedule to the Companies Act, 1963.

---

### Head 55 Bonus issues

---

- (1) Save to the extent that the constitution of a company provides otherwise—
  - (a) The company in general meeting may, upon the recommendation of the directors, resolve that any sum for the time being standing to the credit of any of the company's reserves (including any capital redemption reserve fund or share premium account) or to the credit of profit and loss account be capitalised and applied on behalf of the members who would have been entitled to receive the same if the same had been distributed by way of dividend and in the same proportions either in or towards paying of amounts for the time being unpaid on any shares held by them respectively or in paying up in full on issued shares or debentures of the company of a nominal value equal to the sum capitalised (such shares or debentures to be allotted and distributed credited as fully paid up to and amongst such holders and the proportions aforesaid) or partly in one way and partly in another, so however, that the only purpose for which sum, standing to the credit of the capital redemption reserve fund or the share premium account, shall be applied and shall be thus permitted by Head 6 of this Part [equivalent of Sections 62 and 64 of the Companies Act, 1963];
  - (b) The company in general meeting may on the recommendation of the directors resolve that it is desirable to capitalise any part of the amount for the time being standing to the credit of any of the company's reserve accounts or to the credit of the profit and loss account which is not available for distribution, by applying such sum in paying up in full unissued shares to be allotted as fully paid bonus shares, to those members of the company who would have been entitled to that sum if it were distributed by way of dividend (and in the same proportions), and the directors shall give effect to such resolution;
  - (c) Whenever a resolution is passed in pursuance of Subhead (1) or (2), the directors shall make all appropriations and applications of the undivided profits resolved to be capitalised thereby and all allotments and issues of fully paid shares or debentures, if any, and generally shall do all acts and things required to give effect thereto with full power to the directors to make such provision as they shall think fit for the case of shares or debentures becoming distributable in fractions (and, in particular, without prejudice to the generality of the foregoing, to sell the shares or debentures represented by such fractions and distribute the net proceeds of such sale amongst the members otherwise entitled to such fractions in due proportions) and also to authorise any person to enter, on behalf of all the members concerned, into an agreement with the company providing for the allotment to them, respectively credited as fully paid up, of any further shares or debentures to which they may become entitled on such capitalization or, as the case may require, for the payment by the application thereto of their respective proportions of the profits resolved to be capitalised of the amounts remaining unpaid on their existing shares and any agreement made under such authority shall be effective and binding on all such members.
- (2) Where the directors have resolved to approve a bona fide revaluation of all the fixed assets of the company or all the assets of company of a particular class, the net capital surplus in excess of the previous book value of the assets thereby arising may be credited by the directors to undenominated capital or used in paying up unissued shares of the company to be issued to members as fully paid bonus shares.



**Explanatory note**

*This head is a new head. Subhead (1) imports, in a slightly amended manner, various provisions of the Model Regulations of Part 1 of Table A of the First Schedule to the Companies Act, 1963. References to members and directors have been changed to "member or members" and "director or directors" to take account of the possibility of the single-member private company and single-director private company. The cross-references contained in those provisions have been changed in accordance with the new provisions.*

*Paragraphs (a), (b) and (c) imports, in a slightly amended manner, Regulations 130, 130A and 131 of Part 1 of Table A of the First Schedule to the Companies Act, 1963.*

*Subhead (2) is an amended version of Section 119(6) of the Companies Act 1963, repealed in 1983, but re-enacted for clarity.*

## Chapter 8

### Investments in companies by trustees of designated investment funds

#### Head 56 Trustees of designated investment funds required to enter into specified agreement prior to investing moneys of fund in companies

(1) A trustee of a designated investment (as defined in the Designated Investment Funds Act, 1985) or a manager acting on his behalf shall not invest in shares of a company and a company shall not accept in payment for such shares, monies from the fund unless such trustee or manager on the one hand and the company on the other hand, have previously entered into an agreement described in Subhead (2) of this head and complying with the requirements of Subhead (3) of this head.

(2) The agreement referred to in Subhead (1) of this head is a written agreement whereby the company which is a party to the agreement agrees as follows—

(a) that when-

- (i) shares of the company have been issued, and
- (ii) the company is satisfied that a person is a participant in the relevant designated investment fund and that that person is, under the terms and conditions subject to which subscriptions to the fund were accepted, entitled to require the trustee of the fund to have any such shares transferred into the name of the person,

the company will, on an application being made to it in that behalf, either by the trustee of such fund or by or on behalf of such person or his personal representative, register such shares in the name of such person, or, where appropriate, his personal representative;

(b) that, for the purpose of enabling such registrations to be effected, the company will take such steps as may be necessary under the this Bill, to make such alterations (if any) in its constitution as are required to enable it to effect such registrations in accordance with law.

(3) An agreement required to be entered into by Subhead (1) of this head shall-

- (a) specify the number of participants in the relevant designated investment fund;
- (b) specify the nature of the alterations (if any) in the constitution of the company which is a party to the agreement which are required to be made if the agreement is to be carried into effect; and
- (c) have attached thereto a copy of the resolution, certified by the proper officer of such company, required by Subhead (4) of this head to have been passed prior to the making of the agreement.

(4)

- (a) A company may not enter into an agreement required to be entered into by Subhead (1) of this head unless previously-
  - (i) there has been passed at a general meeting of the company, a special resolution-
  - (I) referring to and approving of the terms of the agreement, and
  - (II) making any necessary alterations in the company's constitution or such other provisions, being a matter required to be the subject of or effected by such a resolution, required to enable registrations to be effected in accordance with the agreement, or

- (ii) in case such a company is so authorised by its articles of association, a resolution so referring and making and giving such an approval and making such necessary alterations (if any) has been signed by all the members of the company (or in the case of members who are bodies corporate by their duly appointed representatives) for the time being entitled to attend and vote on such a resolution at such a general meeting;
- (b) Notwithstanding anything contained in the Companies Acts, 1963 to 1985, or in the articles of association of any company, the following provisions shall apply as regards a resolution passed in compliance with the requirements of paragraph (a) of this subhead—
  - (i) the resolution shall not be capable of being amended or revoked,
  - (ii) a provision of the resolution which is an alteration or other provision referred to in clause (II) of Subhead (4) (a) (i) or subparagraph (ii) of Subhead (4) (a) of this head shall not come into operation until after the agreement approved of by the resolution has been entered into,
  - (iii) such a provision shall come into operation if and only if, its coming into operation is required if registrations are to be effected in accordance with the aforesaid agreement, and
  - (iv) subject to subparagraphs (ii) and (iii) of this paragraph, such a provision shall come into operation on such day as the directors of the company concerned shall fix.
- (5) The date of a resolution referred to in Subhead (4) (a) (ii) of this head shall, for the purposes of this head, be the latest date on which it was signed by a member of the company concerned and where such a resolution purports to have been signed on a particular date, then unless the contrary is shown, it shall for the purposes of this head be treated as having been signed on that date by the person by whom it purports to have been signed.
- (6) An agreement which is required to be entered into by Subhead (1) of this head and in relation to which the other requirements of this head have been complied with shall be binding on the company which is a party thereto, and without prejudice to any other right thereunder the agreement shall, in so far as it provides for the registration by such company of its shares in the name of a participant in the relevant designated investment fund, be enforceable against such company by that participant.
- (7) Where it appears to the Minister to be necessary or expedient for the purpose of enabling this head to have full effect, the Minister may, in relation to any provision contained in this Bill, for that purpose by regulation provide for—
  - (a) its application, with such modification or adaptation as shall be specified in the regulation, to private companies of a class or description so specified; or
  - (b) its non-application to private companies of such a class or description; or
  - (c) its amendment otherwise.

**Explanatory note**

*This head is a re-enactment of Sections 6(1)-(7) of the Designated Investment Funds Act, 1985.*



---

# Part A4 – Corporate Governance

## Contents of Part

---

### Chapter 1 – Preliminary and Interpretation

1 Interpretation

### Chapter 2 – Directors and Secretaries

2 Directors

3 Secretary

4 Prohibition on corporation being a director

5 Prohibition on minor being a director or secretary

6 Prohibition on undischarged bankrupts acting as director or secretary

7 Examination as to solvency status.

8 Avoidance of acts done by person in dual capacity as director and secretary

9 Validity of acts of a director or secretary

10 Share qualifications of directors

11 Company to have director resident in the State

12 Exceptions to requirement for resident director

13 Limitation on number of directorships

14 Appointment of directors

15 Appointment of directors to be voted on individually

16 Rotation of Directors

17 Removal of directors

18 Vacation of office

19 Register of directors and secretaries

20 Particulars to be shown on all business letters of the company

21 Entitlement to notify Registrar of changes in directors and secretaries where company fails

22 Provisions as to assignment of office by directors

### Chapter 3 – Service Contracts and Remuneration

23 Inspection of director's service contracts

24 Remuneration of directors

25 Prohibition of tax-free payments to directors

### Chapter 4 – Proceedings of Directors

26 General power of management and delegation

27 Managing director

28 Meetings of directors and committees of directors

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

30 Counting of a director in the quorum and voting at a meeting where a director is appointed to hold office or a place of profit under the company

31 Signing, drawing, acceptance, endorsement or other execution of negotiable instruments and receipts

32 Alternate directors

33 Minutes of proceedings of meetings of directors

34 Audit committees

### Chapter 5 - Members

35 Definition of member

36 Register of members

37 Provisions as to entries in register of members in relation to bearer shares

38 Inspection of register

39 Power to alter maximum inspection etc. charges

40 Trusts not to be entered on register

41 Register to be evidence

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

43 Transfer of shares in management companies

44. Rectification of register

45. Power to close register



## Part A4 - Corporate Governance

---

### **Chapter 6 – General Meetings and Resolutions**

- 46 Annual general meeting
- 47 The location and means for holding general meetings
- 48 Extraordinary general meetings
- 49 Convening of extraordinary general meeting by members
- 50 Power of court to order a meeting
- 51 Persons entitled to notice of general meetings
- 52 Notice of general meetings
- 53 Quorum
- 54 Proxies
- 55 Form of proxy
- 56 Representation of bodies corporate at meetings of companies and of creditors
- 57 The business of the annual general meeting
- 58 Proceedings at general meetings
- 59 Votes of members
- 60 Right to demand poll
- 61 Voting on poll
- 62 Resolutions
- 63 Resolutions passed at adjourned meetings
- 64 Unanimous written resolutions
- 65 Majority written resolutions
- 66 General meetings of single-member companies
- 67 Application of this Part to class meetings
- 68 Registration of, and obligation of company to supply copies of, certain resolutions and agreements
- 69 Minutes of proceedings of meetings of company
- 70 Inspection of minute books

### **Chapter 7 – Validation Procedure**

- 71 Validation procedure
- 72 Remedy in case of oppression

### **Chapter 8 – Form of Registers, Minute Books and Books of Account**

- 73 Form of registers, minute books and books of account
- 74 Use of computers etc. for certain company records

## Part A4 – Corporate Governance

---

### Chapter 1

#### Preliminary and Interpretation

---

##### Head 1 Interpretation

---

In this Part, “director” includes any person occupying the position of director by whatever name called.

***Explanatory note***

*This head is a new head. It has been introduced in accordance with the view of the Company Law Review Group for clarification purposes. This interpretation makes it clear that the term “director” applies to all persons appointed to the position of director, including where the director’s position is named differently.*

# Chapter 2

## Directors and Secretaries

### Head 2 Directors

Every company shall have at least one director.

#### **Explanatory note**

*This head is an amended re-enactment of Head 174 of the Companies Act 1963. The head was amended to allow private companies to have only one director in accordance with the recommendations of the First Report of the Company Law Review Group.*

### Head 3 Secretary

- (1) Every 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) The secretary shall be appointed by the directors 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 shall have a duty to ensure that the person appointed as secretary has the skills necessary to discharge his or her statutory duties and such other duties as may be delegated to the secretary by the directors.
- (5) Where a company has only one director, that person may not also hold the office of secretary of that company.

#### **Explanatory note**

*This head is a new head. The head is substantially taken from Section 175 of the Companies Act, 1963 and Model Regulation 113 of Part I of Table A of the First Schedule to the Companies Act, 1963. Further provisions have been added in accordance with the views of the Company Law Review Group.*

*Subheads (1) and (2) are re-enactments of Sections 175(1) and 175(2) of the Companies Act, 1963.*

*Subhead (3) imports Model Regulation 113 of Part I of Table A of the First Schedule to the Companies Act 1963.*

*Subhead (4) is new. This subhead is similar, in substance, to Section 236 of the Companies Act, 1990 which places a similar duty on the directors of a PLC.*

*Subhead (5) is new. This accords with the recommendations of the First Report of the Company Law Review Group that a sole director should not also be the company secretary.*

### Head 4 Prohibition on corporation being a director

- (1) A company shall not have as director of the company a body corporate.
- (2) All acts or things purporting to be made or done by a body corporate as director of any company shall be null and void.

#### **Explanatory note**

*This head is an amended re-enactment of Section 176 of the Companies Act, 1963. All references to the "operative date" have been deleted as obsolete. Furthermore the provision that a body corporate which is a director at the operative date must vacate office has been deleted for the same reason.*

### Head 5 Prohibition on minor being a Director or Secretary

- (1) No person shall be appointed a director or, in the case of an individual, secretary unless he has attained the age of 18 years.
- (2) Where:
  - (a) a person appointed a director of a company before Subhead (1) comes into force has not attained the age of 18 when Subhead (1) comes into force; 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 Subhead (1) comes into force,

that person ceases to be a director on Subhead (1) coming into force and the company must make the necessary consequential alteration in its register of directors and must notify the Registrar of the change.

### **Explanatory note**

*This head is a new head. The head gives effect to the recommendations of the First Report of the Company Law Review Group.*

*The text of Subhead (2) is substantially based on Section 143 of the UK Company Law Reform Bill.*

---

## **Head 6 Prohibition of undischarged bankrupts acting as director or secretary**

---

- (1) Subject to Subhead (2), if any person being an undischarged bankrupt acts as a director or secretary of, or directly or indirectly takes part in or is concerned in the promotion, formation or management of any company except with the leave of the court, he shall be guilty of a category two offence.
- (2) Where a person is convicted of an offence under Subhead (1) he shall be deemed to be subject to a disqualification order from the date of such conviction if he was not, or was not deemed to be, subject to such an order on that date.

### **Explanatory note**

*This head is an amended re-enactment of Section 183 of the Companies Act, 1963, as amended by Section 169 of the Companies Act, 1990. Section 183(3) of the Companies Act, 1963 has been omitted from this head for the reason that this Part is relevant only to private companies. It is included in Pillar B instead.*

*Subhead (1) is a slightly amended re-enactment of Section 183(1) of the Companies Act, 1963. The prohibitions of undischarged bankrupts acting as auditors, liquidators and examiners have been removed and are replicated in the relevant Parts of Pillar A.*

*Subhead (2) is a re-enactment of Section 183(2) of the Companies Act, 1963.*

---

## **Head 7 Examination as to solvency status**

---

- (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 require the director or secretary of the company to produce by a specified date a sworn statement of all relevant facts pertaining to the company director's or company secretary's financial position, both within the State and elsewhere, and, in particular, to any matter pertaining to bankruptcy as at a particular date.
- (2) The court may, on the application of the Director or Corporate Enforcement, require a director or secretary of a company who has made a statement under Subhead (1) to appear before it and answer on oath any question pertaining to the content of the statement.
- (3) The court may, on the application of the Director of Corporate Enforcement, make a disqualification order (as defined in Part A13, [equivalent of Section 159 of the Companies Act, 1990]) against a director or secretary of a company on the grounds that he is an undischarged bankrupt.
- (4) A director or secretary of a company who fails to comply with a requirement under Subhead (1) shall be guilty of a category three offence.

### **Explanatory note**

*This head is an amended re-enactment of Section 183A of the Companies Act, 1963. The section has been extended in its application. It now applies to both secretaries and directors alike.*

*The references to "the Director" have been amended to read "the Director of Corporate Enforcement" in accordance with the view of the Company Law Review Group that this was necessary to enhance clarity by further distinguishing between a company director and the Director of Corporate Enforcement.*

---

## **Head 8 Avoidance of acts done by person in dual capacity as director and secretary**

---

A provision 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

## Part A4 - Corporate Governance

---

acting both as director and as, or in place of, the secretary.

### **Explanatory note**

*This head is a re-enactment of Section 177 of the Companies Act, 1963. The re-enactment of Section 177 renders Model Regulation 114 of Part I of Table A of the First Schedule to the Companies Act, 1963 obsolete as it merely reproduces that section.*

---

## **Head 9 Validity of acts of a director or secretary**

---

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

### **Explanatory note**

*This head is an amended re-enactment of Section 178 of the Companies Act, 1963. The section has been extended in its application. It now applies to both secretaries and directors alike.*

---

## **Head 10 Share qualifications of directors**

---

If the constitution of a company requires a director to hold a specified share qualification, then-

- (a) the office of director of a company shall be vacated if the director does not within 2 months from the date of his appointment or within such shorter time as may be fixed by the constitution, obtain his qualification, or if after the expiration of the said period or shorter time, he ceases at any time to hold his qualification; and
- (b) a person vacating office under this head shall be incapable of being re-appointed director of the company until he has obtained his qualification.

### **Explanatory note**

*This head is, in substance, a re-enactment of Section 180 of the Companies Act, 1963. The form of the section has been changed. Section 180(2) of the Companies Act, 1963 has been deleted for the reason that the bearer of share warrants has no application to private companies. Section 180(5) of the Companies Act, 1963, which provides for a fine where the section has been contravened, has also been deleted.*

---

*Paragraph (a) is a slightly amended re-enactment of Section 180(3) of the Companies Act, 1963. The reference to the articles of the company has been replaced with a reference to the constitution of the company.*

*Paragraph (b) is a re-enactment of Section 180(4) of the Companies Act, 1963.*

---

## **Head 11 Company to have director resident in the State**

---

- (1) Subject to Subhead (2) and Part A4, Head 12 [equivalent of Section 44 of the Companies (Amendment) (No 2) Act, 1999], one, at least, of the directors for the time being of a company shall, on and from the commencement of this head, be a person who is resident in the State.
- (2) Subhead (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—
  - (a) a fine, if any, imposed on the company in respect of an offence under the Companies Acts committed by it; and
  - (b)
    - (i) a fine, if any, 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, and
    - (ii) a penalty, if any, which it has been held liable to pay under Section 1071 or 1073 of the Taxes Consolidation Act, 1997, there shall become payable under the bond to a person nominated for the purpose (“the nominated person”) by the Registrar or the Revenue Commissioners, as appropriate, (or jointly by the Registrar and the Commissioners in the case of both a fine referred to in paragraph (a) and a fine or penalty, or a fine and penalty, referred to in paragraph (b)),



a sum of money for the purposes of that 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.

- (3) The bond referred to in Subhead (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.
- (4) The bond referred to in Subhead (2) shall also provide that, in addition to the sum referred to in that subhead, 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 Subhead (2).
- (5) 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 referred to in Subhead (2) and of all disbursements made by him or her from any such moneys.
- (6) The Minister, after consultation with the Minister for Finance, the Revenue Commissioners and any other person whom, 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 referred to in Subhead (2) 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.
- (7) A copy of the bond referred to in Subhead (2) held by a company shall be appended—
  - (a) in case none of the directors of the company is resident in the State on its incorporation, to the statement required by Part A2, Head 6 [equivalent of Section 3 of the Companies (Amendment) Act, 1982], to be delivered to the Registrar in relation to the company;
  - (b) in case a notification is made under Subhead (8) 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 of the company is resident in the State, to that annual return (unless such a copy has been appended to a notification under Subhead (8) made to the Registrar in that period).
- (8) Without prejudice to anything in Part A4, Head 19 [equivalent of section 195 of the Companies Act, 1963 (as amended by the Companies (Amendment) (No.2) Act, 1999)], 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 the State; and
  - (b) to his or her knowledge, no other director of the company is resident in the State,that person shall, within 14 days after that cessation, notify, in writing, the Registrar of that cessation and the matter referred to in paragraph (b).
- (9) A notification in writing to the Registrar of the matter referred to in Subhead (8)(b) shall not, of itself, be regarded as constituting defamatory matter.
- (10) If a person fails to comply with Subhead (8), 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 Subhead (2) imposed on the company or which it is held liable to pay after that cessation, and 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.
- (11) Any provision of a company's constitution shall be void in so far as it has the effect of prohibiting a person who is resident in the State from being a director of the company.

## Part A4 - Corporate Governance

---

- (12) If Subhead (1) is not complied with, the company concerned and every officer of the company who is in default shall be guilty of a category four offence.
- (13) In this head “director” does not include an alternate director
- (4) A statement referred to in Subhead (5) that is tendered by the applicant shall be deemed to be proof, for the purposes of Subhead (3), that the applicant has such a link.
- (5) The statement mentioned in Subhead (4) is a statement in writing that has been given to the company concerned by the Revenue Commissioners within the period of 2 months ending on the date on which an application is made under Subhead (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.

### **Explanatory note**

*This head is an amended re-enactment of Section 43 of the Companies (Amendment) (No.2) Act, 1999, as amended by Section 54 of the Companies (Auditing and Accounting) Act, 2003. References to the “articles of association” of the company have been replaced by references to the “constitution” of the company. References to the “registrar of companies” have also been replaced by references to the “Registrar”.*

*Section 43(2) of the Companies (Amendment) (No.2) Act, 1999 has been deleted as obsolete. Consequently, any cross-references thereto have been deleted and subsequent provisions have been re-numbered and cross-references thereto amended accordingly.*

*The phrase ‘...being an offence which is prosecutable by the Registrar...’ has been deleted from paragraph (2)(a).*

*Section 43(15) of the Companies (Amendment) (No.2) Act, 1999 has been deleted from the new provision. It will be provided for instead in subsequent provisions relating to the power of the Registrar to strike off companies from the register.*

---

## **Head 12 Exceptions to requirement for resident director**

---

- (1) Subhead (1) of Part A4, Head 11 [equivalent of Section 43 of the Companies Amendment (No.2) Act, 1999] shall not apply in relation to a company in respect of which there is in force a certificate under this head.
- (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 Subhead (5) that is tendered by the applicant shall be deemed to be proof, for the purposes of Subhead (3), that the applicant has such a link.
- (5) The statement mentioned in Subhead (4) is a statement in writing that has been given to the company concerned by the Revenue Commissioners within the period of 2 months ending on the date on which an application is made under Subhead (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 Subhead (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 Subhead (2) has been granted has ceased to have a real and continuous link with any economic activity being carried on in the State, then notwithstanding any obligations as to secrecy or other restrictions upon disclosure of information imposed by or under statute or otherwise, they may give a notice in writing to the Registrar stating that they are of that opinion and such a notice that is received by the Registrar shall constitute information in his or her possession for the purposes of Subhead (6).
- (8) For the purposes of Part A4, Head 11 [equivalent of Section 43 of the Companies Amendment (No.2) Act, 1999], 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—
      - (l) 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.

(9) Notwithstanding Subhead (8)(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 Part A4, Head 11 [equivalent of Section 43 of the Companies Amendment (No.2) Act, 1999], at the relevant time concerned, and

(b) no account shall be taken of the period for the purposes of the aggregate mentioned in Subhead (8)(a)(ii).

(10) For the purposes of Subheads (8) and (9)—

(a) references in this head 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 the end of the day.

**Explanatory note**

*This head is an amended re-enactment of Section 44 of the Companies (Amendment) (No.2) Act, 1999. References to the "registrar of companies" have been replaced by references to the "Registrar".*

*Section 44(11) of the Companies (Amendment) (No.2) Act, 1999 has been deleted as obsolete.*

**Head 13 Limitation on number of directorships**

(1) A person shall not, at a particular time, be a director of more than 25 companies.

(2) In reckoning, for the purposes of Subhead (1), the number of companies of which the person concerned is a director at a particular time the following provisions shall apply—

(a) without prejudice to paragraph (b) or Subhead (4), there shall not be included any of the following companies of which he or she is a director at that time, namely—

(i) a PLC, within the meaning of Part B2 Head 1,

(ii) a public company (within the meaning of Part B2, Head 1

(iii) a company in respect of which a certificate under Part A4, Head 12 [equivalent of Section 44 of the Companies Amendment (No.2) Act, 1999] is in force;

(b) there shall not be included any company of which he or she is a director at that time (not being a time that is before the date of the giving of the certificate or direction referred to hereafter in this paragraph) if—

(i) he or she, 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 head, and

(ii) either—

(I) the Registrar, having considered the said notice and having made such enquiries as he or she thinks fit, certifies in writing, or as the case may be the Minister under Subhead (4) so certifies, that the company is a company falling within one or more of the categories aforesaid, or

(II) the Minister directs, under Subhead (4), that the company is not to be included amongst the

## Part A4 - Corporate Governance

---

- companies that shall be reckoned for the purposes aforesaid;
- (c) there shall be counted as the one company of which he or she is a director at that 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.
- (3) For the purposes of Subhead (2)(b)(ii), the Registrar may accept as sufficient evidence that the company concerned falls within a category of company specified in the Table to this head a statutory declaration, in the prescribed form, to that effect made by an officer of the company or the other person referred to in subhead (2)(b)(i).
- (4) If the Registrar refuses to certify that the company to which a notice under subhead (2)(b) relates is a company falling within a category of company specified in the Table to this head, the company or the person referred to in that subhead 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 category aforesaid; or
- (c) notwithstanding that he or she confirms the decision of the Registrar if—
- (i) the person concerned was a director of the company before [the commencement of Section 45 of the Companies (Amendment)(No.2) Act 1999], and
- (ii) in the opinion of the Minister the inclusion of the company amongst the companies that shall be reckoned for the purposes of Subhead (1), in so far as that Subhead applies to the person concerned, would result in serious injustice or hardship to that person, and
- (iii) the giving of a direction under this Subhead would not operate against the common good, direct that the company is not to be included amongst the companies that shall be reckoned for the purposes of Subhead (1) in so far as that subhead applies to the person concerned.
- (5) A notice referred to in Subhead (2)(b)(i) 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.
- (6) If a person, in contravention of Subhead(1), becomes or remains a director of one or more companies he or she shall be guilty of a category four offence.
- (7) An appointment of a person as a director of a company made after the commencement of this head shall, if it contravenes Subhead (1), be void.
- (8) For the avoidance of doubt—
- (a) each appointment, in excess of the limit (reckoned in accordance with Subheads (2) and (3)) that is provided for by Subhead (1), of a person as a director of a company shall constitute a separate contravention of that subhead;
- (b) an appointment, not in excess of the said limit, of a person as a director of a company shall not, by virtue of this head, 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;
- (c) in determining whether one particular appointment referred to in subhead (7), as distinct from another such appointment, has ceased to have effect by virtue of that subhead or whether a person's remaining in office under one such appointment, as distinct from another such appointment, constitutes an offence under subhead (6), the provisions of this head (other than Subheads (2)(b), (3), (4), (5) and (6)) shall be deemed to have been in operation at the time of the making of that appointment.
- (9) 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 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 the Companies Acts.

**TABLE**

1.	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.
2.	A company referred to in Group the Schedule to Part A10 [equivalent of Second Schedule to the Companies (Amendment) (No.2) Act, 1999.

**Explanatory note**

*This head is an amended re-enactment of Section 45 of the Companies (Amendment) (No.2) Act, 1999. Certain subsections have been deleted. Consequently, any cross-references thereto have been deleted and subsequent provisions have been renumbered and cross-references thereto amended accordingly. References to the “registrar of companies” have been replaced by a reference to the “Registrar”.*

*Section 45(2) of the Companies (Amendment) (No.2) Act, 1999 has been deleted. The concept of the shadow director is only relevant to the imposition of the duties on a person who acts as a director, thus it has no relevance here.*

*Section 45(4) of the Companies (Amendment) (No.2) Act, 1999 has been deleted as obsolete.*

*Section 45(10) of the Companies (Amendment) (No.2) Act, 1999 has also been deleted as obsolete.*

*Section 45(13) of the Companies (Amendment) (No.2) Act, 1999 has not been included. It will be contained in the head equivalent to Section 16 of the Companies (Amendment) Act, 1982.*

---

### Head 14 Appointment of directors

---

- (1) Any purported appointment of a director without that director's consent shall be void.
- (2) Unless the constitution provides otherwise—
  - (a) subject to Subhead (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;

- (b) subsequent directors may be appointed by the members in general meeting, provided that no person other than a director retiring at the meeting shall, unless recommended by the directors, be eligible for election to the office of director at any general meeting unless not less than 3 nor more than 21 days before the day appointed for the meeting there shall have been left at the office notice in writing signed by a member duly qualified to attend and vote at the meeting for which such notice is given, of his intention to propose such person for election and also notice in writing signed by that person of his willingness to be elected;

- (c) the directors shall have power at any time and from time to time to appoint any person to be a director, either to fill a casual vacancy or as an addition to the existing directors, but so that the total number of directors shall not at any time exceed the number, if any, provided for in the constitution. Any director so appointed 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 Part A4, Head No.17 [equivalent of Section 182 of the Companies Act, 1963] and without prejudice to the powers of the directors under Subhead (3) of that head the company in general meeting may appoint any person to be a director either to fill a casual vacancy or as an additional director;

- (f) For the purposes of this head “the directors” means the directors for the time being of the company or the directors present at a meeting of the board of directors and includes any person occupying the position of director by whatever name called.

**Explanatory note**

*This head is new. It is substantially comprised of the Model Regulations in Part I of Table A of the First Schedule to the Companies Act, 1963 relating to the appointment of directors.*



## Part A4 - Corporate Governance

---

*Model Regulations 92-95 of Part I of Table A of the First Schedule to the Companies Act, 1963 have been repealed for private companies in accordance with the recommendations of the First Report of the Company Law Review Group.*

*Model Regulations 97, 98 and 100 of Part I of Table A of the First Schedule to the Companies Act, 1963 have been amended insofar as the references to the retirement of the directors of the company by rotation have been deleted.*

*Model Regulation 99 of Part I of Table A of the First Schedule to the Companies Act, 1963 has not been included for the reason that it repeats Section 182 of the Companies Act, 1963.*

*Subhead (1) is new. It requires a director to consent to his purported appointment and, as such, it is drawn from Section 3(3) of the Companies (Amendment) Act, 1982.*

*Subsection (2)(a) imports, in a slightly amended manner, Model Regulation 75 of Part I of Table A of the First Schedule to the Companies Act, 1963. The reference to the memorandum has been replaced by a reference to the constitution of the company.*

*Subhead (2)(b) imports, in a slightly amended manner, Model Regulation 96 of Part I of Table A of the First Schedule to the Companies Act, 1963. It has been amended insofar as to state that the subhead relates to the appointment of subsequent directors.*

*Subhead (2)(c) imports, in a slightly amended manner, Model Regulation 98 of Part I of Table A of the First Schedule to the Companies Act, 1963. The part of the regulation that refers to the retirement of directors by rotation has been deleted.*

*Subhead (2)(d) imports, in a slightly amended manner, Model Regulation 98 of Part I of Table A of the First Schedule to the Companies Act, 1963. The part of the regulation that refers to the retirement of directors by rotation has been deleted.*

*Subhead (2)(e) imports, in a slightly amended manner, Model Regulation 100 of Table A of the First Schedule to the Companies Act, 1963. The last phrase of the regulation has been deleted as it refers to the retirement of directors by rotation.*

---

### Head 15 Appointment of directors to be voted on individually

---

- (1) At a general meeting of a company, a motion for the appointment of two 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 Subheads (3) and (4), a resolution moved in contravention of this head shall be void, whether or not its being so moved was objected to at the time.
- (3) Subhead (2) shall not be taken as excluding the operation of Part A4, Head 9 [equivalent of Section 178 of the Companies Act, 1963].
- (4) Where a resolution moved in contravention of this head 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 head, a motion for approving a person's appointment or for nominating a person for appointment shall be treated as a motion for his appointment.
- (6) Nothing in this head shall apply to a resolution altering the company's constitution.

#### **Explanatory note**

*This head is a slightly amended re-enactment of Section 181 of the Companies Act, 1963. The reference to the articles of the company in Subsection (6) has been replaced by a reference to the "constitution" of the company.*

---

### Head 16 Rotation of Directors

---

- (1) Unless the constitution provides otherwise at the first annual general meeting of the company all the directors shall retire from office, and at the annual general meeting in every subsequent year, one-third of the directors for the time being, or, if their number is not three or a multiple of three, then the number nearest one-third shall retire from office.

- (2) Unless the constitution provides otherwise the directors to retire in every year shall be those who have been longest in office since their last election but as between persons who became directors on the same day, those to retire shall (unless they otherwise agree among themselves) be determined by lot.
  - (3) Unless the constitution provides otherwise a retiring director shall be eligible for re-election.
  - (4) Unless the constitution provides otherwise the company, at the meeting at which a director retires in manner aforesaid, may fill the vacated office by electing a person thereto, and in default the retiring director shall, if offering himself for re-election, be deemed to have been re-elected, unless at such meeting it is expressly resolved not to fill such vacated office, or unless a resolution for the re-election of such director has been put to the meeting and lost.
- (a) the company must be given not less than 28 days' notice of the intention to move any such resolution except when the directors of the company have resolved to submit it; and
  - (b) on receipt of notice of such an intended resolution, the company shall forthwith send a copy thereof to the director concerned, and the director (whether or not he 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 thereof, 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 mode allowed by this Bill or by the constitution, not less than 21 days before the meeting; and
  - (d) any such resolution passed that does not comply with the foregoing provisions, provided however that 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 paragraph (c) shall be deemed to have been properly given for the purposes of that subhead.

**Explanatory note**

*Subhead (1) imports, in a slightly amended manner, Model Regulation 92 of Part I of Table A of the First Schedule to the Companies Act, 1963.*

*Subhead (2) imports, in a slightly amended manner, Model Regulation 93 of Part I of Table A of the First Schedule to the Companies Act, 1963.*

*Subhead (3) imports, in a slightly amended manner, Model Regulation 94 of Part I of Table A of the First Schedule to the Companies Act, 1963.*

*Subhead (4) imports, in a slightly amended manner, Model Regulation 95 of Part I of Table A of the First Schedule to the Companies Act, 1963.*

---

**Head 17 Removal of Directors**

---

- (1) A company may by ordinary resolution remove a director before the expiration of his period of office notwithstanding anything in its constitution or in any agreement between it and him.
  - (2) Subhead (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 head or to appoint somebody instead of the director so removed at the meeting at which he is removed the following provisions shall apply—
    - (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),
- (4) Subject to Subhead (5), where notice is given of an intended resolution to remove a director under this section and the director concerned makes in relation thereto 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),

## Part A4 - Corporate Governance

and if a copy of the representations is not sent as aforesaid because received too late or because of the company's default, the director may (without prejudice to his right to be heard orally) require that the representations shall be read out at the meeting.

- (5) Copies of the representations need not be sent out as aforesaid, and the representations need not be read out at the meeting as aforesaid 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 head are being abused to secure needless publicity for defamatory matter, and the court may order the company's costs on an application under this head to be paid in whole or in part by the director concerned, notwithstanding that he is not a party to the application.
- (6) A vacancy created by the removal of a director under this head may be filled at the meeting at which he is removed and, if not so filled, may be filled as a casual vacancy.
- (7) A person appointed director in place of a person removed under this head shall be treated, for the purpose of determining the time at which he or any other director is to retire, as if he had become director on the day on which the person in whose place he is appointed was last appointed director.
- (8) Nothing in this head shall be taken as depriving a person removed thereunder of compensation or damages payable to him in respect of the determination of his appointment as director or compensation or damages payable to him in respect of the determination of any appointment terminating with that as director or as derogating from any power to remove a director which may exist apart from this head.

### **Explanatory note**

*This head is an amended re-enactment of Section 182 of the Companies Act, 1963.*

*Subhead (1) is an amended re-enactment of Section 182(1) the Companies Act, 1963. It has been amended insofar as the reference to the articles of the company has been replaced by a reference to the constitution of the company. The reference to private companies has also been deleted as this Part only applies to private companies.*

*Subhead (3) is an amended re-enactment of Section 182(2) of the Companies Act, 1963. The concept of extended notice, similar to that set out in Section 142 of the Companies Act, 1963, has been assimilated into this subhead.*

*Subhead (3)(d) is a re-enactment of Section 142(b) of the Companies Act, 1963.*

*Subheads (4) - (8) are re-enactments of Sections 182(3) - (7) of the Companies Act, 1963.*

---

## Head 18 Vacation of office

---

- (1) The office of director shall be vacated if-
  - (a) the director is adjudged 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.
- (2) Unless the constitution provides otherwise, the office of director shall be vacated if the director—
  - (a) resigns his office by notice in writing to the company; or
  - (b) becomes of unsound mind; or
  - (c) where, following and during the currency of a restriction order, the directors resolve that his office be vacated; or
  - (d) is sentenced to a term of imprisonment (actual or suspended) following conviction of an indictable offence; or
  - (e) is for more than 6 months, absent without the permission of the directors, from meetings of the directors held during that period; or
  - (f) For the purposes of this head "the directors" means the directors for the time being of the company or the directors present at a meeting of the board of directors and includes any person occupying the position of director by whatever name called.

### **Explanatory note**

*This head is new. The head substantially reproduces Model Regulation 91 of Part I of Table A of the First Schedule to the Companies Act, 1963. Other subsections which are referred to in this head include Section 183 of the Companies Act 1963, Section 150 of the Companies Act, 1990 and Section 160 of the Companies Act, 1990. It must be noted that these provisions are themselves re-enacted in other provisions and reference to them is made here for the purpose of completeness.*

*Subhead 1(a) is taken, in substance, from Section 183 of the Companies Act, 1963, as re-enacted.*

*Subhead 1(b) is taken, in substance, from Section 160 of the Companies Act, 1990, as re-enacted.*

*Subhead 2(a) and (b) are taken from Model Regulation 91(d) and (e) of Part I of Table A of the First Schedule to the Companies Act, 1963. Subhead 2(c) is taken, in substance, from Section 150 of the Companies Act, 1990. Subhead 2(d) is taken, in substance, from Model Regulation 91(f) of Part I of Table A of the First Schedule to the Companies Act, 1963. A new requirement that the conviction must give rise to a sentence to a term of imprisonment (actual or suspended) has been inserted.*

*Subhead 2(e) is taken, in substance, from Model Regulation 91(g) of Part I of Table A of the First Schedule to the Companies Act, 1963.*

*Model Regulations 91(a) and 91(g) of Part I of Table A of the First Schedule to the Companies Act, 1963 have been migrated elsewhere. Model Regulation 91(a) deals with the share qualification of directors and this is dealt with in Head 10 of this Part*

---

### Head 19 Register of directors and secretaries

---

- (1) Every company shall keep at its registered office a register of its directors and secretaries.
- (2) Subject to Subhead (3), the said register shall contain the following particulars relating to each director—
  - (a) his present forename and surname and any former forename and surname; and
  - (b) his date of birth; and
  - (c) his usual residential address; and
  - (d) his nationality; and
  - (e) his 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 which have been held by him.
- (3) It shall not be necessary for the said register to contain on any day particulars of any directorship—
  - (a) which has not been held by a director at any time during the five 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.
- (4) Subject to Subhead (5), the said register shall contain the following particulars relating to the secretary, in relation to each of them—
  - (a) in the case of an individual, his present forename and surname, any former forename and surname and his usual residential address;
  - (b) in the case of a body corporate, the corporate name, registered office, where the corporation is registered, the register in which it is registered and the number of the corporation in that register; and
  - (c) in the case of an individual, his date of birth.
- (5) 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 said particulars.
- (6) The company shall, within the period of 14 days from the happening of—
  - (a) any change among its directors or in its secretary; or
  - (b) any change in any of the particulars contained in the register,send to the Registrar a notification in the prescribed form of the change and of the date on which it occurred.
- (7) A notification sent to the Registrar pursuant to Subhead (6) of the appointment of a person as a director, secretary or joint secretary of a company shall be accompanied by a consent signed by that person to act as director or secretary, or where a firm are joint secretaries of a company by one partner on behalf of the firm, as the case may be.



## Part A4 - Corporate Governance

---

- (8) Without prejudice to Subsection (7), if the notification to be sent to the Registrar pursuant to Subsection (6) is a notification of the appointment of a person as a director of a company and 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—
- (a) the jurisdiction in which he is so disqualified;
  - (b) the date on which he became so disqualified; and
  - (c) the period for which he is so disqualified.
- (9) Subhead (6) shall not apply to any change in the particulars contained in a company's register of directors and secretaries made solely by reason of the coming into force of this head [equivalent of s.195 of the Companies Act, 1963, as inserted by Section 51 of the Companies Act, 1990] but if after any such change has occurred and before the company makes its next annual return, any other change in those particulars occurs, the company shall send to the Registrar a notification in the prescribed form of any such earlier changes and the date on which they occurred at the same time as it notifies the Registrar of the later changes in accordance with this head.
- (10) The register to be kept under this head shall, during business hours (subject to such reasonable restrictions as the company may by its constitution or in general meeting impose, so that not less than 2 hours in each day be allowed for inspection) be open to the inspection of any member of the company without charge, and of any other person, on payment of €5 or such less sum as the company may prescribe, for each inspection.
- (11) Any member of the company or other person may require a company to supply to him a copy of the register required to be kept under this head, or any part of the register, on payment of €10, or such less sum as the company may prescribe, for every hundred words or fractional part thereof required to be copied. The company shall cause a copy so required by a person to be sent to the person within 10 days of the receipt by the company of the request, and if it fails to do so it shall be guilty of a category three offence.
- (12) It shall be the duty of each director and secretary 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 this head.
- (13) If any inspection required under this head is refused or if default is made in complying with Subhead (1), (2), (4), (6) or (7), the company and every officer of the company who is in default shall be guilty of a category three offence and for continued contravention, to a daily default fine.
- (14) In the case of any such refusal, the court may by order compel an immediate inspection of the register.
- (15) A person who fails to comply with Subhead (12) shall be guilty of a category three offence.
- (16) For the purposes of this head—
- (a) in the case of a person usually known by a title different from his 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 surname, the name by which he 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, the name or surname by which she was known previously to the marriage.



### **Explanatory note**

*This head is an amended re-enactment of Section 195 of the Companies Act, 1963, as inserted by Section 51 of the Companies Act, 1990. References to the “registrar of companies” have been replaced by references to the “Registrar” and references to the articles of the company have been replaced by references to the “constitution” of the company.*

*The monetary amount in Subhead (11) has been increased to €5.*

*Sections 195(11A)-(11E) of the Companies Act, 1963 have been excluded from this head and inserted into a subsequent head as this head would otherwise be too long.*

## **Head 20 Particulars to be shown on all business letters of the company**

- (1) Subject to Subhead (4) every company to which this section applies 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 the following particulars—
  - (a) his present forename, or the initials thereof, and present surname; and
  - (b) any former forename and surnames; and
  - (c) his nationality, if not Irish.
- (2) Subject to Subhead (4) every company shall further have the following particulars on all its business letters and order forms—
  - (a) the place of registration of the company and the number with which it is registered;
  - (b) the address of the registered office;
  - (c) in the case of a company exempt from the obligation to use the word “limited” or “teoranta” as part of its name, the fact that it is a limited company;
  - (d) in the case of a company which is being wound up, the fact that it is so.
- (3) If on any business letters or order forms there is reference to the share capital of the company, the reference shall be to the paid-up share capital.

- (4) 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 may think fit, grant exemption from the obligations imposed by this head.
- (5) This head shall apply to—
  - (a) every company registered under this Bill, under the Companies Acts, 1963-2006 or under the Companies (Consolidation) Act, 1908, unless it was registered before the 23rd day of November, 1916; and
  - (b) every company licensed under the Moneylenders Act, 1933, whenever it was registered or whenever it established a place of business.
- (6) Subject to Subhead (5), if a company makes default in complying with this head, every officer of the company who is in default shall be guilty of a category four offence and, for the purpose of this subhead, where a body corporate is an officer of the company, any officer of the body corporate shall be deemed to be an officer of the company.
- (7) No proceedings shall be instituted under this head except by, or with the consent of, the Minister.
- (8) For the purposes of this head—
  - (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 construed accordingly; and
  - (b) “initials” includes a recognised abbreviation of a forename; and [paragraphs (b), (c) and (d) of Subhead (12) of Head 19 (13)] [equivalent of Section 195 of the Companies Act, 1963] shall apply as they apply for the purposes of that head.

### **Explanatory note**

*This is an amended re-enactment of Section 196 of the Companies Act, 1963. Paragraph (b) of Subhead (4) has been deleted and transferred to Part B7. Subheads (2) & (3) are re-enactments of Regulation 9 (1) & (2) of the European Communities (Companies) Regulations, 1973.*

### Head 21 Entitlement to notify Registrar of changes in directors and secretaries where company fails

---

(1) If a company fails to send, in accordance with Part A4, Head 19 [equivalent of Section 195 of the Companies Act, 1963, as inserted by Section 51 of the Companies Act, 1990], 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 that person may serve on the company a notice—

- (a) requesting it to send forthwith the notification of that matter, in the prescribed form, to the Registrar; and
- (b) stating that if the company fails to comply with that request within 21 days of the service of the notice on it, he will forward to the Registrar and to every person who, to his knowledge, is an officer of the company a copy of any notice of resignation by him as a director or secretary of the company or any other documentary proof of his 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 statutory declaration made by the person stating the names of the persons who, to his knowledge, are officers of the company), and
  - (ii) in the case of every other person as aforesaid, a written request of the person that he take such steps as will ensure that the failure of the company to comply with the notice continues no further.

(2) If a company fails to comply with a request made of it under a notice referred to in Subhead (1) the person who served the notice may forward to the Registrar and to every person who, to his knowledge, is an officer of the company a copy of the notice of resignation or other documentary proof referred to in Subhead (2) if, but only if, there is forwarded together with that notice or proof, in the case of the Registrar, the additional information referred to in that subsection and, in the case of every other person as aforesaid, the written request referred to in that subhead.

- (3) 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 under and in accordance with Subheads (1) and (2), or Part A4, Head 11 [equivalent of Section 43(9) of the Companies (Amendment) (No. 2) Act, 1999]) shall be considered by the Registrar.
- (4) No additional information referred to in Subhead (1)(b)(i) that is included in a notice of resignation or other documentary proof referred to in this head which is forwarded, under and in accordance with the foregoing provisions, to the Registrar shall, of itself, be regarded as constituting defamatory matter.

#### **Explanatory note**

*This head is a new head. The head is a slightly amended re-enactment of Sections 195(11A)-(11E) of the Companies Act, 1963, as inserted by Section 51 of the Companies Act, 1990. These subsections have been given a new head to enhance clarity because Section 195 of the Companies Act, 1963 was seen as too long.*

*References to the "registrar of companies" have been replaced by references to the "Registrar".*

---

### Head 22 Provisions as to assignment of office by directors

---

If, in the case of any company, provision is made by the articles or by any agreement entered into between any person and the company for empowering a director of the company to assign his office as such to another person, any assignment of office made in pursuance of the said provision shall, notwithstanding anything to the contrary contained in the said provision, be of no effect unless and until it is approved by a special resolution of the company.

#### **Explanatory note**

*This head is based on Section 199 of the Companies Act, 1963.*

## Chapter 3

### Service Contracts and Remuneration

#### Head 23 Inspection of directors' service contracts

- (1) Subject to the provisions of this section every company shall keep at an appropriate place—
- (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 paragraphs (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) Where a contract of service is only partially in writing, paragraphs (a), (b), (c) and (d), as appropriate, of Subhead (1), and Subheads (4) and (5), shall also apply to such a contract.
- (3) The following shall, as regards a company, be appropriate places for the purposes of Subhead (1), namely—
- (a) its registered office;
  - (b) the place where its register of members is kept if other than its registered office;
  - (c) its principal place of business.
- (4) Every company shall send notice in the prescribed form to the Registrar of the place where copies and memoranda required by Subhead (1) to be kept by it are kept and of any change in that place, save in a case in which they have at all times been kept at its registered office.

- (5) Subhead (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 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 Subhead (1).
- (6) Every copy and memorandum required to be kept by Subheads (1) and (5) shall, during business hours (subject to such reasonable restrictions as the company may in general meeting impose, so that not less than two hours in each day be allowed for inspection), be open to the inspection of any member of the company without charge.
- (7) If default is made in complying with Subhead (1) or (5) or if an inspection required under Subhead (6) is refused, the company and every officer of the company who is in default shall be guilty of a category three offence and for continued contravention, to a daily default fine.
- (8) In the case of a refusal of an inspection required under Subhead (6) of a copy or memorandum, the court may by order compel an immediate inspection thereof.
- (9) This head shall not require to be kept a copy of, or memorandum setting out the terms of, a contract or 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 three years or at a time at which the contract can, within the next ensuing three years, be terminated by the company without payment of compensation.

#### **Explanatory note**

*This head is an amended re-enactment of Section 50 of the Companies Act, 1990. The reference to being liable to a fine has been changed to being guilty of a categorised offence.*

### Head 24 Remuneration of Directors

---

- (1) Unless the constitution otherwise provides the remuneration of the directors shall from time to time be determined by the company in general meeting and such remuneration shall be deemed to accrue from day to day.
- (2) The directors may also be paid all travelling, hotel and other expenses properly incurred by them in attending and returning from meeting of the directors or any committee of the directors or general meetings of the of the company or in connection with the business of the company.

**Explanatory note**

*This head imports Model Regulation 76 of Part I of Table A of the First Schedule to Companies Act, 1963.*

### Head 25 Prohibition of tax-free payments to directors

---

- (1) It shall not be lawful for a company to pay a director remuneration (whether as director or otherwise) free of income tax or of income tax and sur-tax or of sur-tax or otherwise calculated by reference to or varying with the amount of his income tax or his income tax and sur-tax or his sur-tax or to or with the rate of income tax or sur-tax except under a contract which was in force on the 31st day of March 1962 and provides expressly and not by reference to the constitution for payment of remuneration as aforesaid.
- (2) Any provision contained in a company's constitution or in any contract other than such a contract as aforesaid or in any resolution of a company or a company's directors for payment to a director of remuneration as aforesaid shall have effect as if it provided for payment as a gross sum subject to income tax and sur-tax of the net sum.

**Explanatory note**

*This head is a slightly amended re-enactment of Section 185 of the Companies Act, 1963. References to the memorandum and articles of association of the company have been replaced by references to the constitution of the company.*

## Chapter 4

### Proceedings of Directors

#### Head 26 General power of management and delegation

Unless the constitution otherwise provides—

- (a) The business of the company shall be managed by the 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 the Act or by the constitution, required to be exercised by the company in general meeting, subject, nevertheless, to any regulations contained in the constitution, to the provisions of this Bill and to such regulations, not being inconsistent with the aforesaid regulations or provisions, as may be given by the company in general meeting; but no regulation given by the company in general meeting shall invalidate any prior act of the directors which would have been valid if that direction had not been given;
- (b) Without prejudice to Part A2, Head 22 [Persons or bodies of persons authorised to bind a company], the directors may delegate any of their powers to committees consisting of such member or members of the board as they think fit; any committee so formed shall, in the exercise of the powers so delegated, conform to any regulations that may be imposed on it by the directors;
- (c) All acts done by any meeting of the directors or of a committee of directors or by any person acting as a director shall, notwithstanding that it be afterwards discovered that there was some defect in the appointment of any such director or person acting as aforesaid, or that they or any of them were disqualified, be as valid as if every such person had been duly appointed and was qualified to be a director;
- (d) For the purposes of this head “the directors” means the directors for the time being of the company or the directors present at a meeting of the board of directors and includes any person occupying the position of director by whatever name called.

#### Explanatory note

*This head is new. The head imports various regulations previously contained in Part I of Table A of the First Schedule to the Companies Act, 1963.*

*Paragraph (a) imports Model Regulation 80 of Part I of Table A of the First Schedule to the Companies Act, 1963. The references to the Model Regulations contained in that Part have been replaced by references to “the regulations of the constitution” and “the constitution” of the company.*

*The reference to “...such directions...as may be given by the company in general meeting” has been replaced by “...such regulations...as may be given by the company in general meeting”. This was done in accordance with recommendation of the Company Law Review Group to restore the pre-Companies Act, 1963 position. The insertion of “such directions” in the Companies Act, 1963 had been the cause of much uncertainty in case law. The central issue was whether this allowed the members to control the directors through amending the articles of the company by special resolution (as was the case when “regulations” was used) or to more radically direct the directors to a particular course of action, other than by special resolution amending the articles. Upon review of the case law, the general consensus on the use of the word “directions” appears to be that the members may direct the directors to do or refrain from doing certain acts only where to do so is not inconsistent with the articles of the company. Thus, by reverting back to the use of the word “regulations” as opposed to “directions”, the traditional position has been restored. Members may thus control the directors only through amending the articles of the company by special resolution.*

*Paragraph (b) imports Model Regulation 105 of Part I of Table A of the First Schedule to the Companies Act, 1963.*

*Paragraph (c) imports Model Regulation 108 of Part I of Table A of the First Schedule to the Companies Act, 1963.*



---

### Head 27 Managing director

---

Unless the constitution otherwise provides—

- (a) The directors 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. Without prejudice to any claim he may have for damages for breach of any contract of service between him and the company), his appointment shall be automatically determined if he ceases from any cause to be a director;
- (b) A managing director 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;
- (c) Without prejudice to Part A2, Head 22 [Persons or bodies of persons authorised to bind a company], the directors may entrust to and 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, and either collaterally with or to the exclusion of their own powers, and may from time to time revoke, withdraw, alter or vary all or any of such powers;
- (d) For the purposes of this head “the directors” means the directors for the time being of the company or the directors present at a meeting of the board of directors and includes any person occupying the position of director by whatever name called.

#### **Explanatory note**

*This head is new. The head imports various provisions of the Model Regulations of Part 1 of Table A of the First Schedule to the Companies Act, 1963.*

*Paragraph (a) imports, in an amended manner, Model Regulation 110 of Part I of Table A of the First Schedule to the Companies Act, 1963. The second phrase of Model Regulation 110, concerning the rotation of directors, has been deleted in accordance with the recommendations of the First Report of the Company Law Review Group. The words “...(by whatever name called)...” has been newly inserted in recognition that a managing director may be called a different name e.g. CEO.*

*Paragraph (b) imports Model Regulation 111 of Part I of Table A of the First Schedule to the Companies Act, 1963.*

---

### Head 28 Meetings of directors and committees of directors

---

Unless the constitution otherwise provides—

- (a) The directors may meet together for the dispatch of business, adjourn and otherwise regulate their meetings as they think fit;
- (b) Questions arising at any meeting shall be decided by a majority of votes and where there is an equality of votes, the chairman shall have a second or casting vote;
- (c) A director may, and the secretary on the requisition of a director shall, at any time summon a meeting of the directors;
- (d) All directors shall be entitled to reasonable notice of any meeting of the directors, provided that, 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, provided always that no person other than a director can object to the notice given for any meeting of the directors;
- (e) The quorum necessary for the transaction of the business of the directors may be fixed by the directors, and unless so fixed shall be two but where the company has a single director, the quorum shall be one;

- (f) 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 Bill 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;
- (g) The directors may elect a chairman of their meetings and determine the period for which he is to hold office, but if no such chairman is elected, or, if at any meeting the chairman is not present within 15 minutes after the time appointed for holding the same, the directors present may choose one of their number to be chairman of the meeting;
- (h) A committee may elect a chairman of its meetings; if no such chairman is elected, or if at any meeting the chairman is not present within 15 minutes after the time appointed for holding the same, the members present may choose one of their number to be chairman of the meeting;
- (i) A committee may meet and adjourn as it thinks proper;
- (j) Questions arising at any meeting shall be determined by a majority of votes of the members present, and where there is an equality of votes, the chairman shall have a second or casting vote;
- (k) A resolution in writing signed by all the directors for the time being entitled to receive notice of a meeting of the directors or a committee of the directors shall be as valid as if it had been passed at a meeting of the directors duly convened and held;
- (l) Where a minority of the directors are, pursuant to statute, the company's constitution or a rule of law, unable to vote on a resolution of the directors, that minority may nonetheless sign such a resolution in writing referred to in Subhead (k) and 'minority' for the purposes of this paragraph shall include one half of the board of directors where a director who is not so unable to vote has a casting vote;
- (m) The resolution in writing referred to in Subhead (k) 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;
- (n) Meetings of Directors shall be capable of being held by telephone or other suitable electronic means whereby all the directors can hear and be heard;
- (o) A director may vote in respect of any contract appointment or arrangement in which he is interested and he shall be counted in the quorum present at the meeting;
- (p) The directors 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 appointing the directors or any of them as directors or officers of such other company or providing for the payment of remuneration or pensions to the directors or officers of such other company. Any director of the company may vote in favour of the exercise of such voting rights notwithstanding that he may be or may be about to become a director or officer of such other company and as such or in any other manner is or may be interested in the exercise of such voting rights in manner aforesaid;
- (q) For the purposes of this head "the directors" means the directors for the time being of the company or the directors present at a meeting of the board of directors and includes any person occupying the position of director by whatever name called.

### **Explanatory note**

*This head is new. The head imports various provisions of the Model Regulations of Part 1 of Table A of the First Schedule to the Companies Act, 1963. It also gives effect to certain recommendations of the First Report of the Company Law Review Group.*

*Paragraphs (a)-(d) import, in an amended manner, Model Regulation 101 of Part I of Table A of the First Schedule to the Companies Act, 1963.*

## Part A4 - Corporate Governance

---

The requirement of “reasonable notice” of any meeting of the directors has been included in paragraph (d). The reason for this is that the courts, in *Holland v McGill* (16th March 1990, Unreported HC decision) have held that such a requirement already exists; thus, the common law requirement is now being included for the purpose of completeness.

It is also stated in paragraph (d) that no person other than a director may object to the notice given for directors’ meetings. This safety measure has been included to prevent third parties/outsideers challenging a resolution of the directors on the basis that insufficient notice for the meeting at which it was passed was given.

Paragraph (e) imports, in an amended manner, Model Regulation 102 of Part I of Table A of the First Schedule to the Companies Act, 1963. The amendments were necessitated in order to recognise the possibility of a single-director private company limited by shares.

Paragraph (f) imports, in an amended manner, Model Regulation 103 of Part I of Table A of the First Schedule to the Companies Act, 1963. The reference to the fixing of the quorum by “the regulations” has been replaced by a reference to the quorum instead being fixed by “this Act”.

Paragraph (g) imports Model Regulation 104 of Part I of Table A of the First Schedule to the Companies Act, 1963.

Paragraph (h) imports Model Regulation 106 of Part I of Table A of the First Schedule to the Companies Act, 1963.

Paragraphs (i) and (j) import Model Regulation 107 of Part I of Table A of the First Schedule to the Companies Act, 1963.

Paragraph (k) imports, in an amended manner, Model Regulation 109 of Part I of Table A of the First Schedule to the Companies Act, 1963.

Meetings of a committee of directors have also been included in this head.

Paragraph (l) is new.

Paragraph (m) is new. The paragraph gives effect to the recommendation of the Review Group in its First Report that the possibility of the directors signing a written resolution on separate pieces of paper be recognised.

Paragraph (n) is new. The head may be said to be a logical step forward from the E-Commerce Act, 2000.

Paragraph (o) imports Model Regulation 7 of Part II of Table A of the First Schedule to the Companies Act, 1963.

Paragraph (p) imports Model Regulation 8 of Part II of Table A of the First Schedule to the Companies Act, 1963.

---

### Head 29 Holding of any other office or place of profit under the company by a director

---

Unless the constitution otherwise provides a director may hold any other office or place of profit under the company (other than the office of auditor) in conjunction with his office of director for such period and on such terms as to remuneration and otherwise as the directors may determine, and no director or intending director shall be disqualified by his office from contracting with the company either with regard to his tenure of any such other office or place of profit or as vendor, purchaser or otherwise, nor shall any such contract or any contract or arrangement entered into by or on behalf of the company in which any director is in any way interested, be liable to be avoided, nor shall any 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.

#### Explanatory note

This head is based on Regulation 85 of Table A Part I of the First Schedule to the Companies Act, 1963.

---

### Head 30 Counting of a director in the quorum and voting at a meeting where a director is appointed to hold office or a place of profit under the company

---

Unless the constitution otherwise provides a director, notwithstanding his interest, may be counted in the quorum present at any meeting whereat that director or any other director is appointed to hold any such office or place of profit under the company or whereat the terms of any such appointment are arranged, and he may vote on any such appointment or arrangement other than his own appointment or the arrangement of the terms thereof.

### **Explanatory note**

*This head is based on Regulation 86 of Table A Part I of the First Schedule to the Companies Act, 1963.*

### **Head 31 Signing, drawing, acceptance, endorsement or other execution of negotiable instruments and receipts**

Unless the constitution otherwise provides all cheques, promissory notes, drafts, bills of exchange and other negotiable instruments and all receipts 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 shall from time to time by resolution determine.

### **Explanatory note**

*This head is based on Regulation 88 of Table A Part I of the First Schedule to the Companies Act, 1963.*

### **Head 32 Alternate directors**

Unless the constitution otherwise provides –

- (a) any director (hereinafter called the “appointor”) may from time to time appoint any other director or, with the approval of a majority of the directors, any other person to be an alternate or substitute director (hereinafter called the “appointee”);
- (b) The appointee, while he holds office as an alternate director, shall be entitled to notice of meetings of the directors and to attend and vote thereat as a director and shall not be entitled to be remunerated otherwise than out of the remuneration of the director appointing him;
- (c) Any appointment under this head shall be effected by notice in writing given by the appointer to the company;
- (d) 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;
- (e) Revocation by an appointer shall be effected by notice in writing given by the appointer to the company.

### **Explanatory note**

*This head imports, in an amended manner, Model Regulation 9 of Part II of Table A of the First Schedule to the Companies Act, 1963. The Model Regulation has been sub-divided into paragraphs and the references to the “secretary” in paragraphs (c) and (e) have been replaced by “company”*

### **Head 33 Minutes of proceedings of meetings of directors**

- (1) Every company shall, as soon as may be, cause minutes, to be entered in books kept for that purpose—
  - (a) of all appointments of officers made by the directors;
  - (b) of the names of the directors present at each meeting of the directors and of any committee of the directors;
  - (c) of all resolutions and proceedings at all meetings of the company and of the directors and of committees of directors.
- (2) Any such minute, if purporting to be signed by the chairman of the meeting at which the proceedings were had, or by the chairman of the next succeeding meeting, shall be evidence of the proceedings.
- (3) Where minutes have been made in accordance with this head of the proceedings at any meeting of directors or committee of directors, then, until the contrary is proved, the meeting shall be deemed to have been duly held and convened, and all proceedings had thereat to have been duly had, and all appointments of directors shall be deemed to be valid.
- (4) A company shall if required by the Director of Corporate Enforcement produce for inspection the book or books kept in accordance with Subhead (1) 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 of Corporate Enforcement may require.

### **Explanatory note**

*This head is a slightly amended re-enactment of Section 145 of the Companies Act, 1963, as amended by Section 19 of the Company Law Enforcement Act, 2001. The head has been split into two new heads, one for directors’ meetings and one for members’ meetings.*

### Head 34 Audit Committees

(1) In this head—

'affiliate' in relation to an auditor, means a firm, body corporate or partnership considered under Part A6, Head 2 (2) [equivalent of Section 182(2) of the Companies Act, 1990] to be an affiliate of the auditor at the relevant time;

'amount of turnover' and 'balance sheet total' have the same meanings as in Part A6, Head 58 [equivalent of Section 8 of the Companies (Amendment) Act, 1986];

'internal audit' means an examination of the internal control system of a large private company that is conducted within the company at the request of its audit committee, directors or other officers;

'internal auditor' means a person who conducts an internal audit;

'large private company' means either of the following—

- (a) a private company limited by shares 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—
    - (A) €25,000,000, or
    - (B) if an amount is prescribed under [equivalent of Section 48(1)(I) of the Companies (Auditing and Accounting) Act, 2003] for the purpose of this provision, the prescribed amount;
  - (ii) the amount of turnover of that company exceeds for the year—
    - (A) €50,000,000, or
    - (B) if an amount is prescribed under [equivalent of Section 48(1)(I) of the Companies (Auditing and Accounting) Act, 2003] for the purpose of this provision, the prescribed amount;

- (b) a private company limited by shares if the company and all its subsidiary undertakings together, in both the most recent financial year of that company and the immediately preceding financial year, meet the criteria in paragraph (a);

'parent undertaking' and 'subsidiary undertaking' have the same meaning as in the Part A1, Head 6 [equivalent of S.I. No.201 of 1992, EC (Companies: Group Accounts) Regulations, 1992].

- (2) The responsibilities of a committee of directors, to be known as the audit committee, may include, but are not limited to, the following—
  - (a) reviewing, before they are presented to the board of directors for approval—
    - (i) the company's annual accounts, and
    - (ii) if the company is a parent company, the group accounts of the group of undertakings of which the company is the parent company;
  - (b) determining whether the annual accounts so reviewed comply with Part A6, Head 13 (7) [equivalent of Section 205A(2) of the Companies Act, 1990] and whether, in the committee's opinion, they give at the end of the financial year a true and fair view of—
    - (i) the state of affairs of the company, and
    - (ii) the profit or loss of the company;
  - (c) determining whether the group accounts so reviewed comply with Part A6, Head 13 (7) [equivalent of Section 205A(2) of the Companies Act, 1990] and whether, in the committee's opinion, they give at the end of the financial year a true and fair view of—
    - (i) the state of affairs of the group of undertakings of which the company is the parent company, and
    - (ii) the profit or loss of that group;
  - (d) recommending to the board of directors whether or not to approve the annual accounts and group accounts so reviewed;



## Part A4 - Corporate Governance

- (e) determining, at least annually, whether in the committee's opinion, the company has kept proper books of account in accordance with Part A6, Head 5 [equivalent of Section 202 of the Companies Act, 1990];
  - (f) reviewing, before its approval by the board of directors, the statement required to be made under Part A5, Head 7 [equivalent of Section 205E(5) and (6) of the Companies Act, 1990];
  - (g) determining whether, in the committee's opinion, the statement so reviewed—
    - (i) complies with Part A5, Head 7 [equivalent of Section 205E(5) and 5(6) of the Companies Act, 1990], and
    - (ii) is fair and reasonable and is based on due and careful enquiry;
  - (h) recommending to the board of directors whether or not to approve a statement reviewed under paragraph (f);
  - (i) advising the board of directors as to the recommendation to be made by the board to the shareholders concerning the appointment of the company's auditor;
  - (j) monitoring the performance and quality of the auditor's work and the auditor's independence from the company;
  - (k) obtaining from the auditor up to date information to enable the committee to monitor the company's relationship with the auditor, including, but not limited to, information relating to the auditor's affiliates;
  - (l) recommending whether or not to award contracts to the auditor or an affiliate of the auditor for non-audit work;
  - (m) satisfying itself that the arrangements made and the resources available for internal audits are in the committee's opinion suitable;
  - (n) reporting, as part of the report under Part A6, Head 37 [equivalent of Section 158 of the Companies Act, 1963], on the committee's activities for the year, including, but not limited to, the discharge of its responsibilities under paragraph (j);
  - (o) performing any additional functions prescribed by regulation under Part A14, Head 45 (1) (m) [equivalent of Section 48(1)(m) of the Companies (Auditing and Accounting) Act, 2003];
  - (p) performing any other functions relating to the company's audit and financial management that are delegated to it by the board of directors.
- (3) The board of directors of each large private company shall either—
- (a) establish an audit committee that—
    - (i) has all or some of the responsibilities specified in Subhead (2), and
    - (ii) subject to Subhead (8), otherwise meets the requirements of this head; or
  - (b) decide not to establish an audit committee.
- (4) The board of directors of each large private company to which Subhead(3) applies shall state in their report under Part A6, Head 37 [equivalent of Section 158 of the Companies Act, 1963]—
- (a) whether the company has established an audit committee or decided not to do so;
  - (b) if the company has established an audit committee, whether it has only some of the responsibilities specified in Subhead (2); and
  - (c) if the company has decided not to establish an audit committee, the reasons for that decision.
- (5) The audit committee is to consist of such directors as the board of directors concerned thinks fit, provided, subject to Subheads (7), both of the following requirements are met—
- (a) the committee consists of not fewer than 2 members;
  - (b) all those appointed to the committee qualify under Subhead (6).
- (6) A director qualifies for appointment to the audit committee unless he or she—
- (a) is, or was at any time during the 3 years preceding appointment to the committee—

## Part A4 - Corporate Governance

---

- (i) an employee of the company concerned, or
  - (ii) an employee of any subsidiary of the company concerned, or
- (b) is the chairperson of the board of directors.
- (7) The requirements specified in paragraphs (a) and (b) of Subhead (5) do not apply if—
- (a) only one director on the board of directors of the company concerned qualifies under Subhead (6);
  - (b) that director—
    - (i) is appointed as the sole member of the audit committee, or
    - (ii) is appointed as the chairperson of an audit committee consisting of not more than 2 members (including the chairperson) and has, in the case of an equal division of votes, a second or casting vote;
  - (c) any conditions prescribed under Part A14, head 45 (1) [equivalent of Section 48(1)(m) of the Companies (Auditing and Accounting) Act, 2003] are met, and
  - (d) the directors of the company concerned state in their report under Part A6, Head 37 [equivalent of Section 158 of the Companies Act, 1963] the reasons for the company's exemption from those requirements.
- (8) Written terms of reference concerning the audit committee's role in the audit and financial management of the company concerned shall—
- (a) be prepared and approved by the board of directors;
  - (b) be submitted for the information of the shareholders of the company concerned at its annual general meeting; and
  - (c) be reviewed each year by the board of directors.
- (9) Without limiting the matters that may be included under Subhead (8), the terms of reference must—
- (a) specify how the audit committee will discharge its responsibilities; and
  - (b) provide for a programme of separate and joint meetings with the management, auditor and internal auditor of the company or undertaking concerned.
- (10) Subhead (8) applies also in relation to any amendments of the audit committee's terms of reference.
- (11) Where a director of a large private company to which Subhead (3) applies fails to take all reasonable steps to comply with the requirements of Subhead (4), the director is guilty of a category three offence.

### **Explanatory note**

*This head is an amended re-enactment of Section 205B of the Companies Act, 1990, as inserted by Section 42 of the Companies (Auditing and Accounting) Act, 2003. All cross-references have been updated in accordance with the structure of the new Bill. References to "parent undertaking" have been replaced with references to "parent company" and references to "relevant undertaking" have been deleted where appropriate, given that private companies are the only concern in this Part.*

*Subhead (1) is an amended re-enactment of Section 205B(1) of the Companies Act, 1990. This Subhead contains the interpretive provisions for the purpose of this head. The definition of "internal audit" has been amended insofar as the references to the PLC and the relevant undertaking have been removed for the purpose of this Part. Similarly the definition of "relevant undertaking" has not been included but will need to be re-inserted in Pillar B.*

*Subhead (2) is an amended re-enactment of Section 205B(2) of the Companies Act, 1990. Previously, this subhead imposed the duty to establish an audit committee on the board of directors of a public limited company. As a result of Section 205B(5) of the Companies Act, 1990, the reference to the public limited company in Section 205B(2) was also to be construed as a reference to a large private company. The new provision simply highlights the main responsibilities of the Audit Committee of a private company and is not intended to be exhaustive. As a result of the amendments to Subhead (2), Section 205B(5) has been rendered superfluous.*

*Subhead (3) is an amended re-enactment of Section 205B(3) of the Companies Act, 1990. The phrase "Subject to Subsection (16)..." has been removed since that provision has been deleted.*

*Subhead (4) is a slightly amended re-enactment of Section 205B(4) of the Companies Act, 1990. All references to "relevant undertaking" and "undertaking" have been removed.*

## Part A4 - Corporate Governance

---

*Subheads (5)-(10) are slightly amended re-enactments of Sections 205B(6)-(11) of the Companies Act, 1990.*

*Subhead (11) is a re-enactment of Section 205B(13) of the Companies Act, 1990.*

*Subheads 205B(12), (14), (15) and (16) have been removed but will be re-inserted for the purposes of Pillar B.*

# Chapter 5

## Members

### Head 35 Definition of member

- (1) The subscribers of 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.

#### **Explanatory note**

*This head is a slightly amended re-enactment of Section 31 of the Companies Act, 1963. The amendments were necessitated by the fact that a private company limited by shares has a constitution in place of a memorandum and articles of association.*

### Head 36 Register of members

- (1) Subject to Subhead (4), every company shall keep a register of its members and enter therein 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;
  - (c) the date at which any person ceased to be a member.
- (2) The entries required under paragraphs (a) and (b) of Subhead (1) shall be made within 28 days after the conclusion of the agreement with the company to become a member or, in the case of a subscriber of constitution, within 28 days after the registration of the company.

- (3) The entry required under paragraph (c) of Subhead (1) shall be made within 28 days after the date when the person concerned ceased to be a member, or, if he ceased to be a member otherwise than as a result of action by, the company, within 28 days of production to the company of evidence satisfactory to the company of the occurrence of the event whereby he ceased to be a member.
- (4) 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 paragraph (a) of Subhead (1).
- (5) Subject to Subhead (6), the register of members shall, except when it is closed under the provisions of this Bill, be kept at the registered office of the company, so, however, that—
  - (a) if the work of making it up is done at another office of the company, it may be kept at that other office; and
  - (b) if the company arranges with some other person for the making up of the register to be undertaken on behalf of the company by that other person, it may be kept at the office of that other person at which the work is done.
- (6) The register of members shall not be held outside the State.
- (7) Subject to Subhead (8), every company shall send notice to the Registrar of the place where its register of members is kept and of any change in that place.
- (8) A company shall not be bound to send notice under Subhead (7) where the register has, at all times since it came into existence or, in the case of a register in existence on the operative date, at all times since then, been kept at the registered office of the company.
- (9) Where a company makes default in complying with any of the requirements of Subheads (1) to (6) or makes default for 14 days in complying with Subhead (7), the company and every officer of the company who is in default shall be guilty of a category three offence.

### **Explanatory note**

*This head is a slightly amended re-enactment of Section 116 of the Companies Act, 1963, as amended by Section 20 of the Companies (Amendment) Act, 1982. References to the memorandum and articles of association have been replaced by references to the constitution of the company. References to the registrar of companies have also been replaced by references to the "Registrar".*

*Subhead (1)(a) has been amended insofar as the phrase "in the case of a company having a share capital" has been deleted as it was unnecessary as this Part applies only to a private company limited by shares.*

---

### **Head 37 Provisions as to entries in register of members in relation to bearer shares**

---

- (1) On the issue of a bearer share the company shall strike out of its register of members the name of the member then entered therein as holding the shares specified in the warrant as if he had ceased to be a member and shall enter in the register the following particulars—
  - (a) the fact of the issue of the warrant; and
  - (b) a statement of the shares included in the warrant, distinguishing each share by its number so long as the share has a number; and
  - (c) the date of the issue of the warrant.
- (2) The bearer of a bearer share shall, subject to the articles of the company, be entitled, on surrendering it for cancellation, to have his name entered as a member in the register of members.
- (3) The company shall be responsible for any loss incurred by any person by reason of the company entering in the register the name of a bearer of a bearer share or shares in respect of such bearer share or shares without the bearer share being surrendered and cancelled.
- (4) Until bearer shares are surrendered, the particulars specified in Subhead (1) shall be deemed to be the particulars required by this Bill to be entered in the register of members, and, on surrender, the date of the surrender must be entered.

- (5) Subject to the provisions of this Bill, the bearer of a bearer share may, if the articles of the company so provide, be deemed to be a member of the company within the meaning of this Bill, either to the full extent or for any purposes defined in the constitution.

### **Explanatory note**

*Amended re-enactment of Section 118 of the Companies Act, 1963.*

---

### **Head 38 Inspection of register**

---

- (1) Except when the register of members is closed under the provisions of this Bill, it shall during business hours (subject to such reasonable restrictions as the company in general meeting may impose, so that not less than 2 hours in each day be allowed for inspection) be open to the inspection of any member without charge, and of any other person on payment of €10, or such less sum as the company may prescribe, for each inspection.
- (2) If any member or other person may request a copy of the register, or of any part thereof the company shall cause any copy so required to be sent to that person within a period of 10 days of receiving the request and on payment of €10 or such less sum as the company may prescribe.
- (3) If any inspection required under this head is refused or if any copy requested under this head is not sent within the proper period, the company and every officer of the company who is in default shall be guilty of a category four offence.
- (4) Where under this Bill any document or register is required to be made available for inspection to any person or class of person, such inspection shall be made available at the registered office of the company or another place in the State, provided that such other place has first been notified to the Registrar in the prescribed form.

### **Explanatory note**

*This head is an amended re-enactment of Section 119 of the Companies Act, 1963. Section 119(4) of the Companies Act, 1963, which provided that the courts may compel an inspection of the register, has been repealed as there is a general power under Section 371 of the Companies Act, 1963 to compel company law defaulters to comply.*

*Subhead (1) is an amended re-enactment of Section 119(1). The maximum inspection charge has been raised to €10.*



## Part A4 - Corporate Governance

*Subhead (2) is an amended re-enactment of Section 119(2). The method of calculating the charge has been replaced by a maximum charge of €10.*

*Subhead (3) is a re-enactment of Section 119(3).*

*Subhead (4) is a new head. This head gives effect to the recommendation of the Review Group in its First Report that documents required to be made available for inspection should be made available for inspection either at the registered office of the company or another location within the State, subject to notification to the Registrar of that location.*

---

### Head 39 Power to alter maximum inspection etc. charges

---

- (1) The Minister may, by order, alter any of the charges referred to in-
  - (a) Head 38 (1) of Part A5 or Head 38 (1) or 19 (10) of this Part [equivalent of Section 60 (5) of the Companies Act, 1990, Sections 119 (1) and 195 (10) of the Companies Act, 1963]; or
  - (b) Head 38 (4) of Part A5 or Head 38 (2) or 70 (2) of this Part [equivalent of Section 60 (8) of the Companies Act, 1990, or Section 119 (2) or 146 (2) of the Companies Act, 1963].
- (2) The Minister may also, by order, alter the basis of any of the charges referred to in the provisions specified in Subhead (1) (b) from the basis referred to in those provisions to some other basis.
- (3) In making any order under this head, 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 Subhead (1).
- (4) Every order made under this head shall be laid before each House of the Oireachtas as soon as may be after it is made and if a resolution annulling the order is passed by either House within the next 21 days on which that House has sat after the order is laid before it, the order shall be annulled accordingly but without prejudice to the validity of anything previously done thereunder.

#### **Explanatory note**

*This head re-enacts Section 105 of the Companies Act, 1990.*

---

### Head 40 Trusts not to be entered on register

---

No notice of any trust, express, implied or constructive, shall be entered on the register or be receivable by the keeper of the register.

#### **Explanatory note**

*This head is a slightly amended re-enactment of Section 123 of the Companies Act, 1963. The phrase "by the Registrar" has been replaced by the phrase "by the keeper of the register". In doing so, it is not thought to effect any substantive change.*

---

### Head 41 Register to be evidence

---

The register of members shall be prima facie evidence of any matters by this Bill directed or authorised to be inserted therein.

#### **Explanatory note**

*This head is based on Section 124 of the Companies Act, 1963.*

---

### Head 42 Consequences of failure to comply with requirements as to register owing to agent's default

---

Where, by virtue of Part A4, Head 36 [equivalent of Section 116 of Companies Act, 1963], the register of members is kept at the office of some person other than the company, and by reason of any default of his the company fails to comply with Part A4, Head 36 [equivalent of Section 116 of the Companies Act, 1963] or Part A4, Head 38 [equivalent of Section 119 of Companies Act, 1963], or with any requirements of this Bill as to the production of the register, that other person shall be liable to the same penalties as if he were an officer of the company who is in default, and the power of the court to make orders shall extend to that other person and his officers or servants.

#### **Explanatory note**

*This is a slightly amended re-enactment of Section 120 of the Companies Act, 1963. The cross-references have been amended in accordance with the new provisions.*

---

### Head 43 Transfer of shares in management companies

---

- (1) This head applies to a company that is a management company as defined in Part A1, Head 2 (1).
- (2) The shares in the company follow the estate or interest in the property, automatically, without the need to execute a transfer or have it approved by the directors (transfer occurs upon acquisition of property).
- (3) This head overrides any provision to the contrary in this Part [Part A4].

#### **Explanatory note**

*Newly inserted provision, intended to liberalise the transfer of shares in a private company that is also a residential management company.*

---

### Head 44 Rectification of register

---

- (1) If—
  - (a) the name of any person is, without sufficient cause, entered in the register of members or omitted therefrom, in contravention of Subheads (1) and (2) of Part A4, Head 36 [equivalent of s.116 of Companies Act 1963]; or
  - (b) default is made in entering on the register within the period fixed by Subhead (3) of Part A4, Head 36 [equivalent of Section 116 of the Companies Act, 1963] the fact of any person 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 head, 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 head the court may decide any question relating to the title of any person who is a party to the application to have his 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 required, 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 (whether occurring before, on or after the 1st April 1964) in the register but such a rectification shall not adversely affect any person unless he agrees to the rectification made. The company shall, within 21 days, give notice of the rectification to the Registrar if the error or omission also occurs in any document forwarded by the company to him.

#### **Explanatory note**

*This head is a slightly amended re-enactment of Section 122 of the Companies Act, 1963. The cross-references have been amended in accordance with the new provisions.*

*Subhead (4) is an amended re-enactment of Section 122(4). It has been amended insofar as the phrase "In the case of a company required by the Acts to send a list of its members to the registrar of companies..." has been deleted as this Part applies only to private companies and all such companies are required to do so.*

*Subhead (5) is an amended re-enactment of Section 122(5). It has been amended insofar as the operative date of the Companies Act, 1963 is specified.*

---

### Head 45 Power to close register

---

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.

#### **Explanatory note**

*This head re-enacts Section 121 of the Companies Act, 1963.*

# Chapter 6

## General Meetings and Resolutions

### Head 46 Annual general meeting

- (1) Subject to Subheads (2) and (3), every 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 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 head) to attend and vote at such general meeting sign, before the latest date for the holding of that meeting, a written resolution—
  - (a) acknowledging receipt of accounts;
  - (b) resolving all such matters as would have been resolved at the annual general meeting; and
  - (c) confirming no change in the audit appointment.
- (4) If default is made in holding a meeting of the company in accordance with Subhead (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 in relation to the calling holding and conducting of the meeting, the operation of the company's constitution, and the directions which may be given under this Subhead may include a direction that one member of the company present in person or by proxy shall be deemed to constitute a meeting.

- (5) A general meeting held in pursuance of Subhead (4) shall, subject to any directions of the Director of Corporate Enforcement, be deemed to be an annual general meeting of the company but, 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.
- (6) Where a company resolves that a meeting shall be so treated, a copy of the resolution shall, within 21 days after the passing thereof, be delivered to the Registrar for registration.
- (7) If default is made in holding a meeting of the company in accordance with Subhead (1), or in complying with any direction of the Director of Corporate Enforcement under Subhead (4), the company and every officer of the company who is in default shall be guilty of a category three offence.
- (8) If default is made in complying with Subhead (6), the company and every officer of the company who is in default shall be guilty of a category four offence

#### **Explanatory note**

*This head is an amended re-enactment of Section 131 of the Companies Act, 1963. References to the articles of the company have been replaced by references to the constitution of the company.*

*Subhead (3) is a new subhead. This subhead was inserted in accordance with the recommendations of the First Report of the Company Law Review Group to allow a private company to dispense with the requirement to hold an AGM.*

*Subhead (6) is an amended re-enactment of Section 131(5). It has been amended insofar as the time period has been raised from 15 to 21 days. Such a time frame of 21 days is allowed by most provisions of the Companies Act, 1963.*

---

### Head 47 The location and means for holding general meetings

---

- (1) Where 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 to its being held outside of the State, the company must at its expense make all necessary arrangements to ensure that members can by technological means participate in any such meeting without leaving the State.
- (2) A meeting may be held in two or more venues (whether inside or outside of the State) using any technology that provides members as a whole, with a reasonable opportunity to participate.

#### **Explanatory note**

*This head is a new head. The head provides for the location and means for holding general meetings. It replaces Section 140 of the Companies Act, 1963 which required that general meetings be held in the State unless all the members consented to it being held elsewhere or a resolution was passed at the preceding general meeting that it may be held elsewhere.*

*Under the new Subhead (1), all the members must consent to the meeting being held outside of the State and there is a duty on the company to incur the cost of participation for the members, who are not required to leave the State.*

*Subhead (2) gives effect to the recommendations of the First Report of the Company Law Review Group that it should be possible to hold general meetings in more than one venue.*

---

### Head 48 Extraordinary general meetings

---

- (1) All general meetings other than annual general meetings shall be called extraordinary general meetings.
- (2) The directors 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 or any member of the company 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.

- (4) For the purposes of this head “the directors” means the directors for the time being of the company or the directors present at a meeting of the board of directors and includes any person occupying the position of director by whatever name called.

#### **Explanatory note**

*This head is a new head. The head imports various provisions of the Model Regulations of Part 1 of Table A of the First Schedule to the Companies Act, 1963. It also gives effect to certain recommendations of the First Report of the Review Group.*

*Subhead (1) imports Model Regulation 49 of Part 1 of Table A of the First Schedule to the Companies Act, 1963.*

*Subhead (2) and (3) import Model Regulation 50 of Part 1 of Table A of the First Schedule to the Companies Act, 1963. The reference to requisitioned meetings has been deleted.*

---

### Head 49 Convening of extraordinary general meeting by members

---

- (1) Save where the constitution of a company provides otherwise, a member or members together holding at any time not less than 10 per cent 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.
- (2) The directors of a company shall, notwithstanding anything in its constitution, on the requisition of a member or members 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.
- (3) The requisition must state the objects of the meeting and must 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.



## Part A4 - Corporate Governance

---

- (4) If the directors do not within 21 days from the date of the deposit of the requisition proceed duly to convene a meeting to be held within 2 months from the said 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 from the said date.
- (5) A meeting convened under this head shall be convened in the same manner as nearly as possible as that in which meetings are to be convened by directors.
- (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 this head, 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 thereof as is required by Part A4, Head 52 [equivalent of Section 133 of Companies Act, 1963].
- (c) the personal representatives of a deceased member of the company, which member would but for his death have the right to vote at the meeting;
- (d) the Official Assignee in Bankruptcy of a bankrupt member of the company, which member would but for his bankruptcy have the right to vote at the meeting.
- (2) The court may, either on an application under Subhead (1) or on its own initiative, order a general meeting of a company to be called, held and conducted in any way that the court thinks fit if 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 way in which meetings of that company may be called; or
- (b) to conduct a general meeting of the company in any way prescribed by this Bill or the company's constitution.
- (3) Where such an order is made, the court may give such ancillary or consequential directions as it thinks expedient, which may include a direction that one member of the company, or the personal representative of a deceased member of the company, present in person or by proxy, is a quorum.
- (4) A meeting called, held and conducted in accordance with an order under Subhead (2) is for all purposes to be taken as duly called, held and conducted.

### **Explanatory note**

*This head is a slightly amended re-enactment of Section 132 and Section 134(b) of the Companies Act, 1963. References to the articles of the company have been replaced by references to the constitution of the company. Furthermore, the reference in Subsection (1) to companies not having a share capital has been deleted as this Part only applies to private companies limited by shares.*

---

## **Head 50 Power of court to order a meeting**

---

- (1) Any of the following persons may make an application to the court for an order under Subhead (2) that a general meeting of a company be called, held and conducted in a way that the court thinks fit—
- (a) a director of the company;
- (b) a member of the company who would have the right to vote at the meeting;

### **Explanatory note**

*This head is new. The head is taken from Section 147 of the UK White Paper Modernising Company Law, July 2002 and it replaces Section 135 of the Companies Act, 1963. In particular, the head addresses the position that may arise following the death of the sole director/shareholder of a company and it gives locus standi to the Personal Representatives.*

*Subhead 1(c) makes it clear that it is the deceased member who would have been entitled to attend the meeting, and not the Personal Representative. The words "otherwise undesirable" have also been added to Subhead (2) so as to give the court maximum flexibility, for example, where the cost may have been prohibitive as opposed to merely impractical.*



**Head 51 Persons entitled to notice of general meetings**

(1)

- (a) Notice of every general meeting shall be given to—
  - (i) every member,
  - (ii) the personal representatives of a deceased member of the company, which member would but for his death have the right to vote at the meeting, and
  - (iii) the Official Assignee in bankruptcy of a bankrupt member of the company, which member would but for his bankruptcy have the right to vote at the meeting,
  - (iv) the directors and secretary of the company;
- (b) A notice may be given by the company to the joint holders of a share by giving the notice to the joint holder first named in the register in respect of the share;
- (c) A 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 Official Assignee in bankruptcy or by any like description at the address supplied for the purpose by the persons claiming to be so entitled, or (until such an address has been so supplied) by giving the notice in any manner in which the same might have been given if the death or bankruptcy had not occurred;
- (d) No other person shall be entitled to receive notices of general meetings unless the constitution of a company provides otherwise.

- (2) Unless a company has exercised its right pursuant to Part A6, Head 66 [equivalent of Section 32 of the Companies (Amendment) (No.2) Act 1999] to dispense with the obligation to appoint an auditor, the auditors of a company shall be entitled to attend any general meeting of a company and to receive all notices of, and other communications relating to, any general meeting which any member of the company is entitled to receive and to be heard at any general meeting which they attend on any part of the business of the meeting which concerns them as auditors.

**Explanatory note**

*This head is new. The head imports various provisions of the Model Regulations of Part 1 of Table A of the First Schedule to the Companies Act, 1963. Section 195(3) of the Companies Act, 1990 is also re-enacted in this head.*

*Subhead (1)(a)(i) imports Model Regulation 136(a) of Part 1 of Table A of the First Schedule to the Companies Act, 1963.*

*Subhead (1)(a)(ii) imports, in part, Model Regulation 136(b) of Part 1 of Table A of the First Schedule to the Companies Act, 1963.*

*Subhead (1)(a)(iii) imports, in part, Model Regulation 136(b) of Part 1 of Table A of the First Schedule to the Companies Act, 1963.*

*Subhead (1)(b) imports Model Regulation 134 of Part 1 of Table A of the First Schedule to the Companies Act, 1963.*

*Subhead (1)(c) imports Regulation 135 of Part 1 of Table A of the First Schedule to the Companies Act, 1963.*

*Subhead (1)(d) imports the final phrase of Regulation 136 of Part 1 of Table A of the First Schedule to the Companies Act, 1963. The phrase “unless the constitution provides otherwise” has also been added.*

*Subhead (2) is an amended re-enactment of Section 193(5) of the Companies Act, 1990. This section is amended insofar as it recognises the possibility of a company exercising its right not to appoint an auditor under Section 32 of the Companies Amendment (No.2) Act, 1999.*

### Head 52 Notice of general meetings

- (1) Save where the constitution of a company makes provision for the giving of greater notice, a meeting of the 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 in writing;
  - (b) in the case of any other extraordinary general meeting, by not less than 7 days' notice in writing.
- (2) A meeting of a company shall, notwithstanding that it is called by shorter notice than that specified in Subhead (1), be deemed to have been duly called if it is so agreed by the auditors of the company and by all the members entitled to attend and vote thereat.
- (3) Save where the constitution of a company provides otherwise, written notice of a meeting may be served on a member—
  - (a) personally;
  - (b) by delivering it to the registered address of the member;
  - (c) by ordinary post to the registered address of the member.
- (4) A notice of a meeting if posted by ordinary pre-paid post to the registered address of a member shall be deemed to have been received 24 hours following posting.
- (5) Notice of meetings shall be exclusive of the day on which it is served or deemed to be served and of the day for which it is given.
- (6) The written 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 a member entitled to attend and vote is entitled to appoint a proxy using the form set out in Part A4, Head 55 [Model Art.71 of Table A of Part 1 of the First Schedule to the Companies Act, 1963] or, where that is allowed, one or more proxies, to attend, speak and vote instead of him, that a proxy need not be a member and 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.
- (7) 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.

#### **Explanatory note**

*This head is new. The head is derived, in substance, from Section 133 of the Companies Act, 1963 and various provisions of the Model Regulations of Part 1 & Part II of Table A of the First Schedule to the Companies Act, 1963.*

*Subhead (1) is an amended re-enactment of Sections 133(1) and (2) of the Companies Act, 1963. Although the periods of notice have not been changed, they have been set out more clearly in accordance with the recommendation of the First Report of the Company Law Review Group that the Companies Acts should specify precisely what are to be the periods of notice for meetings, rather than doing so in the constitutional documentation of the company. Companies are entitled to increase the periods of notice.*

*Subhead (2) is a slightly amended re-enactment of Section 133(3) of the Companies Act, 1963. The phrase "...or in the company's articles" has been removed since the issue of periods of notice will no longer be dealt with in the constitution of the company. Subhead (3) is taken in substance from Model Regulation 133 of Part I of Table A of the First Schedule to the Companies Act, 1963. It sets out the different methods of service of notice.*

*Subhead (4) is taken in substance from Model Regulation 133 of Part I of Table A of the First Schedule to the Companies Act, 1963. It gives effect to the recommendation of the Company Law Review Group in its First Report that service of notice shall be deemed to have been received 24 hours after it has been posted.*

Subhead (5) is taken in substance from both Model Regulation 133 of Part I and Model Regulation 4 of Part II of Table A of the First Schedule to the Companies Act, 1963. It gives effect to the recommendation of the Company Law Review Group that the day of receipt/ deemed day of receipt and the day of the meeting should continue to be excluded when calculating the period of notice.

Subhead (6) imports part of Model Regulation 4 of Part II of Table A of the First Schedule to the Companies Act 1963, in an amended form. Paragraph (d) has been inserted here and such requirement is taken from Section 136(3) of the Companies Act, 1963.

Subhead (7) imports Model Regulation 52 of Part I of Table A of the First Schedule to the Companies Act, 1963.

---

### Head 53 Quorum

---

- (1) No business shall be transacted at any general meeting unless a quorum of members is present at the time when the meeting proceeds to business.
- (2) Save in so far as a constitution provides otherwise, two members present in person or by proxy shall be a quorum.
- (3) In a single-member company, one member present in person or by proxy at a general meeting shall be a quorum.
- (4) If within 15 minutes from the time appointed for the meeting a quorum is not present, the meeting, if convened upon the requisition of members, shall be dissolved; in any other case it 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 if at the adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting, the members present shall be a quorum.

#### **Explanatory note**

*This head is new. The head is derived from various provisions:*

*Subhead (2) is an amended re-enactment of Section 134(c) of the Companies Act, 1963. It has been amended insofar as the reference to other types of companies have been deleted given that only private companies limited by shares are relevant for present purposes.*

*Subhead (3) is an enactment of S.I. No. 275 of 1994, EC (Single-Member Private Limited Companies) Regulations, 1994, Regulation 10(1).*

*Subhead (1) and (4) import Model Regulations 54 and 55 of Part I of Table A of the First Schedule to the Companies Act, 1963.*

---

### Head 54 Proxies

---

- (1) Subject to Subhead (2), 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 proxy to attend and vote instead of him, and 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.
- (2) Unless the constitution otherwise provides a member of a company shall be entitled to appoint more than one proxy to attend on the same occasion.
- (3) The instrument appointing a proxy shall be in writing under the hand of the appointer or of his attorney duly authorised in writing, or, if the appointer is a body corporate, either under seal or under the hand of an officer or attorney duly authorised.
- (4) The instrument appointing a 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 or at such other place within the State as is specified for that purpose in the notice convening the meeting, not less than 48 hours, or such lesser period as the constitution may provide, before the time for holding the meeting or adjourned meeting at which the person named in the instrument proposes to vote, or, in the case of a poll, not less than 48 hours or such lesser period as the constitution may provide before the time appointed for the taking of the poll, and, in default, the instrument of proxy shall not be treated as valid.
- (5) A vote given in accordance with the terms of an instrument of proxy shall be valid notwithstanding the previous death or insanity of the principal 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, if no intimation in writing of such death, insanity, revocation or transfer as aforesaid is received by the company at the office before the commencement of the meeting or adjourned meeting at which the proxy is used.

- (6) This head shall apply to meetings of any class of members of a company as it applies to general meetings of the company.
- (7) Subject to Subhead (8), 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 thereat by proxy, every officer of the company who knowingly and wilfully authorises or permits their issue as aforesaid shall be guilty of a category three offence.
- (8) An officer shall not be liable under Subhead (7) by reason only of the issue to a member at his 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.

### **Explanatory note**

*This head is new. The head is an amended re-enactment of Section 136 of the Companies Act, 1963. Sections 136(3) and (4) have been deleted. Subsection (3) has been deleted for the reason that it is now an imperative under Section 40(6)(d) of the Act. Various provisions of the Model Regulations of Part 1 of Table A of the First Schedule to the Companies Act, 1963 have also been included.*

*Subhead (1) is a re-enactment of Section 136(1) of the Companies Act, 1963.*

*Subhead (2) Status quo – see Table A – preserved.*

*Subheads (3) – (5) import Model Regulations 69, 70 and 73 of Part 1 of Table A of the First Schedule to the Companies Act, 1963, respectively.*

*Subheads (6) – (8) are re-enactments of Sections 136(7), (5) and (6) of the Companies Act, 1963, respectively.*

---

## **Head 55 Form of Proxy**

---

An instrument appointing a proxy shall be in the following form or a form as near thereto 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 thereof.

The proxy is to vote as follows:

### **Explanatory note**

*This head imports, in a slightly amended manner, Model Regulation 71 of Part I of Table A of the First Schedule to the Companies Act, 1963. The actual form of the proxy has been amended to what was seen to be a more desirable form.*

---

## **Head 56 Representation of bodies corporate at meetings of companies and of creditors**

---

- (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 (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; and such an authorised person shall be entitled to exercise the same powers on behalf of the body corporate which he represents as that body corporate could exercise if it were an individual member of the company.
- (2) The chairman of a meeting may require a person claiming to be an authorised person within the meaning of Subhead (1) to produce such evidence of such person's authority as the chairman may reasonably require and if such evidence is not produced, the chairman may exclude such person from the meeting.

### **Explanatory note**

*This head is an amended re-enactment of Section 139 of the Companies Act, 1963.*

*Section 139(1)(b) has been omitted from this head and is included later in Part A11 provisions governing creditors' meetings in the course of the winding-up of companies.*

*Subhead (2) is new. Subhead provides a means by which a company may require proof of authority by an "authorised person" that a person is authorised to so act at that meeting.*

## Head 57 The business of the annual general meeting

The business of the annual general meeting shall include—

- (a) the consideration of the company's accounts, balance sheet and the report of the directors; and unless the company has exercised its right pursuant to Part A6, Head 66 [equivalent of Section 32 of the Companies (Amendment) (No.2) Act, 1999] to dispense with the obligation to appoint an auditor, the report of the auditors; and
- (b) the review by the members of the company's affairs; and
- (c) save where the 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 auditors; and

- (d) where the constitution provides that the directors retire by rotation, the election and re-election of directors;
- (e) the appointment or re-appointment of auditors; and
- (f) the remuneration of the directors.

### Explanatory note

*This head is new. It was necessary to elucidate the business of the AGM since the notions of special and ordinary business are to be repealed. Model Regulation 53 of Part I of Table A of the First Schedule to the Companies Act, 1963 sets out the business of the AGM and this has been substantially followed in the new head.*

## Head 58 Proceedings at general meetings

Unless the constitution otherwise provides—

- (a) The chairman, if any, of the board of directors shall preside as chairman at every general meeting of the company, or if there is no such chairman, or if he 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 chairman of the meeting;

Voting Instructions to Proxy (choice to be marked with an 'x')				
Number or description of resolution:		In Favour	Abstain	Against
1				
2				
3				
Unless otherwise instructed the proxy will vote as he or she thinks fit.				
Signature of member:.....				
Dated: [date].....				



## Part A4 - Corporate Governance

---

- (b) If at any meeting no director is willing to act as chairman 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 chairman of the meeting;
- (c) The chairman 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, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place. 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. Save as aforesaid it shall not be necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting;
- (d) Unless a poll is demanded in accordance with Part A4, Head 60 [equivalent of Section 137 of the Companies Act, 1963], at any general meeting a resolution put to the vote of the meeting shall be decided on a show of hands and a declaration by the chairman 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.;(e) Where there is an equality of votes, whether on a show of hand or on a poll, the chairman 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;
- (f) For the purposes of this head “the directors” means the directors for the time being of the company or the directors present at a meeting of the board of directors and includes any person occupying the position of director by whatever name called.

### **Explanatory note**

*This head is new. The head imports various Model Regulations of Part I of Table A of the First Schedule to the Companies Act, 1963.*

*Subheads (1)–(3) import Model Regulations 56-58 of Part I of Table A of the First Schedule to the Companies Act, 1963.*

*Subhead (4) imports, in part, Model Regulation 59 of Part I of Table A of the First Schedule to the Companies Act, 1963. That part of Model Regulation 59 which deals with the right to demand a poll has been enacted in a separate section.*

*Subhead (5) imports Model Regulation 61 of Part I of Table A of the First Schedule to the Companies Act, 1963.*

---

## Head 59 Votes of members

---

Unless the constitution otherwise provides—

- (a) Subject to any rights or restrictions for the time being attached to any class or classes of shares, on a show of hands every member present in person and every proxy shall have one vote, so, however, that no individual shall have more than one vote, and on a poll every member shall have one vote for each share of which he is the holder or each €15 of stock held by him;
- (b) Where there are joint holders, 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 stand in the register;
- (c) A member of unsound mind, or a member who has made an enduring power of attorney or in respect of whom an order has been made by any court having jurisdiction in lunacy, may vote, whether on a show of hands or on a poll, by his committee, donee or an enduring power of attorney, receiver, guardian or other person appointed by that court and any such committee, donee or an enduring power of attorney, receiver, guardian, or other person may speak and vote by proxy on a show of hands or on a poll;
- (d) No member shall be entitled to vote at any general meeting unless all calls or other sums immediately payable by him in respect of shares in the company have been paid;

- (e) 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. Any such objection made in due time shall be referred to the chairman of the meeting, whose decision shall be final and conclusive;
  - (f) Votes may be given either personally or by proxy.
- (2) Except as provided in Subhead (3), if a poll is duly demanded it shall be taken in such manner as the chairman directs, and the result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded.
  - (3) A poll demanded on the election of a chairman or on a question of adjournment shall be taken forthwith. A poll demanded on any other question shall be taken at such time as the chairman 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.
  - (4) 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 Subhead (1), a demand by a person as proxy for a member shall be the same as a demand by the member.

### **Explanatory note**

*This head is new. The head imports various Model Regulations of Part I of Table A of the First Schedule to the Companies Act, 1963.*

*Subhead (1) imports Model Regulation 63 of Part I of Table A of the First Schedule to the Companies Act, 1963. The phrase "...or each €15 of stock held by him" has been added in light of Section 134(e) of the Companies Act, 1963, however the amount has been converted into Euro and rounded up to €15.*

*Subheads (2)-(6) import Model Regulations 64-68 of Part I of Table A of the First Schedule to the Companies Act, 1963.*

---

## **Head 60 Right to demand a poll**

---

- (1) A poll may be demanded whether before or on the declaration of the result of the show of hands by any of the following persons –
  - (a) by the chairman; or
  - (b) by at least three members present in person or by proxy; or
  - (c) by 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 having the right to vote at the meeting; or
  - (d) by a member or members holding shares in the company 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,

provided always that where a poll is demanded by any person or class of person mentioned in (a) to (d) above, that person or class of person can withdraw the demand for a poll.

### **Explanatory notes**

*This head is new. The head imports various Model Regulations of Part I of Table A of the First Schedule to the Companies Act, 1963. Section 137(2) of the Companies Act, 1963 is re-enacted in this head also.*

*Subhead (1) imports, in a slightly amended manner, Model Regulation 59 of Part I of Table A of the First Schedule to the Companies Act, 1963.*

*Subheads (2) and (3) import Model Regulation 60 and 63 of Part I of Table A of the First Schedule to the Companies Act, 1963.*

*Subhead(4) is a re-enactment of Section 137(2) of the Companies Act, 1963. Section 137(1) has been deleted.*

---

## **Head 61 Voting on a poll**

---

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 votes, use all his votes or cast all the votes he uses in the same way.

### **Explanatory note**

*This head is a re-enactment of Section 138 of the Companies Act, 1963.*

---

### Head 62 Resolutions

---

- (1) An ordinary resolution means a resolution passed by a simple majority of the votes cast by members as, being entitled to do so, vote in person or by proxy at a general meeting.
- (2) A special resolution means a resolution that is required to be passed as a special resolution (whether by this Bill or by a company's constitution or otherwise) that is passed by not less than 75 per cent of the votes cast by such members as, being entitled to do so, vote in person or by proxy at a general meeting.
- (3) 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 together holding not less than 90 per cent in par value of the shares giving that right or together representing not less than 90 per cent of the total voting rights at that meeting of all the members.
- (4) At any meeting at which a special resolution is submitted to be passed, a declaration of the chairman that the resolution is carried shall, unless a poll is demanded, be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.
- (5) For the purposes of this head, notice of a meeting shall be deemed to be duly given and the meeting to be duly held when the notice is given and the meeting held in a manner provided by this Part or the company's constitution.
- (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 the 1st 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) A written resolution means either an ordinary resolution or a special resolution passed in accordance with Part A4, Head 62 or Head 64 [equivalent of Section 141 of the Companies Act, 1963].

#### **Explanatory note**

*This head is an amended re-enactment of Section 141 of the Companies Act, 1963. Section 141(7) has been deleted due to obsolescence and Section 141(8) has been migrated to another section. References to the articles and memorandum of association have been replaced by references to the articles of the company.*

*Subhead (1) is a new subhead. An ordinary resolution is not defined in the Companies Acts, 1963-2006. The definition in this subhead is loosely based on the definition given in *Bushell v Faith* [1970] AC 1099, 1108 and Section 141(1) of the Companies Act, 1963.*

*Subhead (2) is an amended re-enactment of Section 141(1). It has been amended insofar as a special resolution is now said to be a resolution that is required to be passed as a special resolution, whether by this Bill or by a company's constitution or otherwise. Under this subhead a special resolution is no longer defined by reference to the notice of the resolution. Thus, the words "...of which not less than 21 days' notice, specifying the intention to propose the resolution as a special resolution, has been duly given" have been dropped from the end of the subhead.*

*Subhead (3) is a slightly amended re-enactment of Section 141(2). The reference to the nominal value of the shares has been replaced by a reference to the par value of the shares.*

*Subheads (4) – (6) are re-enactments of Sections 141(3) – (5).*

*Subhead (7) is a slightly amended re-enactment of Section 141(6). The text has been amended insofar as the operative date has been specifically mentioned in the new subsection.*

*Subhead (8) is a new subhead This sets out the meaning of a written resolution by cross-reference to another head which is a re-enactment of Section 141(8) of the Companies Act.*

---

### Head 63 Resolutions passed at adjourned meetings

---

Where a resolution is passed at-

- (a) an adjourned general meeting;
- (b) an adjourned class meeting;

- (c) an adjourned meeting of the directors, or committee of directors, of a company;

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.

### **Explanatory note**

*This head is a re-enactment of Section 144 of the Companies Act, 1963.*

- (6) This head does not apply to a resolution to remove a director or auditor.

### **Explanatory note**

*This head is an amended re-enactment of Section 141(8) of the Companies Act, 1963. The head also implements the recommendations in the First Report of the Company Law Review Group concerning written resolutions and procedures for their execution.*

*Subhead (1) is an amended re-enactment of Section 141(8)(a). The phrase "Notwithstanding anything to the contrary in this Act..." has been replaced by "Notwithstanding anything to the contrary in Pillar A..." as Section 52 only applies to private companies limited by shares.*

*The reference to the need for authorisation by the company's articles has also been deleted. This was done in accordance with the recommendations of the Company Law Review Group in its First Report that any resolution required to be passed at any general meeting should be able to be achieved by unanimous written resolution regardless of what is said in the articles.*

*Subhead (2) is new. It has been inserted in accordance with the recommendations of the First Report of the Company Law Review Group that any resolution required to be passed at any general meeting should be able to be achieved by unanimous written resolution, consisting of any number of pieces of paper.*

*Subhead (3) is a re-enactment of Section 141(8)(b).*

*Subhead (4) is new. It has been inserted in accordance with the recommendations of the First Report of the Company Law Review Group that in the event that the resolution is not contemporaneously signed (with separate documents being circulated to shareholders), the company should confirm the passing of the resolution within one month of passing.*

*Subhead (5) is new. This head requires delivery of documents constituting the written resolution to the company and they shall be deemed to constitute the proceedings of the general meeting. As such they must be filed with the Registrar under Section 54, where necessary.*

---

## **Head 64 Unanimous written resolutions**

---

- (1) Notwithstanding anything to the contrary in Pillar A, a resolution in writing signed by all the members 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 if described as a special resolution shall be deemed to be a special resolution within the meaning of this Bill.
- (2) A resolution passed in accordance with the provisions of Subhead (1), may consist of several documents in like form each signed by one or more members.
- (3) A resolution passed in accordance with the provisions of Subhead (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 signature thereof by any member, the statement shall be prima facie evidence that it was signed by him on that date.
- (4) In the event that a resolution passed in accordance with the provisions of Subhead (1) is not contemporaneously signed, the company shall confirm the passing of the resolution to the members within one month of its passing.
- (5) The signatories of a resolution passed in accordance with the provisions of subhead (1) will procure delivery to the company of the documents constituting the written resolution, and the company will retain such documents as though they constituted the minutes of the proceeding of any general meeting of the company, and they shall be deemed as such.



### Head 65 Majority written resolutions

- (1) Notwithstanding anything to the contrary in Pillar A, a resolution in writing described as being an ordinary resolution that is signed by members holding a majority of the shares for the time being entitled to attend and vote on such a 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 provided the conditions contained in Subhead (3) are complied with.
- (2) Notwithstanding anything to the contrary in Pillar A, a resolution in writing described as being a special resolution that is signed by such member or members who alone or together represent at least 75 per cent of the total voting rights of all the members who at that time would have the right to vote on a special resolution at a general meeting of the company (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 provided the conditions contained in Subhead(4) are complied with.
- (3) A resolution referred to in either Subheads (1) or (2) will only be valid and effective where all members entitled to attend and vote on either such resolution are circulated with the proposed text of the resolution and an explanation of its effects.
- (4) A resolution passed in accordance with the provisions of Subheads (1) or (2), may consist of several documents in like form each signed by one or more members.
- (5) A resolution passed in accordance with the provisions of Subheads (1) shall be deemed to have been passed at a meeting held 7 days following the date on which it was signed by the last member to sign and a resolution passed in accordance with the provisions of Subhead (2) shall be deemed to have been passed at a meeting held 21 days following 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 signature thereof by any member the statement shall be prima facie evidence that it was signed by him on that date.
- (6) On the day either resolution is signed by the last person to sign the resolution, the company shall notify every member of that fact and of the date that the resolution shall be deemed to have been passed.
- (7) In the event that a resolution passed in accordance with the provisions of Subhead (1) is not contemporaneously signed the company shall confirm the passing of the resolution to the members within one month of its passing
- (8) The signatories of a resolution passed in accordance with the provisions of Subhead (1) will procure delivery to the company of the documents constituting the written resolution, and the company will retain such documents as though they constituted the minutes of the proceeding of any general meeting of the company, and they shall be deemed as such.
- (9) This head does not apply to a resolution to remove a director or auditor.

#### **Explanatory note**

*This head is new. The head gives effect to majority written resolutions which was seen as a positive idea by the Company Law Review Group in light of the provisions in the UK White Paper Modernising Company Law, July 2002 (see Chapter 3 of Draft Clauses).*

*The head itself distinguishes between ordinary and special written resolutions in Subheads (1) and (2).*

*The form and procedure of majority written resolutions is as that set out Head 64 for unanimous written resolutions, subject to two major safeguards:*

*Subhead (3) requires that for the resolution to be valid and effective, all members receive a copy of the proposed resolution and an explanation of its effects.*

*Subhead (5) provides that the resolution will be deemed to have been passed at a later date (either 7 days or 21 days depending on whether it is an ordinary or special resolution). This provides a moratorium for dissenting shareholders to challenge the resolution, if they desire.*



---

### Head 66 General meetings of single-member companies

---

- (1) Subject to Subhead (2), all the powers exercisable by a company in general meeting under this Bill 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.
- (2) Subhead (1) shall not empower the sole member of a single-member company to exercise the powers in Part A6, Heads 84 (4), 85 (2) (c) and Head 98 [equivalent of Sections 160 (2) (b), 160 (5), and 160 (6) of the Companies Act, 1963] to remove an auditor from office without holding the requisite meeting provided for in the said provisions.
- (3) Subject to Subhead (2), any provision of this Bill 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 head.
- (4) Where the sole member of a single-member company takes any decision which may be taken by the company in general meeting and which has effect, pursuant to Subheads (1) and (3), as if agreed by the company in general meeting, he shall, unless the decision is taken by way of written resolution which he has already forwarded to the company, provide the company with a written record of that decision.
- (5) Where the sole member notifies a decision taken by way of written resolution, or a written record of a decision taken pursuant to Subhead (4), to a single-member company of which he is the sole member, the notification shall be recorded and retained by the company in a book or by some other suitable means maintained for the purpose.

- (6) The exercise by the sole member of a single-member company of any power, right or obligation under this Regulation, to which Head 68 of Part A4 [equivalent of Section 143 of the Companies Act, 1963], applies, shall, within 15 days, be notified by the company in writing to the Registrar and be recorded by him.
- (7) If the sole member fails to comply with Subhead (4), or if a company fails to comply with subsections (5) or (6) the sole member, the company and every officer of the company who is in default shall be guilty of an offence.
- (8) Failure by the sole member to comply with Subhead (4) shall not affect the validity of any decision referred to in that subhead.

#### **Explanatory note**

*This head re-enacts Regulation 9 of the European Communities (Single-Member Private Limited Companies) Regulations 1994.*

---

### Head 67 Application of this Part to class meetings

---

The provisions of this Part, other than Part A4, Head 68 [equivalent of Section 143 of the Companies Act, 1963], and the provisions of the constitution of the company relating to general meetings shall, as far as applicable, apply in relation to any meeting of any class of member.

#### **Explanatory note**

*This head is new. The head applies the provisions of the constitution of the company and of this Part to meetings of members of the company, other than general meetings. Thus provisions as to notice and procedure of general meetings now apply to members' meetings other than general meetings.*

---

### Head 68 Registration of and obligation of company to supply copies of, certain resolutions and agreements

---

- (1) A printed copy of every resolution or agreement to which this section applies shall, within 15 days after the passing or making thereof, be forwarded to the Registrar and recorded by him.

## Part A4 - Corporate Governance

---

- (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 issued after the passing of the resolution or the making of the agreement.
- (3) A copy of every such resolution or agreement shall be forwarded to any member at his request on payment of €10 or such less sum as the company may direct.
- (4) This head shall apply to—
- (a) resolutions that are required by this Bill of 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 share capital of a company;
  - (e) resolutions that a company be wound up voluntarily passed under Part A11, Heads 20 or 26 [equivalent of Section 251(1)(a) of the Companies Act, 1963];
  - (f) resolution attaching rights or restrictions to any share;
  - (g) resolutions varying any such right or restriction;
  - (h) resolutions classifying any unclassified share;
  - (i) 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 Subhead (1), the company and every officer of the company who is in default shall be guilty of a category four offence.
- (6) If a company fails to comply with Subhead (2) or Subhead (3), the company and every officer of the company who is in default shall be guilty of a category four offence for each copy in respect of which default is made.
- (7) For the purposes of Subheads (5) and (6), a liquidator of a company shall be deemed to be an officer of the company.

### **Explanatory note**

*This head is a slightly amended re-enactment of Section 143 of the Companies Act, 1963, as amended by Section 5(1) of the Companies (Amendment) Act, 1982 and Para.15 of the First Schedule to the Companies (Amendment) Act, 1983.*

*References to the articles have been replaced by references to constitution of the company. The fee charged in respect of forwarding a copy of a resolution to a member has also been raised. Furthermore, the application of the section has been extended in Subhead (4)(k). The head now applies to resolutions converting share capital into stock and stock into share capital.*

---

## **Head 69 Minutes of proceedings of meetings of company**

---

- (1) Every company shall, as soon as may be, cause minutes of all proceedings of general meetings and all resolutions to be entered in books kept for that purpose.
- (2) Any such minute, if purporting to be signed by the chairman of the meeting at which the proceedings were had, or by the chairman of the next succeeding meeting, shall be evidence of the proceedings.
- (3) Where minutes have been made in accordance with this section of the proceedings at any general meeting of the company then, until the contrary is proved, the meeting shall be deemed to have been duly held and convened, and all proceedings had thereat to have been duly had, and all appointments of directors or liquidators shall be deemed to be valid.

- (4) A company shall, if required by the Director of Corporate Enforcement, produce to the Director of Corporate Enforcement for inspection the book or books kept in accordance with Subhead (1) 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 of Corporate Enforcement may require.
- (5) If a company fails to comply with Subhead (1) or (4), the company and every officer of the company who is in default shall be guilty of a category four offence .

### **Explanatory note**

*This head is a slightly amended re-enactment of Section 146 of the Companies Act, 1963. The references to the articles have been replaced by references to the constitution of the company and the operative date of that Act has been specified. Furthermore, the fee that may be charged by the company for furnishing a member with a copy of the Minute Books has been raised.*

### **Explanatory note**

*This head is an amended re-enactment of Section 145 of the Companies Act, 1963, as amended by Section 19 of the Company Law Enforcement Act, 2001.*

*The references to the directors' meetings and the meetings of committees of directors have been removed as the re-enactment of Section 145 is achieved via two new heads. Each deals with directors' meetings and members' meetings separately.*

---

## **Head 70 Inspection of minute books**

---

- (1) The books containing the minutes of proceedings of any general meeting or all resolutions of a company held after the 1st April 1964 shall be kept at the registered office of the company, and shall, during business hours (subject to such reasonable restrictions as the company may by its constitution or in general meeting impose, so that not less than 2 hours in each day be allowed for inspection), be open to the inspection of any member without charge.
- (2) Any member shall be entitled to be furnished within 7 days after he has made a request in that behalf to the company with a copy of any such minutes as aforesaid at a charge not exceeding €1 for every 100 words.
- (3) If any inspection required under this head is refused or if any copy required under this head is not sent within the proper time, the company and every officer of the company who is in default shall be guilty of a category four offence.
- (4) In the case of any such refusal or default, the court may by order compel an inspection of the books in respect of all proceedings of general meetings or direct that the copies required shall be sent to the persons requiring them.

# Chapter 7

## Validation Procedure

### Head 71 Validation procedure

- (1) 'Validation procedure' means the procedure whereby the following conditions are met—
- (a) a restricted activity has authority of a special resolution of the company passed not more than 12 months previously; and
  - (b) the company has forwarded with each notice of the meeting at which the special resolution is to be considered or, if the procedure detailed in Subhead (2) is followed, the company has appended to the resolution, a copy of a declaration pursuant to Part A13, Head 62 [equivalent of Section 242 of the Companies Act, 1990 which complies with Subheads (3) and (4) and also delivers, within 21 days after the date on which the restricted activity was entered into or the date the procedure was initiated, as the case may be, a copy of the declaration to the Registrar for registration.
- (2) The special resolution referred to in Subhead (1) (a) may be passed in accordance with Part A4, Head 62 [equivalent of Section 141 of the Companies Act, 1963] of this Bill.
- (3) The declaration pursuant to Part A13, Head 62 [equivalent of Section 242 of the Companies Act, 1990] shall be made at a meeting of the directors held not earlier than 1 month before the meeting referred to in Subhead (1) (b) or, if the special resolution is passed in accordance with Subhead (2), not earlier than 1 month before the signing of the special resolution, and shall be made by the directors or, in the case of a company having more than 2 directors, by a majority of the directors.
- (4) The declaration pursuant to Part A13, Head 62 [equivalent of Section 242 of the Companies Act, 1990] shall comply with one of paragraphs (a), (b), (c) or (d)—
- (a) Where the restricted activity is a transaction or arrangement that would otherwise be prohibited by Part A3, Head 15 [equivalent of Section 60(1) of the Companies Act 1963] or Part A5, Head 17 [equivalent of Section 31 of the Companies Act, 1990] the declaration shall state—
    - (i) the circumstances in which the transaction or arrangement is to be entered into,
    - (ii) the nature of the transaction or arrangement,
    - (iii) the person or persons to or for whom the transaction or arrangement is to be made,
    - (iv) the purpose for which the company is entering into the transaction or arrangement,
    - (v) the nature of the benefit which will accrue to the company directly or indirectly from entering into the transaction or arrangement, and
    - (vi) 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 will be able to pay its debts in full as they become due;
  - (b) Where the restricted activity is something that would otherwise be prohibited by Part A3, Head 17 [equivalent of Section 72 (1) of the Companies Act, 1963], the declaration shall state—
    - (i) the circumstances in which the transaction or arrangement is to be entered into,
    - (ii) the nature of the transaction or arrangement,
    - (iii) the person or persons to or for whom the transaction or arrangement is to be made,
    - (iv) the company's assets and liabilities as at the latest practicable date before the making of the declaration and in any event at a date not more than three months before the making of the declaration,
    - (v) the company's assets and liabilities after the restricted activity has taken place,
    - (vi) 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 is able to pay its debts in full, and

- (vii) 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 from the date of the making of the declaration;
- (c) Where the restricted activity is to wind up a solvent company in a members' voluntary winding-up, the declaration shall state—
  - (i) the company's assets and liabilities as at the latest practicable date before the making of the declaration and in any event at a date not more than three months before the making of the declaration, and
  - (ii) 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 its debts in full within such period not exceeding 12 months from the commencement of the winding-up as may be specified in the declaration;
- (d) Where the restricted activity is the continuance of a company in another jurisdiction, the declaration—
  - (i) shall state that the company intends to make the application to the Registrar, and shall specify the jurisdiction in which it proposes to seek continuance,
  - (ii) shall be sent in writing to each creditor of the company,
  - (iii) shall be published once in a newspaper circulating in the State or in such other manner as the court may on application direct, and
  - (iv) shall state that any creditor of the company who objects to the application may within 30 days of the date of the advertisement give notice of his objection to the company.
- (5) A declaration made pursuant to Subheads (4) (b), (c) or (d) shall have no effect for the purposes of this Bill unless it is accompanied by a report—
  - (a) drawn up in the prescribed form, by an independent person who is qualified at the time of the report to be appointed, or to continue to be, the auditor of the company; and
  - (b) which shall state whether, in the opinion of the independent person, the declaration is not unreasonable.
- (6) Where the restricted activity is a transaction or arrangement that would otherwise be prohibited by Part A3, Head 15 [equivalent of Section 60 (1) of the Companies Act, 1963] or Part A5, Head 17 [equivalent of Section 31 of the Companies Act, 1990] and involves a company providing a security, such security shall not be invalidated for failure to comply with the validation procedure by reason only of the fact that it is an existing security, which was in being prior to the initiation of the validation procedure.
- (7)
  - (a) The refinancing of a loan that was secured by a transaction or arrangement that would otherwise be prohibited by Part A3, Head 15 [equivalent of Section 60(1) of the Companies Act, 1963] or Part A5, Head 17 [equivalent of Section 31 of the Companies Act, 1990], but which has already been validated, is deemed to have been validated;
  - (b) The term "refinancing" as used in Subhead (7)(a) means the repayment of an existing loan and its replacement with another loan where the sole and exclusive purpose of the new loan is to repay and only to repay the precise amount outstanding on the existing loan.
- (8) For the purposes of Subhead (4)(a), in determining whether or not a company will be able to pay its debts in full, it shall not be required to assume that the company has been called upon to pay on foot of a guarantee or that security given has been realised.
- (9) Where a director of a company makes the declaration pursuant to Part A13, Head 62 [equivalent of Section 242 of the Companies Act, 1990] without having reasonable grounds for the opinion that the company having entered into or proceeded with a restricted activity is solvent—



- (a) the court, on the application of a liquidator, creditor, member or contributory of the company, or 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; and
  - (b) if the company is wound up within 12 months after the making of the declaration pursuant to Part A13, Head 62 [equivalent of Section 242 of the Companies Act, 1990] 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 the director did not have reasonable grounds for his opinion.
- (10) Unless all of the members of the company entitled to vote at general meetings of the company vote in favour of the special resolution, the company shall not enter into or proceed with the restricted activity before the expiry of 30 days after the special resolution has been passed or, if an application referred to in Subhead (11) is made, until the application has been disposed of by the court.
- (11) If application is made to the court in accordance with this head for the cancellation of the special resolution, the special resolution shall not have effect except to the extent to which it is confirmed by the court.
- (12) Subject to Subhead (13), an application referred to in Subhead (11) may be made by the holders of not less in the aggregate than 10 per cent in par value of the company's share capital or any class thereof.
- (13) An application shall not be made under Subhead (11) by a person who has consented to, signed or voted in favour of the special resolution.
- (14) An application referred to in Subhead (11) must be made within 28 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.

### **Explanatory note**

*This head is new and gives effect to the recommendations of the Company Law Review Group concerning creditor and shareholder protection.*

*The Company Law Review Group believes that there is no justification for having two or more validation procedures and recommended that there should be one validation procedure which is capable of being invoked in the case of a number of specific problems.*

*The validation procedure itself is taken, in substance, from Sections 60(2)-(11) of the Companies Act, 1963 and Section 34 of the Companies Act, 1990, as inserted by Section 78 of the Company Law Enforcement Act, 2001.*

*The validation procedure is comprised of special resolution and a statutory declaration by the directors in a preceding meeting. Provision is made for the passing of the resolution by a written resolution, as was previously the case.*

*Subhead (4) gives the exact composition of the declaration for each restricted activity. The gratuitous disposition of assets to members has also been included (Section 72 of the Companies Act, 1963). The statutory declaration has been replaced by declaration pursuant to Part A13, Head 62 [equivalent of Section 242 of the Companies Act, 1990].*

*Subhead (5) requires an independent person's report as to the solvency of the company. This requirement was introduced by Section 34 of the Companies Act, 1990 as inserted by Section 78 of the Company Law Enforcement Act, 2001. No such provision was previously contained in Section 60.*

*Subheads (6) – (14) are all drawn, in substance, from Sections 60 and 31.*

---

## **Head 72 Remedy in case of oppression**

---

- (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 in a manner oppressive to him or any of the members (including himself), or in disregard of his or their interests as members, may apply to the court for an order under this head.
- (2) In a case falling within Subhead (1), the Director of Corporate Enforcement may apply for an order under this head.

- (3) If, on any application under Subhead (1) or Subhead (2) the court is of opinion that the company's affairs are being conducted or the directors' powers are being exercised as aforesaid, the court may, with a view to bringing to an end the matters complained of, make such order as it thinks fit, whether directing or prohibiting any act or cancelling or varying any transaction or for regulating the conduct of the company's affairs in future, or 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, or for the payment of compensation or otherwise.
- (4) Where an order under this head makes any alteration in, or addition to, any company's constitution, then, notwithstanding anything in any other provision of this Bill, 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 alteration in, or addition to, the constitution, inconsistent with the provisions of the order; but, subject to the foregoing provisions of this subsection, the alterations or additions made by the order shall be of the same effect as if duly made by resolution of the company, and the provisions of this Bill shall apply to the constitution as so altered or added to accordingly.
- (5) An office copy of any order under this head, altering or adding to or giving leave to alter or add to a company's constitution shall, within 21 days after the making thereof, be delivered by the company to the Registrar for registration; and if a company fails to comply with this Subhead, the company and every officer of the company who is in default shall be guilty of a category four offence.
- (6) The personal representative of a person who, at the date of his death was a member of a company, or 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 Subhead (1) for an order under this head and, accordingly, any reference in that subhead to a member of a company shall be construed as including a reference to any such personal representative, trustee or person beneficially interested as aforesaid or to all of them.
- (7) If, in the opinion of the court, the hearing of proceedings under this head 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 thereof shall be in camera.

### **Explanatory note**

*This head is an amended re-enactment of Section 205 of the Companies Act, 1963. References to the memorandum and articles of association have been replaced by references to the constitution of the company.*

*Subhead (2) has been amended insofar as locus standii has been transferred from the Minister to the Director of Corporate Enforcement.*

*Subhead (3) has been amended by expressly permitting the courts to make an award of damages. Although Section 205 stated that the courts were permitted to "make such order as it thinks fit", it has been held by the SC in *Irish Press PLC v Ingersoll Irish Publications Ltd.* (1995) 2 IR 175 that Section 205 does not empower the courts to make an award of damages. In reality the courts circumvented this by ordering the respondent to purchase the shares of the petitioner at an inflated price, thus in effect making an award of damages. As a result the subsection has been amended to permit the courts to make an award of damages directly.*

### Chapter 8

#### Form of Registers, Minute Books and Books of Account

---

##### Head 73 Form of registers, minute books and books of account

---

- (1) Any register, index, minute book or book of account required by this Bill 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, minute book or book of account 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 its discovery, and where default is made in complying with this Subhead, the company and every officer of the company who is in default shall be guilty of a category three offence.

**Explanatory note**

*This head is based on Section 378 of the Companies Act, 1963.*

##### Head 74 Use of computers etc. for certain company records

---

- (1) It is hereby declared that the power conferred on a company by Subhead 64(1) of this Part [equivalent of Section 378 (1) of the Companies Act, 1963] 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 other than minute books kept pursuant to Head 69 of this Part [equivalent of Section 145 of the Companies Act, 1963] 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) Any provision of an instrument made by a company before the commencement of this Bill which requires a register of holders of debentures of the company to be kept in a legible form shall be construed as requiring the register to be kept in a legible or non-legible form, provided, however, that a register kept in non-legible form shall be capable of being reproduced in legible form.
- (3) If any such register or other record of a company as is mentioned in Subhead 64(1) of this Part [equivalent of Section 378 (1) of the Companies Act, 1963] is kept by the company by recording the matters in question otherwise than in a legible form, any duty imposed on the company by virtue of that Act to allow inspection of, or to furnish a copy of, the register or other record 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.
- (4) The Minister may by regulations make such provision in addition to Subhead (3) of this section as he considers appropriate in connection with such registers or other records as are mentioned in that subsection and are kept as there mentioned, and the regulations may make modifications of provisions of this Bill relating to such registers or other records as are mentioned in that subhead.

**Explanatory note**

*This head is based on Section 4 of the Companies (Amendment) Act, 1977.*

---

# Part A5 – Directors and Other Officers

## Contents of Part A5

---

### Chapter 1 – Preliminary and Definitions

- 1 Interpretation
- 2 Connected persons
- 3 Shadow directors
- 4 De facto directors

### Chapter 2 – General Duties of Directors and Secretaries

- 5 Duty of each director
- 6 Directors to have regard to interests of employees
- 7 Directors' compliance statement and related statement
- 8 Duties of secretary
- 9 Fiduciary duties of directors
- 10 Other interests of directors
- 11 Power of a director to act in a professional capacity for the company
- 12 Duty of director to disclose his interest in contracts made by the company
- 13 Liability to account and indemnify
- 14 Power of court to grant relief to officers of company
- 15 Avoidance of provisions exempting officers and auditors of company from liability

### Chapter 3 – Particular transactions involving conflict of interest

- 16 Substantial property transactions involving directors etc
- 17 Prohibition of loans, etc, to directors and connected persons
- 18 Arrangements of certain value
- 19 Reduction in amount of company's relevant assets
- 20 Group exceptions to prohibitions on loans etc
- 21 Transactions with holding company
- 22 Directors' expenses
- 23 Business transactions
- 24 Civil remedies for breach of Part A5, Head 17 [equivalent of section 31 of Companies Act, 1990]
- 25 Personal liability for company debts in certain cases
- 26 Criminal penalties for breach of Part A5, Head 17 [equivalent of section 15 of Companies (Auditing and Accounting) Act 2003, formerly section 31 of Companies Act, 1990]
- 27 Contracts of employment of directors
- 28 Approval of company necessary for payment by it to director or director's dependants for loss of office.
- 29 Approval of company necessary for payment to director of compensation in connection with transfer of property
- 30 Duty of director to disclose to company payments to be made to him in connection with transfer of shares in a company
- 31 Other provisions relating to payments to directors
- 32 Contracts with sole members

### Chapter 4 – Disclosure of Interests in Shares and Debentures

- 33 Meaning of 'disclosable interest'
- 34 Duty of directors and secretary to disclose disclosable interests in certain shares and debentures
- 35 Mode of disclosure by directors and secretaries under this Chapter
- 36 Enforcement of notification obligation
- 37 Register of interests: contents and entries
- 38 Register of interests: maintenance and inspection

## Part A5 - Duties of Directors and other Officers

### Chapter 1

#### Preliminary and Definitions

##### Head 1 Interpretation provisions

- (1) In this Part, unless the context otherwise requires—

“credit transactions” has the meaning assigned to it by Subhead (3);

“guarantee” includes indemnity;

“quasi-loan” has the meaning assigned to it by Subhead (2); and

“licensed bank” means the holder of a licence under Section 9 of the Central Bank Act, 1971;

“approved stock exchange” means a stock exchange approved under the Irish Stock Exchange Act, 1995 or under comparable legislation regulating the authorisation of stock exchanges in other Member States of the European Union.

- (2) For the purposes of this Part—

- (a) a quasi-loan is a transaction under which one party (“the creditor”) agrees to pay, or pays otherwise than in pursuance of an agreement, a sum for another (“the borrower”) or agrees to reimburse or reimburses otherwise than in pursuance of an agreement, expenditure incurred by another party for another (“the borrower”)—

- (i) on terms that the borrower (or a person on his behalf) will reimburse the creditor; or
- (ii) in circumstances giving rise to a liability on the borrower to reimburse the creditor;

- (b) any reference to the person to whom a quasi-loan is made is a reference to the borrower; and

- (c) the liabilities of a borrower under a quasi-loan include the liabilities of any person who has agreed to reimburse the creditor on behalf of the borrower.

(3)

- (a) For the purposes of this Part a credit transaction is a transaction under which one party (“the creditor”)—
- (i) supplies any goods or sells any land under a hire-purchase agreement or conditional sale agreement;
- (ii) leases or licenses the use of land or hires goods in return for periodical payments;
- (iii) otherwise disposes of land or supplies goods or services on the understanding that payment (whether in a lump-sum or instalments or by way of periodical payments or otherwise) is to be deferred;

- (b) For the purposes of this Part, a lease of land which reserves a nominal annual rent of not more than €100 is not a credit transaction where a company grants a lease in return for a premium or capital payment which represents the open market value of the land thereby disposed of by the company.

- (4) For the purposes of this Part the value of a transaction or arrangement is—

- (a) in the case of a loan, the principal of the loan;
- (b) in the case of a quasi-loan, the amount or maximum amount which the person to whom the quasi-loan is made is liable to reimburse the creditor;
- (c) in the case of a transaction or arrangement other than a loan or quasi-loan or a transaction or arrangement within paragraph (d) or (e), the price which it is reasonable to expect could be obtained for the goods, land or services to which the transaction or arrangement relates if they had been supplied at the time the transaction or arrangement is entered into in the ordinary course of business and on the same terms (apart from price) as they have been supplied or are to be supplied under the transaction or arrangement in question;



## Part A5 - Duties of Directors and other Officers

---

- (d) in the case of a guarantee or security, the amount guaranteed or secured;
- (e) in the case of an arrangement to which Head 17 (2) and (3) of this Part [equivalent of Section 31(2) and Section 31(3) of the Companies Act, 1990] applies the value of the transaction to which the arrangement relates less any amount by which the liabilities under the arrangement or transaction of the person for whom the transaction was made have been reduced.
- (5) For the purposes of Subhead (4), the value of a transaction or arrangement which is not capable of being expressed as a specific sum of money (because the amount of any liability arising under the transaction is unascertainable, or for any other reason) shall, whether or not any liability under the transaction has been reduced, be deemed to exceed €65,000.
- (6) For the purposes of this Part, a transaction or arrangement is made for a person if—
- (a) in the case of a loan or quasi-loan, it is made to him;
- (b) in the case of a credit transaction, he is the person to whom goods or services are supplied, or land is sold or otherwise disposed of, under the transaction;
- (c) in the case of a guarantee or security, it is entered into or provided in connection with a loan or quasi-loan made to him or a credit transaction made for him;
- (d) in the case of an arrangement to which Head 17 (2) and (3) of this Part [equivalent of Sections 31(2) or 31(3) of Companies Act, 1990] applies, the transaction to which the arrangement relates was made for him; and
- (e) in the case of any other transaction or arrangement for the supply or transfer of goods, land or services (or any interest therein), he is the person to whom the goods, land or services (or the interest) are supplied or transferred.
- (7) This Part, does not apply to arrangements or transactions entered into before the 1st February 1991 but, for the purposes of determining whether an arrangement is one to which Head 17 (2) and (3) of this Part [equivalent of Section 31(2) and Section 31(3) of the Companies Act, 1990] applies, the transaction to which the arrangement relates shall, if it was entered into before the 1st February 1991, be deemed to have been entered into thereafter.
- (8) This Part shall have effect in relation to an arrangement or transaction whether governed by the law of the State or of another country.

### **Explanatory note**

*This head is a slightly amended re-enactment of Section 25 of the Companies Act, 1990, as amended by Section 75 of the Company Law Enforcement Act, 2001.*

*The cross-references have been amended in accordance with the new provisions and the amounts specified in Subheads (3)(b) and (5) have been converted from punts to euro and rounded off.*

*Subsection (7) has been amended insofar as the commencement date of the head is replaced by the specific.*

---

## **Head 2 Connected persons**

---

- (1) For the purposes of this Part, a person is connected with a director of a company if, but only if, the person (not being himself a director of the company) is –
- (a) that director's spouse, parent, brother, sister or child;
- (b) a person acting in his capacity as the trustee of any trust, the principal beneficiaries of which are the director, his spouse or any of his children or any body corporate which he controls; or
- (c) in partnership within the meaning of Section 1(1) of the Partnership Act 1890, with that director.
- (2) A body corporate shall also be, for the purposes of this Part, connected with a director of a company if it is controlled by that director.

- (3) For the purposes of this head, a director of a company shall be deemed to control a body corporate if, but only if, he is, alone or together with any other director or directors of the company or any person connected with the director or such other director or directors, interested in one-half or more of the equity share capital of that body or entitled to exercise or control the exercise of one-half or more of the voting power at any general meeting of that body.
- (4) In Subhead (3)—
- (a) “equity share capital” has the same meaning as in Part A1, Head 6(9) [equivalent of Section 155 of Companies Act, 1963]; and
- (b) references to voting power exercised by a director shall include references to voting power exercised by another body corporate which that director controls.
- (5) The provisions of Head 33 of this Part [equivalent of Section 54 of Companies Act, 1990] shall have effect for the purposes of Subhead (3) with the substitution of the words “one-half or more” for the words “one-third or more” in Subhead (2)(c) [equivalent of Sections 54 (5) and (6) of the Companies Act, 1990] of that head.
- (6) It shall be presumed for the purposes of this Part, until the contrary is shown, that the sole member of a single-member private limited company is a person connected with a director of that company.

### **Explanatory note**

*This head is a slightly amended re-enactment of Section 26 of the Companies Act, 1990, as amended by Section 76 of the Company Law Enforcement Act, 2001.*

*Subsection (6) has been amended insofar as the reference to S.I. No.275 of 1994, EC (Single-Member Private Limited Companies) Regulations, 1994, has been deleted in view of the fact that provision for a single member private-company limited by shares is now contained in Pillar A of the Bill.*

---

## Head 3 Shadow directors

---

- (1) Subject to Subhead (2), a person in accordance with whose directions or instructions the directors of a company are accustomed to act (in this Bill referred to as “a shadow director”) shall be treated for the purposes of this Part as a director of the company unless the directors are accustomed so to act by reason only that they do so on advice given by him in a professional capacity.
- (2) A body corporate is not to be regarded as a shadow director of any of its subsidiary companies.
- (3) A shadow director shall not be guilty of an offence under Part B10, Head 17(8) [equivalent of Section 44(8) of Companies Act, 1990] by virtue only of Subhead (1).
- (4) Part A5, Head 12 [equivalent of Section 194 of Companies Act, 1963] shall apply in relation to a shadow director of a company as it applies in relation to a director of a company, except that the shadow director shall declare his interest, not at a meeting of the directors, but by a notice in writing to the directors which is either:
- (a) a specific notice given before the date of the meeting at which, if he had been a director, the declaration would be required by Subhead (2) of that head to be made; or
- (b) a notice which under Subhead (3) of that head falls to be treated as a sufficient declaration of that interest or would fall to be so treated apart from the proviso; and Part A4, Heads 33 and 60 [equivalent of Section 145 of Companies Act, 1963] shall have effect as if the declaration had been made at the meeting in question and had accordingly formed part of the proceedings at that meeting.

### **Explanatory note**

*This head is a slightly amended re-enactment of Section 27 of the Companies Act, 1990. The cross references have been amended in accordance with the new provisions of the Bill.*

*Subhead (2) is new. It follows, in part, Section 230(3) of the UK Company Law Reform Bill. The CLRG is of the view that it is appropriate to separate the law applicable to holding companies from the law applicable to directors as to treat holding companies as shadow directors in any situation is wrong – if there is a mischief to be addressed, it should be addressed head-on by regulating the dealings of holding companies qua holding company and not qua shadow director.*

---

### **Head 4    De Facto Directors**

---

- (1) Subject to Subhead (2), a person who occupies the position of director but who has not been formally appointed as a director (in this Bill referred to as a “de facto director”) shall be treated for the purposes of this Part as a director of a company provided that a person shall not be a de facto director by reason only of the fact that he gives advice in a professional capacity.
  
- (2) Head 12 of this Part [equivalent of Section 194 of Companies Act, 1963] shall apply in relation to a de facto director of a company as it applies in relation to a director of a company.

#### ***Explanatory note***

*This head is a new head. The head gives a statutory definition to de facto directors for this Part.*

*This head extends the High Court decision in *Re Lynnrowan Enterprises Ltd.* (31st July 2002) in that de facto directors shall now, for all purposes, be treated as directors of the company and not merely for the purposes of restriction orders. Thus, they will be under the same duties as ordinary directors but need not be registered.*

*A saving provision for those giving professional advice has also been inserted.*

# Chapter 2

## General Duties of Directors and Secretaries

### Head 5 Duty of each director

- (1) It is the duty of each director of a company to ensure that the Companies Acts are complied with by the company.
- (2) For the purpose of any provision of the Companies Acts which provides that an officer of a company who is in default shall be guilty of an offence, an officer who is in default is any officer who authorises or who, in breach of his duty as such officer, permits the default mentioned in the provision.
- (3) An officer shall be presumed to have permitted a default by the company unless the officer can establish that he took all reasonable steps to prevent it or that by reason of circumstances beyond his control, was unable to do so.
- (4) Upon notification of appointment as a director on the prescribed form, the director's signature should appear below a statement: "I acknowledge that, as a director, I have legal duties and obligations imposed by the Companies Acts, other statutes and at common law.
- (5) In this head 'default' includes a refusal or contravention.

#### **Explanatory note**

*This head is an amended re-enactment of Section 383 of the Companies Act 1963, as substituted by Section 100 of the Company Law Enforcement Act, 2001. As an introductory provision to the Chapter of this Part dealing with the general duties of directors and secretaries, it sets out the overall duty of compliance by directors with the Companies Acts. It must be noted that this head now applies to registered directors, shadow directors and de facto directors equally.*

*Subheads (1), (2), and (3) are re-enactments of Sections 383(3), (1), and (2), and of the Companies Act, 1963 respectively.*

*Subhead (4) is new. This subhead implements the recommendation of the First Report of the Company Law Review Group that such an acknowledgement of the existence of directors' duties by the directors upon registration is desirable. This is achieved through requiring them to sign a declaration to that effect.*

*Subhead (5) re-enacts Section 383 (4) of the Companies Act, 1963.*

### Head 6 Directors to have regard to interests of employees

- (1) The matters to which the directors of a company are to have regard in the performance of their functions shall include the interests of the company's employees in general, as well as the interests of its members.
- (2) Accordingly, the duty imposed by this head on the directors shall be owed by them to the company (and the company alone) and shall be enforceable in the same way as any other fiduciary duty owed to a company by its directors.

#### **Explanatory note**

*This head re-enacts Section 52 of the Companies Act, 1990.*

### Head 7 Director's compliance statement and related statement

- (1) In this head—  
  
'amount of turnover' and 'balance sheet total' have the same meanings as in Part A6, Head 58 [the equivalent of Section 8 of Companies (Amendment) Act, 1986];  
  
'relevant obligations', in relation to a company, means the company's obligations under—
  - (a) the Companies Acts, where the failure to comply with any such obligation is a category one offence or a category two offence or a Serious Market Abuse Offence or a Serious Prospectus Offence or a Serious Transparency Offence; and
  - (b) tax law,  
  
'tax law' means—
    - (a) the Customs Acts,
    - (b) the statutes relating to the duties of excise and to the management of those duties,
    - (c) the Tax Acts,

## Part A5 - Duties of Directors and other Officers

- (d) the Capital Gains Tax Acts,
  - (e) the Value-Added Tax Act, 1972 and the enactments amending or extending that Act,
  - (f) the Capital Acquisitions Tax Act, 1976 and the enactments amending or extending that Act,
  - (g) the statutes relating to stamp duty and to the management of that duty, and
  - (h) any instruments made under an enactment referred to in any of paragraphs (a) to (g) or made under any other enactment and relating to tax.
- (2) The directors of a company to which this head applies shall also include in their report under Part A6, Head 37 [the equivalent of Section 158 of the Companies Act, 1963] a statement—
- (a) acknowledging that they are responsible for securing the company's compliance with its relevant obligations; and
  - (b) confirming that the company has in place a compliance policy statement that is, in the opinion of the directors, appropriate for the company and, if this is not the case, specifying the reasons; and
  - (c) confirming that the company has in place, appropriate arrangements or structures that are, in the opinion of the directors, designed to secure material compliance with its relevant obligations, which arrangements or structures may (at the discretion of the directors) include the company's reliance upon internal and/or external advisors who appear to the directors to have the requisite knowledge and experience to advise the company on compliance with its relevant obligations and if this is not the case, specifying the reasons; and
  - (d) confirming that the company's arrangements or structures referred to in paragraph (c), have been reviewed during the financial year to which the report relates, and if this is not the case, specifying the reasons.
- (3) For the purposes of this head, a company's arrangements or structures are considered to be designed to secure material compliance with its relevant obligations if they provide a reasonable assurance of compliance in all material respects with those obligations.
- (4) Where the directors of a company to which this head applies fail to comply with Subhead (2), each director to whom the failure is attributable is guilty of a category three offence.
- (5) This head does not apply to a company in respect of any financial year of the company if, either—
- (a) its balance sheet total for the year does not exceed—
    - (i) €12,500,000, or
    - (ii) if an amount is prescribed under Part A14, Head 45 (1)(l) [the equivalent of Section 48(1)(l) of the Companies (Auditing and Accounting) Act, 2003] for the purpose of this provision, the prescribed amount,
- or, in the alternative to the provisions in (a),
- (b) the amount of its turnover for the year does not exceed—
    - (i) €25,000,000, or
    - (ii) if an amount is prescribed under Part A14 Head 45 (1)(l) [the equivalent of Section 48(1)(l) of the Companies (Auditing and Accounting) Act, 2003] for the purpose of this provision, the prescribed amount.
- (6) This head does not apply to any company that is of a class exempted under Part A14, Head 45 (1)(l) [equivalent of Section 48(1)(j) of the Companies (Auditing and Accounting) Act, 2003].
- Explanatory note**  
*This head is an amended re-enactment of Section 205E of the Companies Act, 1990 as inserted by Section 45 of the Companies (Auditing and Accounting) Act, 2003. The amendments have been made in accordance with the recommendations made by the Company Law Review Group in its 2005 Report on the Directors' Compliance Statement and subsequently adopted by the Minister. The previous Section 45 has not been enacted.*
- This head does not apply to guarantee companies and unlimited companies under Part B4 and B5 respectively. It has full application to DACs under Part B3 (subject to the exemption provided for in Subhead (5)) and to PLCs in Part B2*



---

### Head 8 Duties of secretary

---

- (1) The duties and responsibilities of the secretary of the company shall, without derogating from the secretary's statutory and other legal duties and responsibilities, be such duties and responsibilities as are delegated to the secretary by the board of directors.
- (2) The directors shall in their appointment of a secretary, who may be one of their number, have a duty to ensure that the person appointed as secretary has the suitable skills to maintain (or to procure the maintenance of) the records (other than accounting records) required to be kept under the Companies Acts.
- (3) Upon notification of appointment as a secretary on the prescribed form, the secretary's signature should appear below a statement:  
"I/We acknowledge that, as a secretary, I/we have legal duties and obligations imposed by the Companies Act, other statutes and at common law.

#### **Explanatory note**

*This head is new. The head sets out the duties and responsibilities of the secretary. The head also reflects that the secretary is appointed by and can be removed by the board of directors. The secretary is not responsible for company law compliance since the secretary does not have the authority to cause the company to comply, such being vested in the board of directors.*

*Subhead (1) sets out and recognises the role of the secretary as the person who, by order of the board of directors, convenes meetings, records their proceedings, is custodian of the registers required by the Companies Acts and the person to whom the directors are permitted and expected to delegate their responsibility to make filings under the Companies Acts. It also reflects that it is the directors who are primarily responsible for the management and direction of the company, and to that extent primarily responsible for compliance with the Companies Acts.*

*Subhead (2) imposes a duty on the directors to ensure that the secretary has the suitable skills to maintain records required by the Companies Acts. Such a duty is new. However, it is worth noting that a similar duty is imposed upon the directors of a PLC under Section 236 of the Companies Act, 1990.*

*Subhead (3) implements the recommendation of the First Report of the Company Law Review Group that such an acknowledgement of the existence of a secretary's duties by the secretary upon registration is desirable. This is achieved through requiring the secretary to sign a declaration to that effect. The wording of such a declaration recognises that the secretary may be a corporate body.*

---

### Head 9 Fiduciary duties of directors

---

- (1) Without prejudice to the provisions of any enactment (including this Bill) a director of a company shall owe the duties set out in Head 3 to his company (and the company alone), which shall be enforced in the same way as any other fiduciary duty owed to a company by its directors.
- (2) The duties set out in Subhead (3) are based on certain common law rules and equitable principles as they apply in relation to the directors of companies and shall have effect in place of those rules and principles as regards the duties owed to a company by a director and the duties in Subhead (3) shall be interpreted and applied in the same way as common law rules or equitable principles and regard shall be had to the corresponding common law rules and equitable principles in interpreting and applying the duties set out in Subhead (3)
- (3) Every director of a company shall—
  - (a) act in good faith in what the director considers to be the interests of the company;
  - (b) act honestly and responsibly in relation to the conduct of the affairs of the company;
  - (c) act in accordance with the company's constitution and must exercise his powers only for the purposes allowed by law;
  - (d) not use the company's property, information or opportunities for his own or anyone else's benefit unless he is allowed to by the company's constitution or the use has been approved by a resolution of the company in general meeting;

- (e) not agree to restrict the director's power to exercise an independent judgment unless this is expressly permitted by the company's constitution and provided that if a director considers in good faith that it is in the interests of the company for a transaction to be entered into and carried into effect, a director may restrict the director's power to exercise an independent judgment in the future by agreeing to act in a particular way to achieve this;
  - (f) avoid any conflict between the director's duties to the company and the director's other, including personal, interests and may not retain any benefit derived from any engagement (other than a transaction or arrangement to which the director and the company are party) where there is such a conflict of interest unless the company's members in general meeting release the director from his duty to the company;
  - (g) owe the company a duty to exercise the care, skill and diligence which would be exercised in the same circumstances by a reasonable person having both;
    - (i) the knowledge and experience that may reasonably be expected of a person in the same position as the director, and
    - (ii) the knowledge and experience which the director has; and
  - (h) have regard to the interests of the company's employees in general and to those of its members.
- (4) A director appointed or nominated for appointment by a member with an entitlement to so appoint or nominate under the constitution or a shareholders' agreement, may have regard to the interests of that member.

### **Explanatory note**

*This head is new and implements the recommendation of the First Report of the Company Law Review Group that the fiduciary duties owed by directors to the company be stated within the new companies code.*

*The fiduciary duties of the directors have been enunciated, until now, by the Irish courts. The Company Law Review Group recommended that the inaccessibility and incomprehensibility of the common law concerning directors' duties to the layperson should be addressed by their being stated within the body of the companies code. Furthermore, the fiduciary duties are stated in general rather than specific terms and since they are derived from principles established by the courts, they are not intended to be exhaustive.*

---

## **Head 10 Other interests of directors**

---

Save to the extent that the constitution of a company provides otherwise, a director of a company may be or become a director or other officer of, or otherwise interested in, any company promoted by the company or in which the company may be interested as shareholder or otherwise subject to Head 9 of this Part and no such director shall be accountable to the company for any remuneration or other benefits received by him as a director or officer of, or from his interest in, such other company unless the company otherwise directs.

### **Explanatory note**

*This head is new and imports, in a slightly amended manner, Model Regulation 78 of Part I of Table A of the First Schedule to the Companies Act 1963. It is an exception to the fiduciary duties set out in Head 9 of this Part.*

---

## **Head 11 Power of a director to act in a professional capacity for the company**

---

Save to the extent that the constitution of a company provides otherwise, any director may act by himself or his firm in a professional capacity for the company of which he is a director and he or his firm shall be entitled to remuneration for professional services as if he were not a director, but nothing herein contained shall authorise a director or his firm to act as auditor to the company.

### **Explanatory note**

*This head is new and imports Model Regulation 87 of Part I of Table A of the First Schedule to the Companies Act, 1963. The purpose of this head is to elaborate upon the powers of the directors, notwithstanding the fact that the fiduciary duties are set out in this Part.*

### Head 12 Duty of director to disclose his interest in contracts made by the company

- (1) It shall be the duty of a director of a company who is in any way, whether directly or indirectly, interested in a contract or proposed contract with the company, to declare the nature of his interest at a meeting of the directors of the company.
- (2) In the case of a proposed contract, the declaration, required by this head to be made by a director, shall be made at the meeting of the directors at which the question of entering into the contract is first taken into consideration, or if the director was not at the date of that meeting interested in the proposed contract, at the next meeting of the directors held after he became so interested and in the case where a director becomes interested in a contract after it is made, the said declaration shall be made at the first meeting of the directors held after the director becomes so interested.
- (3) Subject to Subhead (4), for the purposes of this head a general notice given to the directors of a company to the effect that—
  - (a) he is a member of a specified company or firm and is to be regarded as interested in any contract which may, after the date of the notice, be made with that company or firm; or
  - (b) he is to be regarded as interested in any contract which may, after the date of the notice, be made with a specified person who is connected with him (within the meaning of Head 2 of this Part [equivalent of Section 26 of Companies Act, 1990]);

shall be deemed to be a sufficient declaration of interest in relation to any such contract.

- (4) No such notice as aforesaid shall be of effect unless it is given at the meeting of directors or the director takes reasonable steps to secure that it is brought up and read at the next meeting of the directors after it is given.

- (5) A copy of every declaration made and notice given in pursuance of this head shall, within 3 days after the making or giving thereof, be entered into a book for this purpose. Such book shall be open for inspection without any charge by any director, secretary, auditor or member of the company at the registered office of the company and shall be produced at every general meeting of the company and at any meeting of the directors if any director so requests in sufficient time to enable the book to be available at the meeting.
- (6) Nothing in this head shall be taken to prejudice the operation of any rule of law restricting directors of a company from having interests in contracts with the company.
- (7) Any reference in this head to a contract shall be construed as including a reference to any transaction or arrangement (whether or not constituting a contract) made or entered into on or after the commencement of this Bill.
- (8) For the purposes of this head, a transaction or arrangement of a kind described in Head 17, made by a company for a director of the company or a person connected with such a director shall, if it would not otherwise be so treated (and whether or not prohibited by that head), be treated as a transaction or arrangement in which that director is interested.

#### **Explanatory note**

*This head is an amended re-enactment of Section 194 of the Companies Act, 1963, as amended by Section 47(3) of the Companies Act, 1990.*

*Sections 194(5)(b) and 194(6) have not been included in Pillar A as private companies limited by shares are our only concern here. Those subsections will be included in Pillar B for companies other than the CLS. The reason for their exclusion from this Part is that since their purpose was to protect the investing public, it carries less weight in relation to the private company limited by shares as the shares cannot be offered to the public.*

*Furthermore, it was the opinion of the Company Law Review Group that such a declaration was a matter of contract and as such, there was no public interest in having the matter prosecuted.*

*Subheads (7) and (8) re-enact Sections 47 (1) and (2) of the Companies Act, 1990.*

---

### Head 13 Liability to Account and Indemnify

---

- (1) Subject to Head 14 of this Part [equivalent of Section 391 of Companies Act, 1963], where a director acts in breach of his duties under this Part, he shall be liable -
- (a) to account to the company for any gain which he makes directly or indirectly; and
  - (b) to indemnify the company for any loss or damage resulting from that breach of duty.
- (2) Subject to Subhead (4), where a company enters into a transaction or arrangement contrary to Head 16 [equivalent of Section 29 of Companies Act, 1990] or Head 17 of this Part [equivalent of Section 31 of Companies Act, 1990] with a director of the company or its holding company or a person connected with him, that director and the person so connected and any other director of the company who authorised the arrangement or any transaction entered into in pursuance of such an arrangement, shall (whether or not the transaction or arrangement has been avoided) be liable -
- (a) to account to the company for any gain which he had made directly or indirectly by the arrangement or transaction; and
  - (b) (jointly and severally with any other person liable under this subhead) to indemnify the company for any loss or damage resulting from the arrangement or transaction.
- (3) Subheads (1) and (2) are without prejudice to the company's right at common law to claim damages for breach of duty.

- (4) Where an arrangement or transaction is entered into by a company and a person connected with a director of the company or its holding in contravention of Head 16 [equivalent of Section 29 of the Companies Act, 1990] or Head 17 of this Part [equivalent of Section 31 of the Companies Act, 1990], that director shall not be liable under Subhead (2) if he shows that he took all reasonable steps to secure the company's compliance with that head and in any case, a person so connected and any such other officer as is mentioned in the said Subhead (2) shall not be so liable if he shows that at the time the arrangement or transaction was entered into, he did not know the relevant circumstances constituting the contravention.

#### **Explanatory note**

*This head is new and codifies the common law remedies of account and indemnity. Subhead (2) replicates Sections 29(4) and 38(2) of the Companies Act, 1990.*

---

### Head 14 Power of court to grant relief to officers of the company

---

- (1) If in any proceeding for negligence, default, breach of duty or breach of trust against an officer of a company or a person employed by a company as auditor, it appears to the court hearing the case that that officer or person is or may be liable in respect of the negligence, default, breach of duty or breach of trust but that he has acted honestly and reasonably and that having regard to all the circumstances of the case, including those connected with his appointment, he ought fairly to be excused for the negligence, default, breach of duty or breach of trust, that court may relieve him either wholly or partly from his liability on such terms as the court may think fit.
- (2) Where any such officer or person as aforesaid has reason to apprehend that any claim will or might be made against him in respect of any negligence, default, breach of duty or breach of trust he may apply to the court for relief and the court on any such application shall have the same power to relieve him as under this head it would have had if it had been a court before which proceedings against that person for negligence, default, breach of duty or breach of trust had been brought.



## Part A5 - Duties of Directors and other Officers

---

- (3) Where any case to which Subhead (1) applies is being tried by a judge with a jury the judge, after hearing the evidence, may if he is satisfied that the defendant ought, in pursuance of that subhead, to be relieved either in whole or in part from the liability sought to be enforced against him, withdraw the case in whole or in part from the jury and direct judgment to be entered for the defendant on such terms as to costs or otherwise as the judge may think proper.
- (3) Notwithstanding any provision contained in an enactment, the constitution of a company or otherwise, a director may be counted in the quorum and may vote on any resolution to purchase or maintain any insurance under which the director might benefit.
- (4) Any directors' and officers' insurance purchased or maintained by a company before the 6<sup>th</sup> April 2004 (commencement of Companies (Auditing and Accounting) Act, 2003) is as valid and effective as it would have been if those amendments had been in operation when that insurance was purchased or maintained.

### **Explanatory note**

*This head is a re-enactment of Section 391 of the Companies Act, 1963.*

---

## **Head 15 Avoidance of provisions exempting officers and auditors of the company from liability**

---

- (1) Subject as hereinafter provided any provision whether contained in the constitution of a company or in any contract with a company or otherwise for exempting any officer of the company or any person employed by the company as auditor from or indemnifying him against any liability which by virtue of any rule of law would otherwise attach to him in respect of any negligence, default, breach of duty or breach of trust of which he may be guilty in relation to the company shall be void so however that—
- (a) nothing in this head shall operate to deprive any person of any exemption or right to be indemnified in respect of anything done or omitted to be done by him while any such provision was in force; and
- (b) notwithstanding anything in this head a company may in pursuance of any such provision as aforesaid, indemnify any such officer or auditor against any liability incurred by him in defending proceedings whether civil or criminal in which judgment is given in his favour or in which he is acquitted or in connection with any application under Head 14 of this Part [equivalent of Section 391 of Companies Act, 1963] in which relief is granted to him by the court.
- (2) Notwithstanding Subhead (1), a company may purchase and maintain for any of its officers or auditors, insurance in respect of any liability referred to in that subhead.

- (5) In this head a reference to an officer or auditor includes any former or current officer or auditor of the company, as the case may be.

### **Explanatory note**

*This head is a slightly amended re-enactment of Section 200 of the Companies Act, 1963, as amended by para. 16 of the First Schedule to the Companies (Amendment) Act, 1983 and Section 56 of the Companies (Auditing and Accounting) Act, 2003.*

*References to the articles have been replaced by references to the constitution of the company.*



## Chapter 3

### Particular transactions involving conflict of interest

#### Head 16 Substantial property transactions involving directors, etc

- (1) Subject to Subheads (4) and (5), a company shall not enter into an arrangement—
- (a) whereby a director of the company or its holding company or a person connected with such a director, acquires or is to acquire, one or more non-cash assets of the requisite value from the company; or
  - (b) whereby the company acquires or is to acquire, one or more non-cash assets of the requisite value from such a director or a person so connected,

unless the arrangement is first approved by a resolution of the company in general meeting and if the director or connected person is a director of its holding company or a person connected with such a director, by a resolution in general meeting of the holding company.

- (2) For the purposes of this head a non-cash asset is of the requisite value if at the time the arrangement in question is entered into, its value is not less than €5,000 but, subject to that, exceeds €75,000 or ten per cent of the amount of the company's relevant assets and for those purposes the amount of a company's relevant assets is—
- (a) except in a case falling within paragraph (b), the value of its net assets determined by reference to the entity financial statements prepared in accordance with Head 12 of A6 and laid in accordance with the requirements of Part A6, Head 12 [equivalent of Section 148 of Companies Act, 1963] in respect of the last preceding financial year in respect of which such entity [company] financial statements were so laid;
  - (b) where no entity [company] financial statements have been prepared and laid under that head before that time, the amount of its called-up share capital.

- (3) An arrangement entered into by a company in contravention of this head and any transaction entered into in pursuance of the arrangement (whether by the company or any other person) shall be voidable at the instance of the company unless—
- (a) restitution of any money or any other asset which is the subject-matter of the arrangement or transaction is no longer possible or the company has been indemnified in pursuance of Head 13 (2) of this Part [equivalent of Section 29(4)(b) of Companies Act, 1990] by any other person for the loss or damage suffered by it; or
  - (b) any rights acquired bona fide for value and without actual notice of the contravention by any person who is not a party to the arrangement or transaction would be affected by its avoidance; or
  - (c) the arrangement is affirmed by a resolution of the company in general meeting and if it is an arrangement for the transfer of an asset to or by a director of its holding company or a person who is connected with such a director, is so affirmed by a resolution of the holding company in general meeting.
- (4) Subhead (1) shall not apply in relation to any arrangement for the acquisition of a non-cash asset—
- (a) if the non-cash asset in question is or is to be acquired by a holding company from any of its wholly owned subsidiaries or from a holding company by any of its wholly owned subsidiaries or by one wholly owned subsidiary of a holding company from another wholly owned subsidiary of that same holding company; or
  - (b) if the arrangement is entered into by a company which is being wound up unless the winding-up is a members' voluntary winding-up;
  - (c) if the arrangement involves the disposal of a company's assets by a receiver.
- (5) Subhead (1) (a) shall not apply in relation to any arrangement whereby a person acquires or is to acquire an asset from a company of which he is a member if the arrangement is made with that person in his character as such member.

## Part A5 - Duties of Directors and other Officers

---

- (6) No approval is required to be given under this head by any body corporate unless it is a company within the meaning of Pillar A or if it is a wholly owned subsidiary of any body corporate.

### **Explanatory note**

*This head is an amended re-enactment of Section 29 of the Companies Act, 1990. The relevant recommendations of the First Report of the Company Law Review Group have also been implemented. These include the amendment of Section 29(3) insofar as the "reasonable period" should be subject to ratification taking place at the next AGM and in any event not later than 15 months. It was further recommended that Section 29(7) be amended by the addition of a third exemption regarding the disposal of the company's assets by the receiver.*

*The amounts specified in Subhead (2) have been converted into euro and rounded.*

*Section 29(4) of the Companies Act, 1990 has not been included in this head. Instead it is included in Part A5, Head 13 which specifically deals with the liability of directors to account and indemnify where they act in breach of their duties under this Part. Sections 29(5) & 29(6) have been deleted.*

*Subhead (6) has been newly inserted in accordance with the recommendation of the Review Group. Its aim is to clarify the scope of this provision.*

---

### **Head 17 Prohibition of loans, etc. to directors and connected persons**

---

- (1) Except as provided by Heads 18 to 23 of this Part [equivalent of Sections 32 to 37 of the Companies Act, 1990], a company shall not—
- (a) make a loan or a quasi-loan to a director of the company or of its holding company or to a person connected with such a director;
  - (b) enter into a credit transaction as creditor for such a director or a person so connected;
  - (c) enter into a guarantee or provide any security in connection with a loan, quasi-loan or credit transaction made by any other person for such a director or a person so connected.

- (2) A company shall not arrange for the assignment to it or the assumption by it of any rights, obligations or liabilities under a transaction which, if it had been entered into by the company, would have contravened Subhead (1), but for the purposes of this Part the transaction shall be treated as having been entered into on the date of the arrangement.
- (3) A company shall not take part in any arrangement whereby—
- (a) another person enters into a transaction which, if it had been entered into by the company, would have contravened Subhead (1) or (2); and
  - (b) that other person, in pursuance of the arrangement, has obtained or is to obtain any benefit from the company or its holding company or a subsidiary of the company or its holding company.

### **Explanatory note**

*This head is a slightly amended re-enactment of Section 31 of the Companies Act, 1990. The cross-references have been amended in accordance with the new provisions of the Bill.*

---

### **Head 18 Arrangements of certain value**

---

- (1) Part A5, Head 17 [equivalent of Section 31 of the Companies Act, 1990] shall not prohibit a company from entering into an arrangement with a director or a person connected with a director if—
- (a) the value of the arrangement; and
  - (b) the total amount outstanding under any other arrangements entered into by the company with any director of the company, or any person connected with a director, together is less than ten per cent of the company's relevant assets.
- (2) For the purposes of this head—
- (a) a company enters an arrangement with a person if it makes a loan or quasi-loan to or enters into a credit transaction as creditor for that person; and
  - (b) the amount of a company's relevant assets shall be determined in accordance with Part A5, Head 16 (2) [equivalent of Section 29(2) of Companies Act, 1990].

### **Explanatory note**

*This head is a slightly amended re-enactment of Section 32 of the Companies Act, 1990. The cross-references have been amended in accordance with the new provisions of the Bill.*

---

## **Head 19 Reduction in amount of company's relevant assets**

---

- (1) This head applies to a company in respect of which the total amount outstanding under any arrangements referred to in Part A5, Head 18 [equivalent of Section 32 of Companies Act, 1990] comes to exceed 10 per cent of the company's relevant assets for any reason but in particular because the value of those assets has fallen.
- (2) Where the directors of a company become aware or ought reasonably to become aware, that there exists a situation referred to in Subhead (1), it shall be the duty of the company, its directors and any persons for whom the arrangements referred to in that subhead were made, to amend, within two months, the terms of the arrangements concerned so that the total amount outstanding under the arrangements again falls within the percentage limit referred to in that subhead.
- (3) Where the terms of the arrangements referred to in Subhead (2) are not amended within the period specified in that subhead, the arrangements shall be voidable at the instance of the company unless Part A5, Head 24 (1) (a) or (b) [equivalent of Section 38(1)(a) and (b) of Companies Act, 1990] applies.

### **Explanatory note**

*This head is a slightly amended re-enactment of Section 33 of the Companies Act, 1990, as amended by Section 77 of the Company Law Enforcement Act, 2001. The cross-references have been amended in accordance with the new provisions of the Bill.*

---

## **Head 20 Group exceptions to prohibitions on loans etc**

---

Part A5, Head 17 [equivalent of Section 31 of the Companies Act, 1990] does not prohibit a company from entering into a guarantee or providing any security in connection with a loan, quasi-loan or credit transaction made by any other person for a director

of the company or of its holding company or for a person connected with such a director, if the validation procedure in Part A4, Head 71 is followed, and for the purposes of the validation procedure, a guarantee or the provision of security in connection with a loan, quasi-loan or credit transaction is a restricted activity.

### **Explanatory note**

*This head is an amended re-enactment of Section 34 of the Companies Act, 1990, as amended by Section 78 of the Company Law Enforcement Act, 2001.*

*Those subsections of Section 34 of the Companies Act, 1990 relating to the validation of such restricted activities have been deleted in light of the fact that a single general validation procedure is now provided for in Part IV.*

*This new validation procedure has been introduced in accordance with the recommendations of the Company Law Review Group in its First Report.*

---

## **Head 21 Transactions with holding company**

---

Part A5, Head 17 [equivalent of Section 31 of the Companies Act, 1990] shall not prohibit a company from—

- (a) making a loan or quasi-loan to any company which is its holding company, subsidiary or a subsidiary of its holding company or entering into a guarantee or providing any security in connection with a loan or quasi-loan made by any person to any company which is its holding company, subsidiary or a subsidiary of its holding company;
- (b) entering into a credit transaction as creditor for any company which is its holding company, subsidiary or a subsidiary of its holding company or entering into a guarantee or providing any security in connection with any credit transaction made by any other person for any company which is its holding company, subsidiary or a subsidiary of its holding company.

### **Explanatory note**

*This head is a slightly amended re-enactment of Section 35 of the Companies Act, 1990, as amended by Section 79 of the Company Law Enforcement Act, 2001. The cross-references have been amended in accordance with the new provisions of the Bill.*

---

### Head 22 Directors' expenses

---

- (1) Part A5, Head 17 [equivalent of Section 31 of the Companies Act, 1990] shall not prohibit a company from doing anything to provide any of its directors with funds to meet vouched expenditure properly incurred or to be incurred by him for the purposes of the company or the purpose of enabling him properly to perform his duties as an officer of the company or doing anything to enable any of its directors to avoid incurring such expenditure.
- (2) Where a company enters into any transaction pursuant to Subhead (1), any liability falling on any person arising from any such transaction shall be discharged by him within six months from the date on which it was incurred.

#### **Explanatory note**

*This head is a slightly amended re-enactment of Section 36 of the Companies Act, 1990. The cross-references have been amended in accordance with the new provisions of the Bill.*

---

### Head 23 Business transactions

---

Part A5, Head 17 [equivalent of Section 31 of the Companies Act, 1990] shall not prohibit a company from making any loan or quasi-loan or entering into any credit transaction as creditor for any person if—

- (a) the company enters into the transaction concerned in the ordinary course of its business; and
- (b) the value of the transaction is not greater, and the terms on which it is entered into are no more favourable, in respect of the person for whom the transaction is made, than that or those which—
- (i) the company ordinarily offers, or
- (ii) it is reasonable to expect the company to have offered, to or in respect of a person of the same financial standing as that person but unconnected with the company.

#### **Explanatory note**

*This head is a slightly amended re-enactment of Section 37 of the Companies Act, 1990. The cross-references have been amended in accordance with the new provisions of the Bill.*

---

### Head 24 Civil remedies for breach of Part A5, Head 17 [equivalent of Section 31 of the Companies Act, 1990]

---

Where a company enters into a transaction or arrangement in contravention of Part A5, Head 17 [equivalent of Section 31 of the Companies Act, 1990] the transaction or arrangement shall be voidable at the instance of the company unless—

- (a) restitution of any money or any other asset which is the subject matter of the arrangement or transaction is no longer possible, or the company has been indemnified in pursuance of Part A5, Head 13 (2) (b) [equivalent of Section 38(2)(b) of Companies Act, 1990] for the loss or damage suffered by it; or
- (b) any rights acquired bona fide for value and without actual notice of the contravention by any person other than the person for whom the transaction or arrangement was made would be affected by its avoidance.

#### **Explanatory note**

*This head is an amended re-enactment of Section 38 of the Companies Act, 1990. The cross-references have been amended in accordance with the new provisions of the Bill.*

*Section 38(2) has not been included. The reason for this is that there is now a head which deals with making directors liable where they act in breach of their duties under this Part, to account for any gain made and to indemnify the company in respect of any loss or damage which may result to the company. This is provided for in Part A5, Head 17.*

*Section 38(3) has also not been included as it is now provided for in Head 10(4) of this Part.*



---

### Head 25 Personal liability for company debts in certain cases

---

- (1) If a company is being wound up and is unable to pay its debts and the court considers that any arrangement of a kind described in Part A5, Head 18 (2) (a) [equivalent of Section 32(2)(a) of the Companies Act, 1990] has contributed materially to the company's inability to pay its debts or has substantially impeded the orderly winding-up thereof, the court, on the application of the liquidator or any creditor or contributory of the company, may, if it thinks it proper to do so, declare that any person for whose benefit the arrangement was made shall be personally liable, without any limitation of liability for all or such part as may be specified by the court, of the debts and other liabilities of the company.
- (2) In deciding whether to make a declaration under Subhead (1), the court shall have particular regard to whether and to what extent, any outstanding liabilities arising under any arrangement referred to in that subhead were discharged before the commencement of the winding-up.
- (3) In deciding the extent of any personal liability under this head, the court shall have particular regard to the extent to which the arrangement in question contributed materially to the company's inability to pay its debts or substantially impeded the orderly winding-up of the company.

#### **Explanatory note**

*This head is a re-enactment of Section 39 of the Companies Act, 1990. The cross-references have been amended in accordance with the new provisions of the Bill.*

---

### Head 26 Criminal penalties for breach of Part A5, Head 17 [equivalent of Section 15 of the Companies (Auditing and Accounting) Act, 2003, formerly Section 31 of the Companies Act, 1990]

---

- (1) An officer of a company who authorises or permits the company to enter into a transaction or arrangement, knowing or having reasonable cause to believe, that the company was thereby contravening Part A5, Head 17 [equivalent of Section 31 of the Companies Act, 1990] shall be guilty of a category 2 offence.
- (2) A person who procures a company to enter into a transaction or arrangement knowing or having reasonable cause to believe that the company was thereby contravening Part A5, Head 17 [equivalent of Section 31 of the Companies Act, 1990] shall be guilty of a category two offence.

#### **Explanatory note**

*This head is a slightly amended re-enactment of Section 40 of the Companies Act, 1990. The cross-references have been amended in accordance with the new provisions of the Bill.*

---

### Head 27 Contracts of employment of directors

---

- (1) Subject to Subhead (6), a company shall not incorporate in any agreement, a term to which this head applies, unless the term is first approved by a resolution of the company in general meeting and in the case of a director of a holding company, by a resolution of that company in general meeting.
- (2) This head applies to any term by which a director's employment with the company of which he is the director or, where he is the director of a holding company, his employment within the group is to continue, or may be continued, otherwise than at the instance of the company (whether under the original agreement or under a new agreement entered into in pursuance of the original agreement), for a period exceeding five years during which the employment—



## Part A5 - Duties of Directors and other Officers

---

- (a) cannot be terminated by the company by notice; or
  - (b) can be so terminated only in specified circumstances.
- (3) In any case where—
- (a) a person is or is to be employed with a company under an agreement which cannot be terminated by the company by notice or can be so terminated only in specified circumstances; and
  - (b) more than six months before the expiration of the period for which he is or is to be so employed, the company enters into a further agreement (otherwise than in pursuance of a right conferred by or by virtue of the original agreement on the other party thereto) under which he is to be employed with the company or where he is a director of a holding company within the group,

Subhead (2) shall apply as if to the period for which he is to be employed under that further agreement there were added a further period equal to the unexpired period of the original agreement.

- (4) Except in the case of a written resolution, a resolution of a company approving a term to which this head applies shall not be passed at a general meeting of the company unless a written memorandum, setting out the proposed agreement incorporating the term, is available for inspection by members of the company both—
- (a) at the registered office of the company for not less than the period of 15 days ending with the date of the meeting; and
  - (b) at the meeting itself.
- (5) In the case of a company replacing a general meeting by written resolution, the written memorandum referred to at Subhead (4) shall be circulated to members with the proposal for a written resolution.
- (6) A term incorporated in an agreement in contravention of this head shall, to the extent that it contravenes this head, be void and that agreement and in a case where Subhead (3) applies, the original agreement shall be deemed to contain a term entitling the company to terminate it at any time by the giving of reasonable notice.

(7) In this head—

- (a) “employment” includes employment under a contract for services; and
- (b) “group”, in relation to a director of a holding company, means the group which consists of that company, the holding company and its subsidiaries.

### **Explanatory note**

*This head is an amended re-enactment of Section 28 of the Companies Act, 1990.*

*As Part A5 only applies to a CLS, Section 28(6) has been moved to Pillar B rather than re-enacted in this head.*

*Subsection (1) has been amended as a result of the proposed implementation of the recommendation of the Company Law Review Group in its First Report that a resolution required to be passed by the company in general meeting can now be passed by written resolution.*

*Subhead (5) is a new subhead. It has been inserted to provide that, where the CLS replaces the general meeting with a written resolution, that proposed resolution must be circulated to the members.*

---

## **Head 28 Approval of company necessary for payment by it to director or director’s dependants for loss of office**

---

- (1) It shall not be lawful for a company to make to any director of the company, any payment by way of compensation for loss of office or as consideration for or in connection with his retirement from office, without particulars relating to the proposed payment (including the amount thereof) being disclosed to the members of the company and the proposal being approved by the company in general meeting.
- (2) The directors on behalf of the company may pay a gratuity or pension or allowance on retirement to any director who has held any other salaried office or place of profit with the company or to his widow or dependants and may make contributions to any fund and pay premiums for the purchase or provision of any such gratuity, pension or allowance, subject to particulars relating to the proposed payment being disclosed to the members of the company and the proposal being approved by resolution of the company.

**Explanatory note**

*This head is a new head. Subhead (1) is a re-enactment of Section 186 of the Companies Act, 1963.*

*Subhead (2) imports Model Regulation 90 of Part I of Table A of the First Schedule to the Companies Act, 1963.*

---

**Head 29 Approval of company necessary for payment to director of compensation in connection with transfer of property**

---

- (1) It shall not be lawful in connection with the transfer of the whole or any part of the undertaking or property of a company, for any payment to be made to any director of the company by way of compensation for loss of office or as consideration for or in connection with his retirement from office, unless particulars relating to the proposed payment (including the amount thereof) have been disclosed to the members of the company and the proposal approved by resolution of the company
- (2) Where a payment which is not lawful pursuant to Subhead (1) is made to a director of the company the amount received shall be deemed to have been received by him in trust for the company.

**Explanatory note**

*This head is a slightly amended re-enactment of Section 187 of the Companies Act, 1963.*

*Subsection(1) has been amended insofar as "It is hereby declared that it is not lawful..." has been replaced by "It shall not be lawful..."*

*Subsection (2) has been amended insofar as "Where a payment which is hereby declared to be illegal..." has been replaced by "...which is not lawful pursuant to Subhead (1)..."*

---

**Head 30 Duty of director to disclose to company payments to be made to him in connection with transfer of shares in a company**

---

- (1) Where, in connection with the transfer to any persons of all or any of the shares in a company being a transfer resulting from—
  - (a) an offer made to the general body of shareholders; or
  - (b) an offer made by or on behalf of some other body corporate with a view to the company becoming its subsidiary or a subsidiary of its holding company; or
  - (c) an offer made by or on behalf of an individual with a view to his obtaining the right to exercise or control the exercise of not less than one-third of the voting power at any general meeting of the company; or
  - (d) any other offer which is conditional on acceptance to a given extent,

a payment is to be made to a director of the company by way of compensation for loss of office or as a consideration for or in connection with his retirement from office, it shall be the duty of that director to take all reasonable steps to secure that particulars of the proposed payment (including the amount thereof) shall be included in or sent with any notice of the offer made for their shares which is given to any shareholders.

- (2) If—
  - (a) any such director fails to take reasonable steps as aforesaid; or
  - (b) any person who has been properly required by any such director to include the said particulars in or send them with any such notice as aforesaid fails so to do, he shall be guilty of a category three offence.
- (3) Unless—
  - (a) the requirements of Subhead (1) are complied with in relation to any such payment as is therein mentioned; and

- (b) the making of the proposed payment is before the transfer of any shares in pursuance of the offer approved by a meeting summoned for the purpose of the holders of the shares to which the offer relates and of other holders of shares of the same class as any of the said shares,

any sum received by the director on account of the payment shall be deemed to have been received by him in trust for any persons who have sold their shares as a result of the offer made and the expenses incurred by him in distributing that sum amongst those persons shall be borne by him and not retained out of that sum.

- (4) Where the shareholders referred to in paragraph (b) of Subhead (3) are not all the members of the company and no provision is made by the constitution for summoning or regulating such a meeting as is mentioned in that paragraph the provisions of this Pillar and of the company's constitution relating to general meetings of the company, shall for that purpose apply to the meeting either without modification or with such modifications as the director on the application of any person concerned may direct for the purpose of adapting them to the circumstances of the meeting.
- (5) If at a meeting summoned for the purpose of approving any payment as required by paragraph (b) of Subhead (3), a quorum is not present and after the meeting has been adjourned to a later date a quorum is again not present, the payment shall be deemed for the purposes of that subhead to have been approved.

### **Explanatory note**

*This head is a slightly amended re-enactment of Section 188 of the Companies Act, 1963. The reference to being liable to a fine has been changed to guilty of a categorised offence. The reference to the articles of the company have been replaced by a reference to the constitution of the company.*

---

## **Head 31 Other provisions relating to payments to directors**

---

- (1) Where in proceedings for the recovery of any payment as having by virtue of Part A5, Head 29 (1) and (2) [equivalent of Section 187 of the Companies Act, 1963] or Part A5, Head 30 (1) and (2) [equivalent of Section 188 of the Companies Act, 1963] been received by any person in trust it is shown that—
  - (a) the payment was made in pursuance of any arrangement entered into as part of the agreement for the transfer in question or within one year before or 2 years after that agreement or the offer leading thereto; and
  - (b) the company or any person to whom the transfer was made was privy to that arrangement,

the payment shall be deemed, except in so far as the contrary is shown, to be one to which the subheads apply.

- (2) If in connection with any such transfer as is mentioned in Part A5, Head 29 [equivalent of Section 187 of the Companies Act, 1963] or Part A5, Head 30 [equivalent of Section 188 of the Companies Act, 1963]
  - (a) the price to be paid to a director of the company for any shares in the company held by him is in excess of the price which could at the time have been obtained by other holders of the like shares; or
  - (b) any valuable consideration is given to any such director,

the excess or the money value of the consideration as the case may be, shall for the purposes of that head, be deemed to have been a payment made to him by way of compensation for loss of office or as consideration for or in connection with his retirement from office.

- (3) It is hereby declared that references in Part A5, Head 28 [equivalent of Section 186 of the Companies Act, 1963], Part A5, Head 29 [equivalent of Section 187 of the Companies Act, 1963] and Part A5, Head 30 [equivalent of Section 188 of the Companies Act, 1963] to payments to any director of a company by way of compensation for loss of office or as consideration for or in connection with his retirement from office, include payments to him by way of compensation for loss of office as director of the company or for the loss while director of the company or on or in connection with his ceasing to be a director of the company or of any other office in connection with the management of the company's affairs or of any office as director or otherwise in connection with the management of the affairs of any subsidiary company but do not include any bona fide payment by way of damages for breach of contract or by way of pension in respect of past services and for the purposes of this subhead, "pension" includes any superannuation allowance, superannuation gratuity or similar payment.
- (4) Nothing in Part A5, Head 28 [equivalent of Section 186 of the Companies Act, 1963] and Part A5, Head 29 [equivalent of Section 187 of the Companies Act, 1963] shall be taken to prejudice the operation of any rule of law requiring disclosure to be made with respect to any such payments as are therein mentioned or with respect to any other like payments made or to be made to the directors of a company or to prejudice the operation of any rule of law in relation to the accountability (if any) of any director for any such payment received by him.
- (5) References in Part A5, Head 28 [equivalent of Section 186 of the Companies Act, 1963], Part A5, Head 29 [equivalent of Section 187 of the Companies Act, 1963] and Part A5, Head 30 [equivalent of Section 188 of the Companies Act, 1963] and this head to a director include references to a past director.

### **Explanatory note**

*This head is a slightly amended re-enactment of Section 189 of the Companies Act, 1963. The cross-references have been amended in accordance with the new provisions of the Bill.*

---

## **Head 32 Contracts with sole members**

---

- (1) Subject to Subhead (2), where a company enters into a contract with the sole member of the company and the sole member also represents the company in the transaction, whether as a director or otherwise, the company shall, unless the contract is in writing, ensure that the terms of the contract are forthwith set out in a written memorandum or are recorded in the minutes of the first meeting of the directors of the company following the making of the contract.
- (2) Subhead (1) shall not apply to contracts entered into in the ordinary course of the company's business.
- (3) If a company fails to comply with Subhead (1), the company and every officer of the company who is in default shall be guilty of a category three offence.
- (4) Subject to Subhead (5), nothing in this head shall be taken to prejudice the operation of any other enactment or rule of law applying to contracts between a company and a director of that company.
- (5) Failure to comply with Subhead (1) with respect to a contract shall not affect the validity of that contract.

### **Explanatory note**

*This head is a slightly amended re-enactment of S.I. No.273 of 1993, EC (Single-Member Private Limited Companies) Regulations 1993, Reg.13. All cross-references have been updated in accordance with the structure of the new Bill. Furthermore, Subsection (1) has been amended by replacing the phrase "single-member company" with "company".*

## Chapter 4

### Disclosure of interests in shares and debentures

#### Head 33 Meaning of “disclosable interest”

- (1) “Disclosable interest” in relation to shares or debentures, means subject to the succeeding subheads of this head, any interest of any kind whatsoever in shares or debentures of a company,
- (a) there being disregarded any restraints or restrictions to which the exercise of any right attached to the interest is or may be subject;
  - (b) whether or not the interest is held alone, jointly or in common with any other person; and
  - (c) whether or not the shares or debentures are identifiable;
- (2) A person shall be taken to have a disclosable interest in shares or debentures if—
- (a) he enters into a contract for their purchase by him (whether for cash or other consideration); or
  - (b) not being the registered holder, he is entitled to exercise any right conferred by the holding of those shares or debentures or is entitled to control the exercise of any such right;
  - (c) a body corporate is interested in them and—
    - (i) that body corporate or its directors are accustomed to act in accordance with his directions or instructions; or
    - (ii) he is entitled to exercise or control the exercise of one third or more of the voting power at general meetings of that body corporate;

and, for this purpose:

- (I) “voting power” shall not include any power to vote which arises only in specified circumstances;

- (II) where a person is entitled to exercise or control the exercise of one third or more of the voting power at general meetings of a body corporate and that body corporate is entitled to exercise or control the exercise of any of the voting power at general meetings of another body corporate (the “relevant voting power”), then, for the purposes of this paragraph the relevant voting power shall be taken to be exercisable by that person;

- (d) otherwise than by virtue of having an interest under a trust—
  - (i) he has a right to call for delivery of the shares or debentures to himself or to his order; or
  - (ii) he has a right to acquire an interest in shares or debentures, or is under an obligation to take an interest in shares or debentures, whether in any case the right or obligation is conditional or absolute and for this purpose a person shall be taken to be entitled to exercise or control the exercise of any right conferred by the holding of shares or debentures if he has a right (whether subject to conditions or not), the exercise of which would make him so entitled, or is under an obligation (whether so subject or not), the fulfillment of which would make him so entitled;
- (e)
  - (i) the person is a beneficiary of a trust; and
  - (ii) the property held on trust for that beneficiary includes any interest in shares or debentures; and
  - (iii) that person, apart from this paragraph, does not have an interest in the shares or debentures.

- (3) A person shall, amongst other circumstances, be taken to have ceased to have a disclosable interest in shares or debentures upon—

- (a) delivery to a another person’s order of shares or debentures in fulfillment of a contract for the purchase thereof by that other person or in satisfaction of a right of his to call for delivery thereof; or



## Part A5 - Duties of Directors and other Officers

---

- (b) failure by another person to deliver shares or debentures in accordance with the terms of a contract or pursuant to a right to call for delivery thereof; or
  - (c) the lapse of that person's right to call for delivery of shares or debentures.
- (4) The following interests shall not constitute disclosable interests—
- (a) where property is held on trust and an interest in shares or debentures is comprised in that property, an interest in reversion or remainder or of a bare trustee and any discretionary interest;
  - (b) an interest of a person subsisting by virtue of—
    - (i) his holding units in—
      - (I) an authorised unit trust scheme within the meaning of Section 3 of the Unit Trusts Act, 1990;
      - (II) an undertaking for collective investment in transferable securities, within the meaning of the European Communities (Undertakings for Collective Investment in Transferable Securities) Regulations, 2003 (S.I. No. 212 of 2003);
      - (III) an investment company within the meaning of Pillar B, Part 9 [equivalent of Part XIII of Companies Act, 1990];
    - (ii) a scheme made under Section 46 of the Charities Act, 1961;
  - (c) an interest for the life of himself or of another person under a settlement in the case of which the property comprised in the settlement consists of or includes shares or debentures, and :
    - (i) the settlement is irrevocable, and
    - (ii) the settlor (within the meaning of Section 10 of the Taxes Consolidation Act, 1997) has no interest in any income arising under, or property comprised in, the settlement;
  - (d) an interest in shares or debentures held by a member of a recognised stock exchange carrying on business as a stock broker which is held by way of security only for the purposes of a transaction entered into by the person or body concerned in the ordinary course of business of such person or body;
  - (e) any power or discretion vested in a person by virtue only of such person having been duly appointed as or acting as:
    - (i) an attorney of a person with an interest in shares or debentures;
    - (ii) a proxy of a member or debenture holder or representative of a body corporate, member or debenture holder of a company;
  - (f) any interest in shares where the aggregate interest of the director or secretary and spouse and minor children of such director or secretary is in:
    - (i) shares representing 1 per cent or less of the company's share capital of a class carrying rights to vote in all circumstances at general meetings of the company (provided that the temporary suspension of voting rights in respect of shares comprised in issued share capital of a company of any such class shall be disregarded); or
    - (ii) shares or debentures not carrying the right to vote at general meetings of the company or group company in question, save a right to vote which arises only in specified circumstances;
  - (g)
    - (i) An interest in shares arising on the acceptance of an offer subject to the Irish Takeover Panel Act, 1997 or the European Communities (Takeover Bids (Directive 2004/25/EC)) Regulations 2006 which is subject to a threshold acceptance condition which remains unfulfilled;

## Part A5 - Duties of Directors and other Officers

- (ii) For the purposes of subparagraph (i) a threshold acceptance condition is a condition that the offer is conditional as to acceptances unless acceptances of a particular amount or percentage are received or such condition is waived;
- (h) such interests, or interests of such a class, as may be prescribed for the purposes of this paragraph by regulations made by the Minister.

### **Explanatory note**

*This head is new. The head is comprised of a slightly amended re-enactment of Section 54 and 55 of the Companies Act, 1990.*

*Subheads (1)(a), (b) and (c) are, in substance, a re-enactment of Sections 54(2), (11) and (12) of the Companies Act, 1990, respectively*

*Subheads (2)(a) and (b) are a re-enactment of Section 54(4) of the Companies Act, 1990.*

*Subhead (2)(c) is, in substance, a re-enactment of Section 54(5) and (6) of the Companies Act, 1990.*

*Subhead (2)(d) is, in substance, a re-enactment of Section 54(7) and (8) of the Companies Act, 1990.*

*Subhead (2)(e) is a re-enactment of Section 54(3) of the Companies Act, 1990.*

*Subhead (3) is a re-enactment of Section 54(13) of the Companies Act, 1990.*

*Subheads (4)(a) – (d) are a slightly amended re-enactment of Section 55(1) of the Companies Act, 1990. The cross-references to the legislation concerning unit trusts have been updated in light of recent changes. In addition, an interest in an investment company has been included as a non-disclosable interest.*

*Subhead (4)(e) is a new provision stating which powers or discretion vested in a person constitute a non-disclosable interest.*

*Subhead (4)(e)(i) is new and includes an attorney of a person with an interest in shares or debentures.*

*Subhead (4)(e)(ii) is, in substance, a re-enactment of Section 54(9) of the Companies Act, 1990.*

*Subhead (4)(f) is new. It introduces an exception to the requirement of disclosure of shares or interests. This exception applies where the shares held amount to less than 1 per cent of the share capital of the company or where the shares or debentures do not carry a right to vote at general meetings, save for specified circumstances.*

*Subhead (4)(g) is a re-enactment of Section 55(1)(e) of the Companies Act, 1990.*

## **Head 34 Duty of directors and secretary to disclose disclosable interests in certain shares and debentures**

- (1) Subject to Part A5, Head 33 [equivalent of Section 54 of Companies Act, 1990], a person who, at the commencement of this Chapter:
  - (a) is a director or secretary of a company; and
  - (b) is aware of:
    - (i) his having, or
    - (ii) a spouse or minor child of his having, a disclosable interest in shares in or debentures of, the company or of any group company of the company;
- shall notify the company in writing of requisite particulars of the disclosable interest, save where the requisite particulars of the disclosable interest appear in the register kept under Part A5, Head 37 [equivalent of Section 59 of Companies Act, 1990], having been entered in that register within the time specified in this Bill for future notifications under this Chapter of disclosable interests.
- (2) Subject to Part A5, Head 33 a person who:
  - (a)
    - (i) is a director or secretary of a company; and
    - (ii) becomes aware of:
      - (I) his having acquired or having ceased to have; or
      - (II) a spouse or minor child of such person having acquired or having ceased to have;
  - a disclosable interest in shares in, or debentures of, the company or any group company of the company; or
  - (b)
    - (i) is aware of:
      - (I) his having; or

## Part A5 - Duties of Directors and other Officers

- (II) a spouse or minor child of his having;

a disclosable interest in shares in or debentures of, the company or of any group company of the company;  
and

- (iii) becomes a director or secretary of the company (not being the secretary of the company at the time of so becoming a director or not being a director at the time of so becoming the secretary of the company)

shall notify the company in writing of requisite particulars of the disclosable interest and as the case may be, its acquisition or disposal.

- (3) A director or secretary of a company who is aware of:

- (a)
- (i) his being granted by another body corporate, being a group company of the company, of a right to subscribe for shares in, or debentures of, that other body corporate;
  - (ii) his exercise of such a right so granted; and
- (b) any of the transactions in paragraph (a) to which the spouse or a minor child of the director or secretary is party,

shall notify the company in writing of:

- (I) the occurrence of any of such events;
- (II) save where before and after the relevant event the aggregate disclosable interest of the director or secretary, his spouse and minor children before or after such event would be such that Part A5, Head 33 (1) would apply, the number or amount, and class, of shares or debentures involved and the consideration payable.

- (4) A director or secretary of a company who is aware of:

- (a) his entering a contract to sell shares in or debentures of, the company or of any group company of the company;

- (b) his assigning a right granted to him by the company or a group company of the company to subscribe for shares in, or debentures of, the company or such group company; and

- (c) any of the transactions in paragraphs (a) or (b) to which the spouse or a minor child of the director or secretary is party;

shall notify the company in writing of:

- (i) the occurrence of any of such events;
- (ii) save where the aggregate disclosable interest of the director or secretary, his spouse and minor children before such event would be such that Head 33 (4) (f) (i) would apply, the number or amount, and class, of shares or debentures involved and the consideration payable.

- (5) This head applies to shadow directors and de facto directors as to directors, but the making of a notification by a person under this head shall not, in itself, be proof that the person making the notification is a shadow director or de facto director.

- (6) Nothing in this head shall operate so as to impose an obligation with respect to shares in a body corporate which is the wholly owned subsidiary of another body corporate, and for this purpose a body corporate shall be deemed to be the wholly owned subsidiary of another if it has no members but that other and that other's wholly owned subsidiaries and its or their nominees.

- (7) Nothing in this head shall operate to impose an obligation on a director or secretary of a company who is granted an option to subscribe for shares or debentures of that company to make any notification to that company in respect of such grant.

### **Explanatory note**

*This head is a new head. It is taken, in substance, from Section 53 of the Companies Act, 1990 insofar as it imposes an obligation on directors and secretaries to notify their interests in shares or debentures of the company held by themselves or by their spouse or minor children. The latter requirement was previously contained in Section 64 of the Companies Act, 1990.*

*The obligation has also been expressly stated to apply to both de facto directors and shadow directors.*

### Head 35 Mode of disclosure by directors and secretaries under this Chapter

- (1) Where the shares or debentures are acquired or disposed of by the director or secretary, the “requisite particulars” shall, where the director or secretary so chooses, mean—
  - (a) the instrument of transfer of the shares or debentures, identifying:
    - (i) the director or secretary by name;
    - (ii) the shares or debentures in question;
    - (iii) the purchase or sale price therefor;
  - (b) delivered to the company within 30 days of the date of the instrument of transfer.
- (2) In any case other than those envisaged by Subhead (1) the “requisite particulars” shall mean a statement in writing to the company by or on behalf of the director or secretary:
  - (a) stating that the director or secretary, or spouse or minor child (as the case may be) has, has acquired or has ceased to have (as the case may be) a disclosable interest in shares or debentures of the company or a group company;
  - (b) identifying the number of shares or debentures and their class, and the registered holders of the shares or debentures;
  - (c) in the case of an acquisition or disposal, the consideration payable therefor;
  - (d) delivered to the company no later than 8 days of the event giving rise to the notification.
- (3) The notification required by Part A5, Head 34 (3) and (4) [equivalent of Section 53 of the Companies Act, 1990] must be delivered to the company no later than 8 days after the event giving rise to the notification.
- (4) A shadow director or de facto director must, in any notification under this Chapter, identify his address.

#### Explanatory note

*This head is new. The “requisite particulars” have been taken from Section 57(1) of the Companies Act, 1990. They have also been extended in accordance with the Recommendations of the First Report of the Company Law Review Group.*

### Head 36 Enforcement of the notification obligation

- (1) Where a person authorises any other person (“the agent”) to acquire or dispose of, on his behalf, interests in, shares in, or debentures of, a company, he shall secure that the agent notifies him immediately of acquisitions or disposals of interests in such shares or debentures effected by the agent which will or may give rise to any obligation on his part to make a notification under this Chapter with respect to his interest in those shares or debentures.
- (2) Subject to the succeeding subheads of this head, where a person fails to fulfill, within the proper period, an obligation to which he is subject by virtue of Part A5, Head 34 [equivalent of Section 53 of Companies Act, 1990] no right or interest of any kind whatsoever in respect of the shares or debentures concerned shall be enforceable by him, whether directly or indirectly, by action or legal proceeding.
- (3) Where any right or interest is restricted under Subhead (2):
  - (a) any person in default under that subhead or any other person affected by such restriction may apply to the court for relief against a disability imposed by or arising out of Subhead (2);
  - (b) the court, on being satisfied that the default was accidental or due to inadvertence or some other sufficient cause or that on other grounds it is just and equitable to grant relief, may grant such relief either generally or as respects any particular right or interest, on such terms and conditions as it sees fit;
  - (c) where an applicant for relief under this subhead is a person referred to in Subhead (2), the court may not grant such relief if it appears that the default has arisen as a result of any deliberate act or omission on the part of the applicant.

## Part A5 - Duties of Directors and other Officers

- (4) Where—
- (a) a person fails to fulfill, within the proper period, an obligation to which he is subject by virtue of Part A5, Head 34 [equivalent of Section 53 of Companies Act, 1990] and;
- (b)
- (i) the identity of the director or secretary and his holding, acquisition and disposal of the shares or debentures in question and consideration paid or payable therefor has been apparent on the face of the register of members and/ or register of directors and secretaries and / or the register of share and debenture interests of directors and secretaries and /or the documents made available by that company with those registers, from not later than 30 days from when the obligation to notify has arisen; or
- (ii) the members by resolution so resolve

then:

- (I) all rights and interests of any kind whatsoever in respect of the shares or debentures concerned shall be enforceable by him, whether directly or indirectly, by action or legal proceeding;
- (II) upon production of a plain copy of any such special resolution certified by the company secretary for the time being as having been duly passed in compliance with this head, any third party having dealings with the company or the registered holder of the shares or debentures in question shall be entitled to presume without further enquiry that the provisions of this subhead have been complied with and that the registered holder is entitled to deal with the shares or debentures registered in his name,
- (III) Subhead (3) shall not apply to an obligation relating to a person ceasing to be interested in shares in, or debentures of, a company.
- (5) A person who fails without reasonable excuse to comply with Subhead (1) shall be guilty of a category three offence.

- (6) A person who fails to fulfill, within the proper period, an obligation to which he is subject by virtue of Part A5, Head 34 [equivalent of Section 53 of the Companies Act, 1990] shall be guilty of a category three offence.

### **Explanatory note**

*This head is new and is taken in substance from Section 58 of the Companies Act, 1990.*

*Subheads (1) and (2) are re-enactments of Sections 58(1) and (3) of the Companies Act, 1990, respectively.*

*Subhead (3) is a re-enactment of Sections 58(4) and (5) of the Companies Act, 1990.*

*Subhead (4) is new. This allows a company's members to cure a breach of the disclosure obligation by passing a resolution or consider there is no breach where the interests are evident from another public register.*

---

## **Head 37 Register of interests: contents and entries**

---

- (1) Every company shall keep a register of directors' and secretaries' interests for the purposes of this Chapter.
- (2) Whenever the company receives information from a director or secretary in consequence of the fulfilment of an obligation imposed on him by [that head], the company shall within 3 days of such receipt enter in the register, against the name of that person, that information and the date of the entry.
- (3) Every company shall, whenever it grants to a director or secretary a right to subscribe for shares in, or debentures of, the company, enter in the register against his name—
- (a) the date on which the right is granted;
- (b) the period during which or time at which it is exercisable;
- (c) the consideration for the grant (or, if it be the case that there is no consideration, that fact); and
- (d) the description of shares or debentures involved and the number or amount thereof, and the price to be paid therefore.



(4) Whenever such a right as is mentioned in Subhead (3) is exercised by a director or secretary, the company shall enter in the register of interests against his name:

- (a) that fact (identifying the right);
- (b) the number or amount of shares or debentures in respect of which it is exercised; and
- (c) if it be the case that they were registered in his name, that fact, and if not, the name or names of the person or persons in whose name or names they were registered, together (if they were registered in the names of two persons or more) with the number or amount thereof registered in the name of each of them.

(5) The register to be kept under Subhead (1) shall be so made up that the entries therein against the several names inscribed therein appear in chronological order.

(6) The nature and extent of an interest recorded in the said register of a director or secretary in any shares or debentures shall, if he so requires, be recorded in the said register.

(7) The company shall not, by virtue of anything done for the purposes of this head, be affected with notice of or put upon inquiry as to, the rights of any person in relation to any shares or debentures.

(8) If default is made in complying with Subheads (1) to (6), the company and every officer in default shall be guilty of a category three offence.

**Explanatory note**

*This head is new. The head is comprised of a re-enactment of various subsections of Sections 59 and 60 of the Companies Act, 1990.*

*Subheads (1) - (4) are a slightly amended re-enactment of Sections 59(1) – (4) of the Companies Act, 1990.*

*The 3-day requirement inserted into Subhead (2) has been taken from Section 60(2) of the Companies Act, 1990.*

*Subhead (5) – (7) are re-enactments of Sections 60(1), (3) and (4) of the Companies Act, 1990.*

**Head 38 Register of interests: maintenance and inspection**

- (1) The register provided for in Part A5, Head 37 shall—
- (a) if the company's register of members is kept at its registered office, be kept there;
  - (b) if the company's register of members is not so kept, be kept at the company's registered office or at the place where its register of members is kept,

and shall during business hours (subject to such reasonable restrictions as the company in general meeting may impose so that not less than two hours in each day be allowed for inspection) be open to the inspection of any member of the company without charge and of any other person on payment of 50 cent or such less sum as the company may prescribe for each inspection.

(2) The company shall send notice to the Registrar of the place where the said register is kept and of any change in that place, save in a case in which it has at all times been kept at its registered office.

(3) Unless the said register is in such a form as to constitute in itself an index, the company shall keep an index of the names entered therein which shall—

- (a) in respect of each name, contain a sufficient indication to enable the information inscribed against it to be readily found; and
- (b) be kept at the same place as the said register,

and the company shall, within 14 days after the date on which a name is entered in the said register, make any necessary alteration in the index.

## Part A5 - Duties of Directors and other Officers

---

- (4) Any member of the company or other person may require a copy of the said register or of any part thereof, on payment of 20 cent or such less sum as the company may prescribe, for every hundred words or fractional part thereof required to be copied. The company shall cause any copy so required by any person to be sent to that person within the period of 10 days beginning with the day next following that on which the requirement is received by the company.
- (5) The said register shall also be and remain open and accessible to any person attending the company's annual general meeting at least one quarter hour before the appointed time for the commencement of the meeting and during the continuance of the meeting.
- (6) In the case of a refusal of an inspection, required under this head, of the said register, the court may by order, compel an immediate inspection thereof, and in the case of a failure to send within the proper period a copy required under this head, the court may by order direct that the copy required shall be sent to the person requiring it.
- (7) A company may remove an entry against a person's name from the register of interests in shares and debentures kept under Part A5, Head 37 [equivalent of Section 59 of the Companies Act, 1990] if more than 6 years has elapsed since the date of the entry being made, and either—
- (a) that entry recorded the fact that the person in question has ceased to have an interest notifiable under this Chapter in shares in or debentures of the company; or
  - (b) it has been superseded by a later entry made under the said Part A5, Head 37 [equivalent of Section 59 of Companies Act, 1990] against the same person's name;
- and in a case within paragraph (a) the company may also remove that person's name from the register.
- (8) Where a name is removed from a company's register of interests in shares or debentures in pursuance of Subhead (7), the company shall within 14 days of the date of that removal make any necessary alterations in any associated index.
- (9) Entries in a company's register of interests in shares and debentures under this Chapter shall not be deleted except in accordance with Subhead (7) and (8) of this head.
- (10) If an entry is deleted from a company's register of interests in shares in contravention of Subhead (1), the company shall restore that entry to the register as soon as is reasonable and practicable.
- (11) If default is made in complying with Subheads (3), (4), (5) (8), (9) or (10), the company and every officer of it who is in default shall be guilty of a category 3 offence, and if default is made for 14 days in complying with Subhead (2) the company and every officer in default shall be guilty of a category two offence.

### **Explanatory note**

*This head is a new head. The head relates to the maintenance and inspection of the register of interests. The head is a slightly amended re-enactment of various provisions of Section 60, 61 and 62 of the Companies Act, 1990. The cross-references have been amended in light of the new provisions. Fees have also been converted into euro and rounded.*



---

# Part A6 – Financial statements, Annual Return and Audit

## Contents of Part A6

---

### Chapter 1 – Preliminary

1. Definitions relating to financial statements
2. Definitions relating to independent auditors
3. Other definitions
4. Exclusions

### Chapter 2 – Accounting records

5. Obligation to keep accounting records
6. Where accounting records are to be kept
7. Access to accounting records
8. Retention of accounting records
9. Accounting records: offences

### Chapter 3 – Financial year

10. Financial year

### Chapter 4 – Statutory financial statements

11. Statutory financial statements to give true and fair view
12. Obligation to prepare entity financial statements under relevant financial reporting framework
13. Companies Act entity financial statements
14. IFRS entity financial statements
15. Obligation to prepare group financial statements under relevant financial reporting framework
16. Companies Act group financial statements
17. IFRS group financial statements
18. Consistency of financial statements

### Chapter 5 – Companies Acts group financial statements: Exemptions and exclusions

19. Exemption from consolidation: size of group
20. Exemption from consolidation: holding company that is a subsidiary of another EEA registered undertaking
21. Exemption from consolidation: holding company that is a subsidiary of a non-EEA undertaking
22. Subsidiary undertakings included in group financial statements
23. Treatment of entity profit and loss account where group financial statements prepared

### Chapter 6 – Disclosure of directors' transactions

24. Disclosure of Directors' remuneration
25. Directors' benefits: loans, quasi-loans, credit transactions and guarantees
26. Directors' interests in other transactions

### Chapter 7 – Disclosures required in notes to financial statements

27. Information on related undertakings
28. Information on related undertakings: Exemption from disclosures
29. Information on related undertakings: Provision for certain information to be annexed to the annual return
30. Disclosure of particulars of staff
31. Details of authorised share capital, allotted share capital and movements
32. Financial assistance for purchase of own shares
33. Holding of own shares or shares in holding undertakings
34. Accounting policies
35. Disclosure of independent auditors' remuneration

### Chapter 8 – Approval and signing of statutory financial statements by board of directors

36. Approval and signing of statutory financial statements by board of directors

---

**Chapter 9 – Directors' report**

- 37. Obligation to prepare for Directors' Report for every financial year
- 38. Content of Directors' Report: General matters
- 39. Content of Directors' Report: Business Review
- 40. Content of Directors' Report: Acquisition or disposal of own shares
- 41. Content of Directors' Report: Interests in shares and debentures
- 42. Content of Directors' Report: Relevant audit information
- 43. Approval and signing of Directors' Report

**Chapter 10 – Obligation to have financial statements audited**

- 44. Obligation to have statutory financial statements audited
- 45. Right of members to demand audit

**Chapter 11 – Independent auditors' report**

- 46. Independent auditors' report
- 47. Signing of independent auditors' report

**Chapter 12 – Publication of financial statements**

- 48. Circulation of statutory financial statements
- 49. Right to demand copies of financial statements and reports
- 50. Requirements in relation to publication of financial statements
- 51. Financial statements and reports to be laid before the company in general meeting

**Chapter 13 – Annual return and documents to be annexed thereto**

- 52. Obligation to make annual return
- 53. Annual return date
- 54. Alteration of annual return date
- 55. Documents to be annexed to annual return: All companies
- 56. Documents to be annexed to annual returns: Certain companies
- 57. Exceptions from requirement to annex statutory financial statements to annual return

**Chapter 14 – Exclusions, exemptions and special provisions**

- 58. Qualification of company as small or medium company
- 59. Directors' report of small or medium company
- 60. Exemption from obligation to annex certain documents to annual return: small and medium companies
- 61. Abridged financial statements for a small company
- 62. Abridged financial statements for a medium company
- 63. Approval and signing of abridged financial statements
- 64. Special report of the independent auditors on the abridged financial statements
- 65. Subsidiary companies exempt from annexing statutory financial statements to annual return
- 66. Exemption from audit: Conditions with which companies must comply
- 67. Exemption from audit: Companies excluded
- 68. Exemption from audit: Timely filing of annual return

**Chapter 15 – Revision of defective statutory financial statements**

- 69. Voluntary revision of statutory financial statements
- 70. Content of revised financial statements or a revised directors' report
- 71. Approval and signature of revised financial statements
- 72. Approval and signature of revised directors' report
- 73. Independent auditors' report on revised financial statements and revised report
- 74. Company has availed of exemption from audit under Head 66
- 75. Independent auditors' report on revised report alone
- 76. Effect of revision
- 77. Publication of revised financial statements and reports
- 78. Laying of revised financial statements and reports
- 79. Delivery of revised financial statements and reports to Registrar
- 80. Small and medium companies
- 81. Companies exempt from audit under Head 66
- 82. Modifications of Act



---

**Chapter 16 – Appointment of Independent Auditors**

- 83. Appointment of independent auditors: General
- 84. Appointment of independent auditors: By directors
- 85. Appointment of independent auditors: By members of the company
- 86. Appointment of independent auditors: Failure to appoint

**Chapter 17 – Rights, Obligations and Duties of Independent auditors**

- 87. Right of access to accounting records
- 88. Right to information and explanations concerning company
- 89. Right to information and explanations concern subsidiary undertakings
- 90. Penalty for false statements to independent auditors
- 91. Obligation to act with professional integrity
- 92. Independent auditors' report on statutory financial statements
- 93. Report to Registrar and to Director of Corporate Enforcement: Accounting records
- 94. Report to Registrar and Director of Corporate Enforcement: Category 1 and 2 Offences under Companies Act

**Chapter 18 – Removal and Resignation of Independent Auditors**

- 95. Removal of independent auditors: general
- 96. Removal of independent auditors: independent auditors' right to get notice of, attend and be heard at general meeting
- 97. Removal of independent auditors: statement from independent auditor where audit exemption availed of by company
- 98. Removal of independent auditor: general meeting
- 99. Resignation of independent auditors: General
- 100. Resignation of independent auditor: Requisition of general meeting
- 101. Resignation of independent auditor: Right to get notice of, attend, and be heard at general meeting

**Chapter 19 – Qualification of Independent Auditors**

- 102. Qualification for appointment: Individual
- 103. Qualification for appointment: Firm
- 104. Qualification for appointment: Persons excluded
- 105. Qualification for appointment: Persons no longer qualified
- 106. Prohibition on acting while disqualification order in force

**Chapter 20 – Recognition of Body of Accountants**

- 107. Recognition: General
- 108. Recognition: Qualification obtained outside the State
- 109. Recognition: Additional terms and conditions
- 110. Recognition: Standards of professional conduct
- 111. Recognition: Consultation by Supervisory Authority
- 112. Recognition: Disciplinary committees
- 113. Recognition: Bodies recognised under previous regimes

**Chapter 21 – Register of Independent Auditors**

- 114. Register of independent auditors: Contents
- 115. Information to be provided to Registrar: Individual
- 116. Information to be provided to Registrar: Body of accountants
- 117. Recognition of new body of accountants

**Chapter 22 – Offences**

- 118. False statements in returns, balance sheets, etc.

**Chapter 23 – Powers of Minister**

- 119. Power of minister to make amendments

## Part A6 - Financial statements, Annual Return and Audit

### First Schedule – Accounting principles, form and contents of entity financial statements

### Second Schedule – Accounting principles, form and content of group financial statements

## Chapter 1 Preliminary

### Head 1 Definitions relating to financial statements

(1) In Part A6 the following terms have the following meanings-

**“entity financial statements”** of a company means a summary at a point in time of the [assets, liabilities and financial position / state of affairs] of the company as a separate legal entity together with the profit or loss of the company since the date of the previous financial statements and generally comprises a balance sheet, a profit and loss account and other statements and notes attached thereto and forming part thereof which together give a true and fair view of the [assets, liabilities, financial position / state of affairs] and profit or loss of the company;

**“group financial statements”** of a holding company means a summary at a point in time of the [assets, liabilities and financial position / state of affairs] of the company and its subsidiaries as a whole together with the profit or loss of the company and its subsidiaries as a whole since the date of the previous financial statements and generally comprises a consolidated balance sheet, a consolidated profit and loss account and other consolidated statements and notes attached thereto and forming part thereof which together give a true and fair view of the [assets, liabilities, financial position / state of affairs] and profit or loss of the company and its subsidiary undertakings as a whole;

**“financial statements”** of a company includes entity financial statements and any group financial statements;

**“profit and loss account”** in this Bill means a statement of performance of the company showing revenues, expenses, gains and losses earned and incurred by the company during a period in a manner required by the financial reporting framework adopted by the company and, for the avoidance of doubt, includes an income statement required to be prepared by International Financial Reporting Standards. References in this Part to a company’s profit and loss account shall, unless the contrary intention appears, include notes to the financial statements giving information relating to the profit and loss account which is required by any provision of this Bill or International Financial Reporting Standards and is required or allowed by any such provision to be given in a note to the company’s financial statements;

**“balance sheet”** in this Bill means a statement of assets, liabilities and financial position drawn up at a point in time (the balance sheet date) showing the assets, liabilities and equity of the company at that date in a manner required by the financial reporting framework adopted by the company. References in this Part to a company’s balance sheet shall, unless the contrary intention appears, include notes to the financial statements giving information relating to the balance sheet which is required by any provision of this Bill or International Financial Reporting Standards and is required or allowed by any such provision to be given in a note to the company’s financial statements;

**“financial reporting framework”** means the collective provisions and requirements applied in the preparation of financial statements. Statutory financial statements must be prepared in accordance with either

- (a) the provisions of this Part together with any body of accounting standards prescribed by the Minister under Head 119 (Not completed); or
- (b) international financial reporting standards (IFRS financial reporting framework).

**“IFRS”** means international financial reporting standards;

**“international financial reporting standards”**

means the international financial reporting standards, within the meaning of the IAS Regulation, adopted from time to time by the European Commission in accordance with the IAS Regulation;

**“IAS Regulation”** means Regulation (EC) No. 1606/2002 of the European Parliament and of the Council of 19 July 2002;

**“IFRS financial statements”** means IFRS entity financial statements (within the meaning of Head 14) or IFRS group financial statements (within the meaning of Head 17);

**“IFRS group financial statements”** shall be read in accordance with Head 17;

**“IFRS entity financial statements”** shall be read in accordance with Head 14;

**“Companies Act financial statements”** means Companies Bill entity financial statements (within the meaning of Head 13) or Companies Act group statutory financial statements (within the meaning of Head 16);

**“Companies Act group financial statements”** shall be read in accordance with Head 16;

**“Companies Act entity financial statements”** shall be read in accordance with Head 13,

References in this Bill to financial statements giving a “true and fair view” are references -

- (a) in the case of Companies Act entity financial statements, to the requirement under Head 12 [equivalent to Section 148 of the Companies Act, 1963] that the entity financial statements prepared in accordance with that head give a true and fair view of the [assets, liabilities, financial position / state of affairs] and profit or loss of the company as a separate legal entity;
- (b) in the case of Companies Act group financial statements, to the requirement under Head 16 that the group financial statements prepared in accordance with that head give a true and fair view of the [assets, liabilities, financial position / state of affairs] and profit or loss of the company and the undertakings included in the consolidation taken as a whole, so far as concerns the members of the company; and

- (c) in the case of IFRS entity financial statements and IFRS group financial statements, to the equivalent requirement under international financial reporting standards to present fairly the assets, liabilities, financial position, financial performance and cash flows of the entity or group;

**“statutory financial statements”** of a company means—

- (a) in the case of a company that is not a holding company or a holding company that has availed of an exemption under Heads 19 to 21 from the requirement to prepare group financial statements, the entity financial statements required by Head 12 [equivalent of Section 148 of the Companies Act, 1963 as amended by S.I. 116]; and
- (b) in the case of a holding company that prepares group financial statements, the group financial statements required by Head 15 [equivalent of Section 150 of the Companies Act, 1963 as amended by S.I. 116] combined with the entity financial statements required by Head 12 [equivalent of Section 148 of the Companies Act, 1963];

**“non-statutory financial statements”** or “non-statutory accounts” or “abbreviated accounts” or “accounts” or similar terms—

- (a) in relation to a company, mean any balance sheet or profit and loss account, or summary or abstract of a balance sheet or profit and loss account, relating to a financial year of the company which is published by the company otherwise than as part of the statutory financial statements of the company for that financial year; and
- (b) in relation to a holding company, include any information purporting to be a consolidated balance sheet or consolidated profit and loss account, or a summary or abstract of a consolidated balance sheet or consolidated profit and loss account, of the group consisting of the holding company and its subsidiary undertakings that is published otherwise than as part of the statutory financial statements for that financial year;

## Part A6 - Financial statements, Annual Return and Audit

---

**“abridged financial statements”**, in relation to a company means the financial statements of the company prepared in accordance with Part A6, Heads 60 to 62 [equivalent of Sections 10 to 12 of the Companies (Amendment) Act, 1986];

**“financial year”** means, in relation to any undertaking, the period for which the undertaking prepares statutory financial statements in accordance with Head 12 [equivalent of Section 148(1) of the Companies Act, 1963], whether that period is a year or not.

### **Explanatory note**

*This head is a new head. It contains the definitions relating to financial statements applicable to this Part. The definition of “financial statements” is new. NB, however, definition of “annual accounts” or “accounts” provided by Section 2(1) of the Companies Act, 1963 as amended by Schedule 1 of S.I. No 161/2005, as follows:*

*“annual accounts” or “accounts” means (a) entity accounts required by Section 140 of the Companies Act, 1963, and (b) group accounts required by Section 150 of the Companies Act, 1963.*

*The key change is to differentiate between ‘accounts’ which is a commonly used term and applies to any summary of or extract from the accounting records and ‘the financial statements’ which meets the criterion of ‘true and fair’ which is a much higher standard than mere ‘accounts’.*

*The reason why the definitions have been split into two parts is to permit a reader of the definitions on financial statements to read logically through the meaning of balance sheet and profit and loss account in order to help understand the definitions and the interaction with the financial reporting frameworks.*

*In the definition of financial reporting framework there needs to be a reference to wherever the powers of the Minister to make regulations will be situated in the Bill.*

‘audit of the statutory financial statements’ means work required to fulfill the duties imposed under Part A6, Head 46 [equivalent of Section 193 of the Companies Act, 1990] on an independent auditor of a company.

‘firm’ means a firm that qualifies for appointment as independent auditor of a company [or as a public auditor] under Part A6, Head 103 [equivalent of Section 187(1A) of the Companies Act, 1990];

“friendly society” means a society registered under the Friendly Societies Acts, 1896 to 1977;

“independent auditor” is the independent auditor appointed by each company for each financial year in accordance with Head 83;

‘other assurance services’ means services provided by the independent auditor with the objective of providing assurance to any party but does not include the audit of the statutory financial statements;

‘other non-audit services’ means work other than audit of the statutory financial statements or other assurance services;

“practising certificate” mean a certificate awarded to a person by a body of accountants entitling that person to practise as auditor of a company or as a public auditor;

‘public auditor’ means a public auditor for the purposes of the Industrial and Provident Societies Acts, 1893 to 1978 and the Friendly Societies Acts, 1896 to 1993;

‘remuneration’ includes benefits in kind, reimbursement of expenses and other payments in cash;

‘Supervisory Authority’ shall mean the Irish Auditing and Accounting Supervisory Authority.

---

## **Head 2 Definitions relating to independent auditors**

---

(1) In Part A6 the following terms have the following meanings:

‘affiliate’ in relation to an independent auditor, means a firm, body corporate or partnership considered under Subhead (2) [equivalent of Section 182(2) of the Companies Act, 1990] to be an affiliate of the independent auditor;

‘audit committee’ means the committee established under Part A4, Head 34 [equivalent of Section 205B of the Companies Act, 1990];

(2) For the purposes of this Part each of the following is considered to be an affiliate of an independent auditor in a financial year

(a) if the independent auditor is a firm –

(i) any other firm where, at any time during the financial year, both firms were under common ownership and control,

## Part A6 - Financial statements, Annual Return and Audit

---

- (ii) any body corporate in which the independent auditor, any firm mentioned in subparagraph (i) or (iv) or any body corporate mentioned in subparagraph (iii) or (iv) was, at any time in the financial year, entitled to exercise or control the exercise of 20 per cent or more of the voting rights at a general meeting,
- (iii) any body corporate that was, at any time in the financial year, in the same group as a body corporate mentioned in subparagraph (ii),
- (iv) any other firm, or body corporate, that because of the use of a common name or corporate identity or the sharing of common professional services could reasonably be considered to be associated with the independent auditor;
- (b) if the independent auditor is an individual-
- (i) any partnership in which the independent auditor was, at any time in the financial year, a partner,
- (ii) any body corporate in which the independent auditor, any partnership mentioned in subparagraph (i) or any body corporate mentioned in subparagraph (iii) was, at any time in the financial year, entitled to exercise or control the exercise of 20 per cent or more of the voting rights at a general meeting,
- (iii) any body corporate that was, at any time in the financial year, in the same group as a body corporate mentioned in subparagraph (ii).
- “undertaking” shall mean any body corporate, a partnership or an unincorporated body of persons engaged for gain in the production, supply or distribution of goods, the provision of services of the making or holding of investments”;
- “subsidiary” shall have the meaning assigned to it in Part A1 Head 6;
- “subsidiary undertaking” shall have the same meaning as “subsidiary company” as defined by Part A1; Head 2 save that “company” as defined in Head 2(9) shall include a company and any other undertaking;
- “holding company” shall have the meaning assigned to it in Part A1 Head 6;
- “holding undertaking” shall have the same meaning as “holding company” as defined by Part A1, Head 6 save that “company” as defined in Part A1 Head 2 shall include a company and any other undertaking;
- “higher holding undertaking” means an undertaking that is the holding undertaking of an undertaking that is itself a holding undertaking;
- “fellow subsidiary undertakings” means two or more undertakings that are subsidiary undertakings of the same holding undertaking but which are not the holding undertaking or subsidiary undertaking of each other;
- “undertaking included in the consolidation” in relation to group financial statements or “undertaking consolidated in the group financial statements” means that the undertaking is included in the financial statements by the method of full (and not proportional) consolidation and references to an undertaking excluded from consolidation shall be construed accordingly;
- In this Part references to “shares” –

- (a) in relation to an undertaking with share capital, are to allotted shares;
- (b) in relation to an undertaking with capital but no share capital, are to rights to share in the capital of the undertaking;
- (c) in relation to an undertaking without capital, are to interests –
- (i) conferring any rights to share in the profits or liability to contribute to the losses of the undertaking, or
- (ii) giving rise to an obligation to contribute to the debts or expenses of the undertaking in the event of a winding-up;

### **Explanatory note**

*This is a substantial re-enactment of the definitions in Section 182 of the Companies Act, 1990 together with terms and expressions used currently in the eighth directive and which have been used in this Part as explained in Head 35.*

---

### **Head 3 Other definitions**

---

- (1) In Part A6 the following terms have the following meanings—



## Part A6 - Financial statements, Annual Return and Audit

---

“equity share capital” or “equity shares” means, in relation to a company, its allotted share capital excluding any part thereof which, neither as respects dividends nor as respects capital, carries any right to participate beyond a specified amount in a distribution;

“regulated market” has the same meaning as in Article 1(13) of Council Directive 93/22/EEC of 10 May 1993 on investment services in the securities field<sup>7</sup>;

“associated undertaking” has the meaning assigned to it in Paragraph 18 of the Second Schedule;

“participating interest” has the meaning assigned to it in Paragraph 20 of the Second Schedule;

In this Part “group undertakings”, in relation to an undertaking, means an undertaking which is—

- (a) a holding undertaking or subsidiary undertaking of that undertaking; or
- (b) a subsidiary undertaking of any holding undertaking of that undertaking;

“EEA state” means a state, including the State, which is a Contracting Party to the EEA Agreement;

“EEA Agreement” means the Agreement on the European Economic Area signed at Oporto on 2 May 1992, as adjusted by the Protocol signed at Brussels on 17 March 1993;

“publish”, in relation to a document, includes issue, circulate or otherwise make it available for public inspection in a manner calculated to invite the public generally, or any class of members of the public, to read the document, and cognate words shall be construed accordingly;

“Net assets” means the total assets of the company or group less the total liabilities as shown in the financial statements;

“turnover” in relation to any company, means the amounts derived from the provision of goods and services falling within the company’s ordinary activities, after deduction of—

- (a) trade discounts;
- (b) value-added tax; and
- (c) any other taxes based on the amounts so derived;

A “credit institution” means –

- (a) a company that is the holder of a licence under the Central Bank Act, 1971;
- (b) a company engaged solely in the making of hire purchase agreements (within the meaning of the Hire Purchase Act, 1946) and credit sale agreements (within the meaning of that Act), in respect of goods owned by the company; or
- (c) a company engaged in the business of accepting deposits or other repayable funds or granting credit for its own account;
- (d) a company that is a trustee savings bank certified under the Trustee Savings Bank Acts, 1863 to 1965;
- (e) [Agricultural Credit Corporation, public limited company,];
- (f) [Fóir Teoranta; or]
- (g) [Industrial Credit Corporation Public Limited Company.];

An “insurance undertaking” means a company that is the holder of an authorisation under the European Communities (Non-Life Insurance) Regulations, 1976 (S.I. No 115 of 1976) or an authorisation under the European Communities (Life Assurance) Regulations, 1984 (S.I. No 57 of 1984);

References to “derivative financial instruments” are deemed to include commodity-based contracts that give either contracting party the right to settle in cash or some other financial instrument except when such contracts—

- (a) were entered into and continue to meet the company’s expected purchase, sale or usage requirements;
  - (b) were designed for such purpose at their inception; and
  - (c) are expected to be settled by delivery of the commodity.
- (2) The expressions listed in sub-paragraph (3) have the same meaning as they have in Council Directive 78/660/EEC, as amended by Council Directive 2001/65/EEC.

- (3) 'Available for sale financial asset', 'business combination', 'commodity-based contracts', 'equity instrument', 'exchange difference', 'fair value hedge accounting system', 'financial fixed asset', 'financial instrument', 'foreign entity', 'hedge accounting', 'hedged items', 'hedging instrument', 'held to maturity', 'held for trading purposes', 'monetary item', 'receivables', 'reliable market' and 'trading portfolio'.
- (4) Without prejudice to—
- (a) the construction of any other expression by reference (where appropriate) to generally accepted accounting principles or practice; or
  - (b) any specific provision for the treatment of profits of any description as realised, it is hereby declared for the avoidance of doubt that references to "realised profits", in relation to a company's financial statements, are references to such profits of the company as fall to be treated as realised profits for the purposes of those financial statements in accordance with principles generally accepted with respect to the determination for accounting purposes of realised profits at the time when those financial statements are prepared.
- (b) an insurance undertaking;
- (c) [insert others - UCITS, IIA companies, etc.].

### **Explanatory note**

*This head is to acknowledge that credit institution and insurance undertakings need to have special rules regarding the accounting rules, form and content of financial statements as are presently set out in European Communities (Credit Institutions: Accounts) Regulations, 1992 and European Communities (Insurance Undertakings: Accounts) Regulations, 1996 Please note that there are also special rules for building societies – European Communities (Buildings Society: Accounts) Regulations, 1994(still draft). The appropriate Minister will need to make provision for these entities.*

*There is also a big question mark over Investment companies and the application of Schedule 1 to these entities, it seems to be possible from the fourth directive to exempt them from some but not all of the requirements. This will be addressed at least in part as a Pillar issue.*

### **Explanatory note**

*These definitions are taken from the various Acts and S.I.s that have been amalgamated here.*

*The definition of "Supervisory Authority" is taken, in substance, from Section 4(1) of the Companies (Auditing and Accounting) Act, 2003. ("CAA 2003") The Irish Auditing and Accounting Supervisory Authority is set up under Section 5(1) of this Act.*

*Outstanding to confirm whether the definition of credit institution (taken from section 2(2) of the CAA 1986 still needs to refer to ACC, Foir Teoranta and ICC – See subparagraphs (e) to (g) above.*

*Please note that the definition of 'realised profits' has been taken from the Schedule of the CAA 1986 and included here as it applies not just to the schedule. It is suggested that it should perhaps be defined in Part A1 as it is also used in Part A3.*

---

## **Head 4 Application to various entities**

---

The requirements in Heads 13 and 16 in relation to the manner of preparation of 'Companies Act financial statements' do not apply to a company that is –

- (a) a credit institution;

## Chapter 2

### Accounting Records

#### Head 5 Obligation to keep accounting records

- (1) Every company shall keep accounting records that are sufficient to—
- (a) correctly record and explain the transactions of the company;
  - (b) enable, at any time, the [assets, liabilities, financial position / state of affairs] and profit or loss of the company to be determined with reasonable accuracy;
  - (c) enable the directors to ensure that any entity financial statements of the company, required to be prepared in accordance with Head 12 of this Part, comply with the requirements of this Bill; and
  - (d) enable the entity financial statements of the company prepared in accordance with Head 12 to be readily and properly audited.
- (2) The accounting records shall be kept on a continuous and consistent basis, which is to say, the entries therein shall be made in a timely manner and be consistent from one period to the next.
- (3) Without prejudice to the generality of Subheads (1) and (2), accounting records kept pursuant to those subsections shall contain—
- (a) entries from day to day of all sums of money received and expended by the company and the matters in respect of which the receipt and expenditure takes place;
  - (b) a record of the assets and liabilities of the company;
  - (c) if the company's business involves dealing in goods—
    - (i) a record of all goods purchased, and of all goods sold (except those sold by way of ordinary retail trade), showing the goods and the sellers and buyers (except buyers of goods in ordinary retail trade) in sufficient detail to enable the goods and the sellers and buyers to be identified and a record of all the invoices relating to such purchases and sales,
    - (ii) statements of stock held by the company at the end of each financial year and all records of stocktakings from which any such statement of stock has been, or is to be, prepared; and
  - (d) if the company's business involves the provision of services, a record of the services provided, to whom they were provided (unless provided by way of ordinary retail trade) and of all the invoices relating thereto.
- (4) For the purposes of Subheads (1), (2) and (3), accounting records shall be deemed to be sufficient if they comply with those subheads and explain the company's transactions and facilitate the preparation of entity financial statements that give a true and fair view of the [assets, liabilities, financial position / state of affairs] and profit or loss of the company.
- (5) Accounting records required by this head to be kept, and the information and returns referred to in this Chapter [equivalent of Section 202(6) of the Companies Act, 1990], shall be kept either in written form in an official language of the State or so as to enable the accounting records and the information and returns to be readily accessible and readily convertible into written form in an official language of the State.
- (6) A holding company which has a subsidiary undertaking in relation to which the above or similar requirements do not apply shall take reasonable steps to secure that the undertaking keeps such accounting records as to enable the directors of the holding company to ensure that any group financial statements required to be prepared under this Part comply with the requirements of this Bill and, where applicable, Article 4 of the IAS Regulation.

#### **Explanatory note**

*The existing Section 202 of the Companies Act, 1990 has been broken down into its major elements in this and the following heads.*

*This head is an amended re-enactment of Section 202 of the Companies Act, 1990.*

*Instead of 'proper books of account' the requirement has been changed to refer to 'accounting records that are sufficient to...'*

*Subsection (4) has been amended by inserting the words "explain its transactions and facilitate the preparation of entity financial statements that give a true and fair view" in substitution of "give a true and fair view of the state of affairs of the company and explain its transactions".*

*The true and fair view now refers to '[assets, liabilities, financial position / state of affairs]' not 'state of affairs'. The reason for this is that it is presently under debate in the UK and it was agreed at CLRG that it was in the best interests of Ireland to have consistent requirement.*

*Subsection (1)(c) was amended by the European Communities (International Financial Reporting Standards and Miscellaneous Amendments) Regulations 2005 – S.I. 116 of 2005.*

*Subhead (5) is a re-enactment of Section 202(7) of the Companies Act, 1990.*

*Subhead (6) is a new requirement to ensure that the directors of a holding company take reasonable steps to ensure that they can prepare the statutory group financial statements.*

---

### Head 6 Where accounting records are to be kept

---

- (1) Subject to Subhead (2), a company's accounting records shall be kept at its registered office or at such other place as the directors think fit.
- (2) If accounting records are kept at a place outside the State, there shall be sent to and kept at a place in the State such information and returns relating to the business dealt with in the accounting records so kept as will disclose with reasonable accuracy the [assets, liabilities, financial position / state of affairs] and profit or loss of that business at intervals not exceeding 6 months and will enable to be prepared in accordance with the this Bill (and, where applicable, Article 4 of the IAS Regulation) the company's statutory financial statements required by Heads 12 or 15 and the directors' report required by Head 37.

#### **Explanatory note**

*Subhead (1) is a re-enactment of Section 202(5) of the Companies Act, 1990.*

*Subhead (2) substantially re-enacts Section 202(6) of the Companies Act, 1990 which was amended by Section 116 of 2005 to address financial statements prepared in accordance with either the Companies Acts or the IAS/IFRS and to extend the requirement to ensure that sufficient information is received to facilitate the preparation of the business review required by the directors' report.*

*The phrase 'accounts and returns' has been amended to 'information and returns' as accounts has a particular meaning.*

---

### Head 7 Access to accounting records

---

- (1) A company shall make its accounting records, and any information and returns referred to in Part A6, Head 6(2) [equivalent of Section 202(6) of the Companies Act, 1990], available in written form in an official language of the State at all reasonable times for inspection without charge by the officers of the company and by other persons entitled pursuant to this Bill to inspect the accounting records of the company.
- (2) The directors shall from time to time determine whether and to what extent and at what times and places and under what conditions or regulations the financial statements and books of the company or any of them shall be open to the inspection of members, not being directors, and no member (not being a director) shall have any right of inspecting any financial statement or book or document of the company except as conferred by statute or authorised by the directors or by the company in general meeting.

#### **Explanatory note**

*Subhead (1) is a re-enactment of Section 202(8) of the Companies Act, 1990 with 'accounts and returns' changed to 'information and returns'.*

*Subhead (2) is a re-enactment of Regulation 127 of Table A Part 1 of the First Schedule to the Companies Act, 1963.*

---

### Head 8 Retention of accounting records

---

An accounting record required to be kept by Part A6, Head 5 or information or returns referred to in Part A6, Head 6(2) [equivalent of Section 202(6) of the Companies Act, 1990], shall be preserved by the company concerned for a period of at least 6 years after the end of the financial year containing the latest date to which the accounting record relates.



## Part A6 - Financial statements, Annual Return and Audit

### **Explanatory note**

*Slightly amended re-enactment of Section 202(9) of the Companies Act, 1990 with 'accounts and returns' changed to 'information and returns'.*

## **Head 9 Accounting records: offences**

- (1) A company that contravenes Part A6, Heads 5 to 9 [the equivalent of Section 202 of the Companies Act, 1990] and a person who, being a director of a company, fails to take all reasonable steps to secure compliance by the company with the requirements of those heads, or has by his own wilful act been the cause of any default by the company thereunder, shall, in respect of each such contravention be guilty of an offence and
- (a) in any case where-
- (i) the contravention arose
    - I. in relation to a company that is being or has been wound-up,
    - II. which is or was (as the case may be) unable to pay all of its debts, and
    - III. where the court before which the prosecution is taken is satisfied that such contravention has contributed to the company's inability to pay all of its debts, or has resulted in substantial uncertainty as to the assets and liabilities of the company, or has substantially impeded the orderly winding up thereof;
  - or
  - (ii) the contravention persisted during a continuous period of three years or more, or
  - (iii) the contravention involved the failure to correctly record and explain any one or more transactions of the company the value or aggregate value of which exceeded the greater of 1m or 10 per cent of the net assets of the company,
- such offence shall be a Category 1 offence; and

(b) in any other case, such offence shall be a Category 2 offence.

- (2) In any proceedings against a person in respect of an offence under Part A6 Heads 5 to 9 [the equivalent of Section 202 of the Companies Act, 1990] consisting of a failure to take reasonable steps to secure compliance by a company with the requirements of Part A6, Heads 5 to 9 [equivalent of Section 202 of the Companies Act, 1990] it shall be a defence to prove that he had reasonable grounds for believing that a competent and reliable person was charged with the duty or ensuring that those requirements were complied with and was in a position to discharge that duty and that the exercise of that duty by such competent and reliable person was monitored by the accused, by means of reasonable methods properly used.

### **Explanatory note**

*Amended restatement of Section 202 (10) and 203 of the Companies Act, 1990.*

*Paragraph 202(10)(b) has been deleted. This read as follows: "A person shall not be sentenced to imprisonment for such an offence unless, in the opinion of the court, the offence was committed wilfully". The Company Law Review Group believed that the paragraph was superfluous given the discretion of the judiciary that currently exists in such matters generally. The rationale for the amendment is set out below.*

*It will be noted that the 1990 Act gave rise to an anomaly (which still exists) whereby, if the more serious offence (Section 203) is prosecuted summarily, and the accused is convicted, the judge cannot impose as high a sentence of imprisonment as would be available had the less serious offence (Section 202) been prosecuted. This does not make too much sense and presumably it arose through something of an oversight.*

*The other matter that has somewhat imbalanced the relationship between Sections 202 and 203 is that when Section 104 of the Company Law Enforcement Act, 2001 was enacted, the maximum period of imprisonment for an offence under Section 202 (when tried on indictment) was increased to five years. In order to preserve the principle that the Section 203 circumstances warranted a more serious sanction, it would have been preferable if the opportunity had been taken to increase the corresponding Section 203 penalty, perhaps to 7 years – such as occurred in the case of the "aggravated" version of Section 242(1) liability, provided for in Section 242(2) of the 1990 Act. However that did not happen.*



*The result is that, at present, we have two separate offences, one of which was originally intended to be more serious than the other. However, due to the amendment of one (Section 202) and the lack of amendment of the other (Section 203), the more serious offence (Section 203) now gives rise to no greater a penalty than the less serious offence (Section 202) and, when tried summarily, it actually attracts a lesser penalty.*

*In ODCE's view the way in which this issue should be resolved is by the enactment of a provision which creates a single offence, but one which is capable of giving rise to different maximum penalties in different circumstances. So far as those circumstances are concerned ODCE favours retention of the existing Section 203 circumstances, but suggests that the higher penalties should be available also in non-insolvency cases where the default in question is particularly serious.*

*Obviously it is very easy in discussions to use terms such as "particularly serious", "flagrant", or "aggravated". However such terms are not suitable for inclusion in a statutory provision of a penal variety. Accordingly it is necessary to define precisely the sorts of breaches which we think should attract the higher liability.*

*As already stated, ODCE's view is that higher liability should continue to attach to the insolvency-related circumstances already provided for in Section 203. In addition our preliminary view is that Category 1 liability should be available in instances where the breach has persisted for an extended period, or where it is material by reference to the size of the company.*

## Chapter 3

### Financial year

---

#### Head 10 Financial year

---

- (1) A company's first financial year is the period beginning with the date of its incorporation and ending on a date no more than 18 months from that date. This later date is its financial year end date.
- (2) A company's subsequent financial years begin with the day immediately after the previous financial year end date and continue for twelve months or such other period, not more than seven days shorter or longer than twelve months, as the directors may determine to its next financial year end date.
- (3) Notwithstanding Subhead (2), a financial year may be for a period shorter or longer than twelve months, provided that a financial year end date falls within every calendar year or within seven days of the end of that calendar year and the reasons for any change in financial year end date are disclosed in the notes to the statutory financial statements.
- (4) Except where there are substantial reasons not to do so, which reasons should be disclosed in the notes to the statutory financial statements, the directors of a holding company must ensure the financial year end dates of the subsidiary undertakings included in the consolidation coincide with that of the holding company.
- (5) Where it appears to the Registrar desirable for a holding company or a holding company's subsidiary to extend its financial year so that the subsidiary's financial year may end with that of the holding company, and for that purpose to postpone the submission of the relevant financial statements to an annual general meeting from one calendar year to the next, the Minister may, on the application or with the consent of the directors of the company whose financial year is to be extended, direct that in the case of that company, the submission of financial statements to an annual general meeting or the holding of an annual general meeting shall not be required in the earlier of the calendar years.

#### **Explanatory note**

*This is a new head. It defines 'financial year' clearly and draws on information previously spread in the 1963 Act and the 1986 Act. There is no change in the basic requirement*

*Subhead (5) is an amended re-enactment of Section 153 (2) of the Companies Act, 1963.*

## Chapter 4

### Statutory Financial Statements

#### Head 11 Statutory financial statements to give true and fair view

- (1) The directors of a company shall not approve financial statements for the purposes of this Part unless they are satisfied that they give a true and fair view of the [assets, liabilities, financial position / state of affairs] and profit or loss –
  - (a) in the case of the company's entity financial statements, of the company as a separate legal entity;
  - (b) in the case of the company's group financial statements, of the company and all the undertakings included in the consolidation taken as a whole, so far as concerns the members of the company.
- (2) The independent auditors of a company in carrying out their functions under this Bill in relation to the company's statutory financial statements shall have regard to the directors' duty under Subhead (1).

#### **Explanatory note**

*The requirement for the statutory financial statements to give a true and fair view is the most important requirement in relation to financial statements – consequently it is important to have this requirement right up front.*

#### Head 12 Obligation to prepare entity financial statements under relevant financial reporting framework

- (1) The directors of every company shall prepare or cause to be prepared entity financial statements for the company for each of its financial years (to be known and in this Bill referred to as the company's "entity financial statements").
- (2) The entity financial statements prepared in accordance with this head shall be the statutory financial statements of a company that does not prepare group financial statements in accordance with Head 15.

- (3) Subject to Subheads (4) to (7) [equivalent of Sections 148(3) to (11) of the Companies Act, 1963, as inserted by Regulation 4 of S.I. 116 of 2005] and Head 18, a company's entity financial statements shall be prepared—
  - (a) in accordance with Head 13 [equivalent of Section 149 of the Companies Act, 1963] (to be known and in this Bill referred to as 'Companies Act entity financial statements'); or
  - (b) in accordance with international financial reporting standards and Head 14 [equivalent of Section 149A] (to be known and in this Bill referred to as 'IFRS entity financial statements').
- (4) Companies Act entity financial statements shall be prepared by a company not trading for the acquisition of gain by the members.
- (5) After the first financial year in which the directors of a company prepare IFRS entity financial statements (in this head referred to as 'the first IFRS year'), all subsequent entity financial statements of the company shall be prepared in accordance with international financial reporting standards unless there is a relevant change of circumstances as referred to in Subhead (6).
- (6) There is a relevant change of circumstances where at any time during or after the first IFRS year—
  - (a) the company becomes a subsidiary undertaking of another undertaking that does not prepare IFRS financial statements;
  - (b) the company ceases to be a company with securities admitted to trading on a regulated market;
  - (c) a holding undertaking of the company ceases to be an undertaking with securities admitted to trading on a regulated market.
- (7) Where, following a relevant change of circumstances, Companies Act entity financial statements are prepared, the directors may subsequently prepare IFRS entity financial statements for the company and Subheads (4) and (5) apply as if that financial year for which such IFRS entity financial statements are subsequently prepared was the first IFRS year.

### **Explanatory note**

*Revised version of Section 148(1) of the Companies Act, 1963, as substituted by Regulation 4, S.I. 116 of 2005.*

*Revised Sections 148(2) and (4)-(6), of the Companies Act, 1963, inserted by Regulation 4 of S.I. 116 of 2005 Subsection (3) has been slightly amended to refer only to companies not trading for gain of members.*

## **Head 13 Companies Act entity financial statements**

- (1) Companies Act entity financial statements shall comprise—
  - (a) a balance sheet as at the financial year end date;
  - (b) a profit and loss account for the financial year; and
  - (c) any other additional statements and information required by the financial reporting framework adopted.
- (2) The Companies Act entity financial statements shall give a true and fair view of the [assets, liabilities and financial position / state of affairs] of the company as at the financial year end date and of the profit or loss of the company for the financial year.
- (3) Companies Act entity financial statements shall comply with the provisions of—
  - (a) Schedule 1 as to the accounting principles, form and content of the balance sheet, profit and loss account and additional information to be provided by way of notes to the financial statements;
  - (b) Applicable accounting standards; and
  - (c) Other provisions of this Bill.
- (4) Where compliance with that Schedule, applicable accounting standards and the other provisions of this Bill as to the matters to be included in entity financial statements or in notes to those financial statements would not be sufficient to give a true and fair view, the necessary additional information must be given in the entity financial statements or a note to them.
- (5) If in special circumstances compliance with any of the provisions of this Bill (even if additional information were provided under Subhead (4)) is inconsistent with the requirement to give a true and fair view, the directors shall depart from that provision to the extent necessary to give a true and fair view.
- (6) Particulars of any departure under Subhead (5), the reasons for it and its effect shall be given in a note to the financial statements.
- (7) Each company shall ensure—
  - (a) that its Companies Act entity financial statements include a statement as to whether they have been prepared in accordance with applicable accounting standards; and
  - (b) that any material departure from applicable accounting standards, the effect of the departure and the reasons for it are noted in the entity financial statements.
- (8) In this head 'accounting standards' means accounting or financial reporting standards including their interpretations issued by any body or bodies prescribed by regulation.
- (9) Accounting standards are applicable to a company's entity financial statements if those standards are, in accordance with their terms, relevant to its circumstances and those entity financial statements.
- (10) If a company fails to comply with Subheads (2) to (7), the company and every officer of the company who is in default shall be guilty of a category 2 offence. In any proceedings against a person in respect of an offence under this subhead, it shall be a defence to prove that he had reasonable grounds to believe and did believe that a competent and reliable person was charged with the duty of ensuring that the provisions of the said subhead were complied with and that the latter person was in a position to discharge that duty.
- (11) In Subhead (10) "officer" includes any shadow director or de facto director as defined in Part A5.

### **Explanatory note**

*Revised version of Section 149(1)-(4) of the Companies Act, 1963, inserted by Regulation 4 S.I. 116 of 2005. Terminology has been changed and the parts of Section 3 of the Companies (Amendment) Act, 1986 dealing with the true and fair view have been inserted.*

Subsections (5) and (6) have not been restated here. Paragraph (3)(b) has been deleted from this Part and inserted into Part B5 Unlimited Companies. This head contains an amended re-enactment of Section 205A of the Companies Act, 1990, as inserted by Section 39 of the Companies (Auditing and Accounting) Act, 2003. The definition of "relevant undertaking" in Section 205A(1) of the Companies Act, 1990 has not been included here. Instead it will be included in Pillar B of the Bill as this Part is concerned only with private companies limited by shares. Furthermore, all references to a "relevant undertaking" have been replaced by references to a "company".

### Head 14 IFRS entity financial statements

- (1) Where the directors of a company prepare IFRS entity financial statements they shall comply in full with all IFRS and—
  - (a) shall make an unreserved statement in the notes to those entity financial statements that they have been prepared in accordance with international financial reporting standards; and
  - (b) shall ensure that those entity financial statements contain the additional information required by this Part other than the requirements of the First and Second Schedules.
- (2) For the avoidance of doubt, the requirement for entity financial statements prepared in accordance with IFRS to present fairly the assets, liabilities, financial position, financial performance and cash flows is deemed to be equivalent to the true and fair view required by Head 13 (2) and IFRS require such additional information as is necessary to achieve that to be included in the entity financial statements.
- (3) If a company fails to comply with Subheads (1) and (2), the company and every officer of the company who is in default shall be guilty of a category 2 offence. In any proceedings against a person in respect of an offence under this subhead, it shall be a defence to prove that he had reasonable grounds to believe and did believe that a competent and reliable person was charged with the duty of ensuring that the provisions of the said subheads were complied with and that the latter person was in a position to discharge that duty.
- (4) In Subhead (3) "officer" includes any shadow director or de facto director as defined in Part A5.

#### Explanatory note

Amended re-enactment of Section 149A of the Companies Act, 1963, a new section inserted by Regulation 4 of S.I. 116 of 2005 to supplement the duty under Section 148, of the Companies Act, 1963, to prepare entity financial statements where those financial statements are prepared in accordance with international financial reporting standards. It is no longer necessary to include the list of additional requirements as they are now included in this Bill and are applicable to both IFRS and Companies Act financial statements. They are included in Heads 24 to 35. Subhead (2) is a clarification that a 'true and fair view' is required by IFRS financial statements – the requirement is contained in IAS 1 together with the requirement for additional information but non-accountants might not be familiar with the detail. Repeat of offences paras inserted above in Companies Act section.

### Head 15 Obligation to prepare group financial statements under relevant financial reporting framework

- (1) Where at the end of its financial year a company is a holding company, the directors, as well as preparing entity financial statements for the financial year, shall prepare consolidated financial statements for the holding company and all its subsidiary undertakings (to be known and in this Bill referred to as 'group financial statements') for that financial year.
- (2) Where a holding company prepares group financial statements in accordance with this head, it shall combine with those group financial statements the entity financial statements prepared in accordance with Head 12 and together they shall constitute the statutory financial statements of the company.
- (3)
  - (a) Subject to paragraph (b), companies are obliged for financial years commencing on or after 1 January 2005, to prepare their group financial statements in accordance with international financial reporting standards if, at their financial year end date their securities are admitted to trading on a regulated market of any EEA State;



- (b) The requirements referred to in paragraph (a) shall only apply for each financial year starting on or after 1 January 2007 to those companies whose debt securities only have been admitted to trading on a regulated market of any EEA State.
- (4) Subject to Subheads (5) to (9) [equivalent of Sections 150(4) to (11) of the Companies Act, 1963 as inserted by Regulation 4 of S.I. 116], other companies which are required to prepare group financial statements shall prepare -
- (a) group financial statements in accordance with Head 16 [equivalent of Section 150A of the Companies Act, 1963 as inserted by Regulation 4 of S.I. 116] (to be known and in this Bill referred to as 'Companies Act group financial statements'); or
- (b) group financial statements in accordance with international financial reporting standards and Head 17 [equivalent of Section 150B of the Companies Act, 1963 as inserted by Regulation 4 of S.I. 116] (to be known and in this Bill referred to as 'IFRS group financial statements').
- (5) Companies Act group financial statements shall be prepared where the group does not trade for the acquisition of gain by the members.
- (6) After the first financial year in which the directors of a holding company prepare IFRS group financial statements (in this head referred to as 'the first IFRS year'), all subsequent group financial statements shall be prepared in accordance with international financial reporting standards unless there is a relevant change of circumstances as referred to in Subhead (5) [equivalent of Section 150(6), inserted by S.I. 116 of 2005].
- (7) There is a relevant change of circumstances where at any time during or after the first IFRS year—
- (a) the company becomes a subsidiary undertaking of another undertaking that does not prepare IFRS group financial statements;
- (b) the company ceases to be a company with securities admitted to trading on a regulated market;
- (c) a holding undertaking of the company ceases to be an undertaking with securities admitted to trading on a regulated market.
- (8) Where, following a relevant change of circumstances, Companies Act group financial statements are prepared, the directors may subsequently prepare IFRS group financial statements for the company and Subheads (6) and (7) shall apply as if that financial year for which such IFRS group financial statements are subsequently prepared was the first IFRS year.
- (9) This head is subject to the exemptions from the preparation of group financial statements provided by Head 19 (size of group), Head 20 (holding company that is subsidiary of another EEA registered undertaking), Head 21 (holding company that is subsidiary of a non-EAA registered undertaking) and Head 22 (4) (All subsidiaries excluded from consolidation).

### **Explanatory note**

*Amended re-enactment of Section 150 of the Companies Act, 1963, as amended by Regulation 4 of S.I. 166 of 2005.*

*Subhead (1) is a re-enactment of Section 150(1) with terminology changes.*

*Subhead (2) defines what is 'statutory financial statements' for a company that is a holding company obliged to prepare group financial statements*

*Subhead (3) was inserted by S.I. 116 – depending on time period subparagraph (b) may not be needed.*

*Please note that S.I. 116 had the definition of 'IFRS financial statements' included here but it has been moved to the next section as otherwise it does not incorporate the additional requirements of this Bill.*

*Subheads (4) to (8) are amended re-enactments of the subsections inserted by S.I. 116.*

*Subhead (9) summarises the circumstances under which a holding company is exempt from requirement to prepare Companies Act group financial statements. Subheads (3), (6), (7) of the previous Section 150 have been removed and inserted into Pillar B.*

---

## **Head 16 Companies Act group financial statements**

---

- (1) Companies Act group financial statements shall comprise—
- (a) a consolidated balance sheet dealing with the [assets, liabilities and financial position / state of affairs] of the holding company and its subsidiary undertakings (including those in liquidation) as at the financial year end date;
- (b) a consolidated profit and loss account dealing with the profit or loss of the holding company and its subsidiary undertakings (including those in liquidation) for the financial year; and

## Part A6 - Financial statements, Annual Return and Audit

---

- (c) any other additional information required by the financial reporting framework adopted.
- (2) The Companies Act group financial statements shall give a true and fair view of the [assets, liabilities and financial position / state of affairs] as at the financial year end date and of the profit or loss for the financial year, of the company and the undertakings included in the consolidation taken as a whole, so far as concerns the members of the company.
- (3) Companies Act group financial statements shall comply with the provisions of—
- (a) Schedule 2 as to the accounting principles, form and content of the consolidated balance sheet, consolidated profit and loss account and additional information to be provided by way of notes to the group financial statements;
- (b) Applicable accounting standards; and
- (c) Other provisions of this Bill.
- (4) Where compliance with that Schedule, applicable accounting standards and the other provisions of this Bill as to the matters to be included in group financial statements or in notes to those financial statements would not be sufficient to give a true and fair view, the necessary additional information must be given in the group financial statements or a note to them.
- (5) If in special circumstances compliance with any of the provisions of this Bill (even if additional information were provided under Subhead (4)) is inconsistent with the requirement to give a true and fair view, the directors shall depart from that provision to the extent necessary to give a true and fair view.
- (6) Particulars of any departure under Subhead (5), the reasons for it and its effect shall be given in a note to the financial statements.
- (7) Each company shall ensure—
- (a) that its Companies Act group financial statements include a statement as to whether they have been prepared in accordance with applicable accounting standards; and
- (b) that any material departure from applicable accounting standards, the effect of the departure and the reasons for it are noted in the group financial statements.
- (8) In this head 'accounting standards' means accounting or financial reporting standards including their interpretations issued by any body or bodies prescribed by regulation.
- (9) Accounting standards are applicable to a holding company's group financial statements if those standards are, in accordance with their terms, relevant to its circumstances and those group financial statements.
- (10) If a company fails to comply with Subheads (2) to (7), the company and every officer of the company who is in default shall be guilty of a category 2 offence. In any proceedings against a person in respect of an offence under this subhead, it shall be a defence to prove that he had reasonable grounds to believe and did believe that a competent and reliable person was charged with the duty of ensuring that the provisions of the said subheads were complied with and that the latter person was in a position to discharge that duty.
- (11) In Subhead (10) "officer" includes any shadow director or de facto director as defined in Part A5.

### **Explanatory note**

*Amended re-enactment of Section 150A of the Companies Act, 1963, as inserted by Regulation 4 of S.I. 116 of 2005.*

*Paragraph (3)(b) of the original section has been removed and inserted into Pillar B.*

---

## **Head 17 IFRS group financial statements**

---

- (1) Where the directors of a holding company prepare IFRS group financial statements, they shall comply in full with all IFRS and—
- (a) shall make an unreserved statement in the notes to those group financial statements that they have been prepared in accordance with international financial reporting standards; and
- (b) shall ensure that those group financial statements contain the additional information required by this Part other than the requirements of the First and Second Schedules.

## Part A6 - Financial statements, Annual Return and Audit

---

- (2) For the avoidance of doubt, the requirement for group financial statements prepared in accordance with IFRS to present fairly the assets, liabilities, financial position, financial performance and cash flows is deemed to be equivalent to the true and fair view required by Head 16 (2) and IFRS require such additional information as is necessary to achieve that to be included in the group financial statements.
- (3) If a company fails to comply with Subheads (1) and (2), the company and every officer of the company who is in default shall be guilty of a category 2 offence. In any proceedings against a person in respect of an offence under this subhead, it shall be a defence to prove that he had reasonable grounds to believe and did believe that a competent and reliable person was charged with the duty of ensuring that the provisions of the said subheads were complied with and that the latter person was in a position to discharge that duty.
- (4) In Subhead (3) "officer" includes any shadow director or de facto director as defined by Part A5.
- (2) Subhead (1) only applies to financial statements of subsidiary undertakings that are required to be prepared under this Bill.
- (3) Subhead (1) does not apply—
- (a) where the directors do not prepare group financial statements for the holding company;
- (b) to the financial statements of undertakings which do not trade for the acquisition of gain by the members. [equivalent of Section 148(3) CA 1963].
- (4) Subhead (1)(a) does not apply where the directors of a holding company prepare IFRS group financial statements and IFRS entity financial statements for the holding company.

### **Explanatory note**

*Re-enactment of Section 150C of the Companies Act, 1963 as inserted by Regulation 4 of S.I. 116 of 2005 to specifically oblige directors of a holding company to ensure the entity financial statements of the holding company and each subsidiary undertaking are prepared using the same financial reporting framework.*

### **Explanatory note**

*Amended re-enactment of Section 150B of the Companies Act, 1963 as inserted by Regulation 4 of S.I. 116 of 2005.*

*Subhead (2) is a clarification that a 'true and fair view' required by IFRS financial statements – the requirement is contained in IAS 1 but non-accountants might not be familiar with the detail.*

*There is no need to include the list of items of that section here as they are now included in this Bill and apply to both Companies Act and IFRS financial statements.*

*Repeat of offences paras inserted above in Companies Act section.*

---

## **Head 18 Consistency of financial statements**

---

- (1) The directors of a holding company shall ensure that the entity financial statements of—
- (a) the holding company; and
- (b) each of the subsidiary undertakings of the holding company,

are all prepared using the same financial reporting framework, except to the extent that in their opinion there are good reasons for not doing so, and those reasons are disclosed in the entity financial statements of the holding company.

## Chapter 5

### Companies Act group financial statements: Exemptions and exclusions

#### Head 19 Exemption from consolidation: size of group

- (1) Provided that a holding company has not elected to prepare IFRS group financial statements and subject to Subheads (2) to (8), a holding company shall be exempt from the requirement in Part A6, Head 15 [the equivalent of S.I. No. 201/1992, European Communities (Companies: Group Accounts) Regulations 1992, Regulation 5] to prepare group financial statements if, at the financial year end date of the holding company in that financial year and in the financial year of that company immediately preceding that financial year, the holding company and all of its subsidiary undertakings together, on the basis of their entity financial statements prepared for those financial years satisfy two of the following three qualifying conditions—
- (a) the balance sheet total of the holding company and its subsidiary undertakings together does not exceed €10,000,000;
  - (b) the amount of the turnover of the holding company and its subsidiary undertakings together does not exceed €20,000,000; and
  - (c) the average number of persons employed by the holding company and its subsidiary undertakings together does not exceed 250.
- (2) In this head, “balance sheet total” in relation to any financial year, means—
- (a) where Format 1 of the balance sheet Formats set out in Schedule 1 to this Part [equivalent of the Schedule to the Companies (Amendment) Act, 1986] is adopted in the entity financial statements, the aggregate of the amounts that would be shown in the consolidated balance sheet at the end of that financial year under the headings corresponding to items A and B in that Format; and
  - (b) where Format 2 of those formats is adopted by the company and its subsidiary undertakings, the aggregate amounts that would be shown in the consolidated balance sheet under “Assets”.
- (3) In this head, “amount of the turnover”, in relation to any financial year, means the amounts of the turnover that would be shown in the consolidated profit and loss account under headings corresponding to the relevant items in any of the Formats of profit and loss accounts set out in Schedule 1 to this Part [equivalent to the Schedule to the Companies (Amendment) Act, 1986].
- (4) For the purposes of this head, the average number of persons employed shall be that required to be disclosed in accordance with Part A6, Head 30 [equivalent of number of employees required by Regulation 15 of S.I. No. 201/1992, European Communities (Companies: Group Accounts) Regulations 1992, Schedule 2, 15].
- (5) In the application of this head to any period which is a financial year for the purpose of the holding company’s entity financial statements but is not in fact a year, the amount specified in Subhead (1)(b) shall be proportionally adjusted.
- (6) A company which before the commencement of this Part is not a holding company but which becomes a holding company on or after the commencement of this Part may avail of the exemption in Subhead (1) in respect of the financial year in which it becomes a holding company by considering solely whether the requirements of paragraph (1) are met in respect of that financial year.
- (7) A company which was a holding company before such commencement may avail of the exemption in Subhead (1) in the first financial year in which financial statements of the group are to be prepared in accordance with this Part if the requirements of Subhead (1) are met in that financial year or in the financial year immediately preceding that financial year.
- (8) Where a holding company qualifies to avail of the exemption provided for in Subhead (1) it shall continue to be so qualified, unless in the latest financial year of the company and the financial year of the company immediately preceding that financial year the requirements of subhead (1) are not met.

## Part A6 - Financial statements, Annual Return and Audit

- (9) This head shall not apply where—
- (a) any shares, debentures or other debt securities of a subsidiary undertaking have been admitted to trading on a regulated market of any EEA state; or
  - (b) the holding company or any of the subsidiary undertakings is a credit institution or an insurance undertaking [equivalent of S.I. No. 201/1992, European Communities (Companies: Group Accounts) Regulations 1992, Regulation 6].
- (a) the exempted holding company is a wholly owned subsidiary of that other holding undertaking; or
  - (b) where that other holding undertaking holds 50 per cent or more of the shares in the exempted holding company and notice requesting the preparation of group financial statements has not been served on the exempted company by shareholders holding in aggregate –
    - (i) more than half of the remaining shares in the exempted company, or
    - (ii) 5 per cent or more of the total shares in the exempted company.

### Explanatory note

*This head is an amended re-enactment of S.I.*

*201/1992, European Communities (Companies: Group Accounts) Regulations 1992, Regulation 7*

*All cross references have been updated in accordance with the structure of the new Bill and references to “undertaking” have been replaced by references to “company” where appropriate.*

*Subsection (1) has been amended insofar as the figures have been revised in accordance with the view of the Company Law Review Group. The newly inserted balance sheet total and amount of turnover of the holding company and its subsidiary undertakings are consistent with the maximum limits on the qualifying criteria for medium-sized companies in Head 11 of this Part.*

*Subsection 8(a) was amended/inserted by Regulation 6(e), S.I. 116 of 2005.*

*Subsection (10) has been deleted as no longer required.*

*Please note that Subhead (9) above needs to be amended for plc’s as if companies are listed they should not be entitled to this exemption.*

- (2) The notice referred to in Subhead (1) (b) shall be served on the exempted company not later than six months after the end of the financial year before that to which it relates.

- (3) Subhead (1) shall only apply if the following conditions are met—

- (a) the exempted holding company and, without prejudice to Part A6, Head 22 [equivalent of S.I. No. 201/1992, European Communities (Companies: Group Accounts) Regulations 1992, Regulations 10 and 11], all of its subsidiary undertakings must be consolidated in consolidated accounts prepared by a holding undertaking which is established under the law of an EEA State, and of which the exempted holding company is a subsidiary undertaking;

- (b) the consolidated accounts referred to in paragraph (a) must be prepared and audited according to the law of the EEA State in which that holding undertaking is established and in accordance with the Seventh Council Directive 83/349/EEC of 13 June 1983 (where applicable, as modified by Council Directive 86/635/EEC of 8 December 1986 or Council Directive 91/674/EEC of 23 December 1991) or in accordance with international financial reporting standards;

- (c) the report of the directors of the holding undertaking drawing up those consolidated accounts must be prepared according to the law of the EEA State in which that holding undertaking is established and in accordance with the Seventh Directive;

---

## Head 20 Exemption from consolidation: holding company that is a subsidiary of another EEA registered undertaking

---

- (1) Provided that a holding company has not elected to prepare IFRS group financial statements, a holding company is exempt from the requirement in Part A6, Head 15 [equivalent of Regulation 5 S.I. 161/2005] to prepare group financial statements if that holding company (“the exempted holding company”) is itself a subsidiary undertaking of another undertaking established under the laws of an EEA State (“that other holding undertaking”), in the following cases –



- (d) the following must be annexed to the annual return of the exempted holding company next after the consolidated accounts have been prepared in accordance with paragraph (a)—
- (i) the consolidated accounts referred to in paragraph (a),
  - (ii) the directors' report referred to in paragraph (c), and
  - (iii) the report of the person responsible for auditing the accounts referred to in paragraph (a);
- (e) the notes to the entity financial statements of the exempted holding company must disclose –
- (i) the name and registered office of the holding undertaking that draws up the consolidated accounts referred to in paragraph (a), and
  - (ii) the exemption from the obligation to draw up group financial statements and a directors' report dealing with the exempted holding company and its subsidiary undertakings.
- (4) Shares held by directors of the exempted holding company for the purpose of complying with any share qualification requirement shall be disregarded in determining for the purposes of paragraph (1)(a) whether the company is a wholly-owned subsidiary.
- (5) For the purpose of paragraph (1)(b), shares held by a wholly-owned subsidiary of that other holding undertaking, or held on behalf of that other holding undertaking or its wholly-owned subsidiary, shall be attributed to that other holding undertaking.

### **Explanatory note**

*This head is an amended re-enactment of S.I. No. 201/1992, European Communities (Companies: Group Accounts) Regulations 1992, Regulations 8 and 9. The protection for minorities requiring group financial statements has been brought into line with the protection for minorities of non-EEA subsidiaries. All cross-references have been updated in accordance with the structure of the new Bill and references to "undertaking" have been replaced by references to "company" where appropriate. Furthermore, any reference to S.I. No. 201/1992, European Communities (Companies: Group Accounts) Regulations 1992, Regulation 12 have been removed as Regulation 12 has not been included.*

*Also the requirement in Subsection (3) (e) to translate the copies of the higher holding companies accounts and reports into English or Irish has been moved to the annual return section.*

*Paragraph (4) of Regulation 12 has not been included as it is not relevant to a private company. It will instead be included in Pillar B at a later stage. This paragraph read as follows: "Paragraph (1) shall not apply to a holding undertaking.*

*Subsection (8) has been amended in light of Article 2(3) of Directive 2003/51/EEC (the Modernisation Directive) any of whose shares, debentures or other debt securities have been admitted to official listing on a stock which amends Article 6(4) of Directive 83/349/EEC (the 7th Directive) with the insertion of the said text exchange established in a Member State."*

## **Head 21 Exemption from consolidation: holding company that is a subsidiary of a non-EEA undertaking**

- (1) Provided that a holding company has not elected to prepare IFRS group financial statements, a holding company (the 'exempted holding company') is exempt from the requirement in Part A6, Head 15 [equivalent of Regulation 5 S.I. 161/2005] to prepare group financial statements where that exempted holding company is itself a subsidiary undertaking and its holding undertaking is not established under the law of an EEA State where –
  - (a) the exempted holding company is a wholly-owned subsidiary of that other holding undertaking;
  - (b) that other holding undertaking holds more than 50 per cent of the shares in the exempted holding company and notice requesting the preparation of group accounts has not been served in accordance with paragraph (2) on the exempted holding by shareholders holding in aggregate –
    - (i) more than half of the remaining shares in the company, or
    - (ii) 5 per cent of the total shares in the company.
- (2) The notice referred to in Subhead (1)(b) must be served not later than 6 months after the end of the financial year before that to which it relates.

- (3) Exemption under this head is conditional upon compliance with all of the following conditions—
- (a) that the exempted holding company and all of its subsidiary undertakings are included in consolidated accounts for a larger group drawn up to the same date, or to an earlier date in the same financial year by that other holding undertaking;
  - (b) that those accounts and, where appropriate, the group's annual report, are drawn up in accordance with the provisions of the Seventh Council Directive 83/349/EEC of 13 June 1983 (where applicable, as modified by Council Directive 86/635/EEC of 8 December 1986 or Council Directive 91/674/EEC of 23 December 1991), or in a manner equivalent to consolidated accounts and consolidated annual reports so drawn up;
  - (c) that the consolidated accounts are audited by one or more persons authorised to audit accounts under the law under which that other holding undertaking which draws them up is established;
  - (d) that the exempted holding company discloses in its entity financial statements that it is exempt from the obligation to prepare and deliver group financial statements;
  - (e) that the exempted holding company states in its entity financial statements the name of that other holding undertaking which draws up the consolidated accounts referred to in subparagraph (a) and —
    - (i) where that other holding undertaking is incorporated outside the State, the country in which it is incorporated, or
    - (ii) where that other holding undertaking is unincorporated, the address of its principal place of business; and
  - (f) that the exempted holding company delivers to the Registrar, within the period allowed for delivering its entity financial statements, copies of that other holding undertaking consolidated accounts and, where appropriate, of the consolidated annual report, together with the auditors' report on them.
- (4) Shares held by directors of the exempted holding company for the purpose of complying with any share qualification requirement shall be disregarded in determining for the purposes of paragraph (1)(a) whether the company is a wholly-owned subsidiary.
- (5) For the purpose of paragraph (1)(b), shares held by a wholly-owned subsidiary of that other holding undertaking, or held on behalf of that other holding undertaking or its wholly-owned subsidiary, shall be attributed to that other holding undertaking.

### **Explanatory note**

*Regulation 9A of S.I. 116 of 2005 amended to exclude reference to exempted holding companies with securities listed – needs to be inserted into Part B. Also the requirement in Subhead (3) (g) to translate the copies of the higher holding companies accounts and reports into English or Irish has been moved to the annual return section.*

---

## **Head 22 Subsidiary undertakings included in the group financial statements**

---

- (1) In the case of Companies Act group financial statements, subject to the exceptions authorised or required by this head, all the subsidiary undertakings of the holding company shall be consolidated in the group financial statements.
- (2) A subsidiary undertaking may be excluded from consolidation in Companies Act group financial statements if its inclusion is not material for the purposes of giving a true and fair view; but two or more undertakings may be excluded only if they are not material taken together.
- (3) In addition, a subsidiary undertaking may be excluded from consolidation in Companies Act group financial statements where—
- (a) severe long-term restrictions substantially hinder the exercise of the rights of the holding company over the assets or management of that subsidiary undertaking; or
  - (b) the information necessary for the preparation of group financial statements in accordance with this Part cannot be obtained without disproportionate expense or undue delay; or

- (c) the interest of the holding company is held exclusively with a view to subsequent resale.

The reference in paragraph (a) to the rights of the holding company and the reference in paragraph (c) to the interest of the holding company are, respectively, to rights and interests held by or attributed to the holding company for the purposes of Part A1, Head 6 (definition of subsidiary undertaking) in the absence of which it would not be the holding company.

- (4) A holding company is exempt from the requirement to prepare Companies Act group financial statements if under Subheads (2) or (3) all of its subsidiary undertaking could be excluded from the consolidation.

### **Explanatory note**

*Subheads (2) is a slightly amended re-enactment of S.I. No. 201/1992, European communities (Companies: Group Accounts) Regulations 1992, Regulation 10. All cross-references have been updated in accordance with the new structure of the Bill.*

*Subhead (3) is a slightly amended re-enactment of S.I. No. 201/1992, European Communities (Companies: Group Accounts) Regulations 1992, Regulation 11. References to "undertaking" have been replaced by references to "company" where appropriate. Regulation 12 was repealed by S.I. 116 of 2005.*

- (2) The profit and loss account together with the information specified in paragraphs 60 to 64 of Part III of the First Schedule (information supplementing the profit and loss account) or equivalent information required by IFRS must be approved in accordance with Head 36 (approval by board of directors) but may be omitted from the company's entity financial statements for the purposes of Head 48 (circulation of financial statements), Head 49 (Right of members to demand copies of financial statements), Head 51 (financial statements to be laid before members) and Head 55 (documents to be annexed to annual return).

- (3) The exemption conferred by this head is conditional upon the fact that it has been availed of being disclosed in the combined group financial statements and entity financial statements.

### **Explanatory note**

*This head is a slightly amended re-enactment of Section 148(8) and (9).*

---

## **Head 23 Treatment of entity profit and loss account where group financial statements prepared**

---

- (1) The following provisions apply with respect to the entity profit and loss account of a holding company where—
- (a) the company is required to prepare and does prepare group financial statements in accordance with this Bill; and
- (b) the notes to the company's entity balance sheet show the company's profit or loss for the financial year determined in accordance with this Bill.

## Chapter 6

### Disclosure of Directors' Transactions

#### Head 24 Disclosure of directors' remuneration

- (1) The statutory financial statements of a company shall disclose both for the current and the preceding financial year the following amounts in relation to any person that at any time during the financial year concerned was a director of the company—
- (a) the aggregate amount of emoluments paid to or receivable by directors in respect of qualifying services;
  - (b) the aggregate amount of the cost incurred during the financial year in respect of shares or share options granted to directors;
  - (c) the aggregate amount of the money or value of other assets, excluding share or share options, paid to or receivable by the directors under long term incentive schemes in respect of qualifying services;
  - (d) the aggregate value of any contributions paid, treated as paid, or payable during the financial year to a retirement benefit scheme in respect of qualifying services of directors, identifying separately the amounts relating to—
    - (i) defined contribution schemes, and
    - (ii) defined benefit schemes and in each case showing the number of directors, if any, to whom retirement benefits are accruing under such schemes in respect of qualifying services;
  - (e) the aggregate amount of any compensation paid or payable to directors in respect of loss of office or other termination payments in the financial year.
- (2) The statutory financial statements of a company shall disclose the following amounts in relation to any person that is a past director or a past director of the holding undertaking—
- (a) the aggregate amount paid or payable for past directors' retirement benefits;
  - (b) the aggregate amount of any compensation paid or payable to past directors in respect of loss of office or other termination benefits.
- (3) In this head "qualifying services" in relation to any person shall mean his services as a director of the company and his services, while director of the company, as director of any of its subsidiary undertakings or otherwise in connection with the management of the affairs of the company or any of its subsidiary undertakings.
- (4) For the purpose of paragraph (a) of Subhead (1), "emoluments" in relation to a director—
- (a) includes salaries, fees and percentages, bonuses, any sums paid by way of expenses allowance in so far as those sums are chargeable to income tax, and, subject to paragraph (b), the estimated money value of any other benefits received by him otherwise than in cash; but
  - (b) does not include—
    - (i) the value of any share options granted to him or gains made by him on the exercise of share options,
    - (ii) any contributions paid, treated as paid or payable in respect of him to a retirement benefit scheme or any benefits to which he is entitled from such a scheme,
    - (iii) any money or other assets paid to or receivable by him under any long term incentive scheme; and
  - (c) shall distinguish between emoluments in respect of services as director, whether of the company or of its subsidiary undertakings, and other emoluments.
- (5) In paragraph (c) of Subhead (1), "long term incentive scheme" means any agreement or arrangement under which money or other assets may become receivable by a director and which includes one or more qualifying conditions with respect to services or performance which cannot be fulfilled within a single financial year; and for this purpose the following shall be disregarded—
- (a) bonuses the amount of which falls to be determined by reference to service or performance within a single year;

## Part A6 - Financial statements, Annual Return and Audit

---

- (b) compensation for loss of office and other termination payments; and
  - (c) retirement benefits.
- (6) The amount to be shown under paragraph (a) of Subhead (2)—
- (a) shall not include any retirement benefits paid or receivable under a retirement benefit scheme if the scheme is such that the contributions thereunder are substantially adequate for the maintenance of the scheme; but
  - (b) shall include any retirement benefits paid or receivable in respect of any qualifying services of a past-director of the company, whether to or by him, on his nomination or by virtue of dependence on or other connection with him, to or by any other person; and
  - (c) shall distinguish between retirement benefits in respect of services as director, whether of the company or its subsidiary undertakings, and other retirement benefits,

and, for the purposes of this head, "retirement benefits" includes any pension, superannuation allowance, superannuation gratuity or similar payment, and "retirement benefit scheme" means a scheme for the provision of retirement benefits in respect of services as director or otherwise which is maintained in whole or in part by means of contributions, and "contribution" in relation to a retirement benefit scheme means any payment (including an insurance premium) paid for the purposes of the scheme by or in respect of persons rendering services in respect of which retirement benefits will or may become payable under the scheme, except that it does not include any payment in respect of two or more persons if the amount paid in respect of each of them is not ascertainable.

- (7) The amounts to be shown under paragraph (e) of Subhead (1) and (b) of Subhead (2)—

- (a) shall include any sums paid to or receivable by a director or past-director by way of compensation for loss of office or other termination payment as director of the company or for the loss, while director of the company, or on or in connection with his ceasing to be a director of the company, of any other office in connection with the management of the company's affairs or of any office as director or otherwise in connection with the management of the affairs of any of its subsidiary undertakings; and
  - (b) shall distinguish between compensation or termination payments in respect of the office of director, whether of the company or of its subsidiary undertakings, and compensation in respect of other offices,
- and for the purposes of this head, references to termination payments shall include sums paid or payable as consideration for or in connection with a person's retirement from office.
- (8) The amounts to be shown under each paragraph of Subheads (1) and (2)—

- (a) shall include all relevant sums paid by or receivable from—
  - (i) the company, and
  - (ii) the company's subsidiaries, and
  - (iii) any holding undertaking of the company, and
  - (iv) any other person;

except sums to be accounted for to the company or any of its subsidiary undertakings or, by virtue of Part A5, Head 30 [equivalent to Section 188 of the Companies Act, 1963], to past or present members of the company or any of its subsidiary undertakings or any class of those members; and

- (b) shall distinguish, in the case of the amount to be shown under paragraph (e) of Subhead (1) or paragraph (b) of Subhead (2), between the sums respectively paid by or receivable from the company, the company's subsidiaries, any holding undertaking of the company and any other persons .



## Part A6 - Financial statements, Annual Return and Audit

---

- (9) The amounts to be shown under this head in relation to a director shall include all amounts paid or payable to a person connected with a director, as defined in Head 2 of Part A5.
- (10) The amounts to be shown under this head for any financial year shall be the sums receivable in respect of that year, whenever paid, or, in the case of sums not receivable in respect of a period, the sums paid during that year, so, however, that where—
- (a) any sums are not shown in the statutory financial statements for the relevant financial year on the ground that the person receiving them is liable to account therefore as mentioned in paragraph (a) of Subhead (8), but the liability is thereafter wholly or partly released or is not enforced within a period of 2 years; or
  - (b) any sums paid by way of expenses allowance are chargeable to income tax after the end of the relevant financial year,

those sums shall, to the extent to which the liability is released or not enforced or they are chargeable as aforesaid, as the case may be, be shown in the first statutory financial statements in which it is practicable to show them and shall be distinguished from the amounts to be shown therein apart from this provision.

- (11) Where it is necessary so do so for the purpose of making any distinction required by this head in any amount to be shown thereunder, the director may apportion any payments between the matters in respect of which they have been paid or are receivable in such manner as they think appropriate.
- (12) If in the case of any financial statements the requirements of this head are not complied with, it shall be the duty of the auditors of the company by whom the statutory financial statements are examined to include in the report thereon, so far as they are reasonably able to do so, a statement giving the required particulars.
- (13) In this head, any reference to a company's subsidiary undertaking –
- (a) in relation to a person who is or was, while a director of the company, a director also, by virtue of the company's nomination, direct or indirect, of any other body corporate, shall, subject to the following paragraph, include that body corporate, whether or not it is or was in fact the company's subsidiary undertaking; and
  - (b) shall for the purpose of Subheads (3), (4) and (6), be taken as referring to a subsidiary undertaking at the time the services were rendered, and, for the purposes of Subhead (7), be taken as referring to a subsidiary undertaking immediately before the loss of office as director of the company.
- (14) In this head "director" includes any shadow director or de facto director as defined by Part A5.

### **Explanatory note**

*This head, is a slightly re-worded re-enactment of Section 191 of the Companies Act, 1963. Terminology has been brought up to date and requirements have been introduced regarding share options and long term incentive plans.*

---

## **Head 25 Information about directors' benefits: loans, quasi-loans, credit transactions and guarantees**

---

- (1) The entity financial statements of a company shall disclose in the notes to the financial statements details of—
- (a) loans, quasi-loans and credit transactions entered into by a company with its directors, directors of its holding undertaking or persons connected with such directors;
  - (b) any agreement by the company to enter into any loans, quasi-loans and credit transactions with its directors, directors of its holding undertaking or persons connected with such directors;
  - (c) guarantees entered into and security provided by the company on behalf of its directors, directors of its holding undertaking or persons connected with such directors in connection with a loan, quasi-loan or credit transaction;
  - (d) any agreement by the company to enter into guarantees or provide any security on behalf of its directors, directors of its holding undertaking or persons connected with such directors in connection with a loan, quasi-loan or credit transaction.

## Part A6 - Financial statements, Annual Return and Audit

---

- (2) The group financial statements of a holding company shall disclose in the notes to the financial statements details of—
- (a) loans, quasi-loans and credit transactions entered into by the company or any of its subsidiary undertakings with its directors, directors of its holding undertaking or persons connected with such directors;
  - (b) any agreement by the company or any of its subsidiary undertakings to enter into any loans, quasi-loans and credit transactions with its directors, directors of its holding undertaking or persons connected with such directors;
  - (c) guarantees entered into and security provided by the company or any of its subsidiary undertakings on behalf of its directors, directors of its holding undertaking or persons connected with such directors in connection with a loan, quasi-loan or credit transaction;
  - (d) any agreement by the company or any of its subsidiary undertakings to enter into guarantees or provide any security on behalf of its directors, directors of its holding undertaking or persons connected with such directors in connection with a loan, quasi-loan or credit transaction.
- (3) The details required for arrangements comprising loans, quasi-loans or credit transactions are, separately for each director—
- (a) the name of the person for whom it was made and where that person is or was connected with a director of the company, the name of the director;
  - (b) the value of the arrangements at the beginning and end of the financial year;
  - (c) advances made under the arrangements during the financial year;
  - (d) amounts repaid under the arrangements during the financial year;
  - (e) the amounts of any allowance made during the financial year in respect of any failure or anticipated failure by the borrower to repay the whole or part of the outstanding amount;
  - (f) the maximum amount outstanding under the arrangements during the financial year;
  - (g) an indication of the interest rate; and
  - (h) its other main conditions.
- (4) The details required for agreement to enter into loans, quasi-loans or credit transactions are, separately for each director—
- (a) the name of the person for whom it was made and where that person is or was connected with a director of the company, the name of the director;
  - (b) the value of the arrangements agreed to;
  - (c) an indication of the interest rate;
  - (d) its other main conditions.
- (5) The details required for arrangements comprising guarantees entered into or security provided in connection with a loan, quasi-loan or credit transaction, separately for each director—
- (a) the name of the person for whom it was made and where that person is or was connected with a director of the company, the name of the director;
  - (b) the amount of the maximum liability that may be incurred by the company (or its subsidiary undertakings);
  - (c) any amount paid and any liability incurred by the company (or its subsidiary undertakings) for the purpose of fulfilling the guarantee or on foot of the provision of security (including any loss incurred by reason of enforcement of the guarantee or loss of the security);
  - (d) its main terms.
- (6) The details required for agreements to enter into guarantees or provide security in connection with a loan, quasi-loan or credit transaction are, separately for each director—
- (a) the name of the person for whom it was made and where that person is or was connected with a director of the company, the name of the director;
  - (b) the amount of the maximum liability that may be incurred by the company (or its subsidiary undertakings);
  - (c) its main terms.
-

## Part A6 - Financial statements, Annual Return and Audit

- (7) There shall also be stated in the notes to the financial statements the totals of—
- (a) amounts stated under Subheads 3(b), 3(c), 3(d), 3(e) and 3(f);
  - (b) amounts stated under Subheads 5(b) and 5(c);
  - (c) the amounts stated under Subhead 3(b) expressed as a percentage of the net assets of the company at the beginning and end of the financial year.
- (8) Where at any time during the financial year the aggregate of the amounts outstanding under all arrangements of the type referred to in Subheads (3) (f) and (5) (b) amount to more than 10 per cent of the net assets of the company, the aggregate amount shall be stated and the percentage of net assets that the total represents.
- (9) References in this head to the directors of the company are to the persons who were a director at any time in the financial year to which the financial statements relate and directors includes shadow directors and de facto directors as defined in Part A5
- (10) The requirements of this head apply in relation to every loan, quasi-loan, credit transaction or guarantee or agreement subsisting at any time in the financial year to which the financial statements relate—
- (a) whenever it was entered into;
  - (b) whether or not the person concerned was a director of the company in question at the time it was entered into;
  - (c) in the case of an arrangement entered involving a subsidiary undertaking of that company, whether or not that undertaking was a subsidiary undertaking at the time it was entered into; and
  - (d) whether or not the transaction or agreement was prohibited by Head 17 of Part A5.
- (11) The requirements of Subheads (3), (4), (5), (6) and (7) do not apply to—
- (a) arrangements, of the type specified in Subhead (1)(a), entered into or to agreements to enter into arrangements of the type specified in Subhead (1)(b) where the value of all such arrangements did not at any time during the financial year exceed €7,500 for an individual director and his connected persons;
  - (b) any arrangements of the type specified in Subhead (1) entered into by a company with another company where a director of the first company is interested only by virtue of his being a director of that other company.
- (12) There shall also be stated in the notes to the entity or group financial statements the disclosures required by Subhead (7) of the type of arrangements referred to in Subheads (1) and (2) entered into by the company or by the company and any of its subsidiaries, respectively, with officers of the company (but not directors) and the number of officers for whom such arrangements were entered into.
- (13) A company that is a licensed bank or the holding company of a licensed bank is only required to comply with the disclosure requirements of Subheads (7) and (11) and to state the number of persons for whom the arrangements were entered into.
- (14) The information required by this head is required only in relation to the current financial year and comparable information in relation to the previous financial year need not be given.
- (15) In this head—
- (a) the terms “loan”, “quasi-loan”, “credit transaction”, “guarantee” and “value of the arrangement” shall have the meanings assigned to them in Head 1, Part A5;
  - (b) the term “connected with a director” has the same meaning as in Head 2, Part A5;
  - (c) the term “director” includes any shadow director or de facto director as defined by Part A5, Head 3.
- (11) The requirements of Subheads (3), (4), (5), (6) and (7) do not apply to—

### **Explanatory notes**

*This head is a replacement for the parts of Heads 41, 42 and 45 of the Companies Act, 1990 that deal with loans, quasi-loans, credit transactions and guarantees. The head has been substantially re-worded but the disclosures achieve substantially the same results as were obtained from the original wording.*

### **Head 26 Other transactions in which the directors have a material interest**

- (1) The entity financial statements of a company shall disclose in the notes to the financial statements details of any other transaction or arrangement not dealt with in Head 24 or Head 25 entered into by the company in which a person, who at any time during the financial year was a director, a director of its holding undertaking or a person connected with such directors, had, directly or indirectly, a material interest.
- (2) The group financial statements of a company shall disclose in the notes to the financial statements details of any other transaction or arrangement not dealt with in Head 24 or Head 25 entered into by the company or any of its subsidiary undertakings in which a person, who at any time during the financial year was a director, a director of its holding undertaking or a person connected with such directors, had, directly or indirectly, a material interest.
- (3) The details required by Subheads (1) and (2) are—
- (a) particulars of the principal terms of the transaction or arrangement;
  - (b) the name of the director with the material interest; and
  - (c) the nature of the interest.
- (4) For the purposes of Subheads (1) and (2)—
- (a) a transaction or arrangement between a company and a director of the company or of its holding undertaking or a person connected with such a director shall (if it would not otherwise be so treated) be treated as a transaction, arrangement or agreement in which that director is interested; and
  - (b) an interest in such a transaction or arrangement is not material if in the opinion of the majority of the directors (other than that director) of the company which is preparing the financial statements in question it is not material (but without prejudice to the question whether or not such an interest is material in any case where those directors have not considered the matter).
- (5) Subheads (1) and (2) do not apply in relation to the following transactions or arrangements—
- (a) a transaction or arrangement between one company and another in which a director of the first company or of its subsidiary or holding company is interested only by virtue of his being a director of the other;
  - (b) a contract of service between a company and one of its directors or a director of its holding company or between a director of a company and any of that company's subsidiary undertaking; and
  - (c) a transaction, arrangement or agreement which was not entered into during the relevant period for the accounts in question and which did not subsist at any time during that period.
- (6) Subheads (1) and (2) do not apply to any transaction or arrangement with a company or any of its subsidiaries in which a director of the company or of its holding undertaking had, directly or indirectly, a material interest if—
- (a) the value of each transaction or arrangement in which that director had, directly or indirectly, a material interest and which was made after the commencement of the financial year with the company or any of its subsidiaries; and
  - (b) the value of each such transaction or arrangement which was made before the commencement of the financial year less the amount (if any) by which the liabilities of the person for whom the transaction or arrangement was made have been reduced,
- did not at any time during the financial year exceed in the aggregate €5,000 or, if more, did not exceed €15,000 or one per cent of the value of the net assets of the company preparing the entity or group financial statements, whichever is less.
- (7) The information required by this head is required only in relation to the current financial year and comparable information in relation to the previous financial year need not be given.
- (8) In this head—
- (a) the term “connected with a director” has the same meaning as in Head 2 Part A5;

## Part A6 - Financial statements, Annual Return and Audit

---

- (b) the term “director” includes any shadow director or de facto director as defined by Part A5, Head 3.

**Explanatory note**

*This head is a replacement for the parts of Sections 41, 42 and 45 of the Companies Act, 1990 that deal with ‘other arrangements’. The head has been substantially re-worded but the disclosures achieve substantially the same results as were obtained from the original wording.*



## Chapter 7

### Disclosure required in notes to financial statements

#### Head 27 Information on related companies

(1) Where at the end of a financial year of a company, the company—

- (a) has a subsidiary; or
- (b) holds an interest in equity shares equal to 20 per cent or more of all such interests in an undertaking that is not its subsidiary undertaking (in this head referred to as “an undertaking of substantial interest”);
- (c) for the purposes of subparagraph (b), interests held by persons acting in their own name but on behalf of the company shall be deemed to be held by the company;
- (d) in this head, “shares” and “equity shares” shall have the meaning assigned to them in Part A6, Head 3 [equivalent of S.I. 201 of 1992, European Communities (Companies: Group Accounts) Regulations 1992, Regulation 35(2)] and “an interest in equity shares” shall include an interest in an instrument that is convertible into equity shares as well as an option to acquire any such equity shares,

a note shall be included in the statutory financial statements of the company for that year distinguishing between the subsidiaries and the undertakings of substantial interest and giving the following information in relation to them—

- (i) the name and registered office or, if there is no registered office, the principal place of business of each subsidiary or undertaking of substantial interest and the nature of the business carried on by it,

- (ii) the identity of each class of shares held by the company in each subsidiary or undertaking of substantial interest and the proportion of the nominal value of the allotted shares in the subsidiary or associated company of each such class represented by the shares of that class held by the company,

- (iii) the aggregate amount of the net assets of each subsidiary or undertaking of substantial interest as at the end of the financial year of the subsidiary or undertaking of substantial interest ending with or last before the end of the financial year of the company to which the statutory financial statements relate, and

- (iv) the profit or loss of the subsidiary or undertaking of substantial interest for its financial year identified in paragraph (iii) of this subhead.

(2) The notes to the statutory financial statements of a company shall contain the following details regarding each undertaking of which the company is a member having unlimited liability unless the information is not material to the true and fair view given by the statutory financial statements of the company –

- (a) the name and registered office of each such undertaking;
- (b) if the undertaking does not have a registered office, its principal place of business; and
- (c) the legal form of the undertaking.

(3) Subhead (1) is subject to the exemptions set out in Head 28 from providing the information required by paragraphs (iii) and (iv) of that subhead and Subheads (1) and (2) are subject to the exemption set out in Head 29 from including all the detail required by those subheads in statutory financial statements.

(4) The information required by Subheads (1) and (2) is required for the current financial year and comparable information for the preceding financial year need not be given.

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

## Part A6 - Financial statements, Annual Return and Audit

- (6) In Subhead (5) "officer" includes any shadow director or de facto director as defined in Part A5.

### **Explanatory note**

*This head is an amended re-enactment of Section 16(1) of the Companies (Amendment) Act, 1986, as amended by S.I. 201 of 1992, European Communities (Companies: Group Accounts) Regulations 1992, Regulation 44 and Section 16A of the Companies (Amendment) Act, 1986, as inserted by S.I. 396 of 1993, European Communities (Accounts) Regulations 1993, Regulation 23.*

*Subsection (2) of Section 16 of the Companies (Amendment) Act, 1986 is included below in Head 28 and Subhead (3) is included in Head 29.*

*All cross-references have been updated in accordance with the new structure of the Bill and references to "registrar of companies" have been replaced with references to the "Registrar" and "accounts" by "financial statements" and "qualifying capital interest" by "interest in equity shares".*

*Subheads (5) and (6) are in effect a re-enactment of the relevant parts of Section 22(1)(a) and 22(5) of the Companies (Amendment) Act, 1986.*

*The reference here is to statutory financial statements as the information is only required to be given once either in entity financial statements where there is no group financial statements or in the combined set.*

## **Head 28 Information on related undertakings: Exemption from disclosures**

The information on related undertakings required by paragraphs (iii) (net assets) and (iv) (profit or loss) of Head 27, Subhead (1) need not be given in statutory financial statements—

- (a) in respect of a subsidiary undertaking of a company, if the company prepares group financial statements in accordance with Part A6, Head 15 and either—
- (i) the subsidiary undertaking is consolidated in the statutory financial statements prepared by the company, or
- (ii) the interest of the company in the equity shares of the subsidiary undertaking is included in or in a note to the company's statutory financial statements by way of the equity method of accounting;
- or

- (b) in respect of a subsidiary undertaking of a company, if the company is exempt from the requirement to prepare group financial statements because it is relying on the group financial statements of a higher holding in accordance with Part A6 Heads 20, 28 or 21 [equivalent to European Communities (Companies: Group Accounts) Regulations, 1992 Regulations 8,9 and 9A] or in accordance with IFRS, and either—

- (i) the subsidiary undertaking is consolidated in the group financial statements of the higher holding, or
- (ii) the interest of the company in the equity shares of the subsidiary undertaking is included in or in a note to the higher holding's group financial statements by way of the equity method of accounting;

or

- (c) in respect of an undertaking of substantial interest of a company, if the interest in the equity shares of the undertaking of substantial interest is included in or in a note to the company's statutory financial statements by way of the equity method of accounting; or

- (d) if—

- (i) the subsidiary undertaking or the undertaking of substantial interest is not required to publish its financial statements, and
- (ii) the interest held in the equity shares of the subsidiary undertaking or the undertaking of substantial interest do not amount to at least 50 per cent of all such interests;

or,

- (e) in relation to any undertaking if the information required by paragraphs (iii) and (iv) of Subhead (1) of Head 27 is not material to the true and fair view given by the statutory financial statements.

### **Explanatory note**

*This head is an amended re-enactment of Section 16(2) of the Companies (Amendment) Act, 1986, as amended by S.I. 201 of 1992, European Communities (Companies: Group Accounts) Regulations 1992, Regulation 44.*

**Head 29 Information on related undertakings: Provision for certain information to be annexed to annual return**

- (1) If the directors of the company form the opinion that the number of undertakings in respect of which the company is required to disclose information under Head 27 is such that compliance with the provisions of that head would result in a note to the statutory financial statements of excessive length, the information need only be given in respect of—
  - (a) the undertakings whose assets, liabilities, financial position or profit or loss, in the opinion of the directors, principally affected the amounts shown in the company's statutory financial statements; and
  - (b) undertakings excluded from the consolidation under Head 22 (3).
- (2) If advantage is taken of Subhead (1)—
  - (a) there shall be included in the notes to the company's statutory financial statements a statement that the information given deals only with the undertakings mentioned in that subhead; and
  - (b) the full information (both that which is disclosed in the notes to the statutory financial statements and that which is not) shall be annexed to the annual return of the company to which the statutory financial statements are annexed.
- (3) If a company fails to comply with Subhead (2), the company and every officer of the company who is in default shall be guilty of a category 3 offence.
- (4) In Subhead (3) "officer" includes any shadow director or de facto director as defined in Part A5.

**Explanatory note**

*This head is an amended re-enactment of Section 16(3) of the Companies (Amendment) Act, 1986, as amended by S.I. 201 of 1992, European Communities (Companies: Group Accounts) Regulations 1992, Regulation 44.*

**Head 30 Disclosures of particulars of staff**

- (1) The following information shall be given in the entity financial statements with respect to the employees of the company—
  - (a) the average number of persons employed by the company in the financial year; and
  - (b) the average number of persons employed within each category of persons employed by the company.
- (2) In respect of all persons employed by the company during the financial year who are taken into account in determining the relevant annual number for the purposes of Subhead (1) (a) of this head, there shall also be stated the aggregate amounts respectively of—
  - (a) wages and salaries paid or payable in respect of that year to those persons;
  - (b) social insurance costs incurred by the company on their behalf;
  - (c) other retirement benefit costs so incurred; and
  - (d) other compensation costs of those persons by type incurred by the company in the financial year.
- (3) In relation to the aggregate of all amounts under Subhead (2) there shall be shown the amount capitalised into assets and the amount treated as an expense or loss of the financial year.
- (4) The categories of persons employed by the company by reference to which the number required to be disclosed by Subhead (1) (b) of this paragraph is to be determined shall be such as the directors may select, having regard to the manner in which the company's activities are organised.
- (5)
  - (a) For the purposes of Subheads 1(a) and 1(b), the average number of persons employed by the company shall be determined by dividing the relevant annual number by the number of months in the financial year of the company;

- (b) For the purposes of this subhead, the relevant annual number shall be determined by ascertaining for each month in the financial year of the company concerned—

(i) in the case of the said Subhead 1 (a), the number of persons employed under contracts of service by the company in that month (whether throughout the month or not), and

(ii) in the case of the said Subhead 1 (b), the number of persons in the category in question of persons so employed, and, in either case, adding together all the monthly numbers.

(6) Where the company prepares group financial statements, those group financial statements shall contain the information required by Subheads (1), (2) and (3) for the company and its subsidiary undertakings included in the consolidation taken as a whole and Subheads (4) and (5) have effect as if references to the company were references to the company and its subsidiary undertakings included in the consolidation.

(7) In this head—

“wages and salaries” in a company’s profit and loss account shall be determined by reference to payments made or expenses incurred in respect of all persons employed by the company during the financial year concerned who are taken into account in determining the relevant annual number for the purposes of Subhead (1)(a);

“social insurance costs” means any contribution by a company to any state social insurance, social welfare, social security or retirement benefit scheme, fund or arrangement, being a fund or arrangement connected with such a scheme, and “social insurance” means any such scheme fund or arrangement;

“retirement benefit costs” includes any expenses incurred by the company in respect of—

(a) any retirement benefit scheme established for the purpose of providing retirement benefits for persons currently or formerly employed by the company;

(b) any amounts set aside for the future payment of retirement benefits directly by the company to current or former employees; and

(c) any retirement benefits paid directly by the company to such persons without first being so set aside.

### **Explanatory note**

*This requirement was in the Schedule to the 1986 Act and is required in IFRS financial statements as well and so has been moved to front part of Bill. It was also included in the GAR schedule for group financial statements which has been covered by Subhead (6).*

---

## **Head 31 Details of authorised share capital, allotted share capital and movements**

---

(1) The following information shall be given in the notes to the financial statements with respect to the company’s share capital—

(a) the number and aggregate nominal value of the authorised share capital;

(b) where shares of more than one class have been allotted, the number and aggregate nominal value of shares of each class allotted;

(c) in relation to each class of allotted share capital, the amount that has been called up on those shares and of this the amount that has been fully paid up at the financial year end date;

(d) an analysis of allotted and called up share capital by class between—

(i) shares presented as share capital, and

(ii) shares presented as a liability; and

(e) where shares are held as treasury shares, the number and aggregate nominal value of the treasury shares and, where shares of more than one class have been allotted, the number and aggregate nominal value of each class held as treasury shares.

(2) In the case of any part of the allotted share capital that consists of redeemable shares, the following information shall be given—

(a) the earliest and latest dates on which the company has power to redeem those shares;

## Part A6 - Financial statements, Annual Return and Audit

- (b) whether those shares must be redeemed in any event or are liable to be redeemed at the option of the company or the shareholder and at who's option; and
  - (c) whether any (and, if so, what) premium is payable on redemption.
- (3) If the company has allotted any shares during the financial year, the following information shall be given—
- (a) the reason for making the allotment;
  - (b) the classes of shares allotted; and
  - (c) in respect of each class of shares, the number allotted, their aggregate nominal value and the consideration received by the company for the allotment;
  - (d) whether the shares are presented as share capital or as a liability.
- (4) With respect to any contingent right to the allotment of shares in the company, the following particulars shall be given—
- (a) the number, description and amount of the shares in relation to which the right is exercisable;
  - (b) the period during which it is exercisable; and
  - (c) the price to be paid for the shares allotted.
- (5) In Subhead (4) above, “contingent right to the allotment of shares” means any option to subscribe for shares and any other right to require the allotment of shares to any person whether arising on the conversion into shares of securities of any other description or otherwise.
- (6) Subject to Subhead (7), where the company is a holding company, the number, description and nominal value of the shares in the company held by its subsidiaries undertakings or their nominees and the consideration paid for those shares shall be disclosed in the notes to the financial statements.
- (7) Subhead (6) does not apply in relation to any shares—
- (a) in the case of which the subsidiary undertaking is concerned as personal representative; or

- (b) in the case of which it is concerned as trustee,

Provided that in the latter case neither the company nor a subsidiary undertaking of the company is beneficially interested under the trust, otherwise than by way of security only for the purposes of a transaction entered into by it in the ordinary course of a business which includes the lending of money.

### **Explanatory note**

*These requirements were included in paragraphs 26 and 27 of the Schedule to the 1986 Act, except that the reference to debentures has been retained in the Schedule. Also the information on called up share capital and paid up share capital was required by a note to the balance sheet formats in the schedule to the Companies (Amendment) Act, 1986 and has been moved to here so that all the note information is in the one place.*

*It has been re-worded to recognise that some shares will now be included in debt and that the financial statements need to show the classes included with debt separately.*

*Also the requirement to disclose information about share options has been included.*

---

## **Head 32 Financial assistance for purchase of own shares and loans**

---

- (1) The entity financial statements shall show the aggregate amount of any outstanding loans at the financial year end date permitted by Part A3, Head 15 [equivalent of Section 60 of the Principal Act, as amended by the Act of 1983] and shall separately disclose the aggregate of—
- (a) money provided to any scheme in accordance with Subhead 2(e) of Part A3, Head 15 (in order to assist in the purchase of or subscription for shares in the company or its holding undertaking to be held for the benefit of employees or former employees, including salaried directors of the company or its subsidiary undertakings)[equivalent of Section 60 (13)(b) of the Companies Act, 1963]; and
  - (b) loans made in accordance with Subhead 2 (f) of Part A3, Head 15 (to bona fide employees, other than directors, of the company or any subsidiary undertaking to enable them to purchase shares in the company or its holding undertaking to be held by themselves as beneficial owners) [equivalent of Section 60 (13)(c) of the Companies Act, 1963].



- (2) Where the company prepares group financial statements, those group financial statements shall contain the information required by Subhead (1) for the company and its subsidiary undertakings included in the consolidation taken as a whole.
- (3) The entity and group financial statements shall show the corresponding amounts for the preceding year.

### **Explanatory note**

*This was included in paragraph 37(2) of the schedule. It has been simplified to refer to the specific disclosures required and extended to group financial statements. The requirement to give comparative amounts was always included.*

---

## **Head 33 Holding of own shares or shares in holding undertaking**

---

- (1) Where a company, or a nominee of a company holds shares in the company or an interest in such shares, such shares are treasury shares and shall not be shown as an asset but the consideration paid for such shares—
  - (a) shall be shown as a deduction from the company's capital and reserves; and
  - (b) the profits available for distribution shall accordingly be restricted by the amount of such deduction.
- (2) Where a company, or a nominee of the company, holds shares in its holding undertaking or an interest in such shares, such shares are treasury shares and shall not be shown as an asset but the consideration paid for such shares—
  - (a) shall be shown as a deduction from the company's capital and reserves; and
  - (b) the profits available for distribution shall accordingly be restricted by the amount of such deduction.
- (3) Where shares are held as treasury shares under Subhead (1) or Subhead (2), the notes to the financial statements shall give separately for the shares held under each subhead—

- (a) the number and aggregate nominal value of the treasury shares and, where shares of more than one class have been acquired, the number and aggregate nominal value of each class held as treasury shares; and
- (b) particulars of any restriction on profits available for distribution by virtue of holding such shares.

### **Explanatory note**

*This requirement was included in paragraph 46 of the Schedule to the 1986 Act and the definition of treasury shares has been extended to agree with the new requirements in Part A3.*

---

## **Head 34 Disclosure of accounting policies**

---

- (1) A company shall disclose in the notes to its entity financial statements the accounting policies adopted by the company in determining—
  - (a) the items and amounts to be included in its balance sheet; and
  - (b) the items and amount to be included in its profit and loss account.
- (2) Where a company prepares group financial statements, the notes to those financial statements shall disclose the accounting policies adopted in determining—
  - (a) the items and amounts to be included in its consolidated balance sheet; and
  - (b) the items and amounts to be included in its consolidated profit and loss account.

### **Explanatory note**

*This head is an amended re-enactment of Section 205C of the Companies Act, 1990, as inserted by Section 43 of the Companies (Auditing and Accounting) Act, 2003.*

*The head has been amended insofar as Section 205C(1) of the Companies Act, 1990 has not been included. That subsection interpreted "relevant undertaking" for the purposes of that section. Since only the private companies are of concern here, such a provision is not necessary and all references to a "relevant undertaking" have been replaced by references to a "company".*

*Subhead (1) and all such references to "relevant undertakings" will be included later in the Bill.  
Moved to Pillar B:*

(1) In this head 'relevant undertaking' means -

(a) a company; or

(b) an undertaking referred to in [Equivalent of Regulation 6 of the European Communities (Accounts) Regulations 1993], but does not include a company or undertaking of a class exempted under [equivalent of Section 48(1)(j) of the Companies (Auditing and Accounting) Act, 2003] from this head.

Subsections (3) and (4) of 205C have also not been included. Subhead (3) is expressed in terms of 'include, but are not limited to...'. Subsection (4) provided for an offence where Subsection (3) was not complied with and was therefore unnecessary following the deletion of (3).

---

### Head 35 Disclosure of independent auditor's remuneration

---

(1) Subject to Subhead (4), a company shall disclose in the notes to its statutory financial statements relating to each financial year [beginning on or after the commencement of this head] the following information—

(a) the total remuneration for all services in each category specified in Subhead (3) that was carried out for the company or a connected undertaking of the company, during that financial year—

(i) by an independent auditor of the company, and

(ii) by any firm or individual that, at any time during the financial year, was an affiliate of the independent auditor;

(b) the remuneration for all services in each category specified in Subhead (2) that was carried out for the company or a connected undertaking of the company, during the preceding financial year—

(i) by an independent auditor of the company, and

(ii) by any firm or individual that, at any time during the financial year, was an affiliate of the independent auditor;

(c) where the remuneration referred to in paragraph (a) or (b) is for other non-audit services, the nature of the services;

(d) where all or part of the remuneration referred to in paragraph (a) or (b) is in the form of a benefit in kind, the nature and estimated monetary value of the benefit.

(2) Remuneration must be disclosed under Subhead (1) for each of the following categories of services provided as described in that subhead —

(a) the audit of the statutory financial statements for the financial year;

(b) other assurance services;

(c) tax advisory services;

(d) other non-audit services.

(3) Where the independent auditor of a company is a firm, any work carried out by a partner in the firm is considered for the purposes of this head to have been carried out by the independent auditor.

(4) Where more than one firm or individual has been appointed as the independent auditor of a company in a single financial year, separate disclosure in respect of the remuneration of each of them and of their affiliates must be provided in the notes to the company's statutory financial statements.

(5) The independent auditor of a company shall provide the directors of that undertaking with the information necessary to enable the independent auditor's affiliates to be identified for the purposes of this head.

(6) Where an independent auditor fails to comply with Subhead (5), the independent auditor is guilty of a category 3 offence.

(7) In this head—

"Connected undertaking" in relation to a company, means an undertaking that is—

(a) a subsidiary undertaking of the company;

(b) a joint venture of the company;

(c) an associate undertaking of the company.

## Part A6 - Financial statements, Annual Return and Audit

---

### **Explanatory note**

This head is an amended re-enactment of Section 205D of the Companies Act, 1990, as inserted by Section 44 of the Companies (Auditing and Accounting) Act, 2003. All cross-references have been updated in accordance with the new structure of the Bill. It is unlikely to be necessary to include the reference to 'commencement of the head.

Subsection (1) has been amended in two respects – firstly the terminology has been brought into line with that used in the eighth directive – since this has been agreed in Europe and within the next year or so is likely to become law in Ireland, it seemed inappropriate to continue with terminology that had not yet been commenced and with which there were difficulties – all definitions are included in Part A1 of the Bill.

Secondly, insofar as references in the definition of audit work[old terminology] to non-private companies have been moved to Pillar B. This read as follows:

'audit work' means—

(a) in relation to a relevant undertaking other than a partnership referred to in Part B10 Head 27 [equivalent of Regulation 6 of the European Communities (Accounts) 1993 Regulations 1993 ], work required to fulfil the duties imposed under Part A6 Head 76 [equivalent of Section 193 of this Act] on an auditor of a company, and

(b) in relation to a partnership referred to in Part B10 Head 27 [equivalent of Regulation 6 of the European Communities (Accounts) Regulations 1993 ], work required to fulfil the duties imposed under [Equivalent of Regulation 22 of those Regulations – omitted from General Scheme] on an auditor appointed by the partners;

Part of the text of the definition of "connected undertaking" in (1) has also been moved to Pillar B.

The original text of the definition read:

" 'connected undertaking', in relation to a relevant undertaking; means an undertaking that under the [1992 Regulations], or under those Regulations as applied by[quivalent of regulation 9 of the European Communities (Accounts) 1993 Regulations 1993 – omitted from General Scheme], is—

(a) a subsidiary undertaking of the relevant undertaking;

(b) a joint venture of the relevant undertaking proportionally consolidated in accordance with Part A6, Schedule 2, Part II, 18 [equivalent of Regulation 32 of the 1992 Regulations]; or

(c) an associated undertaking of the relevant undertaking;"

Since these terms are defined for this part – this subsection has been simplified.

Paragraph (b) of the definition of 'relevant undertaking' in Subsection (1) has been moved to Pillar B. This read as follows:

" an undertaking referred to in Part B10 Head 27 [equivalent of Regulation 6 of the European Communities (Accounts) 1993 Regulations 1993 ], but does not include a company or an undertaking of a class exempted under Part A14 Head 45 [equivalent of Section 48(1)(j) of the Companies (Auditing and Accounting) Act, 2003] from this head".

The reference here is just to 'company' since this part relates only to CLSs.

Subsections (5) and (6) dealing with disclosures in the directors' report or audit committee report have been moved to that head. (see Head 38)

Subsections (10) and (11) dealing with offences are not repeated as they are covered by the offences in Head 37.

Part of Subsection (13) has been moved to Pillar B.

The moved text read as follows:

"...and Part A4, Head 34 [equivalent of Section 205B(15) of the Companies Act, 1990] applies for the purpose of applying this section to a partnership."

## Chapter 8

### Approval of statutory financial statements

#### Head 36 Approval and signing of statutory financial statements by Board of Directors

- (1) Where the directors of the company are satisfied that the statutory financial statements give a true and fair view and otherwise comply with this Bill or, where applicable, with Article 4 of the IAS Regulation, they shall be approved by the board of directors and signed on their behalf—
  - (a) by two directors, where there are two or more directors; and
  - (b) by the sole director, where there is only one director.
- (2) Where group financial statements are prepared the group financial statements and the entity financial statements of the holding company are to be approved by the board of directors at the same time.
- (3) The signature(s) evidencing approval of the financial statements by the board shall be inserted on the face of the entity's balance sheet and any group balance sheet.
- (4) Every copy of every balance sheet which is laid before the members in general meeting or which is otherwise circulated, published or issued shall state the names of the persons who signed the balance sheet on behalf of the board.
- (5) If statutory financial statements are approved which do not give a true and fair view and otherwise comply with the requirements of this Bill or, where applicable, of Article 4 of the IAS Regulation, every director of the company who is party to their approval, and who knows that they do not comply or is reckless as to whether they comply is guilty of a category 2 offence.

For this purpose every director of the company at the time the statutory financial statements are approved shall be taken to be a party to their approval unless he shows that he took all reasonable steps to prevent their being approved.

- (6) If any copy of a balance sheet is –

- (a) laid before the members or otherwise issued circulated or published without the balance sheet having been signed as required by this head or without the required statement of the signatory's name being included; or
- (b) delivered to the Registrar without the balance sheet having been signed as required by this head or without the required statement of the signatory's name being included,

the company and every officer of the company who is in default shall be guilty of a category 2 offence.

- (7) Subhead (6) shall not prohibit the issue, circulation or publication of—
  - (a) a fair and accurate summary of any statutory financial statement after such statutory financial statement shall have been signed on behalf of the directors;
  - (b) a fair and accurate summary of the profit or loss figures for part of the company's financial year.
- (8) In Subhead (6) "officer" includes any shadow director or de facto director as defined in Part A5.

#### Explanatory note

*This head is a slightly amended re-enactment of Section 156 and 157 of the Companies Act, 1963. Any references to being "liable to a fine" have been replaced by the phrase "shall be guilty of a offence and liable to a fine", the amount of which shall be addressed later in the Bill. Subhead (3) is based on Section 233(5) of the UK Companies Act, 1985. Subhead (1) is an amended re-enactment of Section 156(1) of the Companies Act, 1963. It has been amended to provide for the possibility of a single-director private company. In such a single-director private company, the requirement now provides that the balance sheet must now be signed by the director and the company secretary. Subhead (7) is a re-enactment of Section 156(4) of the Companies Act, 1963. The requirement for the copy filed with the Registrar to be signed by a director and secretary as a 'true copy' has been removed.*

# Chapter 9

## Directors' Report

### Head 37 Obligation to prepare directors' report for every financial year

- (1) The directors of a company shall for each financial year prepare a report (a "directors' report") dealing with the following matters—
  - (a) General matters in relation to the company and the directors as set out in Head 38;
  - (b) A business review in accordance with Head 39;
  - (c) Information on the acquisition or disposal of own shares as set out in Head 40;
  - (d) Information on interests in shares or debentures as set out in Head 41;
  - (e) [Statement on relevant audit information as set out in Head 42].
- (2) For a financial year in which—
  - (a) the company is a holding company; and
  - (b) the directors of the company prepare group financial statements,

the directors shall also prepare a directors' report that is a consolidated report (a "group directors' report") dealing, to the extent provided in the following provisions of this Part, with the company and its subsidiary undertakings included in the consolidation taken as a whole.

- (3) Where group financial statements are combined with entity financial statements, it is sufficient to prepare the group directors' report referred to in Subhead (2) provided that any information relating to the company only is also provided in the report.
- (4) A group directors' report may, where appropriate, give greater emphasis to the matters that are significant to the company and its subsidiary undertakings included in the consolidation taken as a whole.
- (5) Failure by the directors to comply with Subheads (1) to (4) shall be a category 3 offence for each of them.

- (6) In Subhead (5) "director" includes any shadow director or de facto director as defined by Part A5.

#### Explanatory note

*This head is an amended re-enactment of Sections 158(1) of the Companies Act, 1963, as amended by Section 90 of the Company Law Enforcement Act 2001. Sections 158(3) -(7) have been included in the following head so as to organise all general requirements for the content of a directors' report in a single section.*

*It should also be noted that the suggested addition of a statement on 'relevant audit information' is being referred to IAASA for advices and will be brought to a plenary session of the CLRG.*

### Head 38 Directors' Report: General matters

- (1) The directors' report for a financial year shall state—
  - (a) the names of the persons who, at any time during the financial year, were directors of the company;
  - (b) the principal activities of the company during the course of the year;
  - (c) a statement of the measures taken by the directors to secure compliance with the requirements of Part A6, Heads 5 to 9 [equivalent of Section 202 of the Companies Act, 1990], with regard to the keeping of accounting records and the exact location of those records;
  - (d) the amount of any interim dividends paid by the directors during the year and the amount, if any, that the directors recommend should be paid by way of final dividend.
- (2) Where relevant in a particular year, the directors' report shall state—
  - (a) particulars of any important events affecting the company which have occurred since the end of that year;
  - (b) an indication of the activities, if any, of the company in the field of research and development;



## Part A6 - Financial statements, Annual Return and Audit

- (c) an indication of the existence of branches (within the meaning of Council Directive 89/666/EEC) of the company outside the State and the country in which each such branch is located;
- (d) political donations made during the year that are required to be disclosed by the Electoral Act 1997;
- (e) where the company is within scope of Head 7, Part A5, a compliance statement as required by Subhead (2) of that head.
- (3) Where material for an assessment of the company's [assets, liabilities, financial position / state of affairs] and profit or loss, the directors' report shall describe the use of financial instruments by the company and discuss, in particular –
- (a) the financial risk management objectives and policies of the company, including the policy for hedging each major type of forecasted transaction for which hedge accounting is used; and
- (b) the exposure of the company to price risk, credit risk, liquidity risk and cash flow risk.
- (4) Where a company qualifies as a large private company as defined in Head 34 (1) of Part A4, the directors' report shall—
- (a) state whether the company has established an audit committee or decided not to do so;
- (b) if the company has decided not to do so, state the reasons for that decision;
- (c) if the company has established an audit committee –
- (i) state whether it has only some of the responsibilities set out in Head 34 (2) of Part A4, and
- (ii) give the report of the audit committee on the activities of the committee during the financial year as required by Head 34 (2) (n) of Part A4.
- (5) In relation to a group directors' report Subheads 1 (b), (2), (3) and (4) shall have effect as if the reference to the company was a reference to the company and its subsidiary undertakings included in the consolidation.
- Explanatory note**  
*This head is an amended re-enactment of Section 13 of the Companies (Amendment) Act, 1986, as amended by S.I. No. 396 of 1993, EC (Accounts) Regulations 1993. Sections 158(3)-(6) of the Companies Act, 1963, as amended by Section 90 of the Company Law Enforcement Act, 2001. 'Competent and reliable person was charged with the duty of seeing that the provisions of this section were complied with and was in a position to discharge that duty' has also been inserted into this new head. Subhead (1) is an amended re-enactment of Section 13 of the Companies (Amendment) Act, 1986, as amended by S.I. No. 396 of 1993, EC (Accounts) Regulations 1993. The amendments to Subsection (1)(a) implement the requirements of Article 1(14) of the Modernisation Directive which amends Article 46(1) of Directive 78/660/EEC (the 4th Directive) by replacing paragraph 1 of that Article with the above. The Commission argues that while there is no change to the requirement to provide a 'fair review', it believes there is a need to promote greater consistency in the quality of such reviews as well as a need to provide additional guidance on the information content expected. In an effort to move away from 'boiler plate' statements, the Commission states that it has avoided the inclusion of detailed provisions but rather has attempted to give consideration to current 'best practice. Subhead (1) (a) has been revised by S.I. 116 of 2005. Subhead (1)(f) has been newly inserted as a signpost to provisions in the Electoral Act, 1997. Subsection (1) (g) has been newly inserted as a result of the amendment to Article 46(2) of Directive 78/660/EEC (the 4th Directive) by Article 1 of Directive 2001/65/EC (the Fair Value Directive). This amendment has been extracted from Regulation 6 of the draft S.I. implementing the Fair Value directive. Subheads (2) - (5) are slightly amended re-enactments of Sections 158(3), (4), (5), (6A) and (7) of the Companies Act, 1963, as amended by Section 90 of the Company Law Enforcement Act, 2001. All cross-references have been updated in accordance with the new structure of the Bill. Section 158(6) of the Companies Act, 1963 has not been included. This read as follows: "Subsections (4) and (5) shall not apply to a company which is principally engaged in the acquisition and underwriting of shares or other securities of companies carrying on a trade or industry in the State and which holds a certificate or exemption issued by the Minister from the requirements of those subsections." Section 158(7)(b) of the Companies Act 1963 has been deleted. This read: "a person shall not be liable to be sentenced to imprisonment for such an offence unless in the opinion of the court dealing with the case the offence was committed wilfully". The Company Law Review Group believed that the paragraph was superfluous given the discretion of the judiciary that currently exists in such matters generally.*

## Part A6 - Financial statements, Annual Return and Audit

Note that whereas the Section 158(7) offence under the 1963 Act (was a summary only offence), the offence under Section 13 of the 1986 Act-now re-enacted as subhead (1)-was an indictable offence under Section 22(2) of the 1986 Act. Note also that Section 22(5) extended this liability to shadow directors.

---

### Head 39 Directors' Report: Business review

---

- (1) The directors' report for a financial year shall contain —
  - (a) a fair review of the business of the company; and
  - (b) a description of the principal risks and uncertainties facing the company.
- (2) The review required shall be a balanced and comprehensive analysis of —
  - (a) the development and performance of the business of the company during the financial year; and
  - (b) the financial position of the company at the end of the financial year,consistent with the size and complexity of the business.
- (3) The review shall, to the extent necessary for an understanding of such development, performance or financial position, include —
  - (a) an analysis of financial key performance indicators; and
  - (b) where appropriate, an analysis using non-financial key performance indicators, including information relating to environmental and employee matters.
- (4) The report shall, where appropriate, include additional explanations of amounts included in the statutory financial statements of the company.
- (5) In this head, "key performance indicators" means factors by reference to which the development, performance and financial position of the business of the company can be measured effectively.
- (6) The review shall include an indication of likely future developments in the business of the company.

- (7) In relation to a group directors' report this head has effect as if the reference to the company was a reference to the company and its subsidiary undertakings included in the consolidation.

#### Explanatory note

*This head is an amended re-enactment of S.I. No. 201/1992, European Communities (Companies: Group Accounts) Regulations 1992, Regulation 37. All cross-references have been updated in accordance with the new structure of the Bill and references to "undertaking" have been replaced by references to "company" where appropriate. Subhead (1)(a) has been newly inserted and replaces paragraph (1)(a) of Regulation 37. [This implements the requirements of Article 2(10) of Directive 2003/51/EC (the Modernisation Directive) which amends Article 36(1) of Directive 83/349/EEC (the 7th Directive) by replacing paragraph 1 of that Article with the above. The Commission argued that while there is no change to the requirement to provide a 'fair review', it believes there is a need to promote greater consistency in the quality of such reviews as well as a need to provide additional guidance on the information content expected. In an effort to move away from 'boiler plate' statements, the Commission states that it has avoided the inclusion of detailed provisions but rather has attempted to give consideration to current 'best practice'.] Subsection (1)(a) was further revised by S.I. 116 of 2005. Subhead (1)(f) has been newly inserted. This implements Article 2(3) of Directive 2001/65/EC (the Fair Value Directive) which inserts the above into Article 36(2) of Directive 83/349/EEC (the 7th Directive). It is extracted from Regulation 9 of the draft S.I. implementing the Fair Value Directive.*

---

### Head 40 Directors' report: Acquisition or disposal of own shares

---

- (1) Where, at any time during a financial year of a company, shares in the company—
  - (a) are acquired by the company including by forfeiture or surrender in lieu of forfeiture; or
  - (b) are acquired by any subsidiary undertaking of the company the directors' report with respect to that financial year of the company shall state—

- (i) the number and nominal value of any shares of the company held by the company or any subsidiary undertaking at the beginning and end of the financial year together with the consideration paid for such shares,
  - (ii) a reconciliation of the number and nominal value of such shares from the beginning of the financial year to the end of the financial year showing all movements during the year including further acquisitions, disposals and cancellations in each case showing the value of the consideration paid or received if any.
- (2) If any person, being a director of a company, fails to take all reasonable steps to secure compliance with the requirements of Subhead (1), he shall be guilty of a category 3 offence, but in any proceedings against a person in respect of an offence under this subhead, it shall be a defence to prove that he had reasonable grounds to believe and did believe that a competent and reliable person was charged with the duty of ensuring that the provisions of the said Subhead (1) were complied with and that the latter person was in a position to discharge that duty.
- (3) In Subhead (2) "director" includes any shadow director or de facto director as defined in Part A5.

### **Explanatory note**

*This head is an amended re-enactment of Section 14 of the Companies (Amendment) Act, 1986, as amended by Section 233(1)(a) of the Companies Act, 1990. All cross-references have been updated in accordance with the new structure of the Bill.*

*The word acquisition has also been inserted into paragraph (b)(vi).*

*Sections 14(c) and 14(d) of the Companies (Amendment) Act, 1986 have not been included at this point as they relate to the treatment of shares held by or on behalf of a public limited company and charges taken by public limited companies on their own shares. These subsections will be included later in Pillar B and read as follows:*

*"(c) are acquired by another person in the circumstances specified in paragraph (c) or (d) of [equivalent of Section 43 (1) of that Act]; or (d) are made subject to a lien or other charge that is taken (whether expressly or otherwise) by the company and is permitted by paragraph (a), (c) or (d) of [equivalent of Section 44 (2) of the Companies (Amendment) Act, 1986]."*

*Subheads (2) and (3) are in effect a re-enactment of the relevant part of Section 22(2) and (5) of the Companies (Amendment) Act, 1986 redrafted as agreed with Steering committee.*

---

## **Head 41 Directors' report: Interests in shares and debentures**

---

- (1) The directors' report in respect of a financial year shall, as respects each person who, at the end of that year, was a director of the company, state—
- (a) whether or not he was, at the end of that financial year, interested in shares in, or debentures of, the company or any group undertaking of that company ;
  - (b) if he was so interested—
    - (i) the number and amount of shares in, and debentures of, each undertaking (specifying it) in which he was then interested,
    - (ii) whether or not he was, at the beginning of the financial year (or, if he was not then a director, when he became a director), interested in shares in, or debentures of, the company or any other group undertaking, and
    - (iii) if he was, the number and amount of shares in, and debentures of, each undertaking (specifying it) in which he was so interested at the beginning of that year or, as the case may be, when he became a director.
- (2) The reference in Subhead (1) to the time when a person became a director shall, in case of a person who became a director on more than one occasion, be construed as referring to the time when he first became a director.
- (3) The information required by Subhead (1) to be given in respect of the directors of the company shall also be given in respect of the person who was the secretary of the company at the end of the financial year concerned.
- (4) For the purposes of this head, interests of a director and secretary in shares or debentures means all interests required to be recorded in the register of interests under Head 37 of Part A5 and includes interests of shadow directors and de facto directors.

### **Explanatory note**

*This is a reworded re-enactment of Section 63 of the Companies Act, 1990 and in order not to have to repeat all the meanings of 'interests' it has been cross referenced to include all those interests that fall to be included in the register referred to in Part A5.*

---

### **Head 42 Directors' report: Statement on relevant audit information**

---

- (1) This head applies to a company unless—
  - (a) it qualifies under Head 66 for an exemption from audit; and
  - (b) the directors take advantage of that exemption.
- (2) The directors' report must contain a statement to the effect that, in the case of each of the persons who are directors at the time the report is approved—
  - (a) so far as the director is aware, there is no relevant audit information of which the company's independent auditor is unaware; and
  - (b) (s)he has taken all the steps that (s)he ought to have taken as a director in order to make himself or herself aware of any relevant audit information and to establish that the company's independent auditor is aware of that information.
- (3) "Relevant audit information" means information needed by the company's independent auditor in connection with preparing his report.
- (4) A director is regarded as having taken all the steps that he ought to have taken as a director in order to do the things mentioned in subhead (2)(b) if he has—
  - (a) made such enquiries of his fellow directors and of the company's independent auditors for that purpose; and
  - (b) taken such other steps (if any) for that purpose, as are required by his duty as a director of the company to exercise reasonable care, skill and diligence.

- (5) Nothing in this head shall be interpreted as reducing in any way the statutory and professional obligations of the independent auditor in relation to forming his / her opinion on the matters set out in Head 46.
- (6) Where a directors' report containing the statement required by this head is approved but the statement is false, every director of the company who—
  - (a) knew that the statement was false, or was reckless as to whether it was false; and
  - (b) failed to take reasonable steps to prevent the report from being approved, commits a category 2 offence.

### **Explanatory note**

*This is a suggested addition to the requirements for directors based on a similar requirement in the UK Bill.*

---

### **Head 43 Approval and signing of Directors' Report**

---

- (1) The directors' report and, where applicable, the group directors' report shall be approved by the board of directors and signed on their behalf—
  - (a) by two directors, where there are two or more directors; and
  - (b) by the sole director, where there is only one director.
- (2) Every copy of every directors' report which is laid before the members in general meeting or which is otherwise circulated, published or issued shall state the names of the persons who signed it on behalf of the board.
- (3) If any copy of a directors' report is—
  - (a) laid before the members, or otherwise issued, circulated or published without the report having been signed as required by this head or without the required statement of the signatory's name being included; or
  - (b) delivered to the Registrar without the report having been signed as required by this section or without the required statement of the signatory's name being included,

the company and every officer of the company who is in default shall be guilty of a category 3 offence.

---

## Part A6 - Financial statements, Annual Return and Audit

---

- (4) In Subhead (3) "officer" includes any shadow director or de facto director as defined in Part A5.

**Explanatory note**

*Amended restatement of Section 158(2) of the Companies Act, 1963. The provision has been amended to recognize that private companies can now have only one director and to bring the approval requirements into line with the requirements for statutory financial statements.*



# Chapter 10

## Obligation to have statutory financial statements audited

### Head 44 Obligation for a company's statutory financial statements to be audited.

The directors of a company shall arrange for the statutory financial statements of a company for a financial year to be audited by an independent auditor unless the company is entitled to, and chooses to avail of, the exemption in accordance with Heads 66 to 68 of Chapter 14.

#### **Explanatory note**

*This is a new head. It sets out the obligation to have financial statements audited and flags the exemptions to the audit requirement provided for under this Part.*

### Head 45 Right of members to require audit

- (1) Any member or members of a company holding shares in the company that confer, in aggregate, not less than one-tenth of the total voting rights in the company may serve a notice in writing on the company stating that that member or those members do not wish the exemption to be available to the company in a financial year specified in the notice.
- (2) A notice under Subhead (1) may be served on the company either—
  - (a) during the financial year immediately preceding the financial year to which the notice relates; or
  - (b) during the financial year to which the notice relates (but not later than 1 month before the end of that year).
- (3) If a company avails itself of the exemption in a financial year, the balance sheet prepared by the company in respect of that year shall contain a statement by the directors of the company that, in respect of that year—

- (a) the company is availing itself of the exemption (and the exemption shall be expressed to be “the exemption provided for by Chapter 14 of Part A6 of the Companies Consolidation Act, 2007 [equivalent of Part III of the Companies (Amendment) (No. 2) Act, 1999]”);
- (b) the company is availing itself of the exemption on the grounds that it satisfies the conditions specified in Head 66 of this Part [equivalent of Section 32 of the Companies (Amendment) (No. 2) Act, 1999],
- (c) no notice under Subhead (1) has, in accordance with Subhead (2), been served on the company; and
- (d) the directors acknowledge the obligations of the company, under this Bill, to keep proper books of account and prepare accounts which give a true and fair view of the state of affairs of the company at the end of its financial year and of its profit or loss for such a year and to otherwise comply with the provisions of those Acts relating to accounts so far as they are applicable to the company.

- (4) The statement required by Subhead (4) shall appear in the balance sheet in a position immediately above the signatures of the directors required by Head 36 of this Part [equivalent of Section 156 of the Companies Act, 1963] or, as the case may be, the statement required by Head 63 (1) of this Part [equivalent of Section 18(2) of the Companies (Amendment) Act, 1986].
- (5) If Subhead (4) or (5) is not complied with, the company and every officer of the company who is in default shall be guilty of a category three offence.
- (6) The reference in Subhead (1) to a voting right in a company shall be construed as a reference to a right exercisable for the time being to cast, or to control the casting of, a vote at general meetings of members of the company, not being such a right that is exercisable only in special circumstances.

#### **Explanatory note**

*This head is a slightly amended re-enactment of Section 33 of the Companies (Amendment) (No.2) Act, 1999. All cross-references have been updated in accordance with the new structure of the Bill.*

*The structure of the head has been slightly amended. Section 34(7) has been moved to follow Section 34(3) in order to group provisions dealing with the same issue.*

# Chapter 11

## Independent auditor's report

### Head 46 Independent auditors' report on statutory financial statements

- (1) The report required by Head 92 to be made by the independent auditors of a company on statutory financial statements to be laid before the company in general meeting shall comply with the requirements of this head.
- (2) The independent auditors' report shall include—
  - (a) an introduction identifying the entity financial statements, and where appropriate, the group financial statements, that are the subject of the audit and the financial reporting framework that has been applied in their preparation; and
  - (b) a description of the scope of the audit identifying the auditing standards in accordance with which the audit was conducted.
- (3) The independent auditors' report shall state clearly the independent auditors' opinion as to—
  - (a) whether the statutory financial statements give a true and fair view—
    - (i) in the case of an entity balance sheet, of the [assets, liabilities, financial position / state of affairs] of the company as at the end of the financial year,
    - (ii) in the case of an entity profit and loss account, of the profit or loss of the company for the financial year,
    - (iii) in the case of group financial statements, of the [assets, liabilities and financial position / state of affairs] as at the end of the financial year and of the profit or loss for the financial year of the undertakings included in the consolidation as a whole, so far as concerns the members of the company;
- (b) whether the statutory financial statements have been properly prepared in accordance with the relevant financial reporting framework; and
- (c) whether the statutory financial statements have been properly prepared in accordance with the requirements of this Bill (and, where applicable, Article 4 of the IAS Regulation).
- (4) The independent auditors' report shall also state—
  - (a) whether they have obtained all the information and explanations which, to the best of their knowledge and belief, are necessary for the purposes of their audit;
  - (b) whether, in their opinion, the accounting records of the company were sufficient to permit the financial statements to be readily and properly audited;
  - (c) whether, in their opinion, information and returns adequate for their audit have been received from branches of the company not visited by them; and
  - (d) in the case of entity financial statements, whether the company's balance sheet and, except where the exemption in Head 23 is availed of, the profit and loss account are in agreement with the accounting records and returns,
- (5) The independent auditors' report shall state whether, in their opinion, the information given in the directors' report for the financial year is consistent with the statutory financial statements.
- (6) The independent auditors' report shall, in relation to each matter referred to in Subheads (3), (4), (5) and (6) contain a statement or opinion, as the case may be, which shall be either—
  - (a) qualified, including to the extent of an adverse opinion or a disclaimer of opinion, where there is a disagreement or limitation in scope of work; or
  - (b) unqualified; and
  - (c) shall include a reference to any matters to which the independent auditors wish to draw attention by way of emphasis without qualifying the report.

## Part A6 - Financial statements, Annual Return and Audit

---

- (7) If in the case of any statutory financial statements the requirements of Heads 24, 25, 26 or Part B10 Head 17 [equivalent of Section 191 of the Companies Act, 1963, Sections 41, 42, 43, 44, 45 of the Companies Act, 1990] are not complied with, the independent auditors of the company by whom the statutory financial statements are examined shall include in their report, so far as they are reasonable able to do so, a statement giving the required particulars.
- (8) Where the entity financial statements of a holding company are combined with the group financial statements, the independent auditors' report on the group financial statements shall be combined with the report on the entity financial statements.
- (b) is delivered to the Registrar without being signed as required by this head, or without the required statement of the independent auditors' name, the company and every officer of the company who is in default shall be guilty of a category 3 offence.
- (5) In Subhead (4) "officer" includes any shadow director or de facto director as defined in Part A5.

### **Explanatory note**

*This is an amended re-enactment of Section 193 (4D)(a) of the Companies, Act, 1990 as inserted by S.I. 116.*

### **Explanatory note**

*This head is an amended re-enactment of Sections 193(1) and (4) of the Companies Act, 1990. All cross-references have been updated in accordance with the new structure of the Bill.*

*Subsection (4) was substantially amended by Paragraph 8, S.I. 116 of 2005.*

*This head is currently being amended by the UK.*

*Given that the audit standards are jointly prepared for the UK and Ireland, it is preferable that the final wording of this head is aligned with that in the UK.*

---

## **Head 47 Signature of independent auditors' report**

---

- (1) The independent auditors' report shall state the name of the independent auditors and be signed and dated by them.
- (2) Every copy of the independent auditors' report which is laid before the members in general meeting or which is otherwise circulated, published or issued shall state the name of the independent auditors.
- (3) The copy of the independent auditors' report which is delivered to the registrar shall state the name of the independent auditors.
- (4) If a copy of an independent auditors' report—
- (a) is laid before the members, or otherwise issued, circulated or published without being signed as required by this section or without the required statement of the independent auditors' name; or

## Chapter 12

### Publication of financial statements

#### Head 48 Circulation of statutory financial statements

- (1) A copy of each of the documents mentioned in Subhead (2) shall be sent to—
- (a) every member of the company (whether that person is or is not entitled to receive notices of general meetings of the company);
  - (b) every holder of debentures of the company (whether that person is or is not so entitled); and
  - (c) all persons other than members or holders of debentures of the company who are so entitled,

not less than 21 days before the date of the meeting at which copies of those documents are to be laid in accordance with Part A6, Head 51.

- (2) The documents referred to in Subhead (1) are—
- (a) the statutory financial statements of the company including the entity financial statements and any group financial statements for the financial year;
  - (b) the directors' report including any group directors' report for that financial year;
  - (c) the independent auditors' reports on those financial statements and that directors' report.
- (3) If the copies of the documents referred to in Subhead (1) are sent less than 21 days before the date of the meeting they shall notwithstanding that fact be deemed to have been duly sent if it is so agreed by all the members entitled to attend and vote at the meeting.
- (4) References in this head to sending to any person copies of the documents mentioned in Subhead (2) include references to using electronic communications for sending copies of those documents to such address as may for the time being be notified to the company by that person for that purpose.

- (5) For the purposes of this head copies of those documents are also to be treated as sent to a person where—
- (a) the company and that person have agreed to his having access to the documents on a website (instead of their being sent to him);
  - (b) the documents are documents to which that agreement applies; and
  - (c) that person is notified, in a manner for the time being agreed for the purpose between him and the company, of —
    - (i) the publication of the documents on a web site,
    - (ii) the address of that web site, and
    - (iii) the place on that web site where the documents may be accessed, and how they may be accessed.
- (6) For the purposes of this head documents treated in accordance with Subhead (5) as sent to any person are to be treated as sent to him not less than 21 days before the date of a meeting if, and only if—
- (a) the documents are published on the web site throughout a period beginning at least 21 days before the date of the meeting and ending with the conclusion of the meeting; and
  - (b) the notification given for the purposes of paragraph (c) of that subhead is given not less than 21 days before the date of the meeting.
- (7) Nothing in Subhead (6) shall invalidate the proceedings of a meeting where—
- (a) any documents that are required to be published as mentioned in paragraph (a) of that subhead are published for a part, but not all, of the period mentioned in that paragraph; and
  - (b) the failure to publish those documents throughout that period is wholly attributable to circumstances which it would not be reasonable to have expected the company to prevent or avoid.
- (8) A company may take advantage of Subhead (4) to (7) only to the extent that the constitution of the company permits it to do so.

- (9) Where copies are sent out under this head over a period of days, reference elsewhere in this Bill to the day on which copies are sent out shall be construed as references to the last day of that period.
- (10) If default is made in complying with this head, the company and every officer of it who is in default shall be guilty of a category 3 offence.
- (11) In Subhead (10) "officer" includes any shadow director or de facto director as defined in Part A5.

### **Explanatory note**

*This head is an amended re-enactment of Section 159 of the Companies Act, 1963. Any references to being "liable to a fine" have been replaced by the phrase "shall be guilty of an offence and liable to a fine", the amount of which shall be addressed later in the Bill. Section 159(2) has not been included here as only private companies are of concern here. It will be provided for elsewhere in Pillar B. This provided: "In the case of a company not having a share capital, Subsection (1) shall not require a copy of the documents referred to in that subsection to be sent to a member of the company who is not entitled to receive notices of general meetings of the company or to a holder of debentures of the company who is not so entitled". Section 156(6) has been deleted as obsolete.*

---

## **Head 49 Right to demand copies of financial statements and reports**

---

- (1) Any member of a company and any holder of debentures of the company shall be entitled to be furnished, on demand and without charge, with a copy of—
- (a) the company's last statutory financial statements;
  - (b) the last director's report; and
  - (c) the last independent auditors' report on those financial statements and that directors' report.
- (2) If the group financial statements do not deal with a subsidiary undertaking of the company, any member of the company shall be entitled to demand to be furnished without charge with a copy of the latest statutory financial statements of such subsidiary which has been sent to the members of that subsidiary together with a copy of the directors' and independent auditors' reports.
- (3) Without prejudice to Subhead (2), any member of the company shall be entitled to be furnished within 14 days after he has made a request in that behalf to the company with a copy of any statutory financial statement (including every document required by law to be annexed thereto and a copy of the directors' and auditors' reports) of any subsidiary of the company laid before any annual general meeting of such subsidiary held since the operative date, at a charge not exceeding €3 for each balance sheet so furnished so, however, that a member shall not be entitled to be furnished with a copy of any balance sheet laid before an annual general meeting held more than 10 years before the date on which such request is made.
- (4) Copies of balance sheets need not be sent to any member of a private company if, on the application either of the company or of any person who claims to be aggrieved, the court is satisfied that the rights conferred by this head are being abused, and the Court may order the company's costs on an application under this subhead to be paid in whole or in part by the member who has made the request for such copies.
- (5) Any obligation by virtue of Subhead (1) or (2) to furnish a person with a document may be complied with by using electronic communications for sending that document to such address as may for the time being be notified to the company by that person for that purpose.
- (6) A company may take advantage of Subhead (5) only to the extent that the constitution of the company permits it to do so.
- (7) If a demand made under this head is not complied with within 14 days of the demand being made, the company and every officer of the company who is in default shall be guilty of a category 3 offence unless it is proved that the member has already made a demand for and been furnished with a copy.
- (8) In the case of any default under this head, the Court may direct that the copies required shall be sent to the member requiring them.



- (9) In Subhead (7), “officer” includes any shadow director or de facto director as defined in Part A5.

### **Explanatory note**

*This head is a new head. It is comprised of an amended re-enactment of Subsection (10) of Section 150 of the Companies Act, 1963 and Subsection (4) of Section 159.*

*Subheads (3) and (4) re-enact Sections 154 (3) and (4) of the Companies Act, 1963.*

*Subhead (8) re-enacts Section 154 (6) of the Companies Act, 1963.*

*All cross-references have been updated in accordance with the structure of the new Bill and any references to being “liable to a fine” have been replaced by the phrase “shall be guilty of a category X offence.”*

---

## **Head 50 Requirements in relation to publication of financial statements**

---

- (1) If a company publishes its statutory financial statements, it shall also publish with those statutory financial statements any directors’ report prepared in accordance with Head 37 and any independent auditors’ report made in accordance with Part A6, Head 92 in the form required by Head 46 [equivalent of Section 193 of the Companies Act, 1990].
- (2) Where a company is required to prepare group financial statements for a financial year, it shall not publish entity financial statements for that year unless they are combined with group financial statements and published together as the statutory financial statements of the company.
- (3) Where a company publishes its abridged financial statements prepared in accordance with Part A6, Head 60, it shall also publish with those abridged financial statements any report in relation to those abridged financial statements specified in Part A6, Head 64 [equivalent of Subsection (3) of Section 18 of the Companies (Amendment) Act, 1986] and, if the independent auditors of the company have refused to provide the directors of the company with a report under Subhead (4) of that head, an indication of the refusal.
- (4) If a company publishes non-statutory financial statements, including any abbreviated accounts relating to any period, it shall also publish a statement indicating—
- (a) the reason for the preparation of the non-statutory financial statements;
- (b) that the non-statutory financial statements are not the statutory financial statements of the company;
- (c) whether statutory financial statements dealing with any financial year with which the non-statutory financial statements purport to deal have been annexed to the annual return and delivered to the Registrar and, if not, an indication of when they are likely to be so delivered;
- (d) whether the independent auditors of the company have made a report under Part A6, Head 92 in the form required by Head 46 [equivalent of Section 193 of the Companies Act, 1990] in respect of the statutory financial statements of the company which relate to any financial year with which the non-statutory financial statements purport to deal;
- (e) whether any matters referred to in the independent auditors’ report were qualified or unqualified, or whether the independent auditors’ report included a reference to any matters to which the independent auditors drew attention by way of emphasis without qualifying the report.
- (5) Where a company publishes non-statutory financial statements, it shall not publish with those financial statements any such independent auditors’ report as is mentioned in Subhead (4)(d) of this head.
- (6) Where a holding company publishes non-statutory entity financial statements dealing with the company as a separate legal entity, it shall indicate in a note to those financial statements whether or not group financial statements have been prepared for that period and if so where they can be obtained.
- (7) If a company fails to comply with any of Subheads (1) to (6), the company and every officer of the company who is in default shall be guilty of a category 3 offence.
- (8) In Subhead (7) “officer” includes any shadow director or de facto director as defined in Part A5.

### **Explanatory note**

*This head is a slightly amended re-enactment of Section 19 of the Companies (Amendment) Act, 1986, as amended by S.I. No. 201 of 1992 European Communities (Companies: Group Accounts) Regulations 1992, Regulation 46 and S.I. No. 201/1992, European Communities (Companies: Group Accounts) Regulations 1992, Regulation 40. All cross-references have been updated in accordance with the structure of the Bill and the subsections have been re-numbered.*

*Subsection (1) was further revised by Regulation 5(e) of S.I. 116 of 2005 to address publication by SME of abridged financial statements.*

*Paragraph 2(d) was amended by Regulation 6 (m), S.I. 116 of 2005.*

*Subheads (6) and (7) are in effect a re-enactment of the relevant part of Section 22(1)(a) of the Companies (Amendment) Act, 1986.*

---

### **Head 51 Financial statements and reports to be laid before the company in general meeting**

---

- (1) The directors' of a company shall, in respect of each financial year, lay before the company in general meeting copies of—
  - (a) the statutory financial statements of the company including the entity financial statements and any group financial statements for the financial year;
  - (b) the directors' report including any group directors' report for that financial year;
  - (c) the independent auditors' reports on those financial statements and that directors' report.
- (2) The period allowed for complying with Subhead (1) shall be no later than 9 months after the financial year end date.
- (3) The independent auditor's report shall be open to inspection by any member at the general meeting.

### **Explanatory note**

*This head is a slightly amended re-enactment of Section 148(7) of the Companies Act, 1963(as amended by S.I. 116 of 2005).*

## Chapter 13

### Annual Return and Documents Annexed Thereto

#### Head 52 Obligation to make annual return

- (1) Subject to Subhead (3), every company shall deliver to the Registrar for registration an annual return in accordance with Subhead (2) not later than 28 days after each annual return date of the company, unless it is made up to an earlier date in which case it shall be delivered to the Registrar not later than 28 days after that earlier date.
- (2) An annual return shall be in the prescribed form and shall be made up to a date that is not later than the relevant annual return date of the company except that the first annual return due to be made by a company after it is incorporated shall be made up to the date that is its first annual return date.
- (3) The court, on an application made (on notice to the Registrar) by a company, may, if it is satisfied that it would be just to do so, make an order extending the time for the purposes of Subhead (1) in which the annual return of the company in relation to a particular year may be delivered to the Registrar.
- (4) Within the period of 28 days after the making of an order under Subhead (3), or such longer period as the court may allow, the company to which the order relates shall deliver an office copy of the order to the Registrar. The order shall be ineffective unless received by the Registrar within the 28 day period or such period as the court may have allowed on the making of the order.
- (5) The court for the purposes of Subheads (3) and (4) shall be the District Court for the area where the registered office of the company is located or the High Court.
- (6) Subhead (1) shall not apply in respect of any annual return date that falls during a period when the company is in the course of being wound up.
- (7) Subhead (1) shall not apply in respect of any annual return date that falls during a period when the company is in the course of being voluntarily struck off the register by the Registrar pursuant to Head 7, Part A12 unless the company is restored to the register post-dissolution.

- (8) If a company fails to comply with the requirements of this head, the company and every officer of the company who is in default shall be guilty of a category 3 offence.
- (9) In Subhead (6) "officer" includes any shadow director or de facto director as defined in Part A5.

#### Explanatory note

*The Companies Acts, 1963 to 2006 had two separate provisions requiring a company to file an annual return. Section 125 required a return to be filed "in every year" and Section 127, with extensive amendments from the 1963 Act, required the return to be filed within 28 days of an "annual return date" (ARD).*

*These provisions have now been merged so that there is now one basic requirement to file an annual return within 28 days of the company's ARD. There is express provision in Head 65 that a company has an ARD in each year except, in certain circumstances, in the year when a company is incorporated.*

*The complexity of the existing provisions results from extensive amendment to the original provisions in the Companies Act, 1963 and from the requirement for transition provisions under the Company Law Enforcement Act, 2001. The effect of the proposed changes is not significant in substance and will not require an alteration of practice by companies or by the CRO. The provisions are however somewhat easier to understand in their new form.*

*The new construction is also preferable in that while a company now clearly has an annual return date in every year it may file the return within 28 days of that date (even if that is in the following year) and hence not actually file a return in every calendar year as theoretically required by existing law (Section 125). Example: a company has an ARD of 15 December in each year. In 2007 it files its return on 20 December. It files the 2008 return on 5 January 2009. In theory that is in breach of existing law because the company has not filed a return in 2008. It does however comply with all of the other provisions and the intention of the legislation.*

*Transition provisions necessary in the Company Law Enforcement Act, 2001 have not been repeated. This head contains all of the requirements to file an annual return and is an amalgamation of certain provisions of Section 125 of the Companies Act, 1963 and of Section 127 of the Companies Act, 1963 as amended by Section 60 of the Company Law Enforcement Act, 2001 and by Section 46 of the Companies (Auditing and Accounting) Act, 2003. Subhead (1) is the key provision linking back the requirement to file an annual return to the existence in any year of an annual return date. Presumably the definitions section suffices to define annual return date. Subhead (2) Note: We need to be satisfied that this covers sufficiently companies incorporated before or after the head comes into effect. Subhead (3) is a restatement of Section 127(3)*

## Part A6 - Financial statements, Annual Return and Audit

---

Subhead (4) is a modified version of Section 127(4). The change proposed places a limit on the time for filing a court order extending the filing deadline in relation to an annual return, which time limit may however be extended by the court at the request of the company at the hearing of the application. There is no restriction on a court making an order in respect of a return that is already overdue but provision has been made nonetheless that the order shall be ineffective unless delivered by the company to the CRO within 28 days of its making or such longer period as the court may allow on the making of the order. This will avoid the undesirable scenario of a company being prosecuted for not filing an annual return which then produces in court by way of defence an order of which the CRO was unaware, which the company had obtained but had not bothered to file with CRO following its making. It will also act as an incentive to file such orders with CRO without delay. In the event that the 28 day period or longer period allowed by the court has expired when the office copy order is presented, application can be made to court for an extension of time, under general law, within which to deliver the order to CRO in order to have the filing deadline extended.

Subhead (5) is a new provision allowing an application to be made to the District Court for the area where the registered office of the company is located for an extension of the time for filing an annual return as the costs of a High Court action would in most cases be prohibitive. The option of using the High Court is retained in case the application should be made as part of another set of proceedings.

Subhead (6) has the effect of dis-applying the requirement to file an annual return during a winding-up. During that time the liquidator is required to file returns relevant to the course of the winding up and the annual return ceases to be useful. Consideration was given to the making of a similar exemption for receiverships but it was concluded that it would be difficult to provide for the various circumstances that might govern particular receiverships.

Subhead (7) has the effect of disapplying the requirement to file an annual return where a company has applied to be struck off the register voluntarily, pursuant to Head 7 Part A12. Where a company has applied to the Registrar to be struck off and the voluntary strike off process has commenced, such company is not to be required to file an annual return should its ARD or annual return filing deadline fall in the period between date of commencement of the strike off process and the date of dissolution of the company. However, if such company were to be subsequently restored to the Register, either on the application of an officer or member or by application of a creditor, the company should be required to deliver all outstanding annual returns, for the period of dissolution and prior to dissolution, including the period when the company was strike off-listed. This is to prevent abuse of the voluntary strike off regime by companies anxious to avoid filing a particular return (or financial statements attached to a particular return).

---

### Head 53 Annual return date

---

- (1) Unless it is altered by the company in accordance with Head 54, the annual return date of a company in any year shall be the date determined by this head.
- (2) Except in the case of the first annual return date of a company after it is incorporated, an annual return date shall fall in each year in respect of every company on the anniversary of the company's previous annual return date.
- (3) In the case of a company that is in existence at the date this head comes into effect, the next annual return date after this head comes into effect shall be its existing annual return date pursuant to the Companies Acts, 1963-2006.
- (4) In the case of a company to which Subhead (3) does not apply, the first annual return date shall be the day 6 months after the date of the incorporation of the company.

#### **Explanatory note**

This head contains all of the provisions on the determination of an annual return date. All of the provisions regarding the alteration of that date have been removed to a separate head.

Subhead (2) is the key provision which determines that a company has an annual return date in each year. Subhead (3) carries forward existing ARDs and avoids the needs for a complex restatement of the existing provisions. It is necessary to make clear the distinction between the next annual return date after the head comes into effect and the first annual return date after the company is incorporated.



---

### Head 54 Alteration of annual return date

---

- (1) Where the annual return of a company is made up in any year to a date earlier than its annual return date, its annual return date shall thereafter be each anniversary of the date to which that annual return is made up, unless the company elects in the annual return to retain its existing annual return date in respect of the year following the year in which the effective date of the annual return falls, or establishes a new annual return date pursuant to Subhead (2).
- (2) Subject to Subheads (3) and (4) a company may establish a new annual return date by delivering an annual return to the Registrar, in accordance with Part A6, Head 52 (1) made up to a date in the six months preceding its existing annual return date, to which return shall be annexed a statement in the prescribed form nominating the new annual return date.
- (3) The new annual return date established pursuant to Subhead (2) shall be within the period of 6 months following the existing annual return date.
- (4) Where a company has established a new annual return date, either pursuant to Subhead (2), it shall not establish a further new annual return date pursuant to Subhead (2) until at least 5 years have elapsed since the establishment of the first-mentioned new annual return date.
- (5) Where it appears to the Registrar desirable for a holding company or a holding company's subsidiary to extend its annual return date so that the subsidiary's annual return date may correspond with that of the holding company, the Registrar may, on the application or with the consent of the directors of the company whose annual return date is to be extended, direct that an extension is to be permitted in the case of that company.

#### **Explanatory note**

*This head contains all of the provisions regarding the alteration of an ARD.*

*Subhead (1) The phrase "unless the company elects in the annual return to retain its existing annual return date in respect of the year following the year in which the effective date of the annual return falls" is cumbersome but is intended as an anti-avoidance measure, to prevent a company filing an annual return made up to a date in the calendar year prior to the year in which its next ARD (NARD) falls and claiming on that basis to have pushed its annual return filing obligation back to the year following the year in which its NARD falls. The clearer we can make it in the statutory provisions that there is an obligation to file an annual return once in every calendar year, the better. Example: A company's NARD is 30/6/2007. The company files an annual return made up to 2/12/2006, and elects in the annual return to retain its existing ARD. It claims that its NARD is 30/6/2008 as it has filed the return made up to 2/12/2006 in lieu of a return made up to 30/6/2007. CRO requires a clear and unambiguous provision which obliges such a company to file its next return made up to a date in 2007 no later than 30 June. Subhead (2) requires that an annual return filed with a request for the establishment of a new annual return date must be dated in the six months preceding the current annual return date. That provision is included to ensure that a return is not filed so early as to leave a period of more than a year between that return and the new return date. Subhead (3) provides that as under current law, an ARD may be extended by a company up to and including six months from its existing ARD. Subhead (5) is an amended re-enactment of Section 153 (2) of the Companies Act, 1963 – "Registrar" has been exchanged for "Minister".*

---

### Head 55 Documents to be annexed to annual return: All companies

---

- (1) Subject to the provisions of this Part, there shall be annexed to the annual return a copy of the following documents laid or to be laid before the company in general meeting for that financial year—
  - (a) the statutory financial statements of the company including the entity financial statements and any group financial statements for the financial year;
  - (b) the directors' report including any group directors' report for that financial year;
  - (c) the independent auditors' reports on those financial statements and that directors' report.



(2) Where any document referred to in Subhead (1) annexed to the annual return, is in a language other than the English language or the Irish language, there shall be annexed to each such document a translation in the English language or the Irish language certified in the prescribed manner to be a correct translation.

(3) Every document annexed to the annual return in accordance with Subhead (1) shall cover the period—

- (a) in the case of the first annual return to which such documents are annexed - since the incorporation of the company; and
- (b) in any other case - since the end of the period covered by the statutory financial statements annexed to the preceding annual return,

and shall be made up to a date not earlier by more than 9 months than the date to which the annual return is made up.

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

(5) In Subhead (4) "officer" includes any shadow director or de facto director as defined in Part A5.

### **Explanatory note**

*This head is a slightly amended re-enactment of Section 7 of the Companies (Amendment) Act, 1986, as amended by S.I. 294 of 1992, EC (Credit Institutions: Accounts) Regulations 1992 and Section 64 of the Company Law Enforcement Act, 2001. Section 7 applied in practice to companies other than (i) unlimited companies, (ii) companies limited by guarantee not having a share capital and not trading for gain, which continued to be regulated by Section 128 of the Companies Act, 1963. This head now applies, subject to modifications, to the Pillar B companies. Subheads (4) and (5) are in effect a re-enactment of the relevant parts of Section 22(1)(a) and 22(5) of the Companies (Amendment) Act, 1986.*

---

## **Head 56 Documents to be annexed to annual returns: Certain companies**

---

(1) Where a holding company that prepares Companies Act financial statements has availed of the exemptions in Head 20 (subsidiary of higher EEA holding) or Head 21 (subsidiary of higher Non-EEA holding) and does not prepare group financial statements because it has relied on group financial statements and a directors' report prepared by its higher holding in which it and all of its subsidiary undertakings are consolidated, the holding company shall annex to its annual return—

- (a) the group financial statements on which it has so relied;
- (b) the directors' report of the higher holding; and
- (c) the report of the independent auditor on such group financial statements and directors' report.

(2) Where a holding company that prepares IFRS financial statements has availed of the exemptions in IFRS and does not prepare group financial statements because it has relied on group financial statements and a directors' report prepared by its higher holding in which it and all of its subsidiary undertakings are consolidated, the holding company shall annex to its annual return—

- (a) the group financial statements on which it has so relied;
- (b) the directors' report of the higher holding; and
- (c) the report of the independent auditor on such group financial statements and directors' report.

(3) Where a company has relied on the exemption in Head 29 (1) regarding information on related companies, the company shall annex the information required by Head 29 (2) to its annual return.

- (4) Where any document required to be annexed to the annual return by this head is in a language other than the English language or the Irish language, there shall be annexed to the copy of that document delivered a translation of it into the English language or the Irish language, certified in the prescribed manner to be a correct translation.

**Explanatory note**

*This head refers to those documents that are required for companies to annex to annual return if they have taken advantage of certain options available to them under various heads above.*

---

### **Head 57 Exceptions from requirement to annex statutory financial statements to annual return**

---

Notwithstanding anything to the contrary in this Bill, a company shall not be required to annex statutory financial statements to—

- (a) the first annual return due to be made by a company after it is incorporated; or
- (b) an annual return filed in accordance with Subhead (2) of Head 54.

**Explanatory note**

*This head contains (and re-states) the exceptions from the requirement to attach financial statements to each annual return.*

## Chapter 14

### Exclusions, exemptions and special arrangements

#### Head 58 Qualification of company as small or medium sized

- (1) Except for those companies excluded by Subhead (9), a company qualifies as a small company or a medium company in relation to its first financial year if the qualifying conditions are met in respect of that year.
- (2) A company that is not excluded by Subhead (9) qualifies as a small company in relation to a subsequent financial year –
- if the qualifying conditions are met in respect of that year and the preceding financial year;
  - if the qualifying conditions are met in respect of that year and the company qualified as a small company in relation to the preceding financial year;
  - if the qualifying conditions were met in the preceding financial year and the company qualified as a small company in relation to that year.
- (3) A company that is not excluded by Subhead (9) qualifies as a medium company in relation to a subsequent financial year –
- if the qualifying conditions are met in respect of that year and the preceding financial year;
  - if the qualifying conditions are met in respect of that year and the company qualified as a medium company respectively in relation to the preceding financial year;
  - if the qualifying conditions were met in the preceding financial year and the company qualified as a medium company in relation to that year.
- (4) The qualifying conditions for a small company are met by a company in relation to a financial year in which it satisfies two or more of the following requirements –
- Turnover Not exceeding €5,000,000;
  - Balance sheet total Not exceeding €2,500,000;
  - Average number of employees Not exceeding 50.
- (5) The qualifying conditions for a medium company are met by a company in relation to a financial year in which it satisfies two or more of the following requirements –
- Turnover Not exceeding €20,000,000;
  - Balance sheet total Not exceeding €10,000,000;
  - Average number of employees Not exceeding 250.
- (6) In the application of this head to any period which is a financial year of a company, but is not in fact a year, the amounts specified for turnover in Subhead (4)(a) and (5)(a) of this head shall be proportionately adjusted.
- (7) In this head “balance sheet total”, in relation to any financial year of a company, means—
- where the company prepares Companies Act entity financial statements and –
    - Format 1 of the balance sheet formats set out in the First Schedule to this Part [equivalent of the Schedule to the Companies (Amendment) Act 1986] is adopted by the company, the aggregate of the amounts shown in the entity balance sheet at that financial year end date under headings corresponding to items A and B in that Format, or
    - Format 2 of those formats is adapted by the company, the aggregate of the amounts so shown under “Assets”; and
  - where the company prepares IFRS entity financial statements, the aggregate of the amounts shown as assets in the balance sheet at the financial year end date.

- (8) For the purposes of Subheads (4)(c) and (5)(c) of this head, the average number of employees of a company shall be determined by applying the method of calculation prescribed by Head 30 of this Part [equivalent of paragraph 42(4) of the Schedule to the Companies (Amendment) Act, 1986] for determining the number required by Subhead (1)(a) of that head to be stated in a note to the financial statements of a company.
- (9) A company may not avail of this head if it is –
- a holding company that prepares group financial statements;
  - a credit institution;
  - an insurance undertaking; or
  - [other see Explanatory note].

### **Explanatory note**

*This head is an amended re-enactment of Section 8 of the Companies (Amendment) Act, 1986, as amended by S.I. No.396 of 1993 EC (Accounts) Regulations 1993, Reg.4. The section has been amended as a result of the recommendations of the Company Law Review Group in its Second Report.*

*All cross-references have been updated in accordance with the structure of the Bill. Furthermore, all references to "private companies" have been replaced by references to "companies" as only private companies are of concern here and for the purposes of Pillar A, a "company" is defined as a private company limited by shares. It will be necessary to exclude public companies from this section in Pillar B.*

*Subsections (4) and (5) have been amended as a result of the recommendations of the Review Group in its Second Report. The Review Group considered to what extent the maximum limits on the qualifying criteria for small and medium-sized companies should be revised. Such an exercise was last undertaken in Ireland by S.I. No.396 of 1993, EC (Accounts) Regulations 1993. Since then the permissible EU maxima for qualification for exemption have been revised. The present EU limits are, for a small company, a balance sheet total of €3.65m and a turnover of €7.3m, and for a medium-sized company, a balance sheet total of €14.6m and a turnover of €29.2m. As a result, it was clearly appropriate to increase the limits in Irish law again.*

*The Review Group concluded that, on balance, it would be wise to use the increase in the level of inflation since December 1993 as a guideline for increasing the limits. According to the Central Statistics Office, inflation in Ireland in the period from December 1993 to January 2004 has been approximately 34.5 per cent. Thus, the figures have been increased at this rate and rounded upwards.*

*Subheads (4) - (7) are slightly amended re-enactments of Sections 8(4) - 8(7) of the Companies (Amendment) Act, 1986. Paragraph (4)(c) inserted by Regulation 5(e) of S.I. 116 of 2005.*

*Subhead (8) is a slightly amended re-enactment of Section 8(9) of the Companies (Amendment) Act, 1986.*

*Subsections (8) and (10) have been deleted as they were transitional provisions of the Companies (Amendment) Act 1986. Section 8(11) has been removed as it unnecessarily duplicates the general power the minister is granted in Head 2, which is an amended restatement of Section 24 of the Companies (Amendment) Act, 1986.*

*Current subsection (11) has been omitted re Ministerial Order amending balance sheet and/or turnover thresholds.*

*The new Subhead (9) was necessary as the 1986 Act specifically excluded these entities from the Act but they are not excluded from this new Bill. The question also arises as to whether all regulated entities – including Investment Intermediaries Act companies, investment companies, etc should be precluded from filing abridged financial statements because of their public responsibilities. Investment companies also cause a problem as there is a question over what constitutes 'turnover' for such entities and if it assumed that passive income of such entities is not 'turnover', then provided they have less than 250 employees – they will qualify as small no matter what level of assets are under management. It is necessary to clarify turnover of investment companies should they be included in this head.*

## **Head 59 Exemptions in directors' report of small and medium companies**

A company that qualifies as a small or medium company in accordance with Head 58, is exempt from the requirements in –

- Head 38, Subhead (3) to give information regarding the use of financial instruments during the period; and
- Head 39, Subhead (3) to give an analysis of key performance indicators in its directors' report prepared in accordance with Head 37.

### **Explanatory note**

*This repeats an exemption previously set out in Section 13 of the Companies (Amendment) Act, 1986 as amended by S.I. 116 of 2005.*

### Head 60 Exemption from filing certain information for small and medium companies

- (1) A company that qualifies as a small or medium company in accordance with Head 58, may avail of an exemption from the requirement in Head 55 to annex to its annual return the following documents –
  - (a) the statutory financial statements of the company;
  - (b) the directors' report; and
  - (c) the independent auditors' reports on those financial statements and that directors' report.
- (2) If a company that qualifies as a small company avails of the exemption in Subhead (1), it shall instead annex to its annual return the following documents –
  - (a) abridged financial statements prepared in accordance with Head 61 provided that they have been approved and signed in accordance with Head 63;
  - (b) an extract of the information required by Head 41 from the directors' report; and
  - (c) a special independent auditors' report prepared in accordance with Head 64.
- (3) If a company that qualifies as a medium company avails of the exemption in Subhead (1), it shall instead annex to its annual return the following documents –
  - (a) abridged financial statements prepared in accordance with Head 62, provided that they have been approved and signed in accordance with Head 63;
  - (b) the directors' report; and
  - (c) a special independent auditors' report prepared in accordance with Head 64.

#### **Explanatory note**

*Subheads (1)(2) and (3) are amended re-enactments of the exemption from filing of statutory financial statements and the requirement to annex instead abridged financial statements previously in Sections 10 and 11 of the Companies (Amendment) Act, 1986.*

### Head 61 Abridged financial statements for a small company

- (1) The abridged financial statements of a small company shall be extracted from the statutory financial statements of the company prepared in accordance with Head 12 of this Part in the manner set out in this head.
- (2) Where the statutory financial statements of the company are IFRS financial statements, the abridged financial statements shall comprise –
  - (a) the balance sheet of the company;
  - (b) those notes to the financial statements that provide the information required by Heads 24 to 35 of this Bill; and
  - (c) those notes to the financial statements that provide the following information—
    - (i) information in relation to the maturity of non-current liabilities, and,
    - (ii) details of any security given in respect of those liabilities.
- (3) Where the statutory financial statements of the company are Companies Act financial statements, the abridged financial statements shall comprise—
  - (a) the balance sheet of the company;
  - (b) those notes to the financial statements that provide the information required by Heads 24 to 35 of this Bill;
  - (c) those notes to the financial statements that provide the information required by paragraphs 50, 51, 55, 56, and 65 of the First Schedule to this Part [equivalent to paragraphs 31B, 31C, 33, 34 and 44 of the Schedule to the Companies(Amendment) Act, 1986]; and
  - (d) if not shown separately on the face of the balance sheet, the total amounts falling due within one year and after one year shall be shown separately for item B II (Debtors) if the balance sheet is prepared in accordance with Format 1 and items B II (Debtors) and C (Creditors) if the balance sheet is prepared in accordance with Format 2 in the First Schedule to this Part.



### **Explanatory note**

*This head is an amended re-enactment of Subsections 10 and 12(1) of the Companies (Amendment) Act, 1986. All cross-references have been updated in accordance with the structure of the Bill.*

---

## **Head 62 Abridged financial statements for a medium company**

---

- (1) The abridged financial statements of a medium company shall be the same as the statutory financial statements of the company prepared in accordance with Head 12 of this Part except that the profit and loss account and notes may be abridged in the manner set out in this head.
- (2) Where the statutory financial statements of the company are IFRS financial statements –
  - (a) an abridged income statement which combines as one item under the heading “gross profit or loss” the company’s revenue and certain expenses for the period may be extracted from the income statement prepared in accordance with international financial reporting standards;
  - (b) The expenses that may be combined as one item with the revenue of the company are –
    - (i) where expenses are classified by function, only those expenses classified as ‘cost of sales’ may be so combined, and
    - (ii) where expenses are classified by nature, only changes in finished goods and work-in-progress and raw materials and consumables used may be so combined;
  - (c) The notes to the statutory financial statements may be abridged such that items that are combined on the face of the income statement are not separately identified in the notes.
- (3) Where the statutory financial statements of the company are Companies Act financial statements –

- (a) An abridged profit and loss account which combines as one item under the heading “gross profit or loss” the company’s turnover and certain expenses for the period may be extracted from the profit and loss account prepared in accordance with Head 13 of this Part;
- (b) The turnover and expenses that may be combined as one item are –
  - (i) items 1, 2, 3 and 6 in Format 1 of the profit and loss account formats set out in the First Schedule to this Part,
  - (ii) items 1 to 5 in Format 2 of the said profit and loss account formats,
  - (iii) items A.1, B.1 and B.2 in Format 3 of the said profit and loss account formats,
  - (iv) items A.1, A.2 and B.1 to B.4 in Format 4 of the said profit and loss account formats;
- (c) The notes to the statutory financial statements may be abridged such that items that are combined on the face of the income statement are not separately identified in the notes and in particular the information required by paragraph 63 of the First Schedule is not required [equivalent to Paragraph 41 of the Schedule to the Companies (Amendment) Act, 1986].

### **Explanatory note**

*This head is an amended re-enactment of Subsections 11 and 12(2) of the Companies (Amendment) Act, 1986. All cross-references have been updated in accordance with the structure of the Bill.*

---

## **Head 63 Approval and signing of abridged financial statements**

---

- (1) Where a company has prepared abridged financial statements as permitted by Head 60 above, the directors shall approve those abridged financial statements and shall include the following statement on the face of the abridged balance sheet –
  - (a) they have relied on the specified exemption contained in Head 60, [equivalent of Sections 10 to 12 of the Companies (Amendment) Act, 1986];

- (b) they have done so on the ground that the company is entitled to the benefit of that exemption as a small company or (as the case may be) as a medium company; and
- (c) the abridged financial statements have been properly prepared in accordance with Heads 61 or 62 of this Part, as appropriate.
- (2) Two directors or, if there is only one director, that director of the company shall sign the abridged balance sheet to evidence the approval of the board and the signatures shall be inserted on the face of the abridged balance sheet immediately after the statement referred to in Subhead (1).
- (3) Every copy of the abridged financial statements which is otherwise circulated, published or issued shall state the names of the persons who signed the abridged balance sheet on behalf of the board.
- (4) The following requirements apply to the documents annexed to the annual return under Head 60, Subheads (2) and (3) and delivered to the Registrar —
- (a) the copy of the abridged financial statements required by Head 60, Subheads (2)(a) and (3)(a) shall state the names of the director(s) who signed the abridged balance sheet on behalf of the board;
- (b) The extract from the directors' report required by Head 60, Subhead (2)(b) shall be signed by the secretary of the company as being a true copy of the information laid before the members in general meeting;
- (c) The directors' report required by Head 60 Subhead 3(b) shall state the name(s) of the director(s) who signed the report on behalf of the board;
- (d) The special independent auditors' report required by Head 60, Subheads (2)(c) and (3)(c) shall state the name of the independent auditor who signed the report and if different the name of the independent auditors that signed the report under Head 92.
- (5) If abridged financial statements are approved which do not comply with the requirements of this Bill, every director of the company who is party to their approval, and who knows that they do not comply or is reckless as to whether they comply is guilty of a category 2 offence.
- For this purpose every director of the company at the time the abridged financial statements are approved shall be taken to be a party to their approval unless he shows that he took all reasonable steps to prevent their being approved.
- (6) If any copy of any document is annexed to the annual return and delivered to the Registrar without being signed as required by this Subhead (4), the company and every officer of the company who is in default shall be guilty of a category 2 offence.
- (7) In Subhead (6) "officer" includes any shadow director or de facto director as defined in Part A5.

### **Explanatory note**

*Subheads (1) – (5) deal with the approval of the abridged financial statements and the certification of copies as true copies previously dealt with in Section 18 of Companies (Amendment) Act, 1986.*

*Subheads (6) and (7) are in effect a re-enactment of the relevant part of Section 22(1)(a) and 22(5) of the Companies (Amendment) Act, 1986.*

---

## **Head 64 Special report of the independent auditors' on abridged financial statements**

---

- (1) Abridged financial statements annexed to the annual return and delivered to the Registrar shall be accompanied by a special report of the independent auditors to the directors of the company containing—
- (a) a report of the independent auditors of the company dealing with the matters set out in Subhead (2) of this head on those abridged financial statements; and
- (b) a copy of the independent auditors' report under this Part, Head 92 in the form required by Head 46 [equivalent of Section 193 of the Companies Act, 1990] on the company's statutory financial statements.

- (2) Where the directors of a company propose to annex to the annual return abridged financial statements for any financial year prepared pursuant to any of the provisions of Part A6, Heads 61 or 62 [equivalent of Sections 10 to 12 of the Companies (Amendment) Act, 1986] and the independent auditors of the company are satisfied that the directors of the company are entitled, for that purpose, to rely on the exemption contained in Part A6, Head 60 [equivalent of Sections 10 to 12 of the Companies (Amendment) Act, 1986] and that the abridged financial statements have been properly prepared pursuant to the provisions in Heads 61 or 62, it shall be the duty of the independent auditors of the company to state in the special report required by Subhead (1), whether, in the opinion of the independent auditors of the company —
- (a) the directors of the company are entitled to annex those abridged financial statements to the annual return; and
  - (b) the abridged financial statements so annexed are properly prepared.
- (3) The special report of the independent auditors prepared in accordance with Subhead (1) shall state the name of the independent auditors and be signed and dated by them.
- (4) Every copy of the special report of the independent auditors prepared in accordance with Subhead (1) that is delivered to the Registrar or otherwise circulated, published or issued shall state the name of the independent auditors providing the report and if different the names of the independent auditors that provided the report under Head 92.
- (5) If a company fails to comply with Subheads (1), (2) and (3), the company and every officer of the company who is in default shall be guilty of an offence.
- (6) In Subhead (5) “officer” includes any shadow director or de facto director as defined in Part A5.

### **Explanatory note**

*This head is a slightly amended re-e-enactment of Section 18 of the Companies (Amendment) Act, 1986 as it refers to the independent auditors special report. All cross-references have been updated in accordance with the new structure of the Bill and references to “registrar of companies” have been replaced with references to the “Registrar”. Subheads (6) and (7) are in effect a re-enactment of the relevant part of Section 22(1)(a) and 22(5) of the Companies (Amendment) Act, 1986.*

---

## **Head 65 Subsidiary companies exempted from annexing their statutory financial statements to annual return**

---

- (1) Where a company is a subsidiary undertaking of a holding undertaking established under the laws of a Member State, the company shall, as respects any particular financial year of the company, stand exempted from the provisions of Part A6, Heads 55 and 56 [equivalents of Section 7 of the Companies (Amendment) Act, 1986] (other than Head 55 (1) (b)) if, but only if, the following conditions are fulfilled —
- (a) every person who is a shareholder of the company on the date of the holding of the next annual general meeting of the company after the end of that financial year or on the next annual return date of the company after the end of that financial year, whichever is the earlier, shall declare his consent to the exemption;
  - (b) there is in force in respect of the whole of that financial year an irrevocable guarantee by the holding undertaking of all amounts shown as liabilities in the statutory financial statements of the company referred to in Part A6, Head 12 in respect of that financial year;
  - (c) the company has notified in writing every person referred to in paragraph (a) of this subhead of the guarantee;
  - (d) the statutory financial statements of the company for that financial year are consolidated in the group financial statements prepared by the holding undertaking;
  - (e) the exemption of the company under this head is disclosed in a note to those group financial statements; and

## Part A6 - Financial statements, Annual Return and Audit

- (f) a notice stating that the company has availed of the exemption under this section in respect of that financial year and a copy of the guarantee and notification referred to in paragraph (b) of this subhead, together with a declaration by the company in writing that paragraph (a) of this subhead has been complied with in relation to the exemption, is annexed to the annual return for the financial year made by the company under the Bill to the Registrar;
  - (g) the group financial statements of the holding undertaking are drawn up in accordance with the requirements of the Seventh Council Directive 83/349/EEC of 13 June 1983 or in accordance with international financial reporting standards and are audited in accordance with Article 37 of the said Seventh Council Directive; and
  - (h) the group financial statements of the holding undertaking together with the report of the auditors on them are annexed to the annual return of the company claiming the exemption.
- (2) The Minister may make such orders (if any) as may be necessary for the purpose of enabling this head to have full effect.

### **Explanatory note**

*This head is a slightly amended re-enactment of Section 17 of the Companies (Amendment) Act, 1986, as amended by S.I. 201 of 1992, European Communities (Companies: Group Accounts) Regulations 1992, Regulation 45 and further amended by Section 65 of the Company Law Enforcement Act, 2001. All cross-references have been updated in accordance with the new structure of the Bill and references to "registrar of companies" have been replaced with references to the "Registrar". Paragraph (b) and (e) of Subsection (1) were further amended by Regulation 5 (j), S.I. 116 of 2005. Terminology changes have also been made.*

---

## **Head 66 Exemption from audit: Conditions with which companies must comply**

---

- (1) Subject to the exclusions in Part A6, Head 67 (companies excluded) and Head 68 (timely filing of annual return) [equivalent of Section 32A and Section 33(1) of the Companies (Amendment) (No. 2) Act, 1999], if—

- (a) the directors of a company are of the opinion that the company will satisfy the conditions specified in Subhead (3) in respect of a financial year and decide that the company should avail itself of the exemption in that financial year (and they record that decision in the minutes of the meeting concerned); and
  - (b) unless that financial year is the first financial year, the company satisfied the said conditions in respect of the preceding financial year then—
    - (i) without prejudice to Part A6 Heads 84 to 86 [equivalent of Section 35 of the Companies (Amendment) (No. 2) Act, 1999 and equivalent of Section 160 of the Companies Act, 1963] (which requires the appointment of independent auditors to a company), Head 44 (obligation for statutory financial statements to be audited) shall not apply to the said company in respect of that financial year, and
    - (ii) unless and until—
      - (I) circumstances, if any, arise in that financial year which result in one or more of the said conditions not being satisfied in respect of that year, or
      - (II) circumstances otherwise arise by reason of which the said company is not entitled to the exemption in respect of that financial year, the provisions mentioned in Subhead (2) shall not apply to the said company in respect of that year.
- (2) The provisions mentioned in Subhead (1) are those provisions of this Bill, that apply to the company, being provisions that—

- (a) confer any powers on independent auditors or require anything to be done by or to or as respects independent auditors;
- (b) make provision on the basis of a report of independent auditors having been prepared in relation to the statutory financial statements of the company in a financial year, and, without prejudice to the generality of the foregoing, include the following provisions —

## Part A6 - Financial statements, Annual Return and Audit

---

- (i) Part A6 Heads 35 (disclosure of independent auditor's remuneration), 42 (statement on relevant audit information), 46 (form of independent auditors' report), 47 (signature of independent auditor's report), 48 (circulation of statutory financial statements), 49 (right of members to demand copies of financial statements and reports), 50 (requirements in relation to publication of financial statements) and 51 (financial statements and reports to be laid before company in general meeting) [equivalent of Sections 157 and 159 of the Companies Act, 1963] in so far as they relate to a report of the independent auditors,
  - (ii) Part A6 Head 55 (documents to be annexed to annual return) [equivalent of Section 7 of the Companies (Amendment) Act, 1986], in so far as it relates to a report of the independent auditors,
  - (iii) Part A6 Head 64 (special report on abridged financial statements) [equivalent of Subsections (3), (4) and (5) of Section 18 of the Companies (Amendment) Act, 1986],
  - (iv) Part A6 Heads 83, 84 and 85 (dealing with appointment of independent auditor) [equivalent of Section 160(2) of the Companies Act, 1963],
  - (v) Part A6 Heads 92, 93 and 94 (details of independent auditors) [equivalent of Section 15 of the Companies (Amendment) Act, 1986 and Sections 46 and 193 of the Companies Act, 1990],
  - (vi) Part A3 Head 51 (3) and (4) (report of independent auditor on statutory financial statement for purposes of distribution) [equivalent of paragraphs (b), (c) and (d) of Subsection (3), and Subsection (4), of Section 49 of the Companies (Amendment) Act, 1983].
- (3) The conditions mentioned in Subhead (1) are that—
- (a) in respect of the year concerned—
    - (i) the amount of the turnover of the company does not exceed €7.3 million,
    - (ii) the balance sheet total of the company does not exceed €3.65 million,
    - (iii) the average number of persons employed by the company does not exceed 50;
  - (b) a failure to comply with the requirement of Part A6, Head 52 [equivalent of Section 127(1) of the Companies Act, 1963, as amended by Section 60 of the Company Law Enforcement Act, 2001 and Section 46 of the Companies (Auditing and Accounting) Act, 2003] as regards forwarding, to the Registrar, an annual return in respect of the company does not occur in the financial year concerned.
- (4) In this head "amount of turnover" and "balance sheet total" have the same meaning as they have in Part A6, Head 58 (qualification of company as small or medium sized) [equivalent of Section 8 of the 1986 Act].
- (5) For the purpose of Subhead (3)(a)(iii), the average number of persons employed by a company shall be determined by applying the method of calculation prescribed by Head 30 [equivalent of paragraph 42(4) of the Schedule to the Companies (Amendment) Act, 1986] for determining the number required by Subhead (1) of that head to be stated in a note to the financial statements of a company.
- (6) In the application of this head to any financial year which is not a period of twelve months the amount specified in Subhead (3)(a)(i) shall be proportionally adjusted.
- [(7) Each occasion of an amendment of the kind referred to in Subhead (8) being effected shall operate to enable the Minister to amend, by order, subparagraphs (i) and (ii) of Subhead (3)(a) by substituting for the amount and the total, respectively, specified in those provisions a greater amount and total (not being an amount or total that is greater than the amount or total it replaces by 25 per cent.).



- (8) The amendment referred to in Subhead (7) is an amendment of the total and the amount specified in paragraphs (a) and (b), respectively, of Part A6, Head 58(4) [equivalent of Section 8(2) of the Companies (Amendment) Act, 1986], being an amendment made for the purpose of giving effect to an Act adopted by an institution of the European Communities.
- (9) Notwithstanding that the conditions specified in Subhead (3) are satisfied, a company is not entitled to the exemption in a financial year if a notice, with respect to that year, is served, under and in accordance with Part A6, Head 45 (1) and (2) [equivalent of Sections 33(1) and (2) of the Companies (Amendment) (No. 2) Act, 1999], on the company.

### **Explanatory note**

*This head is a re-enactment of Section 32 of the Companies (Amendment) (No. 2) Act, 1999, as amended by Section 53 of the Companies (Auditing and Accounting) Act, 2003. All cross-references have been updated in accordance with the new structure of the Bill and references to the registrar of companies have been replaced by references to the "Registrar". Subsection (3)(a)(i) has not been included. This required the company to be a company to which the Companies (Amendment) Act, 1986 applied. Thus it had to be a company that is not trading for the acquisition of gain by the members, to which [equivalent of Subsection (4) (c) of Section 128 of the Companies Act, 1963] applies or in respect of which there is in force an order under [equivalent of Subsection (5) of Section 128 of the Companies Act, 1963]. This subsection will be included in Pillar B. QUERY It is necessary to ensure that the list of references in (2)(b) above is complete. It is also necessary to consider this list specifically in the context of other types of companies and whether there are additional references that should be included for undertakings under the 1993 Regulations or plcs. Subsection (3)(a) has also been further amended in respect of the figures. The turnover figure in (3)(a) have been amended by Section 9(1) of the Investment Funds, Companies and Miscellaneous Provisions Act 2006.*

*The subsections dealing with power of Minister to amend should probably be more appropriately included with the section on other powers of Minister. Subhead (9) implements Section 32B of the Companies (Amendment) (No. 2) Act, 1999, as inserted by Section 9(1) of the Investment Funds, Companies and Miscellaneous Provisions Act, 2006.*

---

## **Head 67 Exemption from audit: Companies excluded**

---

A company cannot avail of the audit exemption if it is—

- (a) a holding company or a subsidiary company (within the meaning of Part A1 of this Bill);
- (b) a credit institution;
- (c) an Insurance Undertaking;
- (d) a company referred to in the Schedule to Part A10 (other than paragraph 18 thereof).

### **Explanatory note**

*Restatement of Section 32 (3)(a)(v) of the Companies (Amendment)(No. 2) Act, 1999.*

*Subparagraph (3)(a)(v)(iv) has also been moved to Pillar B. The text of that subparagraph reads: "a company referred to in the Schedule to Part A10 [equivalent of the Second Schedule of the Companies (Amendment) (No.2) Act, 1999] (other than paragraph 18 thereof)."*

*This now refers to all 'credit institutions' and perhaps it needs to be considered whether or not there should be excluded other regulated entities such as Investment Intermediary Act companies, etc.*

---

## **Head 68 Exemption from audit: Timely filing of annual return**

---

Notwithstanding that the conditions specified in Part A6, Head 66 [equivalent of Section 32(3) of the Companies (Amendment) (No.2) Act, 1999] are satisfied, a company is not entitled to the exemption in a financial year unless –

- (a) the company's annual return to which the statutory financial statements for that financial year are annexed is delivered to the Registrar in compliance with Part A6, Head 52 [equivalent of Section 127 of the Companies Act, 1963]; and

## Part A6 - Financial statements, Annual Return and Audit

---

- (b) if the annual return referred to in paragraph (a) is not the company's first annual return, its annual return to which the statutory financial statements for its preceding financial year were annexed was also delivered to the Registrar in compliance with Part A6, Head 52 [equivalent of Section 127 of the Companies Act, 1963.]

**Explanatory note**

*This head is a slightly amended re-enactment of Section 32A of the Companies (Amendment) (No. 2) Act, 1999, as inserted by Section 53 of the Companies (Auditing and Accounting) Act, 2003. All cross-references have been updated in accordance with the new structure of the Bill and references to the registrar of companies have been replaced by references to the "Registrar".*

# Chapter 15

## Revision of defective statutory financial statements

### Head 69 Voluntary revision of defective statutory financial statements

- (1) If it appears to the directors of a company that any statutory financial statements of the company, or any directors' report, did not comply with the requirements of this Bill or, where applicable, of Article 4 of the IAS Regulation, they may prepare revised financial statements or a revised directors' report.
- (2) Where copies of the original statutory financial statements or original directors' report have been laid before the company in general meeting or delivered to the Registrar, the revisions shall be confined to -
  - (a) the correction of those respects in which the original statutory financial statements or original directors' report did not comply with the requirements of this Bill or, where applicable, of Article 4 of the IAS Regulation); and
  - (b) the making of any necessary consequential alterations.
- (3) Where the reason for the revision of the statutory financial statements is—
  - (a) that information that should have been included by way of note to the financial statements was not so included; or
  - (b) information provided in a note to the financial statements was incorrect or incomplete,

but the amounts and presentation of the profit and loss account, balance sheet or other statements required by the financial reporting framework are not impacted, the revision may be by supplementary note; in all other cases, revised financial statements shall be prepared.

- (4) Where the reason for the revision of the directors' report is—
  - (a) that information that should have been included in the report was not so included; or

- (b) information provided in the report was incorrect or incomplete,

but the additional information does not impact on other information included in the report, the revision may be by supplementary note; in all other cases, a revised directors' report shall be prepared.

- (5) Where the statutory financial statements for any financial year are revised, the next statutory financial statements prepared after the date of revision shall refer to the fact that a previous set of financial statements were revised and provide particulars of the revision, its effect and the reasons therefore in a note to the financial statements.

#### **Explanatory note**

*This whole chapter is setting out the rules that apply to the voluntary revision of financial statements.*

*This process has been missing in our law to date and consequently, where a set of statutory financial statements had already been filed and it came to the attention of the directors that they were deficient in some respects, there was no procedure to govern their revision.*

*Subheads (3) and (4) specify when revision may be by supplementary note.*

### Head 70 Content of revised financial statements or revised report

- (1) Subject to Head 82(1), the provisions of this Bill as to the matters to be included in the statutory financial statements of a company shall apply to revised financial statements as if the revised financial statements were prepared and approved by the directors as at the date of the original statutory financial statements.
- (2) In particular, Head 11 shall apply so as to require a true and fair view to be shown in the revised financial statements of the matters therein referred to viewed as at the date of the original statutory financial statements.
- (3) In the case of Companies Act financial statements, paragraph 13(b) of the First Schedule to the Bill shall apply to revised financial statements as if the reference therein to the date on which the financial statements were signed was to the date the original statutory financial statements were signed.

- (4) The provisions of the Bill as to the matters to be included in a directors' report apply to a revised report as if the revised report was prepared and approved by the directors of the company as at the date of the original directors' report.

---

### Head 71 Approval and signature of revised financial statements

---

- (1) Head 36 (approval and signing of statutory financial statements) shall apply to revised financial statements, save that in the case of a revision by supplementary note, it shall apply as if it required a signature on the supplementary note instead of on the balance sheets.

- (2) Where copies of the original statutory financial statements have been sent out to members under Head 48, laid before the members in general meeting under Head 51 or delivered to the Registrar under Head 55, the directors shall, before approving the revised financial statements under Head 36, cause statements as to the following matters to be made in a prominent position in the revised financial statements, or in the case of a revision by supplementary note, in that note—

- (a) in the case of a revision by replacement—

- (i) that the replacement financial statements are clearly identified as being revised financial statements,
- (ii) that the revised financial statements replace the original statutory financial statements for the financial year, specifying it,
- (iii) that they are now the statutory financial statements of the company for that financial year,
- (iv) that they have been prepared as at the date of the original financial statements and not as at the date of the revision and, accordingly, do not deal with events and transactions between those dates,
- (v) the respects in which the original statutory financial statements did not comply with the requirements of this Bill, and

- (vi) any significant amendments made consequential upon the remedying of those defects;

- (b) in the case of revision by supplementary note—

- (i) that the note revises in certain respects the original statutory financial statements of the company and is to be treated as forming part of those original statutory financial statements, and

- (ii) that the statutory financial statements have been revised as at the date of the original statutory financial statements and not as at the date of the revision and, accordingly, do not deal with events and transactions between those dates,

and shall, when approving the revised financial statements, cause the date on which the approval is given to be stated in them (or in the case of revision by supplementary note, in that note) and Head 36, Subheads (6), (7) and (8) shall apply with respect to a failure to comply with this head as if the requirements of this head were requirements of that head.

---

### Head 72 Approval and signature of revised directors' report

---

- (1) Head 43 (approval and signing of directors' report) shall apply to a revised directors' report, save that in the case of a revision by supplementary note, it shall apply as if it required a signature on the supplementary note instead of on the report.

- (2) Where copies of the original directors' report have been sent out to members under Head 48, laid before the members in general meeting under Head 51 or delivered to the Registrar under Head 55, the directors shall, before approving the revised directors' report under Head 43, cause statements as to the following matters to be made in a prominent position in the revised directors' report or in the case of a revision by supplementary note, in that note—

- (a) in the case of a revision by replacement—

- (i) that the revised directors' report replaces the original directors' report for the financial year, specifying it,

- (ii) that it has been prepared as at the date of the original directors' report and not as at the date of the revision and, accordingly, does not deal with events and transactions between those dates,
  - (iii) the respects in which the original directors' report did not comply with the requirements of this Bill, and
  - (iv) any significant amendments made consequential upon the remedying of those defects;
- (b) in the case of revision by supplementary note—
- (i) that the note revises in certain respects the original directors' report of the company and is to be treated as forming part of that original directors' report, and
  - (ii) that the directors' report has been revised as at the date of the original directors' report and not as at the date of the revision and accordingly does not deal with events and transactions between those dates,
- (2) Where the independent auditors' report on the original statutory financial statements was not made by the company's current independent auditors, the directors of the company may resolve that the report required by Subhead (1) is to be made by the person or persons who made that report, provided that that person or those persons agree to do so and (s)he or they would be qualified for appointment as independent auditors of the company.
- (3)
- (a) Subject to Head 82(1), an independent auditors' report under this head shall state whether in the independent auditor's opinion the revised financial statements have been properly prepared in accordance with the provisions of this Bill and the relevant financial reporting framework and, in particular, whether a true and fair view as at the date the original statutory financial statements were approved by the directors is given by the revised financial statements with respect to the matters set out in Head 46;
  - (b) The report shall also state whether in the independent auditors' opinion the original statutory financial statements failed to comply with the requirements of the Bill in the respects identified by the directors (in case of revision by replacement) in the statement required by Head 71(2)(a) or (in case of revision by supplementary note) in the supplementary note.

and shall, when approving the revised directors' report, cause the date on which the approval is given to be stated in them (or in the case of revision by supplementary note, in that note) and Head 43, Subheads (4) and (5) shall apply with respect to a failure to comply with this head as if the requirements of this head were requirements of that head.

---

### **Head 73 Independent auditors' report on revised financial statements and revised report**

---

- (1) Subject to Head 74 and subject to the next subhead, a company's current independent auditors shall make a report or, as the case may be, a further report under Head 92 in the form required by Head 46 to the company's members under this head on revised financial statements prepared under Head 71 and Head 93 (assessment of accounting records) and Head 94 (reporting of offences) shall apply *mutatis mutandis*.
- (2) The independent auditors shall also consider whether the information contained in the directors' report for the financial year for which the revised financial statements are prepared (which is, if the report has been revised under this Chapter, the revised directors' report) is consistent with those financial statements; and if they are of the opinion that it is not they shall state that fact in their report under this head.
- (3) Head 47 (signature of independent auditors' report) shall apply to an independent auditors' report under this head as it applies to an independent auditors' report under Head 46 *mutatis mutandis*.
- (4) An independent auditors' report under this head shall, upon being signed under Head 47 as so applied, be, as from the date of signature, the independent auditors' report on the statutory financial statements of the company in place of the report on the original statutory financial statements.



---

### Head 74 Company has availed of exemption from audit

---

- (1) Head 73 does not apply to a company that qualifies for the exemption from audit under Head 66 unless the further subheads of this head apply.
- (2) Where as a result of the revisions to the statutory financial statements a company which, in respect of the original statutory financial statements, was exempt from audit by virtue of Head 66, becomes a company which is no longer entitled to the exemption from audit under Head 66, the company shall cause an independent auditors' report on the revised financial statements to be prepared.
- (3) The report made in accordance with Subhead (2) shall be delivered to the Registrar within 2 months of the date of the revision of the revised financial statements.

---

### Head 75 Independent auditors' report on revised directors' report alone

---

- (1) Subject to the next subhead, a company's current independent auditors shall make a report or, as the case may be, a further report in the form required by Head 46 to the company's members on any revised directors' report prepared under Head 72 if the relevant statutory financial statements have not been revised at the same time.
- (2) Where the independent auditors' report on the original statutory financial statements was not made by the company's current independent auditors, the directors of the company may resolve that the report required by Subhead (1) is to be made by the person or persons who made that report, provided that that person or those persons agree to do so and (s)he or they would be qualified for appointment as independent auditors of the company.
- (3) The report shall state that the independent auditors have considered whether the information given in the revised report is consistent with the original statutory financial statements for the relevant year (specifying it) and –

- (a) if they are of the opinion that it is; or
- (b) if they are of the opinion that it is not, they shall state that fact in their report.

- (4) Head 47 (signing of auditors' report) shall apply to an auditors' report under this head as it applies to the auditors' report under Head 46(1) mutatis mutandis.

---

### Head 76 Effect of revision

---

- (1) Upon the directors approving revised financial statements under Head 71, the provisions of this Bill shall have effect as if the revised financial statements were, as from the date of their approval, the statutory financial statements of the company in place of the original statutory financial statements.
- (2) In particular, the revised financial statements shall thereupon be the company's statutory financial statements for the relevant financial year for the purposes of –
  - (a) Head 49 (right to demand copies of financial statements and reports) and Head 50 (requirements in relation to publication of financial statements); and
  - (b) Head 48 (circulation of statutory financial statements), Head 51 (financial statements and reports to be laid before the members in general meeting) and Head 55 (Documents to be annexed to annual return: all companies) if the requirements of those heads have not been complied with prior of the date of revision.
- (3) Upon the directors approving a revised report under Head 72 the provision of this Bill shall have effect as if the revised report was, as from the date of its approval, the directors' report in place of the original directors' report.
- (4) In particular, the revised report shall thereupon be the directors' report for the relevant financial year for the purposes of –
  - (a) Head 49 (right of members to demand copies of financial statements and reports); and

- (b) Head 48 (circulation of statutory financial statements), Head 51 (financial statements and reports to be laid before the members in general meeting) and Head 55 (Documents to be annexed to annual return; all companies) if the requirements of those heads have not been complied with prior to the date of revision.

---

### **Head 77 Publication of revised financial statements and reports**

---

- (1) This head has effect where the directors have prepared revised financial statements or a revised report under Head 69 and copies of the original statutory financial statements or original directors' report have been sent to any person under Head 48.
- (2) The directors shall send to any such person—
- (a) in the case of a revision by replacement, a copy of the revised financial statements, or (as the case may be) the revised report, together with a copy of the independent auditors' report on those financial statements, or (as the case may be) on that report; or
  - (b) in the case of revision by supplementary note, a copy of that note together with a copy of the independent auditors' report on the revised financial statements, or (as the case may be) on the revised report,

not more than 28 days after the date of revision.

- (3) The directors shall also, not more than 28 days after the revision, send a copy of the revised financial statements or (as the case may be) the revised report, together with a copy of the independent auditors' report on those financial statements or (as the case may be) on that report, to any person who is not a person entitled to receive a copy under the last paragraph but who is, as at the date of revision—
- (a) a member of the company;
  - (b) a holder of the company's debentures; or
  - (c) a person who is entitled to receive notice of general meeting.

- (4) Head 48 (10) shall apply to a default in complying with this head as if the provisions of this head were provisions of Head 48 and as if the reference therein to "the company and every officer of it who is in default" was a reference to each of the directors who approved the revised financial statements under Head 71 above or revised report under Head 72 above.
- (5) While prior to the date of revision of the original statutory financial statements, the company had completed sending out copies of those financial statements under Head 48, references in the Bill to the day on which financial statements are sent out under Head 48 shall be construed as referring to the day on which the original financial statements were sent out (applying Head 48 (9) as necessary) notwithstanding that those financial statements have been revised; where the company had not completed, prior to the date of revision, the sending out of copies of those financial statements under that head, such references shall be to the day, or the last day, on which the revised financial statements are sent out.

---

### **Head 78 Laying of revised financial statements or a revised report**

---

- (1) This head has effect where the directors have prepared revised financial statements or a revised report under Head 69 and copies of the original statutory financial statements or report have been laid before a general meeting under Head 51.
- (2) A copy of the revised financial statements or (as the case may be) the revised report, together with a copy of the independent auditors' report on those financial statements, or (as the case may be) on that report, shall be laid before the next general meeting of the company held after the date of revision at which any statutory financial statements for a financial year are laid, unless the revised financial statements, or (as the case may be) the revised report, have already been laid before an earlier general meeting.

---

### Head 79 Delivery of revised financial statements or a revised report

---

- (1) This head has effect where the directors have prepared revised financial statements or a revised report under Head 69 and a copy of the original statutory financial statements or report has been delivered to the registrar under Head 55.
- (2) The directors of the company shall, within 28 days of the date of revision, deliver to the Registrar—
  - (a) in the case of a revision by replacement, a copy of the revised financial statements or (as the case may be) the revised report, together with a copy of the independent auditors' report on those financial statements or (as the case may be) on that report; or
  - (b) in the case of a revision by supplementary note, a copy of that note, together with a copy of the independent auditors' report on the revised financial statements or (as the case may be) on the revised report.
- (3) If a company fails to comply with Subhead (2), the company and every officer of the company who is in default shall be guilty of a category 3 offence.
- (4) In Subhead (3) "officer" includes any shadow director or de facto director as defined in Part A5.

---

### Head 80 Small and medium companies

---

- (1) This head has effect (subject to Head 82 (2)) where the directors have prepared revised financial statements under Head 71 and the company has, prior to the date of revision, delivered to the Registrar abridged financial statements which take advantage of the exemptions for a small or medium company conferred by Head 60.

- (2) Where the abridged financial statements so delivered to the Registrar would, if they have been prepared by reference to the revised financial statements, not comply with the provisions of the Bill (whether because the company would not have qualified as a small or (as the case may be) medium company in the light of the revised financial statements or because the financial statements have been revised in a manner which affects the content of the abridged financial statements), the directors of the company shall cause the company either –
  - (a) to deliver to the Registrar a copy of the revised financial statements, together with a copy of the directors' report and the independent auditors' report on the revised financial statements; or
  - (b) if on the basis of the revised financial statements they would be entitled under Head 56 to do so, to prepare revised abridged financial statements under Heads 61 or 62 as appropriate and deliver them to the Registrar together with a statement as to the effect of the revisions made.
- (3) Where the abridged financial statements would, if they had been prepared by reference to the revised financial statements, comply with the requirements of the Bill, the directors of the company shall cause the company to deliver to the Registrar –
  - (a) a note stating that the statutory financial statements of the company of the relevant financial year (specifying it) have been revised in a respect which has no bearing on the abridged financial statements delivered for that year; together with
  - (b) a report from the independent auditors setting out their report on the revised financial statements.
- (4) Revised abridged financial statements or a note under Subhead (3) shall be delivered to the Registrar within 28 days after the date of revision of the revised financial statements.
- (5) If a company fails to comply with Subhead (2), the company and every officer of the company who is in default shall be guilty of a category 3 offence.
- (6) In Subhead (5) "officer" includes any shadow director or de facto director as defined in Part A5.

### **Head 81 Companies exempt from audit by virtue of Head 66**

---

Where based on the revised financial statements a company is exempt by virtue of Head 66 from the requirement to have financial statements audited, this Chapter shall have effect as if any reference to an independent auditors' report, or to the making of such a report, were omitted.

### **Head 82 Modifications of Bill**

---

- (1) Where the provisions of the Bill as to the matters to be included in the statutory financial statements of a company or (as the case may be) in a directors' report have been amended after the date of the original statutory financial statements or (as the case may be) directors' report but prior to the date of revision, references in Heads 70 and 73 (3) above to the provisions of the Bill shall be construed as references to the provisions of the Bill as in force at the date of the original statutory financial statements or (as the case may be) directors' report.
- (2) Where the provisions of Heads 61 and 62 as to the matters to be included in abridged financial statements have been amended after the date of delivery of the original abridged financial statements but prior to the date of revision of the revised financial statements or report, references in Head 80 to the provisions of the Bill or to any particular provision thereof shall be construed as references to the provisions of the Bill, or to the particular provision, as in force at the date of the delivery of the original abridged financial statements.

## Chapter 16

### Appointment of independent auditors

#### Head 83 Appointment of independent auditors: General

- (1) Independent auditors must be appointed in accordance with Heads 84 and 85 for each financial year of the company, unless the directors reasonably resolve that the company is entitled to and intends to avail of the audit exemption under Part A6, Head 66 [equivalent of Section 32 of the Companies (Amendment) (No. 2) Act, 1999].
- (2) Subject to the qualification requirements of Chapter 19, the independent auditors may be either one or more individuals or one or more firms.
- (3) The appointment of a firm by its firm name to be the independent auditors of a company shall be deemed to be an appointment of those persons who shall from time to time during the currency of the appointment be the partners in that firm as from time to time constituted and who are qualified to be independent auditors of that company.
- (4) The remuneration of the independent auditors—
  - (a) Where they are appointed by the directors in accordance with Head 84, shall be agreed with the directors;
  - (b) Where their appointment is approved by the members in accordance with Head 85, shall be fixed by the members at the annual general meeting and thereafter at each subsequent annual general meeting during which they hold the office or may be fixed by the members in such other manner as they may from time to time resolve;
  - (c) Where their appointment is by the Minister / Director of Corporate Enforcement as a result of Head 86, may be fixed by the directors or by the Minister / Director of Corporate Enforcement as the case may be.

#### Explanatory note

*This head proposes that there be a general requirement to appoint independent auditors to a company for each financial year. This was already there in essence in Section 160(1) of the 1963 Act. Subhead (2) above has been made subject to the qualification requirements set out in Chapter 19 and Subhead (3) is a re-enactment of Subsection (9) of Section 160 of the 1963 Act. Subhead (4) is an amended re-enactment of Subsection (8) of Section 160 of the 1963 Act.*

#### Head 84 Appointment of independent auditors: By directors

- (1) Except for such periods as a company is entitled to and avails of an audit exemption under Part A6, Head 66 [equivalent of Section 32 of the Companies (Amendment) (No. 2) Act, 1999], the first independent auditors of a company shall be appointed by the directors at any time before the first annual general meeting.
- (2) Except for such periods as a company is entitled to and avails of an audit exemption under Part A6, Head 66 [equivalent of Section 32 of the Companies (Amendment) (No. 2) Act, 1999], where any casual vacancy in the office of independent auditors arises, it shall be the duty of the directors to appoint independent auditors to the company as soon as may be after that vacancy has arisen.
- (3) Whenever by reason of—
  - (a) circumstances referred to in Part A6, Head 66 (1) (ii) [equivalent of Section 32 (1)(ii) of the Companies (Amendment) (No. 2) Act, 1999] arising in the financial year concerned the exemption ceases to have effect in relation to a company in respect of that year; or
  - (b) circumstances otherwise arising, a company is not entitled to the exemption in respect of the financial year concerned, it shall be the duty of the directors of the company to appoint an auditor of the company as soon as may be after those circumstances arise and such an appointment may be made by the directors notwithstanding the provisions of Part A6, Heads 83 to 86 [equivalent of Section 160 of the Companies Act, 1963].



## Part A6 - Financial statements, Annual Return and Audit

---

- (4) Independent auditors appointed pursuant to Subheads (1), (2) or (3) shall hold office until the conclusion of the next meeting of the company held after their appointment at which statutory financial statements are required to be laid so however that—
- (a) the members of the company may at any general meeting remove any such independent auditors and appoint in their place any other person (or persons) who have been nominated for appointment by any member of the company and of whose nomination notice has been given to the members of the company not less than 14 days before the date of the meeting; and
  - (b) if the directors fail to exercise their powers under this head the members of the company in general meeting may appoint independent auditors and thereupon the said powers of the directors shall cease.
- (2) Independent auditors appointed by the members pursuant to Subhead (1) shall continue to hold office from the conclusion of that meeting until the conclusion of the next annual general meeting and thereafter until the conclusion of each successive annual general meeting, unless —
- (a) they have given the company notice in writing of their unwillingness to be re-appointed;
  - (b) they are not qualified for re-appointment;
  - (c) a resolution has been passed at a general meeting appointing somebody instead of them or providing expressly that they shall not be re-appointed and that someone shall be appointed in their stead; or
  - (d) the company becomes eligible to avail of the exemption from audit in Head 66 and consequently has terminated the appointment of the independent auditors in accordance with Head 97.
- (3) Where notice is given of an intended resolution at a general meeting to appoint some other person or persons in place of retiring independent auditors and by reason of the death, incapacity or disqualification of that person or of all those persons as the case may be the resolution cannot be proceeded with, the appointment of the retiring independent auditors shall in any event cease on that date unless a resolution reappointing them is passed at that meeting and the retiring independent auditors express their willingness to be reappointed.

### **Explanatory note**

*Subhead (1) is a restatement of Section 160(6) of the Companies Act, 1963.*

*Subhead (2) is a slightly amended re-enactment of Section 35 of the Companies (Amendment)(No. 2) Act, 1999.*

*Subhead (3) deals with casual vacancies previously dealt with in Section 160 of Companies Act, 1963.*

*Section (4) empowers members to change appointment by directors – this power was previously in section 160(6) of the Companies Act, 1963 in relation to first auditors now extended to all appointments by directors.*

*All cross-references have been updated in accordance with the new structure of the Bill.*

---

## **Head 85 Appointment of independent auditors: By members of the company**

---

- (1) Where independent auditors are appointed by the directors in accordance with Head 84 of Part A6, the members of the company shall, at the next meeting of the company held after their appointment at which statutory financial statements are required to be laid, resolve either —
- (a) to approve the appointment of the independent auditors; or
  - (b) to appoint in their place other independent auditors.

### **Explanatory note**

*This head is an amended re-enactment of Section 160(2) and (3) of the Companies Act, 1963, as amended by Section 183 of the Companies Act, 1990 and including a subsection dealing with the audit exemption.*

*Subhead (2) is to provide for the continuing appointment of independent auditors at the annual general meeting of a company and cater for the situation where an AGM is not held as per Part A4, Head 46(3).*

*N.B - Extended notice, as defined in Part A6, Head 96(2), is required for a resolution filling a casual vacancy in the office of independent auditors see Section 161(1) of the Companies Act, 1963 and Section 142 of the Companies Act, 1963.*

### **Head 86 Appointment of independent auditors: Failure to appoint**

---

- (1) Where at an annual general meeting no independent auditors are appointed by the members and the company is not entitled to avail of the exemption from audit set out in Head 66 of Part A6, the Minister / Director of Corporate Enforcement may appoint a person to fill the position of independent auditors.
- (2)
- (a) A company shall—
- (i) within one week of the Minister / Director of Corporate Enforcement's power under Subhead (1) becoming exercisable, give the Minister / Director of Corporate Enforcement notice of that fact, and
- (ii) where a resolution removing the independent auditors is passed, give notice of that fact in the prescribed form to the Registrar within 14 days of the meeting at which the resolution removing the independent auditors was passed;
- (b) If a company fails to give notice as required by paragraph (a) of this subhead, the company and every officer of the company who is in default shall be guilty of a category 3 offence.

#### **Explanatory note**

*Restatement of Section 160(4) and (5A) of the Companies Act, 1963.*

*Subsection 6(b) has been amended insofar as the phrase "...shall be guilty of an offence and liable on summary conviction to a fine not exceeding £1000" has been replaced by the phrase "...shall be guilty of an offence and liable to a fine", the amount of which shall be prescribed at a later stage.*

*All cross-references have been updated in accordance with the new structure of the Bill and all references to the "Minister" have been replaced by references to the "Director of Corporate Enforcement".*

## Chapter 17

Rights, obligations and duties of independent auditors

### Head 87 Right of access to accounting records

Independent auditors of a company shall have a right of access at all reasonable times to the accounting records of the company.

**Explanatory note**

*Revision of Section 193(3) of the Companies Act, 1990.*

### Head 88 Right to information and explanations concerning company

- (1) Independent auditors of a company shall be entitled to require from the officers of the company such information and explanations that are within their knowledge or can be procured by them as the independent auditors think necessary for the performance of their duties.
- (2) An officer of a company who fails to provide to the independent auditors of the company or of the holding company of the company, within two days of the making of the relevant requirement, any information or explanations that the independent auditors require as independent auditors of the company or of the holding company of the company and that is within the knowledge of or can be procured by the officer shall be guilty of a category 2 offence.
- (3) In a prosecution for an offence under this head, it shall be a defence for the defendant to show that it was not reasonably possible for him to comply with the requirement under Subhead (2) to which the offence relates within the time specified in that subhead but that he complied therewith as soon as was reasonably possible after the expiration of such time.
- (4) In this head “officer”, in relation to a company, includes any employee of the company and any shadow director or de facto director as defined in Part A5.

**Explanatory note**

*Revision of Section 193(3) of the Companies Act, 1990  
Re-statement of Sections 197(3), (4) and (5) of the Companies Act, 1990.*

### Head 89 Right to information and explanations concerning subsidiary undertakings

- (1) Where a company (referred to in this head as “the holding company”) has a subsidiary undertaking, then—
  - (a) where the subsidiary undertaking is an undertaking registered in the State, it shall be the duty of the subsidiary undertaking and its independent auditors to give to the independent auditors of the holding company such information and explanations as those independent auditors may reasonably require for the purposes of their duties as independent auditors of the holding company;
  - (b) in any other case, it shall be the duty of the holding company, if required by its independent auditors to do so, to take all such steps as are reasonably open to it to obtain from the subsidiary such information and explanations as aforesaid.
- (2) If a company or an independent auditor fails to comply with Subhead (1) within five days of the making of the relevant requirement under that subhead, the company and every officer thereof who is in default, or the independent auditor, as the case may be, shall be guilty of a category 2 offence.
- (3) In a prosecution for an offence under this head, it shall be a defence for the defendant to show that it was not reasonably possible for him to comply with the requirement under Subhead (1) to which the offence relates within the time specified in Subhead (2) but that he complied therewith as soon as was reasonably possible after the expiration of such time.
- (4) In Subhead (2) “officer” includes any shadow director or de facto director as defined in Part A5.

**Explanatory note**

*This head is a re-enactment of Section 196 of the Companies Act, 1990.*

---

### Head 90 Penalty for false statements to independent auditors

---

- (1) An officer of a company who knowingly or recklessly makes a statement to which this head applies that is misleading, false or deceptive in a material particular shall be guilty of a category 2 offence.
- (2) This head applies to any statement made to the independent auditors of a company (whether orally or in writing) which conveys, or purports to convey, any information or explanation which they require under this Bill, or are entitled so to require, as independent auditors of the company.
- (3) In this head “officer”, in relation to a company, includes any employee of the company and any shadow director or de facto director as defined in Part A5.

#### **Explanatory note**

*Restatement of Section 197 of the Companies Act, 1990.*

---

### Head 91 Obligation to act with professional integrity

---

A person who is appointed as independent auditors of a company shall be under a general duty to carry out such audit services with professional integrity.

#### **Explanatory note**

*Restatement of Section 193(6) of the Companies Act, 1990.*

*Reference to ‘public auditor’, removed from this head as “public auditor” refers to a society rather than a company in scope of Part A. However, this means that the Companies Act will no longer contain the requirement above for a society.*

---

### Head 92 Independent auditors’ report on statutory financial statements

---

The independent auditors of a company shall make a report to the members on all statutory financial statements laid before the members during their tenure of office in the form set out in Head 46.

#### **Explanatory note**

*Revision of Section 193(2) of the Companies Act, 1990.*

---

### Head 93 Report to Registrar and to Director of Corporate Enforcement: Accounting records

---

- (1) If, at any time, the independent auditors of a company form the opinion that the company is contravening, or has contravened, Part A6, Heads 5 to 9 [equivalent of Section 202 of the Companies Act, 1990] by failing to keep accounting records that are in accordance with the requirements of those heads, the independent auditors shall—
  - (a) as soon as may be, by recorded delivery, serve a notice in writing on the company stating their opinion; and
  - (b) not later than 7 days after the service of such notice on the company, notify the Registrar in the prescribed form of the notice and the Registrar shall forthwith forward a copy of the notice to the Director of Corporate Enforcement.
- (2) Where the independent auditors form the opinion that the company has contravened Part A6, Heads 5 to 9 [equivalent of Section 202 of the Companies Act, 1990] but that, following such contravention, the directors of the company have taken the necessary steps to ensure that the accounting records are kept in accordance with those heads, Subhead (1)(b) shall not apply.
- (3) This head shall not require the independent auditors to make the notifications referred to in Subhead (1) if they are of the opinion that the contraventions concerned are minor or otherwise immaterial in nature.
- (4) Where the independent auditors of a company file a notice pursuant to Subhead (1)(b), they shall, if requested by the Director of Corporate Enforcement –
  - (a) furnish to the Director of Corporate Enforcement such information, including an explanation of the reasons for their opinion that the company had contravened Part A6, Heads 5 to 9 [equivalent of Section 202 of the Companies Act, 1990]; and

- (b) give to the Director of Corporate Enforcement such access to documents, including facilities for inspecting and taking copies, being information or documents in their possession or control and relating to the matter the subject of the notice, as the Director of Corporate Enforcement may require.
- (5) Any written information given in response to a request of the Director of Corporate Enforcement under Subhead (4) shall in all legal proceedings be admissible without further proof, until the contrary is shown, as evidence of the facts stated therein.
- (6) No professional or legal duty to which independent auditors are subject by virtue of their appointment as independent auditors of a company shall be regarded as contravened by, and no liability to the company, its shareholders, creditors or other interested parties shall attach to, independent auditors, by reason of their compliance with an obligation imposed on them by or under this head.
- (7) Nothing in this head compels the disclosure by any person of any information that the person would be entitled to refuse to produce on the grounds of legal professional privilege or authorises the inspection or copying of any document containing such information that is in the person's possession.
- (8) A person who contravenes this head is guilty of a category 3 offence.

### **Explanatory note**

*Restatement of Section 194(1)-(5) and (8)-(10) of the Companies Act, 1990 as amended by Section 74 of the Company Law Enforcement Act, 2001 and Section 37 of the Companies (Auditing and Accounting) Act, 2003.*

---

## **Head 94 Report to Registrar and Director of Corporate Enforcement: Category 1 and 2 Offences under the Companies Act**

---

- (1) Where, in the course of, and by virtue of, their carrying out an audit of the financial statements of the company, information comes into the possession of the independent auditors of a company that leads them to form the opinion that there are reasonable grounds for believing that the company or an officer or agent of it has committed a category 1 or 2 offence under this Bill, the independent auditors shall, forthwith after having formed it, notify that opinion to the Director of Corporate Enforcement and provide the Director of Corporate Enforcement with details of the grounds on which they have formed that opinion.
- (2) Where the independent auditors of a company notify the Director of Corporate Enforcement of any matter pursuant to Subhead (1), they shall, in addition to performing their obligations under that subsection, if requested by the Director of Corporate Enforcement—
  - (a) furnish the Director of Corporate Enforcement with such further information in their possession or control relating to the matter as the Director of Corporate Enforcement may require, including further information relating to the details of the grounds on which they formed the opinion referred to in that subhead;
  - (b) give the Director of Corporate Enforcement such access to books and documents in their possession or control relating to the matter as the Director of Corporate Enforcement may require; and
  - (c) give the Director of Corporate Enforcement such access to facilities for the taking of copies of or extracts from those books and documents as the Director of Corporate Enforcement may require.
- (3) Any written information given in response to a request of the Director of Corporate Enforcement under Subhead (2) shall, in all legal proceedings, be admissible without further proof, until the contrary is shown, as evidence of the facts stated therein.



- (4) No professional or legal duty to which independent auditors are subject by virtue of their appointment as independent auditors of a company shall be regarded as contravened by, and no liability to the company, its shareholders, creditors or other interested parties shall attach to, independent auditors, by reason of their compliance with an obligation imposed on them by or under this head.
- (5) Nothing in this head compels the disclosure by any person of any information that the person would be entitled to refuse to produce on the grounds of legal professional privilege or authorises the inspection or copying of any document containing such information that is in the person's possession.
- (6) A person who contravenes Subheads (1) or (2) is guilty of a category 3 offence.

**Explanatory note**

*Restatement of Sections 194(4) to (6) of the Companies Act, 1990 as amended by Section 74 of the Company Law Enforcement Act, 2001 and Section 37 of the Companies (Auditing and Accounting) Act, 2003.*

## Chapter 18

### Removal and resignation of independent auditors

#### Head 95 Removal of independent auditors: General

- (1) Extended notice shall be required for –
  - (a) a resolution at an annual general meeting of a company appointing as independent auditors any persons other than incumbent independent auditors or providing expressly that incumbent independent auditors shall not be re-appointed; and
  - (b) a resolution at a general meeting of a company removing independent auditors from office.
- (2) For the purpose of this head extended notice shall require –
  - (a) the company must be given not less than 28 days' notice of the intention to move any such resolutions; and
  - (b) on receipt of notice of such an intended resolution, the company shall forthwith—
    - (i) send a copy thereof to the incumbent independent auditors, and
    - (ii) 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 thereof, either by advertisement in a daily newspaper circulating in the district in which the registered office of the company is situate or in any other mode allowed by this Bill or by the constitution, not less than 21 days before the meeting.
- (3) 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 paragraph (2) shall be deemed to have been properly given for the purposes of that subhead.

#### Explanatory note

*This head is an amendment re-enactment of Section 161(1) of the Companies Act, 1963, as amended by Section 184 of the Companies Act, 1990. All cross-references have been updated in accordance with the new structure of the Bill.*

*Paragraph (1)(c) has been deleted as was already provided for within Head 84 and Head 85.*

*The definition of extended notice has been imported from Section 142 of the Companies Act, 1963 and this replaces Section 161(2) of the Companies Act, 1963.*

#### Head 96 Removal of independent auditors: independent auditors' right to get notice of, attend and be heard at general meeting

- (1) Independent auditors of a company who have been removed shall be entitled to attend—
  - (a) the next annual general meeting of the company after his removal; and
  - (b) the general meeting of the company at which it is proposed to fill the vacancy occasioned by their removal,and to receive all notices of, and other communications relating to, any such meeting which a member of the company is entitled to receive and to be heard at any general meeting that such a member attends on any part of the business of the meeting which concerns them as former independent auditors of the company.
- (2) Subject to Subhead (4) where notice is given of such an intended resolution as aforesaid and the incumbent independent auditors make, in relation to the intended resolution, representations in writing to the company (not exceeding a reasonable length) and request their notification to be sent to 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),

and if a copy of the representations is not sent as aforesaid because received too late or because of the company's default the independent auditors may (without prejudice to his right to be heard orally) require that the representations shall be read out at the meeting.

- (3) Copies of the representations need not be sent out as aforesaid and the representations need not be read out at the meeting as aforesaid 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 head are being abused to secure needless publicity for defamatory matter and the court may order the company's costs on an application under this head to be paid in whole or in part by the independent auditors notwithstanding that they are not a party to the application.
- (4) Subheads (2) and (3) shall apply to a resolution to remove any independent auditors, including a resolution to remove an auditor other than the first auditor before the expiration of his term of office, by virtue of Part A6 Head 95 (1)(b) [equivalent of Section 161 of the Companies Act, 1963] as they apply in relation to a resolution that incumbent independent auditors shall not be re-appointed.

### **Explanatory note**

*Restatement of Section 161(2A)-(5) of the Companies Act, 1963.*

*Subsection (4) has been amended to reflect Section 184 (2) of the Companies Act, 1990.*

---

## **Head 97 Removal of independent auditors: statement from independent auditors where audit exemption availed of by company**

---

- (1) If a company, which avails of the exemption from audit as permitted by Head 66—
  - (a) decides that the appointment of persons as independent auditors to the company should not be continued during the whole or part of a financial year in which the exemption is being availed of in relation to the company; and

- (b) decides, accordingly, to terminate the appointment of those persons as independent auditors to the company, then—

- (i) the independent auditors shall, within the period of 21 days beginning on the date of their being notified by the company of that decision, serve a notice on the company containing the statement referred to in Subhead (2),

- (ii) unless and until the independent auditors serve such a notice, any purported termination of their appointment as independent auditors to the company shall not have effect.

- (2) The statement to be contained in a notice under Subhead (1)(i) shall be whichever of the following is appropriate, namely—
  - (a) a statement to the effect that there are no circumstances connected with the decision of the company referred to in Subhead (1) that they consider should be brought to the notice of the members or creditors of the company; or
  - (b) a statement of any such circumstances as aforesaid.
- (3) Where a notice under Subhead (1)(i) is served on a company—
  - (a) the independent auditors concerned shall, within 14 days after the date of such service, send a copy of the notice to the Registrar; and
  - (b) subject to Subhead (4), the company shall, if the notice contains a statement referred to in Subhead (2)(b), within 14 days after the date of such service, send a copy of the notice to every person who is entitled under Part A6, Head 48 [equivalent of Section 159(1) of the Companies Act, 1963] to be sent copies of the documents referred to in the said Part A6, Head 48 [equivalent of Section 159(1) of the Companies Act, 1963].

- (4) Copies of a notice served on a company under Subhead (1) need not be sent to the persons specified in Subhead (3)(b), if, on the application of the company concerned or any other person who claims to be aggrieved, the court is satisfied that the notice contains material which has been included to secure needless publicity for defamatory matter and the court may order the company's costs on an application under this subhead to be paid in whole or in part by the independent auditors concerned notwithstanding that they are not a party to the application.
- (5) Part A6, Head 96(1) [equivalent of Section 161(2A) of the Companies Act, 1963] shall not apply to independent auditors as respects their removal from office in the circumstances referred to in Subhead (1).

### **Explanatory note**

*This head is a slightly amended re-enactment of Section 34 of the Companies (Amendment) (No. 2) Act, 1999. All cross-references have been updated in accordance with the new structure of the Bill and references to the registrar of companies have been replaced by references to the "Registrar".*

---

## **Head 98 Removal of independent auditor: General meeting**

---

Without prejudice to any rights of the independent auditors in relation to their removal, a company may, by ordinary resolution at a general meeting, remove independent auditors and appoint in their place any other persons who have been nominated for appointment by any member of the company, who are qualified under this Bill to be independent auditors of a company and of whose nomination notice has been given to its members.

### **Explanatory note**

*Restatement of Section 160(5) of the Companies Act, 1963.*

---

## **Head 99 Resignation of independent auditors: General**

---

- (1) Independent auditors of a company may, by a notice in writing that complies with Subhead (2) served on the company and stating their intention to do so, resign from the office of independent auditors to the company; and the resignation shall take effect on the date on which the notice is so served or on such later date as may be specified in the notice.
- (2) A notice under Subhead (1) shall contain either—
- (a) a statement to the effect that there are no circumstances connected with the resignation to which it relates that the independent auditors concerned consider should be brought to the notice of the members or creditors of the company; or
  - (b) a statement of any such circumstances as aforesaid.
- (3) Where a notice under Subhead (1) is served on a company—
- (a) the independent auditors concerned shall, within 14 days after the date of such service, send a copy of the notice to the Registrar; and
  - (b) subject to Subhead (4), the company shall, if the notice contains a statement referred to in Subhead (2)(b), not later than 14 days after the date of such service send a copy of the notice to every person who is entitled under Part A6, Head 48 [equivalent of Section 159(1) of the Companies Act, 1963] to be sent copies of the documents referred to in the said Part A6, Head 48 [equivalent of Section 159(1) of the Companies Act, 1963].

## Part A6 - Financial statements, Annual Return and Audit

---

- (4) Copies of a notice served on a company under Subhead (1) need not be sent to the persons specified in Subhead (3) (b) if, on the application of the company concerned or any other person who claims to be aggrieved, the court is satisfied that the notice contains material which has been included to secure needless publicity for defamatory matter and the court may order the company's costs on an application under this head to be paid in whole or in part by the independent auditors concerned notwithstanding that they are not a party to the application.
- (5) This head shall also apply to a notice given by independent auditors under Part A6, Head 85 (2)(a) [equivalent of Section 160(2)(c) of the Companies Act, 1963], indicating his unwillingness to be re-appointed.
- (6) A person who fails to comply with Subhead (2) or (3) (a) shall be guilty of a category 3 offence.
- (7) If default is made in complying with Subhead (3)(b) the company concerned, and every officer of such company who is in default, shall be guilty of a category 3 offence.
- (8) In Subhead (7) "officer" includes any shadow director or de facto director as defined in Part A5.
- (2) Where the independent auditors make a requisition under Subhead (1), the directors of the company shall, within 14 days of the service on the company of the said notice, proceed duly to convene a general meeting of the company for a day not more than 28 days after such service.
- (3) Subject to Subhead (4), where—
- (a) a notice served on a company under Part A6, Head 99 [equivalent of Section 185 of the Companies Act, 1990] contains a statement in accordance with Subhead (2)(b) of that head; and
- (b) the independent auditors concerned request the company to circulate to its members—
- (i) before the next general meeting after their resignation, or
- (ii) before any general meeting at which it is proposed to fill the vacancy caused by his resignation or convened pursuant to a requisition under Subhead (1),

a further statement in writing prepared by the independent auditors of circumstances connected with their resignation that the independent auditors consider should be brought to the notice of the members, the company shall—

- (I) in any notice of the meeting given to members of the company state the fact of the statement having been made, and
- (II) send a copy of the statement to the Registrar and to every person who is entitled under Part A6, Head 48 [equivalent of Section 159(1) of the Companies Act, 1963] to be sent copies of the documents referred to in the said Part A6, Head 48 [equivalent of Section 159(1) of the Companies Act, 1963].

### **Explanatory note**

*This head is a slightly amended re-enactment of Section 185 of the Companies Act, 1990. All cross-references have been updated in accordance with the new structure of the Bill and references to the Registrar of companies have been replaced by references to the "Registrar".*

---

## **Head 100 Resignation of independent auditor: Requisition of general meeting**

---

- (1) A notice served on a company under Part A6, Head 99 [equivalent of Section 185 of the Companies Act, 1990] which contains a statement in accordance with Subhead (2)(b) of that head may also requisition the convening by the directors of the company of a general meeting of the company for the purpose of receiving and considering such information and explanation of the circumstances connected with their resignation from the office of independent auditors to the company as they may wish to give to the meeting.



## Part A6 - Financial statements, Annual Return and Audit

---

- (4) Subhead (3) need not be complied with by the company concerned if, on the application either of the company or any other person who claims to be aggrieved, the court is satisfied that the rights conferred by this head are being abused to secure needless publicity for defamatory matter and the court may order the company's costs on an application under this head to be paid in whole or in part by the independent auditors concerned notwithstanding that they are not a party to the application.
- (5) If default is made in complying with Subhead (2) or (3), the company concerned, and every officer of the company who is in default, shall be guilty of a category 3 offence.
- (6) In Subhead (5) "officer" includes any shadow director or de facto director as defined in Part A5.
- (2) If default is made in complying with Subhead (1), the company concerned, and every officer of the company who is in default, shall be guilty of a category 3 offence.
- (3) In Subhead (2) "officer" includes any shadow director or de facto director as defined in Part A5.

### **Explanatory note**

*This head is a slightly amended re-enactment of Section 186(5) of the Companies Act, 1990. All cross-references have been updated in accordance with the new structure of the Bill and references to the registrar of companies have been replaced by references to the "Registrar".*

### **Explanatory note**

*This head is a slightly amended re-enactment of Subsections (1) to (4) and (6) of Section 186 of the Companies Act, 1990. All cross-references have been updated in accordance with the new structure of the Bill and references to the registrar of companies have been replaced by references to the "Registrar".*

---

## **Head 101 Resignation of independent auditors: Right to get notice of, attend, and be heard at general meeting**

---

- (1) Independent auditors of a company who have resigned from the office of independent auditors shall be permitted by the company to attend—
- (a) the next annual general meeting after their resignation; and
  - (b) any general meeting at which it is proposed to fill the vacancy caused by their resignation or convened pursuant to a requisition of theirs under Head 100 Subhead (1),

and the company shall send them all notices of, and other communications relating to, any such meeting that a member of the company is entitled to receive and the company shall permit them to be heard at any such meeting which they attend on any part of the business of the meeting which concerns them as former independent auditors of the company.

## Chapter 19

### Qualification of independent auditors

#### Head 102 Qualification for appointment: Individual

(1) Subject to Part A6, Head 111 [equivalent of Section 190 of the Companies Act, 1990], a person shall not be qualified for appointment as independent auditors of a company unless—

(a) he or she—

- (i) is a member of a body of accountants for the time being recognised by the Supervisory Authority for the purposes of this head and holds a valid practising certificate from such a body, or
- (ii) holds an accountancy qualification that is, in the opinion of the Supervisory Authority, of a standard which is not less than that required for such membership as aforesaid and which would entitle him to be granted a practising certificate by that body if he were a member of it, and is for the time being authorised by the Supervisory Authority to be so appointed, or
- (iii) was, on the [day that the power of the Minister to recognise accounting bodies either under S.I. 191 of the Companies Act, 1990 or Section 162(1)(a) of the Companies Act, 1963 is taken over by Supervisory Authority], a member of a body of accountants for the time being recognised by the Minister under Section 191 of the Companies Act, 1990 or Section 162(1)(a) of the Companies Act, 1963 and holds a valid practising certificate from such a body, or
- (iv) he was authorised by the Minister before the 3<sup>rd</sup> day of February 1983 under Section 191 of the Companies Act, 1990 and is for the time being authorised by the Supervisory Authority to be so appointed or

(v) is a person to whom Part A6, Head 108 [equivalent of Section 189 of the Companies Act, 1990] applies, and is for the time being authorised by the Supervisory Authority to be so appointed; and

(b) the particulars required by Part A6, Head 115 [equivalent of Sections 200 and 199 of the Companies Act, 1990] in respect of such a person have been forwarded to the Registrar.

(2) This head shall not apply to the Comptroller and Auditor General.

(3) An authorisation granted to a person by the Supervisory Authority under Subhead (1) (a) (iv) shall cease to have effect on the expiry of 3 years after the granting of the authority by the Supervisory Authority unless, within that 3 year period, the person becomes a member of or otherwise becomes subject to the regulations of a body of accountants recognised for the purposes of this head.

(4) On an authorisation ceasing to have effect under Subhead (3), the person to whom it was granted ceases to be qualified for appointment as independent auditors of a company.

#### Explanatory note

*This head is an amended re-enactment of Section 187(1) of the Companies Act, 1990 as amended by Section 72 of the Company Law Enforcement Act, 2001 and Section 35 of the Companies (Auditing and Accounting) Act, 2003. All cross-references have been updated in accordance with the new structure of the Bill and references to the registrar of companies have been replaced by references to the "Registrar".*

*Subsections (3), (4) and (5) of Section 187 of the 1990 Act have not been included for the purpose of private companies. These deal with Societies and Friendly Societies and do not at present fit easily into the structure of the Bill. It may be necessary to include a new section in Pillar B of the Bill. If not the Industrial and Provident Society Act and the Friendly Society Act will need to be amended to pick up the requirements of this head and a number of other heads mentioned below.*

*The reference to Section 199 of the Companies Act, 1990 in paragraph (1)(b) has been deleted as the provisions contained in that section were transitional, it is assumed that since the details will have been forwarded to the Registrar prior to the commencement of this head, they do not have to be re-submitted. Subheads (3) and (4) above are re-worded re-enactments of Subsections (14) and (15) of Section 187 of the 1990 Act.*

---

### Head 103 Qualification for appointment: Firm

---

- (1) A firm shall be qualified for appointment as independent auditors of a company if—
- (a) at least one member of the firm is entitled to hold a practicing certificate from a body referred to in subparagraph (i), (ii) or (iii) of Subhead (1)(a) of Head 102 and is otherwise qualified under the applicable subparagraph for appointment as independent auditors of a company; and
  - (b) the particulars required by Part A6, Head 116 [equivalent of Sections 200 and 199 of the Companies Act, 1990] in respect of such a member have been forwarded to the Registrar.
- (2) A body referred to in Subhead (1) may grant a practising certificate to a firm that satisfies the conditions in that subhead, and, if a practising certificate is granted —
- (a) each member of the firm who from time to time during the currency of the certificate is qualified for appointment as independent auditor of a company or as a public auditor is deemed to hold the certificate; and
  - (b) the name of such a member is deemed to be entered in the register of independent auditors.

#### **Explanatory note**

*These provisions are Sections 187(1A) and (1B) of the 1990 Companies Act as inserted by the Section 35 of the 2003 Act.*

*The reference to Section 199 of the Companies Act, 1990 in paragraph (1)(b) has been deleted as the provisions contained in that section were transitional, it is assumed that since the details will have been forwarded to the Registrar prior to the commencement of this head, they do not have to be re-submitted.*

---

### Head 104 Qualification for appointment: Persons excluded

---

None of the following persons shall be qualified for appointment as independent auditors of a company—

- (a) an officer or servant of the company;

- (b) a person who has been an officer or servant of the company within a period in respect of which financial statements would fall to be audited by him if he were appointed independent auditor of the company;
- (c) a holding, spouse, brother, sister or child of an officer of the company;
- (d) a person who is a partner of or in the employment of an officer of the company;
- (e) a person who is disqualified under this subhead for appointment as independent auditor of any other group undertaking of the company, or would be so disqualified if the undertaking were a company;
- (f) a person who is disqualified for appointment as a public auditor of a society that is a group undertaking of the company;
- (g) a body corporate;
- (h) a person in whose name a share in the company is registered, whether or not that person is the beneficial owner of the share.

#### **Explanatory note**

*Amended reenactment of Subsection (2) and (10) of Section 187 of the Companies Act, 1990. Paragraph (1)(h) has been inserted.*

*As noted above Section 187 (3) (4) and (5) of the Companies Act, 1990 used to deal with what persons were not qualified to be public auditors of Industrial and Provident Societies and Friendly Societies – where this is going to be dealt with needs to be considered.*

---

### Head 105 Qualification for appointment: Persons no longer qualified

---

- (1) A person shall not act as independent auditor of a company at a time when he is not qualified under any of Heads 102, 103 or 104 for appointment to that office.
- (2) If, during his term of office as independent auditor of a company, a person ceases to be qualified under this Bill for appointment to that office, he shall thereupon vacate his office and give notice in writing to the company that he has vacated his office by reason of ceasing to be so qualified and he shall give the reason he has ceased to be so qualified.

- (3) A person who contravenes Subhead (1) or (2) shall be guilty of a category 2 offence .
- (4)
- (a) Where a person is the subject of a prosecution under Subhead (3) for a contravention of Subhead (1) or (2), it shall be sufficient evidence, until the contrary is shown by the person, of non-membership of a body of accountants for the time being recognised by the Supervisory Authority for the purposes of this head for any or all such bodies to certify in writing to the court such non-membership, provided that the first-mentioned person is provided by the prosecutor with a copy of the certificate or certificates, served by registered post, not later than 21 days before any such certificate is presented in evidence to the court;
- (b) Where a person, the subject of a prosecution, proposes to contest the certification of non-membership contained in a certificate provided for by paragraph (a), he shall give written notice thereof to the prosecutor within 21 days, or such longer period as the court may allow, of receipt of the certificate from the prosecutor.
- (2) Where a person is convicted of an offence under Subhead (1), the period for which he was disqualified shall be extended for a further period of ten years from such date, or such other further period as the court, on the application of the prosecutor and having regard to all the circumstances of the case, may order.

**Explanatory note**

*Restatement of Section 195 of the Companies Act, 1990. This section also used to apply to Societies.*

**Explanatory note**

*Restatement of Section 187 (6), (7), (9) and (13), of the Companies Act, 1990. Minister has been changed to Supervisory Authority.*

---

### Head 106 Prohibition on acting while disqualification order in force

---

- (1) If a person who is subject or deemed to be subject to a disqualification order—
- (a) becomes, or remains after 28 days from the date of the making of the order, a partner in a firm of independent auditors;
- (b) gives directions or instructions in relation to the conduct of any part of the audit of the financial statements of a company; or
- (c) works in any capacity in the conduct of an audit of the financial statements of a company, he shall be guilty of a category 2 offence.

# Chapter 20

## Recognition of body of accountants

### Head 107 Recognition: General

The Supervisory Authority may grant recognition to a body of accountants whether established or based in the State or elsewhere but only if satisfied—

- (a) that the standards relating to training, qualifications and repute required by that body for the awarding of a practising certificate to a person are not less than those specified in Articles 3 to 6, 8 and 19 of the Council Directive No 84/253/EEC of 10 April 1984 on the approval of persons responsible for carrying out the statutory audits of accounting documents; and
- (b) as to the standards that body applies to its members in the areas of ethics, codes of conduct and practice, independence, professional integrity, auditing and accounting standards and investigation and disciplinary procedures.

#### **Explanatory note**

*This head is a re-enactment of Section 191 of the Companies Act, 1990 as replaced by Schedule 1 of the Companies (Auditing and Accounting) Act, 2003.*

### Head 108 Recognition: Qualification obtained outside the State

- (1) The Supervisory Authority may declare that, subject to Subhead (2), persons who hold—
  - (a) a qualification entitling them to audit accounts under the law of a specified country outside the State; or
  - (b) a specified accountancy qualification recognised under the law of a country outside the State,

shall be regarded as qualified for appointment as independent auditor of a company.

- (2) Before making a declaration under Subhead (1), the Supervisory Authority—

- (a) must be satisfied that the qualification concerned is of a standard not less than is required by this Bill to qualify a person for appointment as auditor of a company; and
- (b) may direct that such a person shall not be treated as qualified for the purposes of Subhead (1) unless he holds such additional educational qualifications as the Minister may specify for the purpose of ensuring that such persons have an adequate knowledge of the law and practice in the State relevant to the audit of statutory financial statements; and
- (c) may have regard to the extent to which persons qualified under this Bill for appointment as independent auditor of a company are recognised by the law of the country in question as qualified to audit accounts there.

- (3) Different direction may be given under Subhead (2) (b) in relation to different qualifications.
- (4) The Supervisory Authority may, if he thinks fit, revoke or suspend for a specified period, in such a manner and on such conditions as he may think appropriate, any declaration previously made under Subhead (1).

#### **Explanatory note**

*This head is a re-enactment of Section 189 of the Companies Act, 1990.*

### Head 109 Recognition: Additional terms and conditions

- (1) The Supervisory Authority may, at the time it is granted or at any time during the currency of a recognition or authorisation under or for the purpose of Part A6, Heads 102 or 103 [equivalent of Section 187 of the Companies Act, 1990] by notice in writing given to the body of accountants or individual concerned, attach to the recognition or authorisation, as the case may be, such terms and conditions as it thinks necessary or expedient and specified in the notice.



- (2) The Supervisory Authority may, at any time during the currency of a recognition or authorisation under Part A6, Heads 102 or 103 [equivalent of Section 187 of the Companies Act, 1990], by notice in writing given to the body of accountants or individual concerned, amend its terms or conditions or insert into it or delete from it other terms or conditions.
- (3) The Supervisory Authority may, at any time during its currency, by notice in writing given to the body of accountants or individual concerned, revoke, or suspend for a specified period, a recognition or authorisation under or for the purpose of Part A6, Heads 102 or 103 [equivalent of Section 187 of the Companies Act, 1990].
- (4) References in this head to recognitions under Heads 102 or 103 of this Part [equivalent of Section 187 of the Companies Act, 1990] include references to recognitions under Section 187 of the Companies Act, 1990 and Section 162 of Companies Act 1963 [repealed by the Companies Act, 1990] and references in this head to an authorisation under Heads 102 or 103 of this Part [equivalent of Section 187 of the Companies Act, 1990] include references to authorisations under the said Section 187 of the Companies Act, 1990 and Section 162 of the Companies Act, 1963.
- (5) Where a disciplinary committee or tribunal (however called) of a body of accountants recognised under Heads 102 or 103 of this Part [equivalent of Section 187 of the Companies Act, 1990] has reasonable grounds for believing that an indictable offence under this Bill may have been committed by a person while the person was a member of the body, the body shall, as soon as possible, provide a report to the Director of Corporate Enforcement giving details of the alleged offence and shall furnish the Director of Corporate Enforcement with such further information in relation to the matter as the Director of Corporate Enforcement may require.
- (6) Where a body referred to in Subhead (6) fails to comply with that subhead or a requirement of the Director of Corporate Enforcement under that subhead, it, and every officer of the body to whom the failure is attributable, shall be guilty of a category three offence.

### **Explanatory note**

*This head is a slightly amended re-enactment of Section 192 of the Companies Act, 1990, as amended by Schedule 1 of the Companies (Auditing and Accounting) Act, 2003. Subhead (4) has been re-enacted in the head below. All cross-references have been updated in accordance with the new structure of the Bill.*

*Subhead (4) re-enacts Section 192 (5) of the Companies Act, 1990*

QUERY – is it necessary to have some kind of continuing provision for existing ‘recognitions’ and authorisation in the new Bill – or was the above only needed because power was moving from Minister to Supervisory Authority?

*Subheads (5) and (6) re-enact Sections 192 (6) and (7) of the Companies Act, 1990.*

---

## **Head 110 Recognition: Standards of professional conduct**

---

- (1) The Supervisory Authority may require a body of accountants recognised for the purposes of the said Part A6, Heads 102 or 103 [equivalent of Section 187 of the Companies Act, 1990] to prepare and, within such period as may be specified in the requirement, to submit to the Supervisory Authority for its approval a code prescribing standards of professional conduct for the members of the body of accountants and providing for sanctions for breaches of the code, and the body of accountants shall comply with the requirement.
- (2) A body of accountants may, at any time, prepare and submit to the Supervisory Authority a code amending or revoking a code prepared by it under this subhead.
- (3) The Supervisory Authority may approve of a code submitted to them under this subhead.
- (4) A code approved of by the Supervisory Authority under this head shall be brought into operation and enforced by the body of accountants concerned in accordance with its terms.

### **Explanatory note**

*Restatement of Section 192(4) of the Companies Act, 1990.*

---

### Head 111 Recognition: Consultation by Supervisory Authority

---

- (1) Before granting, renewing, withdrawing, revoking suspending or refusing recognition of a body of accountants under this Bill, the Supervisory Authority may consult with any person or body of persons as to the conditions imposed or standards required by the body of accountants concerned in connection with membership of that body or the awarding to persons of practising certificates.
- (2) The Supervisory Authority may also consult with any person or body of persons before forming any opinion or making any declaration in relation to the qualifications held by any person or class of persons as respects qualification for appointment as auditor of a company.

#### **Explanatory note**

*Restatement of Section 190 of the Companies Act, 1990. Please note that this Section in the 1990 Act also refers to persons being appointed as public auditor of a society.*

---

### Head 112 Recognition: Disciplinary committee

---

- (1) In this head—

“disciplinary committee” means any disciplinary committee or tribunal (however called) of a prescribed accountancy body;

“member”, in relation to a prescribed accountancy body, means—

- (a) a person; or
- (b) a firm,

that is, or was at the relevant time, subject to the investigation and disciplinary procedures approved by the Supervisory Authority under Head 21 (2) of Part A14 [equivalent of Section 9(2)(c) of the Companies (Auditing and Accounting) Act, 2003] for that body;

“prescribed accountancy body” has the meaning given by Head 16 (1) of Part A14 [equivalent of Section 4 of the Companies (Auditing and Accounting) Act, 2003];

“refusal” includes failure and “refuses” includes fails;

“relevant person”, in relation to an investigation of a member of a prescribed accountancy body, means—

- (a) a member of the prescribed accountancy body;
- (b) a client or former client of such a member;
- (c) if the client or former client is a body corporate, a person who is or was an officer, employee or agent of the client or former client; or
- (d) any person whom the prescribed accountancy body reasonably believes has information or documents relating to the investigation other than information or documents the disclosure of which is prohibited or restricted by law;

“standards”, in relation to a prescribed accountancy body, means the rules, regulations and standards that body applies to its members and to which, by virtue of their membership, they are obliged to adhere.

- (2) For the purposes of an investigation of a possible breach of a prescribed accountancy body’s standards by a member, a disciplinary committee may require a relevant person to do one or more of the following—
- (a) produce to the committee all books or documents relating to the investigation that are in the relevant person’s possession or control;
  - (b) attend before the committee;
  - (c) give the committee any other assistance in connection with the investigation that the relevant person is reasonably able to give.
- (3) For the purposes of an investigation referred to in Subhead (2), the disciplinary committee may—
- (a) examine on oath, either by word of mouth or on written interrogatories, a relevant person;
  - (b) administer oaths for the purpose of that examination; and
  - (c) record, in writing, the answers of a person so examined and require that person to sign them.

- (4) The disciplinary committee may certify the refusal to the Court if a relevant person refuses to do one or more of the following —
- (a) produce to the committee any book or document that it is the person's duty under this head to produce;
  - (b) attend before the committee when required to do so under this head;
  - (c) answer a question put to the person by the committee with respect to the matter under investigation.
- (5) On receiving a certificate of refusal concerning a relevant person, the Court may enquire into the case and, after hearing any evidence that may be adduced, may do one or more of the following—
- (a) direct that the relevant person attend or re-attend before the disciplinary committee or produce particular books or documents or answer particular questions put to him or her by that committee;
  - (b) direct that the relevant person need not produce a particular book or document or answer a particular question put to him or her by that committee;
  - (c) make any other ancillary or consequential order or give any other direction that the Court thinks fit.
- (6) The production of any books or documents under this head by a person who claims a lien on them does not prejudice the lien.
- (7) Any information produced or answer given by a member of a prescribed accountancy body in compliance with a requirement under this head may be used in evidence against the member in any proceedings whatsoever, save proceedings for an offence (other than perjury in respect of such an answer).

### **Explanatory note**

*Restatement of Section 192A of the Companies Act, 1990.*

---

## **Head 113 Recognition: Bodies recognised under previous regimes**

---

- (1) Each body that was a recognised body of accountants immediately before the commencement of this Bill is a recognised accountancy body immediately after the commencement of this Bill.
- (2) Each person who, immediately before the commencement of this head, was for the time being authorised by the Minister under Section 187 of the Companies Act, 1990 to be appointed as an auditor of a company or as a public auditor is immediately after the commencement of this section considered for the time being authorised by the Supervisory Authority to be so appointed.
- (3) Any legal proceedings against the Minister that, immediately before the commencement of this Bill, are pending or underway and that relate to the exercise of the Minister's powers under Sections 187, 189, 190, 191 or 192 of the Companies Act, 1990 may be continued against the Minister after the commencement of this Bill as if that provision had not been repealed by this Bill.

### **Explanatory note**

*This head re-enacts Sections 32 (1), (10) and (11) of the Companies (Auditing and Accounting) Act, 2003, Chapter 21, Register of firms and individuals qualified to be independent auditors.*

---

## **Head 114 Register of independent auditors: Contents**

---

- (1) The Registrar shall maintain a register containing the names and addresses of persons or firms that have been notified to him as qualified for appointment as independent auditors of a company.
- (2) A person shall not—
  - (a) act as an independent auditor of a company;
  - (b) describe himself as an independent auditor of a company; or
  - (c) so hold himself or herself out as to indicate, or be reasonably understood to indicate, that he or she is or is registered as, an independent auditor of a company, unless—

- (i) his or her name is entered, or is deemed under Subhead (3) to be entered, in the register of independent auditors and he or she holds a valid practising certificate, or
  - (ii) he or she is a member of a firm that holds a valid practising certificate under Part A6, Head.103 [equivalent of Section 187(1B) of the Companies Act, 1990] and he or she is deemed under that head to hold a practising certificate.
- (3) In the following circumstances, the name of a person is deemed to be entered in the register of independent auditors —
- (a) if the person becomes qualified for appointment as an independent auditor or is granted an authorisation by the Supervisory Authority under Part A6, Heads 102 or 103 [equivalent of Section 187(1) of the Companies Act, 1990] and if the time allowed under Part A6, Heads 115 or 116 as appropriate [equivalent of Section 200(1), (2) or (3) of the Companies Act, 1990] for forwarding that person's particulars to the Registrar has not yet expired;
  - (b) if the person is entitled to have his or her name entered in the register of independent auditors and his or her particulars have been forwarded to the Registrar in accordance with Part A6, Heads 115 or 116 [equivalent of Section 200(1), (2) or (3) of the Companies Act, 1990] but his or her name has not yet been entered in that register.
- (4) This head does not apply to the Comptroller and Auditor-General.
- (5) A person who contravenes Subhead (2) is guilty of a category 2 offence.
- (6) In this head and Part A6, Heads 115 and 116 [equivalent of Sections 199 and 200 of the Companies Act, 1990], 'address' in relation to a person means—
- (a) the person's usual business address; and
  - (b) if the person is a partner or employee of a firm, the name of the firm and the address of its head office.

### **Explanatory note**

*This head is an amended re-enactment of Section 198 of the Companies Act, 1990, as amended by Regulation 5 of S.I. 259 of 1992, Companies Acts (Auditors) Regulations, 1992 and replaced by Section 38 of the Companies (Auditing and Accounting) Act, 2003.*

*All cross-references have been updated in accordance with the new structure of the Bill and references to the registrar of companies have been replaced by references to the "Registrar". Furthermore, references to "public auditor" have been removed from Subheads (1) and (2). These will need to be re-inserted elsewhere.*

*Subhead (5) has been amended insofar as the reference to a fine has been replaced by the phrase "... shall be guilty of an offence and liable to a fine", the amount of which shall be prescribed later in the Bill.*

---

## **Head 115 Information to be provided to Registrar: Individual**

---

- (1) Every person who, after the commencement of this head, is granted an authorisation by the Supervisory Authority under this Bill to act as independent auditor of a company (otherwise than by virtue of membership of a recognised body of accountants) shall, within one month after such grant, deliver his name and address to the Registrar.
- (2) A person referred to in Subhead (1) shall notify the Registrar —
  - (a) at least once in each year during the currency of the authorisation referred to in that subhead, of the fact that the person holds the authorisation;
  - (b) as soon as possible but not later than one month after the event, of any change in the particulars provided by the person to the Registrar; and
  - (c) as soon as possible but not later than one month after ceasing to hold the authorisation, of the occurrence of that event.
- (3) Information required to be delivered to the Registrar under this head shall be delivered in such form and manner as that Registrar may specify.

### **Explanatory note**

*This head is a slightly amended re-enactment of Section 200 of the Companies Act, 1990 as amended by Section 40 of the Companies (Auditing and Accounting) Act, 2003.*

*All cross-references have been updated in accordance with the new structure of the Bill and references to the registrar of companies have been replaced by references to the "Registrar". The reference to the Minister in Subsection (1) has been replaced by a reference to the Supervisory Authority. Furthermore, references to "public auditor" have been removed from Subsections (1), (3) and (5). These will need to be re-inserted elsewhere.*

*Depending on whether the Power of the Supervisory Authority is commenced or not it may also be necessary to include a reference to being authorised by the Minister –*

*"Every person, who after the commencement of this head is granted an authorisation by the Minister under this Bill to act as independent auditor of a company (otherwise than by virtue of membership of a recognised body of accountants) shall, within one month after such grant, deliver his name and address to the Registrar."*

---

### **Head 116 Information to be provided to Registrar: Body of accountants**

---

- (1) Subject to Subhead (2), where, by virtue of his becoming a member of a body of accountants, a person becomes qualified for appointment as independent auditor of a company, the body concerned shall, within one month of his becoming so qualified, deliver his name and address to the Registrar for inclusion in the register referred to in Part A6, Head 114 [equivalent of Section 198 of the Companies Act, 1990].
- (2) Without prejudice to the generality of Subhead (1), a recognised body of accountants based outside the State shall notify details of those of its members who wish to practise in the State.
- (3) A body of accountants referred to in Subhead (1) or a recognised body of accountants referred to in Subhead (2) shall, as soon as possible but not later than 6 months after the event, notify the Registrar of any change in the particulars previously provided to him under the applicable subhead.

- (4) If default is made in complying with Subhead (1), (2) or (3), the body of accountants concerned, or the recognised body of accountants concerned, shall be guilty of a category 4 offence.
- (5) Information required to be delivered to the Registrar under this head shall be delivered in such form and manner as that Registrar may specify.

### **Explanatory note**

*This head is a slightly amended re-enactment of Section 200 of the Companies Act, 1990 as amended by Section 40 of the Companies (Auditing and Accounting) Act, 2003.*

*All cross-references have been updated in accordance with the new structure of the Bill and references to the registrar of companies have been replaced by references to the "Registrar". The reference to the Minister in Subsection (1) has been replaced by a reference to the Supervisory Authority. Furthermore, references to "public auditor" have been removed from Subsections (1), (3) and (5). These will need to be re-inserted elsewhere.*

---

### **Head 117 Recognition of new body of accountants**

---

- (1) Subject to Subhead (2), a body of accountants which has been recognised by the Supervisory Authority under Part A6, Head 107 [equivalent of Section 191 of the Companies Act, 1990] shall, within one month after such recognition, deliver to the Registrar, the name and address of each of its members who is qualified for appointment under this Bill as independent auditors of a company.
- (2) Without prejudice to the generality of Subhead (1), a body of accountants based outside the State, whose recognition is granted under Part A6, Head 108, shall notify the Registrar of the names and addresses of those of its members who wish to practise in the State.
- (3) If default is made in complying with Subhead (1) or (2), the body of accountants concerned shall be guilty of a category 4 offence.
- (4) Information required to be delivered to the Registrar under this head shall be delivered in such form and manner as that Registrar may specify.



### **Explanatory note**

*This head is a slightly amended re-enactment of Section 199 of the Companies Act, 1990, as amended by Section 39 of the Companies (Auditing and Accounting) Act, 2003.*

*All cross-references have been updated in accordance with the new structure of the Bill and references to the registrar of companies have been replaced by references to the "Registrar". Furthermore, references to "public auditor" have been removed from Subsection (1). This will need to be re-inserted elsewhere.*

*It is necessary to consider whether any other transitional provisions are necessary for existing accounting bodies recognised by the Minister or persons so recognised.*

## Chapter 22

### Offences

---

#### **Head 118 False statements in returns, balance sheets, etc.**

---

If a person in any return, statement, balance sheet or other document required by or for the purposes of any provision of this Part wilfully makes a statement, false in any material particular, knowing it to be so false, he or she shall be guilty of a category two offence.

**Explanatory note**

*This head re-enacts Section 37 of the Companies (Amendment) (No. 2) Act, 1999, Chapter 23 - Powers of Minister*

---

#### **Head 119 Powers of minister**

---

It is suggested that there needs to be some general powers for the minister to amend certain heads of the Bill by regulation—

In particular—

- (a) Any further changes to the 4<sup>th</sup> and 7<sup>th</sup> Directives that impact on content of financial statements or content of directors' report;
- (b) Size of companies for small and medium and for audit exemption;
- (c) Exemption limits for transactions with directors;
- (d) Power to amend the schedules as referred to in Head 13 and Head 16;
- (e) Power to prescribe accounting standards etc.

# First Schedule

Accounting principles, form and content of entity financial statements

## Part 1

General rules and formats

---

### Section A General Rules

---

1. (1) Save as provided for in European Union legislation as transposed into Irish law and subject to the provisions of this Schedule,
  - (a) every balance sheet of a company shall show the items listed in either of the balance sheet formats set out in Section B of this Part; and
  - (b) every profit and loss account of a company shall show the items listed in any one of the profit and loss accounts formats so set out,

in either case in the order and under the headings and sub-headings given in the format adopted.
- (2) Subparagraph (1) above shall not be read as requiring the heading or sub-heading for any item in the balance sheet, or profit and loss account, of a company to be distinguished by any letter or number assigned to that item in the formats set out in Section B of this Part.
2. (1) Where in accordance with sub-paragraph (1), a company's balance sheet or profit and loss account for any financial year has been prepared by reference to one of the formats set out in Section B of this Part, the directors of the company shall adopt the same format in preparing the financial statements for subsequent financial years unless, in their opinion, there are special reasons for a change.
- (2) Where any change is made in the format adopted in preparing a balance sheet or profit and loss account of a company, the reasons for the change, together with full particulars of the change, shall be given in a note to the financial statements in which the new format is first adopted.
3. (1) Any item required in accordance with Paragraph 1 of this Schedule to be shown in the balance sheet or profit and loss account of a company may be shown in greater detail than that required by the format adopted.
- (2) The balance sheet, or profit and loss account, of a company may include an item representing or covering the amount of any asset or liability or income or expenditure not otherwise covered by any of the items listed in the format adopted but the following shall not be treated as assets in the balance sheet of a company—
  - (a) preliminary expenses;
  - (b) expenses of and commission on any issue of shares or debentures;
  - (c) costs of research; and
  - (d) own shares or treasury shares.
- (3) Any items to which an Arabic number is assigned in any of the formats set out in the Section B to this Part may be combined in the financial statements of a company—
  - (a) in any case where the individual amounts of such items are not material to assessing the financial position or profit or loss of the company for the financial year concerned; or
  - (b) in any case where the combination of such items facilitates that assessment.
- (4) Where items are combined in a company's financial statements pursuant to subparagraph (3) (b) of this paragraph, the individual amounts of any items so combined shall be disclosed in a note to the financial statements.
- (5) In preparing the balance sheet, or profit and loss account, of a company, the directors of the company shall adapt the arrangement and headings and sub-headings otherwise required by Paragraph 1 of this Schedule in respect of items to which an Arabic number is assigned in the format adopted, in any case where the special nature of the company's business requires such adaptation.
- (6) Every profit and loss account of a company shall show the amount of the profit or loss of the company on ordinary activities before taxation.

## Part A6 - Financial statements, Annual Return and Audit

---

4. (1) Subject to subparagraph (2), in respect of every item shown in the balance sheet, or profit and loss account, or notes thereto, of a company, the corresponding amount for the financial year immediately preceding that to which the balance sheet or profit and loss account refers shall also be shown and, if that corresponding amount is not comparable with the amount to be shown for the item in question in respect of the financial year to which the balance sheet, or profit and loss account relates by reason of –

(a) a change in accounting policy in the current financial year; or

(b) a fundamental error in the financial statements of an earlier year,

the former amount may be adjusted, and particulars of the adjustment and the reasons therefor shall be given in a note to the financial statements.

(2) Subparagraph (1) does not apply in relation to any amount stated by virtue of the following provisions of this Schedule –

(a) paragraph 46 (movement in fixed assets); and

(b) paragraph 54 (movements in reserves and provisions for liabilities).

5. (1) Subject to subparagraph (2) of this paragraph, a heading or sub heading corresponding to an item listed in the format adopted in preparing the balance sheet or profit and loss account of a company shall not be included in the balance sheet or profit and loss account, as the case may be, if there is no amount to be shown for that item in respect of the financial year to which the balance sheet or profit and loss account relates.

(2) Subparagraph (1) of this paragraph shall not apply in any case where an amount can be shown for the item in question in respect of the financial year immediately preceding that to which the balance sheet or profit and loss account relates and that amount shall be shown under the heading or sub-heading required by the format adopted as aforesaid.

6. Amounts in respect of items representing assets or income may not be set off in the financial statements of a company against amounts in respect of items representing liabilities or expenditure, as the case may be, or vice versa.

### **Explanatory note**

*This head is an amended re-enactment of Section 4 of the Companies (Amendment) Act, 1986. All references to “the Schedule of this Act” have been replaced by a reference to a paragraph of this Schedule or head of the Bill.*

*All heads have been renumbered and reordered*

*Subhead (1) has been amended insofar as it now commences with the words “Save as provided for in European Union legislation and...”.*

*Subsection (15)(a) has been removed to take account of the requirements of International Financial Reporting Standards and similar convergence proposals from the International Accounting Standards Board. As a result the requirement of this subsection has been moved to paragraph 53 of this schedule. This re-emphasises the changes made by S.I. 116 of 2005.*

*Subsections (16) and (17) have not been re-enacted as the offences in Head 13 deals with non-compliance.*

### Section B

#### The Required Formats for Financial statements

##### Preliminary

7. References in this Part of this Schedule to the items listed in any of the formats set out in this Part are references to those items read together with any notes following the formats which apply to any of those items.
8. A number in brackets following any item in, or any heading to, any of the formats set out in this Part is a reference to the note of that number in the notes following the formats.
9. In the notes following the formats—
  - (a) the heading of each note gives the required heading or sub heading for the item to which it applies and a reference to any letters and numbers assigned to that item in the formats set out in this Part; and
  - (b) references to a numbered format are references to the balance sheet format or (as the case may require) to the profit and loss account format of that number set out in this Part.

##### BALANCE SHEET FORMATS

###### Format 1

###### A. Fixed Assets

###### I. Intangible assets

1. Development costs
2. Concessions, patents, licences, trade marks and similar rights and assets (1)
3. Goodwill (2)
4. Payments on account

###### II. Tangible assets

1. Land and buildings
2. Plant and machinery
3. Fixtures, fittings, tools and equipment
4. Payments on account and assets in course of construction

###### III. Financial assets

1. Shares in group undertakings
2. Loans to group undertakings
3. Participating interests
4. Loans to undertakings in which a participating interest is held
5. Other investments other than loans
6. Other loans

###### B. Current Assets

###### I. Stocks

1. Raw materials and consumables
2. Work in progress
3. Finished goods and goods for resale
4. Payments on account

###### II. Debtors (3)

1. Trade debtors
2. Amounts owed by group undertakings
3. Amounts owed by undertakings in which a participating interest is held
4. Other debtors
5. Called up share capital not paid
6. Prepayments and accrued income

###### III. Investments

1. Shares in group undertakings
2. Other investments

###### IV. Cash at bank and in hand

###### C. Creditors: amounts falling due within one year

1. Debenture loans (4)
2. Bank loans and overdrafts
3. Shares presented as a liability (8)
4. Payments received on account (5)
5. Trade creditors
6. Bills of exchange payable
7. Amounts owed to group undertakings
8. Amounts owed to undertakings in which a participating interest is held
9. Other creditors including tax and social insurance (6)
10. Accruals and deferred income (7)

###### D. Net current assets (liabilities)

###### E. Total assets less current liabilities

###### F. Creditors: Amounts falling due after more than one year

1. Debenture loans (4)
2. Bank loans and overdrafts
3. Shares presented as liabilities (8)



## Part A6 - Financial statements, Annual Return and Audit

---

3. Payments received on account (5)
4. Trade creditors
5. Bills of exchange payable
6. Amounts owed to group undertakings
7. Amounts owed to undertakings in which a participating interest is held
8. Other creditors including tax and social insurance (6)
9. Accruals and deferred income (7)

### G. Provisions for liabilities

1. Retirement benefit obligations
2. Taxation, including deferred taxation
3. Other provisions for liabilities

### H. Capital and reserves

- I. Share capital (8)
- II. Share premium account
- III. Revaluation reserve
- IV. Other reserves
  1. Capital redemption reserve
  2. Own shares held
  3. Reserves provided for by the Constitution
  4. Other reserves (specified as necessary)

### V Profit and loss account

## BALANCE SHEET FORMATS

---

### Format 2

#### Assets

##### A. Fixed Assets

- I. Intangible assets
  1. Development costs
  2. Concessions, patents, licences, trade marks and similar rights and assets (1)
  3. Goodwill (2)
  4. Payments on account
- II. Tangible assets
  1. Land and buildings
  2. Plant and machinery
  3. Fixtures, fittings, tools and equipment
  4. Payments on account and assets in course of construction
- III. Financial assets
  1. Shares in group undertakings
  2. Loans to group undertakings
  3. Participating interests
  4. Loans to undertakings in which a participating interest is held
  5. Other investments other than loans
  6. Other loans

##### B. Current Assets

- I. Stocks
  1. Raw materials and consumables
  2. Work in progress
  3. Finished goods and goods for resale
  4. Payments on account
- II. Debtors (3)
  1. Trade debtors
  2. Amounts owed by group undertakings
  3. Amounts owed by undertakings in which a participating interest is held
  4. Other debtors
  5. Called up share capital not paid
  6. Prepayments and accrued income
- III. Investments
  1. Shares in group undertakings
  2. Other investments
- IV. Cash at bank and in hand

#### Liabilities

##### A. Capital and reserves

- I. Share capital (8)
- II. Share premium account
- III. Revaluation reserve
- IV. Other reserves
  1. Capital redemption reserve
  2. Own shares held
  3. Reserves provided for by the Constitution
  4. Other reserves (specify as necessary)
- V. Profit and loss account

##### B. Provisions for liabilities

1. Retirement benefit obligations
2. Taxation, including deferred taxation
3. Other provisions for liabilities

##### C. Creditors (10)

1. Debenture loans (4)
2. Bank loans and overdrafts
3. Shares presented as liabilities (8)
4. Payments received on account (5)
5. Trade creditors
6. Bills of exchange payable
7. Amounts owed to group undertakings
8. Amounts owed to undertakings in which a participating interest is held
9. Other creditors including tax and social insurance (6)
10. Accruals and deferred income (7)

### NOTES ON THE BALANCE SHEET FORMATS

---

(1) Concessions, patents, licences, trade marks and similar rights and assets

(Formats 1 and 2, items A. I. 2)

Amounts in respect of assets shall only be included in a company's balance sheet under this item if either—

(a) the assets were acquired for valuable consideration and are not required to be shown under goodwill, or

(b) the assets in question were created by the company itself.

(2) Goodwill

(Formats 1 and 2, items A. I. 3)

Amounts representing goodwill shall only be included to the extent that the goodwill was acquired for valuable consideration.

(3) Debtors

(Formats 1 and 2, items B. II. 1 to 6)

The amount falling due after more than one year shall be shown separately for each item included under debtors.

(4) Debenture loans

(Format 1, item C.1 and F.1 and Format 2, item C.1)

The amount of any convertible loans shall be shown separately. Identifying the terms and conditions under which loans are convertible into share capital.

(5) Payments received on account

(Format 1, items C.3 and F.3 and Format 2, item C.3)

Payments received on account of orders shall be shown for each of these items insofar as they are not shown as deductions from stocks.

(6) Other creditors including tax and social insurance

(Format 1, items C.8 and F.8 and Format 2, item C.8)

The amount for creditors in respect of taxation and social insurance shall be shown separately from the amount for other creditors and in respect of taxation there shall be stated separately the amounts included in respect of income tax payable on emoluments to which [check reference in TCA][Chapter IV of Part V of the Income Tax Act, 1967], applies, any other income tax, corporation tax, capital gains tax, value-added tax and any other tax.

(7) Accruals and deferred income (Format 1, items C. 9 and F. 9 and Format 2, item C. 9)

The amount in respect of Government grants, that is to say, grants made by or on behalf of the Government, included in this item shall be shown separately in a note to the financial statements unless it is shown separately in the balance sheet.

(8) Called up share capital

(Format 1, item H. I and Format 2, item A. I)

In accordance with the accounting principle in paragraph 16 of Part II, called up share capital must be analysed between shares that are presented as liabilities and share capital.

(10) Creditors

(Format 2, items C.1 to 9)

Amounts falling due within one year and after one year shall be shown separately for each of these items and their aggregate shall be shown separately for all of these items.

### PROFIT AND LOSS ACCOUNT FORMATS

---

#### Format 1 (13)

1. Turnover
2. Cost of Sales (10)
3. Gross Profit or Loss
4. Distribution costs (10)
5. Administrative expenses (10)
6. Other operating income
7. Income from shares in group undertakings
8. Income from participating interests
9. Income from other financial assets (11)
10. Other interest receivable and similar income (11)
11. Amounts written off financial assets and investments held as current assets
12. Interest payable and similar charges (12)
13. Tax on profit or loss on ordinary activities
14. Profit or loss on ordinary activities after taxation
15. Extraordinary income

16. Extraordinary charges
17. Extraordinary profit or loss
18. Tax on extraordinary profit or loss
19. Other taxes not shown under the above items
20. Profit or loss for the financial year

### PROFIT AND LOSS ACCOUNT FORMATS

#### Format 2

1. Turnover
2. Variation in stocks of finished goods and in work in progress
3. Own work capitalised
4. Other operating income
5.
  - (a) Raw materials and consumables
  - (b) Other external charges
6. Staff costs:
  - (a) Wages and salaries
  - (b) Social insurance costs
  - (c) Other retirement benefit costs
7.
  - (a) Depreciation and other amounts written off tangible and intangible fixed assets
  - (b) Exceptional amounts written off current assets
8. Other operating charges
9. Income from shares in group undertakings
10. Income from participating interests
11. Income from other financial assets (11)
12. Other interest receivable and similar income (11)
13. Amounts written off financial assets and investments held as current assets
14. Interest payable and similar charges (12)
15. Tax on profit or loss on ordinary activities
16. Profit or loss on ordinary activities after taxation
17. Extraordinary income
18. Extraordinary charges
19. Extraordinary profit or loss
20. Tax on extraordinary profit or loss
21. Other taxes not shown under the above items
22. Profit or loss for the financial year

### PROFIT AND LOSS ACCOUNT FORMATS

#### Format 3 (13)

- A. Charges
1. Cost of sales (10)
  2. Distribution costs (10)
  3. Administrative expenses (10)

4. Amounts written off financial assets and investments held as current assets
5. Interest payable and similar charges (12)
6. Tax on profit or loss on ordinary activities
7. Profit or loss on ordinary activities after taxation
8. Extraordinary charges
9. Tax on extraordinary profit or loss
10. Other taxes not shown under the above items
11. Profit or loss for the financial year

#### B. Income

1. Turnover
2. Other operating income
3. Income from shares in group undertakings
4. Income participating interests
5. Income from other financial assets (11)
6. Other interest receivable and similar income (11)
7. Profit or loss on ordinary activities after taxation
8. Extraordinary income
9. Profit or loss for the financial year

### PROFIT AND LOSS ACCOUNT FORMATS

#### Format 4

- A. Charges
1. Reduction in stocks of finished goods and in work in progress
  2.
    - (a) Raw materials and consumables
    - (b) Other external charges
  3. Staff costs:
    - (a) Wages and salaries
    - (b) Social insurance costs
    - (c) Other retirement benefit costs
  4.
    - (a) Depreciation and other amounts written off tangible and intangible fixed assets
    - (b) Exceptional amounts written off current assets
  5. Other operating charges
  6. Amounts written off financial assets and investments held as current assets
  7. Interest payable and similar charges (12)
  8. Tax on profit or loss on ordinary activities
  9. Profit or loss on ordinary activities after taxation
  10. Extraordinary charges
  11. Tax on extraordinary profit or loss

## Part A6 - Financial statements, Annual Return and Audit

---

12. Other taxes not shown under the above items
13. Profit or loss for the financial year

### B. Income

1. Turnover
2. Increase in stocks of finished goods and in work in progress
3. Own work capitalised
4. Other operating income
5. Income from shares in group undertakings
6. Income from participating interests
7. Income from other financial assets (11)
8. Other interest receivable and similar income (11)
9. Profit or loss on ordinary activities after taxation
10. Extraordinary income
11. Profit or loss for the financial year

The amounts of any provisions for depreciation and diminution in value of tangible and intangible fixed assets falling to be shown under items 7 (a) and A. 4 (a), respectively, in Formats 2 and 4 shall be disclosed in a note to the financial statements in any case where the profit and loss account is prepared by reference to Format 1 or Format 3.

### NOTES ON THE PROFIT AND LOSS ACCOUNT FORMATS

*(10) Cost of sales: Distribution costs: Administrative expenses*

*(Format 1, items 2, 4 and 5 and Format 3, items A. 1, 2 and 3)*

These items shall be stated after taking into account any necessary provisions for depreciation or diminution in value of assets.

*(11) Income from other financial assets: other interest receivable and similar income*

*(Format 1, items 9 and 10; Format 2, items 11 and 12; Format 3, items B. 5 and 6; Format 4, items B. 7 and 8)*

Income and interest derived from group undertakings shall be shown separately from income and interest derived from other sources.

*(12) Interest payable and similar charges*

*(Format 1, item 12; Format 2, item 14; Format 3, item A. 5; Format 4, item A. 7)*

The amount payable to group undertakings shall be shown separately.

*(13) Formats 1 and 3*

## Part II

### Accounting Principles and Valuation Rules

## Section A

### Accounting Principles

#### Preliminary

10. Subject to paragraph 17 below [equivalent of Section 6 of the Companies (Amendment) Act, 1986], the amounts to be included in the financial statements of a company in respect of the items shown shall be determined in accordance with the principles set out in paragraphs 11 to 16.

#### Accounting principles

11. The company shall be presumed to be carrying on business as a going concern.
12. Accounting policies shall be applied consistently from one financial year to the next.
13. The amount of any item in the financial statements shall be determined on a prudent basis and in particular—
- (a) only profits realised at the financial year end date shall be included in the profit and loss account; and
  - (b) all liabilities which have arisen in the course of the financial year to which the financial statements relate or of a previous financial year, even if such liabilities only become apparent between the date of the financial year end and the date on which the financial statements are signed in pursuance of Part A6, Head 36 [equivalent of Section 156 of the Companies Act, 1963].
14. All income and charges relating to the financial year to which the financial statements relate shall be taken into account without regard to the date of receipt or payment.
15. In determining the aggregate amount of any item the amount of each individual asset or liability that falls to be taken into account shall be determined separately.

16. The presentation of amounts within items in the profit and loss account and balance sheet shall have regard to the substance of the reported transaction or arrangement in accordance with applicable accounting standards.

#### Departure from the accounting principles

17. If it appears to the directors of a company that there are special reasons for departing from any of the principles stated above in preparing the company's financial statements in any particular year [equivalent of Section 5 of the Companies (Amendment) Act, 1986], they may so depart, but particulars of the departure, the reasons for it and its effect on the balance sheet and profit and loss account of the company shall be stated in a note to the financial statements.

#### Explanatory note

*This head is an amended re-enactment of Section 5 of the Companies (Amendment) Act, 1986. Subsection 5(1)(c)(ii) of the Companies (Amendment) Act, 1986 has been amended. Article 1(9) of Directive 2003/51/EC (Modernisation Directive) amends Article 31 of Directive 78/660/EEC (Fourth Directive) by replacing paragraph Article 31(1)(c) (bb) with the above.*

*Paragraph 16 was newly inserted by S.I. 116 of 2005 in accordance with Article 1(2) of Modernisation Directive which provides for the addition of the following paragraph to Article 4 of the Fourth Directive: "6. Member States may permit or require the presentation of amounts within items in the Profit and Loss Account and Balance Sheet to have regard to the substance of the reported transaction or arrangements. Such permission or requirement may be restricted to certain classes of companies and or consolidated financial statements defined in the Seventh Accounting Directive 83-349-EEC of 13th June 1983 on consolidated financial statements."*

*This new paragraph reflects the accounting principle of "Substance over Form", a principle that is already embodied in S.I. No. 201 of 1992, EC (Companies: Group Accounts) Regulations 1992, for example, in determining whether an undertaking is a subsidiary.*



*The amendment is necessary to facilitate the convergence programme for Irish and UK accounting standards by the Accounting Standards Board, particularly in the area of financial instruments. Under International Accounting Standards certain transactions and arrangements must be disclosed in the profit and loss account and balance sheet in a manner that reflects their substance rather than legal form. So, for example, under International Accounting Standard 32, dealing with financial instruments the presentation of certain items in the balance sheet and profit and loss account will change. Some preference shares will be classified as liabilities, rather than as share capital, and their dividends treated as an interest expense. Furthermore, the debt and equity elements of convertible debt and similar instruments will be presented separately in the financial statements rather than classified wholly as a liability at present. Para 17 is a slightly amended re-enactment of Section 6 of the Companies (Amendment) Act 1986. All cross-references have been updated in accordance with the structure of the Bill.*

## Section B

### HISTORICAL COST ACCOUNTING RULES

---

#### Preliminary

18. Subject to Sections C and D of this Part of this Schedule, the amounts to be included in respect of all items shown in a company's financial statements shall be determined in accordance with the rules set out in the paragraphs 19 to 30 of this Part.

#### Fixed assets

---

#### General rules

---

19. Subject to any provision for depreciation or diminution in value made in accordance with paragraph 20 or 21 of this Part of this Schedule the amount to be included in respect of any fixed asset shall be its purchase price or production cost.
20. In the case of any fixed asset which has a limited useful economic life, the amount of—
- (a) its purchase price or production cost; or

- (b) where it is estimated that any such asset will have a residual value at the end of the period of its useful economic life, its purchase price or production cost less that estimated residual value, shall be reduced by provisions for depreciation calculated to write off that amount systematically over the period of the asset's useful economic life.

21. (1) Where a financial asset of a description falling to be included under item A. III of either of the balance sheet formats set out in Part I of this Schedule has diminished in value, provisions for diminution in value may be made in respect of it and the amount to be included in respect of it may be reduced accordingly; and any such provisions which are not shown separately in the profit and loss account shall be disclosed (either separately or in aggregate) in a note to the financial statements.

(2) Provisions for diminution in value shall be made in respect of any fixed asset which has diminished in value if the reduction in its value is expected to be permanent (whether its useful economic life is limited or not) and the amount to be included in respect of it shall be reduced accordingly; and any such provisions which are not shown separately in the profit and loss account shall be disclosed (either separately or in aggregate) in a note to the financial statements.

(3) Where the reasons for which any provision was made in accordance with sub paragraph (1) or (2) of this paragraph have ceased to apply to any extent, that provision shall be written back to the extent that it is no longer necessary; and any amounts written back in accordance with this sub paragraph which are not shown in the profit and loss account shall be disclosed (either separately or in aggregate) in a note to the financial statements.

#### Rules for determining particular fixed asset items

---

22. (1) Notwithstanding that an item in respect of "development costs" is included under "fixed assets" in the balance sheet formats set out in Part I of this Schedule, an amount may only be included in a company's balance sheet in respect of that item in special circumstances.

(2) If an amount is included in a company's balance sheet in respect of development costs, the following information shall be given in a note to the financial statements—

- (a) the period over which the amount of those costs originally capitalised is being or is to be written off; and
  - (b) the reasons for capitalising the costs in question.
23. (1) The application of paragraphs 19 to 21 in relation to goodwill (in any case where goodwill is treated as an asset) is subject to the following provisions of this paragraph.
- (2) Subject to subparagraph (3), the amount of the consideration for any goodwill acquired by a company shall be reduced by provisions for depreciation calculated to write off that amount systematically over a period chosen by the directors of the company.
- (3) The period chosen shall not exceed the useful economic life of the goodwill in question.
- (4) In any case where any goodwill acquired by a company is shown or included as an asset in the company's balance sheet, the period chosen for writing off the consideration for that goodwill and the reasons for choosing that period shall be disclosed in a note to the financial statements.

### Current Assets

---

24. Subject to paragraph 25 the amount to be included in respect of any current asset shall be its purchase price or production cost.
25. (1) If the net realisable value of any current asset is lower than its purchase price or production cost, the amount to be included in respect of that asset shall be the net realisable value.
- (2) Where the reasons for which any provision for diminution in value was made under sub paragraph (1) have ceased to apply to any extent, that provision shall be written back to the extent that it is no longer necessary.

### Miscellaneous

---

Excess of money owed over value received as an asset item

26. (1) Where the amount repayable on any debt owed by a company is greater than the value of the consideration received in the transaction giving rise to the debt, the amount of the difference may be treated as an asset.
- (2) Where any such amount exists—
- (a) it shall be written off by reasonable amounts each year and shall be completely written off before repayment of the debt; and
  - (b) if the amount not written off is not shown as a separate item in the company's balance sheet, it shall be disclosed in a note to the financial statements.

### Assets included at a fixed amount

---

27. (1) Subject to sub paragraph (2), assets which fall to be included—
- (a) amongst the fixed assets of a company under the item "tangible assets"; or
  - (b) amongst the current assets of a company under the item "raw materials and consumables",
- may be included at a fixed quantity and value.
- (2) Sub paragraph (1) applies to assets of a kind which are constantly being replaced, where—
- (a) their overall value is not material to assessing the company's state of affairs; and
  - (b) their quantity, value and composition are not subject to material variation.

### Determination of purchase price or production cost

---

28. (1) The purchase price of an asset shall be determined by adding to the actual price paid any expenses incidental to its acquisition.
- (2) The production cost of an asset shall be determined by adding to the purchase price of the raw materials and consumables used the amount of the costs incurred by the company which are directly attributable to the production of that asset.

## Part A6 - Financial statements, Annual Return and Audit

- (3) In addition there may be included in the production cost of an asset—
- (a) a reasonable proportion of the costs incurred by the company which are only indirectly attributable to the production of that asset, but only to the extent that they relate to the period of production; and
  - (b) interest on capital borrowed to finance the production of that asset, to the extent that it accrues in respect of the period of production,

provided, however, in a case within sub paragraph (b) above that the inclusion of the interest in determining the cost of that asset and the amount of the interest so included is disclosed in a note to the financial statements.

(4) In the case of current assets, distribution costs may not be included in production costs.

29. (1) Subject to the qualification mentioned below, the purchase price or production cost of—
- (a) any assets which fall to be included under any item shown in a company's balance sheet under the general item "stocks"; and
  - (b) any assets which are fungible assets (including investments),

may be determined by the application of any of the methods mentioned in sub paragraph (2) below in relation to any such assets of the same class.

The method chosen must be one which appears to the directors to be appropriate in the circumstances of the company.

- (2) Those methods are —
- (a) the method known as "first in, first out" (FIFO);
  - (b) a weighted average price; and
  - (c) any other method similar to any of the methods mentioned above.
- (3) Where, in the case of any company—

- (a) the purchase price or production cost of assets falling to be included under any item shown in the company's balance sheet has been determined by the application of any method permitted by this paragraph; and
- (b) the amount shown in respect of that item differs materially from the relevant alternative amount given below in this paragraph,

the amount of that difference shall be disclosed in a note to the financial statements.

(4) Subject to subparagraph (5), for the purposes of subparagraph (3) (c), the relevant alternative amount, in relation to any item shown in a company's balance sheet, is the amount which would have been shown in respect of that item if assets of any class included under that item at an amount determined by any method permitted by this paragraph had instead been included at their replacement cost as at the financial year end date.

(5) The relevant alternative amount may be determined by reference to the most recent actual purchase price or production cost before the financial year end date of assets of any class included under the item in question instead of by reference to their replacement cost as at that date, but only if the former appears to the directors of the company to constitute the more appropriate approach in the case of assets of that class.

(6) For the purpose of this paragraph, assets of any description shall be regarded as fungible if assets of that description are substantially indistinguishable from one another.

Substitution of original stated amount where price or cost unknown

30. Where there is no record of the purchase price or production cost of any asset of a company or of any price, expense or costs relevant for determining its purchase price or production cost in accordance with paragraph 28 of this Schedule or any such record cannot be obtained without unreasonable expense or delay, its purchase price or production cost shall be taken for the purposes of paragraphs 19 to 25 of this Schedule to be the value ascribed to it in the earliest available record of its value made on or after its acquisition or production by the company.

## Section C

### ALTERNATIVE ACCOUNTING RULES

#### Preliminary

31. (1) The rules set out in Section B of this Part of this Schedule are referred to subsequently in this Schedule as the historical cost accounting rules.
- (2) Those rules, with the omission of paragraphs 18, 23 and 27 to 30, are referred to subsequently in this Part of this Schedule as the depreciation rules; and references subsequently in this Schedule to the historical cost accounting rules do not include the depreciation rules as they apply by virtue of paragraph 34 of this Schedule.
32. Subject to paragraphs 34 to 36 of this Schedule, the amounts to be included in respect of assets of any description mentioned in paragraph 33 of this Schedule may be determined on any basis so mentioned.

#### Alternative accounting rules

33. (1) Intangible fixed assets, other than goodwill, may be included at their current cost.
- (2) Tangible fixed assets may be included at a market value determined as at the date of their last valuation or at their current cost.
- (3) Financial fixed assets may be included either—
- (a) at a market value determined as at the date of their last valuation; or
- (b) at a value determined on any basis which appears to the directors to be appropriate in the circumstances of the company,
- but in the latter case particulars of the method of valuation adopted and of the reasons for adopting it shall be disclosed in a note to the financial statements.
- (4) Investments of any description falling to be included under item B. III of either of the balance sheet formats set out in Part I of this Schedule may be included at their current cost.
- (5) Stocks may be included at their current cost.

#### Application of depreciation rules

34. (1) Where the value of any asset of a company is determined on any basis mentioned in paragraph 33 of this Schedule, that value shall be, or (as the case may require) be the starting point for determining, the amount to be included in respect of that asset in the company's financial statements, instead of its purchase price or production cost or any value previously so determined for that asset; and the depreciation rules shall apply accordingly in relation to any such asset with the substitution for any reference to its purchase price or production cost of a reference to the value most recently determined for that asset on any basis mentioned in the said paragraph 33.
- (2) The amount of any provision for depreciation required in the case of any fixed asset by paragraph 20 or 21 of this Schedule as it applies by virtue of subparagraph (1) of this paragraph is referred to below in this paragraph as the adjusted amount; and the amount of any provision which would be required by that paragraph in the case of that asset according to the historical cost accounting rules is referred to as the historical cost amount.
- (3) Where sub paragraph (1) applies in the case of any fixed asset, the amount of any provision for depreciation in respect of that asset—
- (a) included in any item shown in the profit and loss account in respect of amounts written off assets of the description in question; or
- (b) taken into account in stating any item so shown which is required by note (10) of the notes on the profit and loss account formats set out in Part I of this Schedule to be stated after taking into account any necessary provisions for depreciation or diminution in value of assets included under it,
- may be the historical cost amount instead of the adjusted amount, provided that, if the amount of the provision for depreciation is the historical cost amount, the amount of any difference between the two shall be shown separately in the profit and loss account or in a note to the financial statements.

Additional information in case of departure from historical cost accounting rules

35. (1) This paragraph applies where the amounts to be included in respect of assets covered by any items shown in a company's financial statements have been determined on any basis mentioned in paragraph 33 of this Schedule.
- (2) The items affected and the basis of valuation adopted in determining the amounts of the assets in question in the case of each such item shall be disclosed in a note to the financial statements.
- (3) In the case of each balance sheet item affected (except stocks) either—
- (a) the comparable amounts determined according to the historical cost accounting rules; or
  - (b) the differences between those amounts and the corresponding amounts actually shown in the balance sheet in respect of that item,
- shall be shown separately in the balance sheet or in a note to the financial statements.
- (4) In sub paragraph (3), references in relation to any item to the comparable amounts determined as there mentioned are references to—
- (a) the aggregate amount which would be required to be shown in respect of that item if the amounts to be included in respect of all the assets covered by that item were determined according to the historical cost accounting rules; and
  - (b) the aggregate amount of the cumulative provisions for depreciation or diminution in value which would be permitted or required in determining those amounts according to those rules.

### Revaluation reserve

---

36. (1) With respect to any determination of the value of an asset of a company on any basis mentioned in paragraph 33 of this Schedule, the amount of any profit or loss arising from that determination (after allowing, where appropriate, for any provisions for depreciation or diminution in value made otherwise than by reference to the value so determined and any adjustments of any such provisions made in the light of that determination) shall be credited or (as the case may be) debited to a separate reserve (referred to in this paragraph as "the revaluation reserve").
- (2) The amount of the revaluation reserve shall be shown in the company's balance sheet under a separate sub-heading in the position given for the item "revaluation reserve" in Format 1 or 2 of the balance sheet formats set out in Part I of this Schedule.
- (3) An amount may be transferred -
- (a) from the revaluation reserve
    - (i) to the profit and loss account, if the amount was previously charged to that account, or it represents realised profit, or
    - (ii) on capitalisation;
  - (b) to or from the revaluation reserve in respect of the taxation relating to any profit or loss credited or debited to the reserve;
- and the revaluation reserve shall be reduced to the extent that the amounts transferred to it are no longer necessary for the purpose of the valuation methods used.
- (4) In sub-paragraph (3)(a)(ii) "capitalisation", in relation to an amount standing to the credit of the revaluation reserve, means applying it in wholly or partly paid up unissued shares in the company to be allotted to members of the company as fully or partly paid shares.
- (5) The revaluation reserve shall not be reduced except as mentioned in this paragraph.
- (6) The treatment for taxation purposes of amounts credited or debited to the revaluation reserve shall be disclosed in a note to the financial statements.



### **Explanatory note**

*This paragraph has been amended to refer to capitalisation of the revaluation reserve deriving from the application of the alternative accounting rules.*

*It has been amended here to be consistent with the planned reintroduction of Section 149(6) of the 1963 Act. There is a question as to whether all revaluations should be capable of being capitalised in this manner or would it be restricted to certain reserves. Once decided, this paragraph needs to be made consistent with the decisions in Part A3.*

## **Section D**

### **FAIR VALUE ACCOUNTING RULES**

#### **Inclusion of financial instruments at fair value**

37. (1) Subject to sub-paragraphs (2) to (4), financial instruments, including derivatives, may be accounted for at fair value. [Article 42a(1) and MS option].

(2) Subject to paragraph 39, sub paragraph (1) does not apply to financial instruments which constitute liabilities unless-

- (a) they are held as part of a trading portfolio; or
- (b) they are derivatives. [Article 42a(3)].

(3) Subparagraph (1) does not apply to-

- (a) financial instruments (other than derivatives) held to maturity;
- (b) loans and receivables originated by the company and not held for trading purposes;
- (c) interests in subsidiary undertakings, associated undertakings and joint ventures;
- (d) equity instruments issued by the company;
- (e) contracts for contingent consideration in a business combination; and
- (f) other financial instruments with such special characteristics that the instruments, according to generally accepted accounting principles or practice, should be accounted for differently from other financial instruments. [Article 42a(4)].

(4) If the fair value of a financial instrument cannot be determined reliably by any of the methods described in paragraph 38, sub paragraph (1) does not apply to that financial instrument and it shall be measured using the accounting rules set out in Section B or C of this Part of this Schedule. [Article 42b(2)].

(5) In this paragraph-

'subsidiary undertaking' has the meaning given by Part A6 Head 3 [Regulation 4 of S.I. 201/1992];

'associated undertaking' has the meaning given by paragraph 18 of the Second Schedule [Regulation 34 of S.I. 201/1992];

'joint venture' has the meaning given by paragraph 17 of the Second Schedule [Regulation 32 of S.I. 201/1992].

#### **Methods for determining fair value**

38. (1) The fair value of a financial instrument is its value determined in accordance with this paragraph.

(2) If a reliable market can readily be identified for the financial instrument, its fair value is to be determined by reference to its market value.

(3) If a reliable market cannot readily be identified for the financial instrument but can be identified for its components or for a similar instrument, its fair value is to be determined by reference to the market value of its components or of the similar instrument.

(4) If neither sub-paragraph (2) or (3) applies, the fair value of the financial instrument is to be a value resulting from generally accepted valuation models and techniques.

(5) Any valuation models and techniques used for the purposes of sub-paragraph (4) must ensure a reasonable approximation of the market value. [Article 42b(1)]

#### **Inclusion of hedged items at fair value**

39. A company may include any assets and liabilities that qualify as hedged items under a fair value hedge accounting system, or identified portions of such assets and liabilities, at the amount required under that system. [Article 42a(5) and availing of MS option]

## Part A6 - Financial statements, Annual Return and Audit

---

### **Other assets that may be included at fair value**

40. (1) This paragraph applies to -
- (a) investment property; and
  - (b) living animals and plants, that, under relevant international financial reporting standards, may be included in financial statements at fair value.

(2) Such investment property and such living animals and plants may be included at fair value, provided that all such investment property or, as the case may be, all such living animals and plants are so included where their fair value can reliably be determined.

(3) In this paragraph, "fair value" means fair value determined in accordance with relevant international financial reporting standards.

### Accounting for changes in fair value of financial instruments

---

41. (1) This paragraph applies where a financial instrument is valued at fair value in accordance with paragraph 37 or 39 or where an asset is valued in accordance with paragraph 40.

(2) Notwithstanding paragraph 13 of Section A of this Part of this Schedule, and subject to sub-paragraphs (3) and (4) below, a change in the fair value of the financial instrument or of the investment property or living animal or plant shall be included in the profit and loss account.

(3) Where -

- (a) the financial instrument accounted for is a hedging instrument under a system of hedge accounting that allows some or all of the change in value not to be shown in the profit and loss account; or
- (b) the change in value relates to an exchange difference arising on a monetary item that forms part of a company's net investment in a foreign entity,

the amount of the change in value shall be credited to (or debited from, as the case may be) a separate reserve to be known as the 'fair value reserve'. [New Article 42c(1)].

(4) Where the instrument accounted for-

(a) is an available for sale financial asset; and

(b) is not a derivative,

the change in value may be credited to (or debited from as the case may be) the fair value reserve. [New Article 42c(2) and availing of MS option].

### The fair value reserve

---

42. (1) An amount shall be transferred -

(a) from the fair value reserve to the profit and loss account if the amount represents realised profit;

(b) to or from the fair value reserve in respect of tax relating to any amount credited or debited to the reserve.

(2) The fair value reserve shall be adjusted when amounts therein are no longer necessary for the purposes of paragraphs 41 (3) or (4).

(3) The fair value reserve shall not be reduced except as mentioned in this paragraph.

(4) The treatment for taxation purposes of amounts credited or debited to the fair value reserve shall be disclosed in a note to the financial statements. [Article 42c(3)].

## Part III

### INFORMATION REQUIRED BY WAY OF NOTES TO FINANCIAL STATEMENTS

#### Preliminary

43. (1) Any information required in the case of any company by the following provisions of this Part shall (if not given in the company's financial statements) be given by way of a note to those financial statements.

#### Information supplementing the balance sheet

44. Paragraphs 45 to 58 of this Schedule require information which either supplements the information given with respect to any particular items shown in the balance sheet or is otherwise relevant to assessing the company's financial position in the light of the information so given.

#### Debentures

45. (1) If the company has issued any debentures during the financial year to which the financial statements relate, the following information shall be given—
- (a) the reason for making the issue;
  - (b) the classes of debentures issued; and
  - (c) in respect of each class of debentures, the amount issued and the consideration received by the company for the issue.
- (2) Where any of the company's debentures are held by a nominee of or trustee for the company, the nominal amount of the debentures and the amount at which they are stated in the accounting records kept by the company in accordance with Part A6, Head 5 [equivalent of Section 147 of the Principal Act and Section 202 of the 1990 Act] shall be stated.

#### Fixed assets

46. (1) In respect of each item which is or would, but for paragraph 3(3)(b) of Section A of Part I [equivalent of Section 4 (6) (c) of the 1986 Act], be shown under the general item "fixed assets" in the company's balance sheet, the following information shall be given—
- (a) the appropriate amounts in respect of that item as at the date of the beginning of the financial year and as at the financial year end date respectively;
  - (b) the effect on any amount shown in the balance sheet in respect of that item of—
    - (i) any revision of the amount in respect of any assets included under that item made during that year on any basis mentioned in paragraph 33 of this Schedule [equivalent to para of Schedule to the Companies (Amendment) Act, 1986],
    - (ii) acquisitions during that year of any assets,
    - (iii) disposals during that year of any assets, and
    - (iv) any transfers of assets of the company to and from that item during that year.
- (2) The reference in sub paragraph (1) (a) to the appropriate amounts in respect of any item as at any date there mentioned is a reference to amounts representing the aggregate amounts determined, as at that date, in respect of assets falling to be included under that item either—
- (a) on the basis of purchase price or production cost (determined in accordance with paragraphs 28 and 29 of this Schedule [equivalent to paras 14 and 15 of Schedule to the Companies (Amendment) Act, 1986]); or
  - (b) on any basis mentioned in paragraph 33 of this Schedule (leaving out of account in either case any provisions for depreciation or diminution in value) [equivalent to para 19 of Schedule to the Companies Amendment Act, 1986]

## Part A6 - Financial statements, Annual Return and Audit

- (3) In respect of each item within subparagraph (1) of this paragraph—
- (a) the cumulative amount of provisions for depreciation or diminution in value of assets included under that item as at each date mentioned in sub paragraph (1) (a);
  - (b) the amount of any such provisions made in respect of the financial year concerned;
  - (c) the amount of any adjustments made in respect of any such provisions during that year in consequence of the disposal of any assets; and
  - (d) the amount of any other adjustments made in respect of any such provisions during that year, shall also be stated.

47. Where any fixed assets of the company (other than listed investments) are included under any item shown in the company's balance sheet at an amount determined on any basis mentioned in paragraph 33 of this Schedule [equivalent to para 19 of Schedule to the Companies (Amendment) Act, 1986], the following information shall be given—

- (a) the years (so far as they are known to the directors) in which the assets were severally valued and the several values; and
- (b) in the case of assets that have been valued during the financial year, the names of the persons who valued them or particulars of their qualifications for doing so and (in either case) the bases of valuation used by them.

### **Financial assets and investments held as current assets**

48. (1) In respect of the amount of each item which is or would, but for paragraph 3(3)(b) of Section A of Part I [equivalent to Section 4 (6) (c) of the 1986 Act], be shown in the company's balance sheet under the general items "financial assets" or "investments held as current assets" there shall be stated how much of that amount is ascribable to listed investments.

(2) Where the amount of any listed investments is stated for any item in accordance with sub paragraph (1), the following amounts shall also be stated—

- (a) the aggregate market value of those investments where it differs from the amount so stated; and
- (b) both the market value and stock exchange value of any investments of which the former value is, for the purposes of the financial statements, taken as being higher than the latter.

### **Explanatory note**

*The first sub paragraph of this paragraph [para 31 of Schedule to the Companies (Amendment) Act] 1986 used to require a split of listed investments between those listed on a recognised stock exchange and those otherwise listed. This has been removed.*

### **Information about fair valuation of assets and liabilities** [Inserting Regulation 3 of Draft SI on Fair Value]

49. (1) This paragraph applies where financial instruments have been included at fair value by virtue of paragraphs 37 or 39 [equivalent to paras 22A or 22C of schedule to 1986 Act as inserted by Fair Value Regulations].

(2) There shall be stated—

- (a) the significant assumptions underlying the valuation models and techniques where fair values have been determined in accordance with paragraph 38(4);
- (b) for each category of financial instrument the fair value of the financial instruments in that category and the amounts —
  - (i) included in the profit and loss account, and
  - (ii) credited to or debited from the fair value reserve, in respect of instruments in that category;
- (c) for each class of derivative financial instrument, the extent and nature of the instruments including significant terms and conditions that may affect the amount, timing and certainty of future cash flows;
- (d) a table showing movements in the fair value reserve during the financial year. [Article 42d].

50. Where the company has derivatives that it has not accounted for at fair value, there shall be stated for each class of such derivatives —

- (a) the fair value of the derivatives in that class, if such a value can be determined in accordance with paragraph 38; and
- (b) the extent and nature of the derivatives. [Article 1 para 2 of FV Directive amending Article 43(1) of 4th Directive by insertion of additional para.point 14 a and as amended by S.I. 116 of 2005]

51. Where

- (a) a company has financial assets which could be included at fair value by virtue of paragraph 37; and
- (b) those assets are included in the company's financial statements at an amount in excess of their fair value; and
- (c) the company has not made provision for the diminution in value of those assets in accordance with paragraph 21(1) of this Schedule,

there shall be stated –

- (i) the amount at which either the individual assets or appropriate groupings of those assets is stated in the company's financial statements, and
- (ii) the fair value of those assets or groupings, and
- (iii) the reasons for not making a provision for diminution in value of those assets, including the nature of the evidence that provides the basis for the belief that the amount at which they are stated in the financial statements will be recovered. [Article 1 para 2 of FV Directive amending Article 43(1), of 4<sup>th</sup> Directive by insertion of additional para. point 14b]

### Information where investment property and living animals and plants included at fair value

52. (1) This paragraph applies where the amounts to be included in a company's financial statements in respect of investment property or living animals and plants have been determined in accordance with paragraph 40 [equivalent to para 22CA of 1986 CAA] of this Schedule.

(2) The balance sheet items affected and the basis of valuation adopted in determining the amounts of the assets concerned in the case of each such item shall be disclosed in a note to the financial statements.

(3) In the case of investment property, for each balance sheet item affected there shall be shown, either separately in the balance sheet or in a note to the financial statements –

(a) the comparable amounts determined according to the historical cost accounting rules; or

(b) the differences between those amounts and the corresponding amounts actually shown in the balance sheet in respect of that item.

(4) In subparagraph (3) of this paragraph, references in relation to any item to the comparable amounts determined in accordance with that sub paragraph are references to –

(a) the aggregate amount which would be required to be shown in respect of that item if the amounts to be included in respect of all the assets covered by that item were determined according to the historical cost accounting rules; and

(b) the aggregate amount of the cumulative provisions for depreciation or diminution in value which would be permitted or required in determining those amounts according to those rules.

*[Equivalent to paragraph 31D of the Schedule to CAA86 – inserted by S.I. No. 116 of 2005]*

### **Dividends, reserves and provisions for liabilities**

53. (1) The profit and loss account reserve of a company for a financial year shall show—



## Part A6 - Financial statements, Annual Return and Audit

- (a) The aggregate amount of dividends paid in the financial year (other than dividends for which a liability existed at the immediately preceding financial year end date);
  - (b) the aggregate amount of dividends the company is liable to pay at the financial year end date (other than dividends for which a liability existed at the immediately preceding financial year end date);
  - (c) Separately, any transfer between the profit and loss account reserve and other reserves;
  - (d) any other increase or reduction in the balance on the profit and loss account reserve since the immediately preceding financial year end date;
  - (e) the profit or loss brought forward at the beginning of the financial year;
  - (f) the profit or loss carried forward at the end of the financial year.
- (2) The aggregate amount of dividends proposed by the directors for approval of the members at the next general meeting shall be stated in a note to the financial statements.

### **Explanatory note**

*This paragraph was included in Section 4(15) and (16) of the 1986 Companies (Amendment) Act. It was considered more appropriate to include the movements in the profit and loss reserve with the movements on other reserves.*

54. (1) Where any amount is transferred—
- (a) to or from any reserves; or
  - (b) to any provision for liabilities; or
  - (c) from any provision for liabilities other than for the purpose for which the provision was established,

and the reserves or provisions for liabilities are or would, but for paragraph 3(3)(b) of Section A of Part I [equivalent to Section 4 (6) (c) of the 1986 Act], be shown as separate items in the company's balance sheet, the information mentioned in subparagraph (2) of this paragraph shall be given in respect of the each such reserve or provisions for liabilities .

- (2) That information is—

- (a) the amount of the reserves or provisions for liabilities as at the date of the beginning of the financial year and as at the financial year end date respectively;
  - (b) any amount transferred to or from the reserves or provisions for liabilities during that year; and
  - (c) the source and application respectively of any amounts so transferred.
- (3) Particulars shall be given of each provision included in the item "other provisions for liabilities" in the company's balance sheet in any case where the amount of that provision is material.

### **Provision for taxation**

55. The amount of any provision for deferred taxation shall be shown separately from the amount of any provision for other taxation.

### **Details of indebtedness**

56. (1) In respect of each item shown under "creditors" in the company's balance sheet there shall be stated—

- (a) the aggregate amount of any debts included under that item which are payable or repayable otherwise than by instalments and fall due for payment or repayment after the end of the period of five years beginning with the day next following the end of the financial year; and
- (b) in the case of any debts so included which are payable or repayable by instalments, the amount of any instalments which fall due for payment after the end of that period,

(2) Subject to sub paragraph (3), in relation to each debt falling to be taken into account under sub paragraph (1), the terms of payment or repayment and the rate of any interest payable on the debt shall be stated.

(3) If the number of debts is such that, in the opinion of the directors, compliance with sub-paragraph (2) would result in a statement of excessive length, it shall be sufficient to give a general indication of the terms of payment or repayment and the rates of any interest payable on the debts.

## Part A6 - Financial statements, Annual Return and Audit

(4) In respect of each item shown under “creditors” in the company’s balance sheet there shall be stated –

- (a) the aggregate amount of any debts included under that item in respect of which any security has been given; and
- (b) an indication of the nature of the securities so given.

(5) References in subparagraph (1) of this paragraph to an item shown under “creditors” in the company’s balance sheet include references, where amounts falling due to creditors within one year and after more than one year are distinguished in the balance sheet—

- (a) in a case within sub paragraph (1), to an item shown under the latter of those categories; and
- (b) in a case within sub paragraph (4) of this paragraph, to an item shown under either of those categories,

and references to items shown under “creditors” include references to items which would, but for paragraph 3(3)(b) of Section A of Part I [equivalent of Section 4 (6) (c) of 1986 Act], be shown under that heading.

### **Explanatory note**

*The requirements in relation to indebtedness have been extended to bring more into line with what is required from IFRS financial statements. It is also consistent with the UK Act and with UK Accounting Standards.*

57. If any fixed cumulative dividends on the company’s shares are in arrears, there shall be stated, distinguishing between those shares presented as a liability and other shares —

- (a) the amount of the arrears; and
- (b) the period for which the dividends or, if there is more than one class, each class of them are in arrears.

Guarantees and other financial commitments

58. (1) Particulars shall be given of any charge on the assets of the company to secure the liabilities of any other person, including, where practicable, the amount secured.

(2) The following information shall be given with respect to any other contingent liability not provided for—

- (a) the amount or estimated amount of that liability;
- (b) its legal nature; and
- (c) whether any valuable security has been provided by the company in connection with that liability and, if so, what.

(3) There shall be stated, where practicable—

- (a) the aggregate amount or estimated amount of contracts for capital expenditure, so far as not provided for, and
- (b) the aggregate amount or estimated amount of capital expenditure authorised by the directors which has not been contracted for;

(4) Particulars shall be given of:

- (a) any unfunded retirement benefit commitments included under any provision shown in the company’s balance sheet; and
- (b) any such commitments for which no provision has been made, and, where any such commitment relates wholly or partly to retirement benefits payable to past directors of the company, separate particulars shall be given of that commitment so far as it relates to such retirement benefits.

(5) The following information shall also be given:

- (a) the nature of every retirement benefit scheme operated by, or on behalf of, the company including information as to whether or not each scheme is a defined benefit scheme or a defined contribution scheme;
- (b) whether each such scheme is externally funded or internally financed;
- (c) whether any retirement benefit costs and liabilities are assessed in accordance with the advice of a professionally qualified actuary and, if so, the date of the most recent relevant actuarial valuation;
- (d) whether and, if so, where any such actuarial valuation is available for public inspection.

## Part A6 - Financial statements, Annual Return and Audit

(6) Particulars shall also be given of any other financial commitments which—

- (a) have not been provided for; and
- (b) are relevant to assessing the company's [assets, liabilities and financial position / state of affairs].

### Miscellaneous matters

59. (1) Particulars shall be given of any case where the purchase price or production cost of any asset is for the first time determined under paragraph 30 of this Schedule.

### Information supplementing the profit and loss account

60. Paragraphs 61 to 64 of this Part require information which either supplements the information given with respect to any particular items shown in the profit and loss account or otherwise provides particulars of income or expenditure of the company or of circumstances affecting the items shown in the profit and loss account.

### Separate statement of certain items of income and expenditure

61. (1) Subject to the following provisions of this paragraph, each of the amounts mentioned in subparagraphs (2) and (3) of this paragraph shall be stated.

(2) The amount of interest on or any similar charges in respect of—

- (a) bank loans and overdrafts made to the company;
- (b) loans to the company from group undertakings;
- (c) loans of any other kind made to the company;

(3) The amount of income from listed and unlisted investments.

### Explanatory note

*The extent of disclosure required in relation to interest cost has been reduced because of the extended disclosures now required for debt.*

### Particulars of tax

62. (1) The basis on which the charge for corporation tax, income tax and other taxation on profits (whether payable in or outside the State) is computed shall be stated.

(2) Particulars shall be given of any special circumstances which affect the liability in respect of taxation on profits, income or capital gains for the financial year concerned or the liability in respect of taxation of profits, income or capital gains for succeeding financial years.

(3) The amount of the charge for corporation tax, income tax and other taxation on profits or capital gains, so far as charged to revenue, including taxation payable outside the State on profits (distinguishing where practicable between corporation tax and other taxation) shall be stated. These amounts shall be stated separately in respect of each of the amounts which is or would, but for paragraph 3(3)(b) of Section A of Part I [equivalent to Section 4 (6) (c) of the 1986 Act], be shown under the following items in the profit and loss account, that is to say, "tax on profit or loss on ordinary activities" and "tax on extraordinary profit or loss".

### Particulars of turnover

63. (1) If in the course of the financial year, the company has carried on business of two or more classes which, in the opinion of the directors, differ substantially from each other, there shall be stated in respect of each class (describing it) the amount of the turnover attributable to that class.

(2) If, in the course of the financial year, the company has supplied markets which, in the opinion of the directors, differ substantially from each other, the amount of the turnover attributable to each such market shall also be stated.

In this sub paragraph "market" means a market delimited in by geographical bounds.

(3) In analysing for the purposes of this paragraph the source (in terms of business or in terms of market) of turnover, the directors of the company shall have regard to the manner in which the company's activities are organised.

(4) For the purpose of this paragraph—

- (a) classes of business which, in the opinion of the directors, do not differ substantially from each other shall be treated as one class; and

- (b) markets which, in the opinion of the directors, do not differ substantially from each other shall be treated as one market,

and any amounts properly attributable to one class of business or (as the case may be) to one market which are not material may be included in the amount stated in respect of another.

- (5) Where in the opinion of the directors the disclosure of any information required by this paragraph would be seriously prejudicial to the interests of the company, that information need not be disclosed, but the fact that any such information has not been disclosed must be stated.

### **Miscellaneous matters**

64. (1) Where any amount relating to any preceding financial year is included in any item in the profit and loss account, the effect shall be stated.

(2) Particulars shall be given of any extraordinary income or charges arising in the financial year.

(3) The effect shall be stated of any transactions that are exceptional by virtue of size or incidence notwithstanding the fact that they fall within the ordinary activities of the company.

(4) Any amount expended on research and development in the financial year, and any amount committed in respect of research and development in subsequent years, shall be stated.

(5) Where, in the opinion of the directors, the disclosure of any information required by sub paragraph (4) of this paragraph would be prejudicial to the interests of the company, that information need not be disclosed, but the fact that any such information has not been disclosed shall be stated.

### **General**

---

65. (1) Where sums originally denominated in foreign currencies have been brought into account under any items shown in the balance sheet or profit and loss account, the basis on which those sums have been translated into euro or, if different, the functional currency of the company, shall be stated.

#### **Explanatory note**

*The Subsection (2) of this paragraph [equivalent of paragraph 44 of the Schedule of the 1986 Companies Amendment) Act has been removed as it is covered by paragraph 4 of this Schedule.*

### Part IV

#### SPECIAL PROVISIONS WHERE A COMPANY IS A HOLDING COMPANY OR SUBSIDIARY COMPANY

##### Entity financial statements

66. (1) This Part applies where the company is a holding company, whether or not it is itself a subsidiary company.
- (2) Where a company is a holding company or a subsidiary company and any item required by Part I of this Schedule to be shown in the company's balance sheet, in relation to group undertakings, includes—
- (a) amounts attributable to dealings with or interests in any holding undertaking or fellow subsidiary undertaking; or
  - (b) amounts attributable to dealings with or interests in any subsidiary undertaking of the company,

the aggregate amounts within paragraphs (a) and (b) of this sub paragraph, respectively, shall be shown as separate items, either by way of subdivision of the relevant item in the balance sheet or in a note to the company's financial statements.

##### Guarantees and other financial commitments in favour of group undertakings

67. Commitments within any of the sub paragraphs (1) to (6) of paragraph 58 (guarantees and other financial commitments) which are undertaken on behalf of or for the benefit of—
- (a) any holding undertaking or fellow subsidiary undertaking; or
  - (b) any subsidiary undertaking of the company

shall be stated separately from the other commitments within that sub paragraph, and commitments within paragraph (a) shall also be stated separately from those within paragraph (b).

68. (1) Subject to sub paragraph (2) of this paragraph, where the company is a holding undertaking, the number, description and amount of the debentures of the company held by its subsidiary undertakings or their nominees shall be disclosed in a note to the company's financial statements.
- (2) Sub paragraph (1) does not apply in relation to any debentures—
- (a) in the case of which the subsidiary undertaking is concerned as personal representative; or
  - (b) in the case of which it is concerned as trustee,

provided that in the latter case neither the company nor a subsidiary undertaking of the company is beneficially interested under the trust, otherwise than by way of security only for the purposes of a transaction entered into by it in the ordinary course of a business which includes the lending of money.

69. (1) Where a company is a subsidiary company, the following information shall be stated with respect to the holding undertaking of—
- (a) the largest group of undertakings for which group financial statements are drawn up and of which the company is a member; and
  - (b) the smallest such group of undertakings.
- (2) The name of the holding undertaking shall be stated.
- (3) There shall be stated —
- (a) if the holding undertaking is incorporated, the country in which it is incorporated;
  - (b) if it is unincorporated, the address of its principal place of business.
- (4) If copies of the group financial statements referred to in subparagraph (1) are available to the public, there shall be stated the addresses from which copies of the financial statements can be obtained.



### Provisions of general application

70. (1) This paragraph applies where a company is a holding and either—

- (a) does not prepare group financial statements; or
- (b) prepares group financial statements which do not deal with one or more of its subsidiary undertakings,

and references in this paragraph to subsidiary undertakings shall be read in a case within clause (b) of this sub paragraph as references to such of the subsidiaries of the company concerned as are excluded from the group financial statements.

(2) Subject to the following provisions of this paragraph—

- (a) the reasons why subsidiaries are not dealt with in group financial statements; and
- (b) a statement showing any qualifications contained in the reports of the auditors of the subsidiaries on their financial statements for their respective financial years ending with or during the financial year of the company, and any note or saving contained in those financial statements to call attention to a matter which, apart from the note or saving, would properly have been referred to in such a qualification, insofar as the matter which is the subject of the qualification or note is not covered by the company's entity financial statements and is material from the point of view of its members, shall be given in a note to the company's entity financial statements.

(3) Subject to the following provisions of this paragraph, the aggregate amount of the total investment of the holding company in the shares of the subsidiary undertakings shall be stated in a note to the company's entity financial statements by way of the equity method of accounting.

(4) Insofar as information required by any of the preceding provisions of this paragraph to be stated in a note to the company's entity financial statements is not obtainable, a statement to that effect shall be given instead in a note to those entity financial statements.

(5) Where in any case within sub paragraph (1) (b) of this paragraph the company prepares group financial statements, references in the preceding sub paragraphs of this paragraph to the company's entity financial statements shall be read as references to the group financial statements.

71. Where a company has subsidiary undertakings whose financial years did not end with that of the company, the following information shall be given in relation to each such subsidiary undertaking (whether or not dealt with in any group financial statements prepared by the company) by way of a note to the company's entity financial statements or (where group financial statements are prepared) to the group financial statements, that is to say—

- (a) the reasons why the company's directors consider that the subsidiary undertakings' financial years should not end with that of the company; and
- (b) the dates on which the subsidiary undertakings' financial years ending last before that of the company respectively ended or the earliest and latest of those dates.

#### **Explanatory note**

*Part V of the Schedule to the 1986 Companies (Amendment) Act has been deleted from this part as it applies only to Investment companies. It will need to be reinstated in Pillar B.*

### Part V

#### INTERPRETATION OF SCHEDULE

---

##### **Assets: fixed or current**

---

72. For the purposes of this Schedule, assets of a company shall be taken to be fixed assets if they are intended for use on a continuing basis in the company's activities, and any assets not intended for such use shall be taken to be current assets.

##### **Capitalisation**

---

73. References in this Schedule to capitalising any work or costs are references to treating that work or those costs as a fixed asset.

##### **Investment property**

74. In this Schedule "investment property" means land or buildings (or both) held to earn rentals or for capital appreciation.

##### **Listed investments**

75. In this Schedule, "listed investments" means an investment as respects which there has been granted a listing on a stock exchange within the State or on any stock exchange of repute outside the State.

##### **Loans**

76. For the purposes of this Schedule, a loan shall be treated as falling due for payment, and an instalment of a loan shall be treated as falling due for payment, on the earliest date on which the lender could require repayment or (as the case may be) payment, if he exercised all options and rights available to him.

##### **Materiality**

77. Amounts which in the particular context of any provision of this Schedule are not material may be disregarded for the purposes of that provision.

##### **Provisions**

78. (1) References in this Schedule to "provisions for depreciation or diminution in value" of assets are references to any amount written off by way of providing for depreciation or diminution in value of assets.

(2) Any reference in the profit and loss account formats set out in Part I of this Schedule to the depreciation of, or amounts written off, assets of any description is a reference to the movement in any provision for depreciation or diminution in value of assets of that description.

79. References in this Schedule to "provisions for liabilities" are to any amount retained as reasonably necessary for the purpose of providing for any liability the nature of which is clearly defined and which exists at the financial year end date but there is uncertainty as to the amount or as to the date on which they will be settled.

##### **Purchase price**

80. References in this Schedule (however expressed) to the purchase price of an asset of a company or of any raw materials or consumables used in the production of any such asset shall be read as including references to any consideration (whether in cash or otherwise) given by the company in respect of that asset or in respect of those materials or consumables (as the case may require).

## Second Schedule

### Accounting principles, Form and Content of Group Financial statements

#### **Explanatory note**

*This Schedule is basically all of the European Communities (Companies: Group Accounts) Regulations 1992 ("GAR"). The approach adopted has been to refer to the First Schedule as far as possible and require compliance with the same accounting principles and valuation rules and disclosures as for entity financial statements. I have reordered the GAR so that it follows the same order as the First Schedule - ie*

- *Part I deals with 'general rules' and changes to the 'formats'.*
- *Part II deals with Accounting principles and valuation rules and includes the special accounting principles that apply only to group financial statements ie how to consolidate and how to account for an acquisition and how to account for joint ventures and associates.*
- *Part III deals with information to be included in the notes – and in addition to the information to be given as a result of applying the First Schedule it includes specific disclosures relevant to group financial statements only.*

## Part 1

### General Rules and Formats

#### GENERAL RULES

1. (1) Group financial statements shall comply, except for any necessary modifications to take account of differences between group financial statements and entity financial statements, with the provisions of the First Schedule (Accounting principles, Form and Content of Entity Financial statements) as if the undertakings included in the consolidation ("the group") were a single company.  
  
(2) In particular, for the purposes of paragraph 66 of the First Schedule [equivalent to paragraph 45 of the Schedule to the Companies (Amendment) Act 1986], (dealings with or interests in group undertakings) as it applies to group financial statements—

- (a) any subsidiary undertakings of the holding company not dealt with in the group financial statements shall be treated as a subsidiary undertaking of the group; and
- (b) if the holding company is itself a subsidiary undertaking, the group shall be treated as a subsidiary undertaking of any holding undertaking of the holding company, and the reference to fellow subsidiary undertakings shall be construed accordingly.

2. (1) The group balance sheet and group profit and loss account shall consolidate in full the information contained in the separate balance sheets and profit and loss accounts of the holding company and of the subsidiary undertakings included in the consolidation, subject to the adjustments required or permitted by the following provisions of this Schedule and to such other adjustments (if any) as may be appropriate in accordance with generally accepted accounting practice.  
  
(2) If the financial year of a subsidiary undertaking dealt with in the group financial statements differs from that of the holding company, the group financial statements shall be drawn up—
  - (a) from the entity financial statements of the subsidiary undertaking for its financial year last ending before the end of the holding company's financial year provided that the financial year ended no more than three months before that of the holding undertaking; or
  - (b) from interim financial statements drawn up by the subsidiary undertaking as at the end of the holding company's financial year.

#### **Explanatory note**

*Para 1 is a slightly amended re-enactment of S.I. No. 201/1992, European Communities (Companies: Group Accounts) Regulations 1992, Regulation 15. All cross-references have been updated in accordance with the new structure of the Bill and references to "undertaking" have been replaced by references to "company" where appropriate. Also subsection (3) of regulation 15 has not been included as this analysis is required by IFRS financial statements and it is also required by UK Accounting standard.*

## Part A6 - Financial statements, Annual Return and Audit

*Para 2(1) is a slightly amended re-enactment of S.I. No. 201/1992, European Communities (Companies: Group Accounts) Regulations 1992, Regulation 16. Extended to allow consolidation adjustments required by GAAP and the phrase "under these Regulations" has been replaced by the phrase "provisions of this Schedule" and references to "undertaking" have been replaced by references to "company" where appropriate*

*Sub-paragraphs (2) is a slightly amended re-enactment of S.I. No. 201/1992, European Communities (Companies: Group Accounts) Regulations 1992, Regulation 26. It is not necessary to have Regulation 26(1) included here as it is included in the main body of the act – Head 15.*

### AMENDMENTS TO FORMATS IN FIRST SCHEDULE

#### **Minority interest**

3. (1) In applying Balance Sheet Formats 1 and 2 of Section B of Part I of the First Schedule to group financial statements a separate item under the heading "Minority Interest" shall be shown—
    - (a) in Format 1 after item H; and
    - (b) in Format 2 under the general heading "Liabilities", between items A and B.

(2) The amount to be shown under the heading "Minority Interest" referred to in paragraph (1) shall be the amount of share capital and reserves attributable to shares in subsidiary undertakings consolidated in the group financial statements held by or on behalf of persons other than the holding company and its subsidiary undertakings.
  4. (1) In applying Profit and Loss Formats 1, 2, 3 and 4 of Section B of Part I of the First Schedule to group financial statements a separate item under the heading "Minority Interest" shall be shown—
    - (a) in Format 1, before item 20;
    - (b) in Format 2, before item 22;
    - (c) in Format 3, before item 11 in Section A and before item 9 in Section B; and
    - (d) in Format 4, before item 13 in Section A and before item 11 in Section B.
  - (2) The amount to be shown under the heading minority interest in accordance with paragraph (1) shall be the amount of any profit or loss for the year attributable to shares in subsidiaries consolidated in the group financial statements held by or on behalf of persons other than the holding company and its subsidiary undertakings.
- Other changes
5. (1) The formats set out in Section B of Part I of the First Schedule shall have effect in relation to group financial statements with the following modifications.
    - (2) In the Balance Sheet Formats the items headed "Participating interests", that is—
      - (a) in Format 1, item A.III.3; and
      - (b) in Format 2, item A.III.3 under the heading "ASSETS", shall be replaced by two items, "Interests in associated undertakings" and "Other participating interests".
    - (2) In the Profit and Loss Account Formats, the items headed "Income from participating interests", that is—
      - (a) in Format 1, item 8;
      - (b) in Format 2, item 10;
      - (c) in Format 3, item B.4; and
      - (d) in Format 4, item B.6, shall be replaced by two items, "Income from interests in associated undertakings" and "Income from other participating interests".

## Part II

### Accounting Principles and Valuation Rules

#### ACCOUNTING PRINCIPLES

##### General

6. In determining the amounts to be included in the group financial statements, the accounting principles and valuation methods contained in Part II of the First Schedule to this Part [equivalent of the Schedule to the Companies (Amendment) Act 1986] shall apply and shall be applied consistently within those group financial statements.
7. (1) Subject to sub paragraph (2), a holding company shall apply the same methods of valuation in drawing up its group financial statements as it applies in drawing up its entity financial statements.  
  
(2) Subject to paragraph 3 of this Schedule [equivalent of Regulation 28 S.I. No. 201/1992], paragraph (1) shall not apply where, in the opinion of the directors, a departure from the provisions of that paragraph is necessary for the purpose of giving a true and fair view.  
  
(3) Where there is any application of Subsection (2), the particulars of the departure and the reasons therefor shall be disclosed in the notes to the group financial statements.
8. (1) Where the assets and liabilities to be included in the group financial statements have been valued or otherwise determined by undertakings included in the consolidation according to accounting rules differing from those used in the group financial statements, the values or amounts shall be adjusted so as to accord with the rules used for the group financial statements.  
  
(2) The adjustments referred to in this paragraph need not be made if they are not material for the purpose of giving a true and fair view.  
  
(3) If in the opinion of the directors of the holding company there are special reasons for departing from the provisions of sub paragraph (1) they may do so but particulars of any such departure, the reasons therefor and its effect shall be stated in the notes to the group financial statements.

##### Explanatory note

*These paragraphs are a slightly amended re-enactment of S.I. No. 201/1992, European Communities (Companies: Group Accounts) Regulations 1992, Regulations 28, 29 and 30. All cross-references have been updated in accordance with the new structure of the Bill and references to "undertaking" have been replaced by references to "company" where appropriate. Regulation 29(2), GAR 1992, was amended by S.I. 116 to cover both Companies Acts group financial statements and IFRS Group financial statements but will now apply only to Companies Act group financial statements.*

##### Preparing the consolidation

9. Group financial statements shall show the assets, liabilities, [financial position / state of affairs] as at the end of the financial year and the profit or loss for the financial year of the holding company and the undertakings included in the consolidation as if they were a single undertaking. In particular –
  - (a) debts and claims between the undertakings included in the consolidation shall be eliminated in preparing the group financial statements;
  - (b) income and expenditure relating to transactions between the undertakings included in the consolidation shall be eliminated in preparing the group financial statements;
  - (c) where profits and losses resulting from transactions between the undertakings included in the consolidation are included in the book values of assets, they shall be eliminated in preparing the group financial statements;
  - (d) Subparagraphs (1) to (3) need not be complied with where the amounts involved are not material for the purpose of giving a true and fair view.
10. (1) The methods of consolidation shall be applied consistently from one financial year to the next.  
  
(2) If in the opinion of the directors of the holding company there are special reasons for departing from the provisions of sub paragraph (1) they may do so but particulars of any such departure, the reasons therefor and its effect shall be stated in the notes to the group financial statements.



## Part A6 - Financial statements, Annual Return and Audit

### **Explanatory note**

*This Paragraph 9 is a slightly amended re-enactment of S.I. No. 201/1992, European Communities (Companies: Group Accounts) Regulations 1992, Regulation 25.*

*The phrase "under these Regulations" has been replaced by the phrase "under this Part" and references to "undertaking" have been replaced by references to "company" where appropriate.*

*Paragraph 10 is a slightly amended re-enactment of Regulation 24.*

### **Accounting for an acquisition**

11. (1) The following provisions apply where an undertaking becomes a subsidiary undertaking of the holding company.

(2) The event is referred to in those provisions as an "acquisition" and references to the "undertaking acquired" shall be construed accordingly.

12. An acquisition shall be accounted for by the acquisition method of accounting unless the conditions for accounting for it as a merger as set out in paragraph 14 are met and the merger method of accounting is adopted.

13. (1) The acquisition method of accounting is as described in sub paragraphs (2) to (6) below.

(2) The identifiable assets and liabilities of the undertaking acquired shall be included in the consolidated balance sheet at their fair values as at the date of acquisition.

In this paragraph the term "identifiable assets or liabilities" means the assets or liabilities which are capable of being disposed of or discharged separately, without disposing of a business of the undertaking.

(3) The income and expenditure of the undertaking acquired shall be brought into the group financial statements only as from the date of acquisition.

(4) There shall be calculated the difference between the acquisition cost of the interest in the shares of the acquired undertaking incurred by the undertakings included in the group financial statements, and the interest of the undertakings included in the group financial statements in the adjusted capital and reserves of the undertaking acquired.

For this purpose—

"the acquisition cost" means the amount of any cash consideration and the fair value of any other consideration, together with such amounts (if any) in respect of fees and other expenses of the acquisition as the holding company may determine to have been incurred in relation to the acquisition; and

"the adjusted capital and reserves" of the undertaking acquired means its capital and reserves at the date of the acquisition after adjusting the identifiable assets and liabilities of the undertaking to fair values as at that date.

(5) The resulting amount if positive shall be treated as goodwill and the provisions of the First Schedule to this Part [equivalent of the Schedule to Companies (Amendment) Act, 1986] in relation to goodwill shall apply.

(6) The resulting amount if negative shall be treated as a negative consolidation difference.

### **Explanatory note**

*This section is a slightly amended re-enactment of S.I. No. 201/1992, European Communities (Companies: Group Accounts) Regulations 1992, Regulation 19. All cross-references have been updated in accordance with the new structure of the Bill.*

*Regulation 20 has not been included on the basis that it is timed out by now.*

14. (1) The conditions for accounting for an acquisition as a merger are—

(a) that at least 90 per cent of the nominal value of the equity shares in the undertaking acquired is held by or on behalf of the undertakings consolidated in the group financial statements,

(b) that the proportion referred to in paragraph (a) was attained pursuant to the arrangement providing for the issue of equity shares by the undertakings consolidated in the group financial statements,

## Part A6 - Financial statements, Annual Return and Audit

(c) that the fair value of any consideration other than the issue of equity shares given pursuant to the arrangement by the undertakings consolidated in the group financial statements did not exceed 10 per cent of the nominal value of the equity shares issued.

(2) The reference in this paragraph to equity shares has the meaning set out in Head 3.

### **Explanatory note**

*This section is a slightly amended re-enactment of S.I. No. 201/1992, European Communities (Companies: Group Accounts) Regulations 1992, Regulation 21.*

*Note - The definition of 'relevant shares' which was given in Regulation 21 was as follows:*

*"The reference in paragraph (1)(a) to the "relevant shares" in an undertaking acquired is to those shares carrying unrestricted rights to participate both in distributions and in the assets of the undertaking upon liquidation"*

*Since this has the same meaning as 'equity shares' defined elsewhere in the Act I have changed the definition to refer to equity shares.*

*I would also note that the definition here without the double negative is more easily understandable.*

15. (1) The merger method of accounting is as set out in subparagraphs (2) to (6) below.

(2) The assets and liabilities of the undertaking acquired shall be brought into the group financial statements at the amount at which they stand in the acquired undertaking's financial statements, subject to any adjustment authorised or required by this Part.

(3) The income and expenditure of the acquired undertaking shall be included in the group financial statements for the entire financial year, including the period before the acquisition.

(4) The group financial statements shall show corresponding amounts relating to the previous financial year as if the undertaking had been included in the consolidation throughout that year.

(5) There shall be set off against the aggregate of—

(a) the appropriate amount in respect of shares issued by the undertakings consolidated in the group financial statements as part of the arrangement referred to in Paragraph 14(1)(b) of this Schedule [equivalent of S.I. No. 201/1992, European Communities (Companies: Group Accounts) Regulations 1992, Regulation 20(1)(b)] in consideration for the acquisition of shares in the acquired undertaking; and

(b) the fair value of any other consideration for the acquisition of shares in the acquired undertaking, determined as at the date when those shares were acquired,

the nominal value of the issued share capital of the acquired undertaking held by the undertakings consolidated in the group financial statements.

(6) The resulting amount shall be shown as an adjustment to the consolidated reserves.

### **Explanatory note**

*This section is a slightly amended re-enactment of S.I. No. 201/1992, European Communities (Companies: Group Accounts) Regulations 1992, Regulation 22. All cross-references have been updated in accordance with the new structure of the Bill.*

16. (1) Where a group is acquired, Paragraphs 11 to 15 of this Schedule [equivalent of S.I. No. 201/1992, European Communities (Companies: Group Accounts) Regulations 1992, Regulations 18 to 22] apply with the following adaptations.

(2) References to shares of the acquired undertaking shall be construed as references to shares of the holding undertaking of the group acquired.

(3) Other references to the acquired undertaking shall be construed as references to the group acquired; and references to the assets and liabilities, income and expenditure and capital and reserves of the acquired undertaking shall be construed as references to the assets and liabilities, income and expenditure and capital and reserves of the group after making the set offs and other adjustments required by this Part in the case of group financial statements.

### **Explanatory note**

*This section is a slightly amended re-enactment of S.I. No. 201/1992, European Communities (Companies: Group Accounts) Regulations 1992, Regulation 23. All cross-references have been updated in accordance with the new structure of the Bill and references to "undertaking" have been replaced by references to "company" where appropriate.*

### **Changes in the composition of the group**

17. If the composition of the undertakings consolidated in the group financial statements has changed significantly in the course of a financial year, the group financial statements must include information which makes the comparison of successive sets of group financial statements meaningful.

### **Explanatory note**

*This section is a re-enactment of S.I. No. 201/1992, European Communities (Companies: Group Accounts) Regulations 1992, Regulation 27.*

## Accounting for joint ventures and associates in group financial statements

### **Joint ventures**

18. (1) Where a holding company or one of its subsidiary undertakings consolidated in the group financial statements manages another undertaking jointly with one or more undertakings not consolidated in the group financial statements, that other undertaking ("the joint venture") may, if it is not –

- (a) a body corporate; or
- (b) a subsidiary undertaking of the holding company,

be proportionally consolidated in the group financial statements in proportion to the rights in its capital held by the holding company or the subsidiary undertakings consolidated in the group financial statements as the case may be.

- (2) The provisions of this Schedule relating to the preparation of consolidated financial statements shall apply, with any necessary modifications, to the inclusion of joint ventures in the consolidated financial statements by proportional consolidation in accordance with Subsection (1).

### **Explanatory note**

*This section is a slightly amended re-enactment of S.I. No. 201/1992, European Communities (Companies: Group Accounts) Regulations 1992, Regulation 32. All cross-references have been updated in accordance with the new structure of the Bill and references to "undertaking" have been replaced by references to "company" where appropriate.*

### **Associated undertakings**

19. (1) An "associated undertaking" means an undertaking in which an undertaking consolidated in the group financial statements has a participating interest and over whose operating and financial policy it exercises a significant influence and which is not—
- (a) a subsidiary undertaking of the holding company, or
  - (b) a joint venture proportionally consolidated in accordance with paragraph 18.
- (2) Where an undertaking holds 20 per cent or more of the voting rights in another undertaking, it shall be presumed to exercise such an influence over it unless the contrary is shown.

(3) The voting rights in an undertaking means the rights conferred on shareholders in respect of their shares or, in the case of an undertaking not having a share capital, on members, to vote at general meetings of the undertaking on all or substantially all matters.

(4) The provisions of Subsections (3) and (4) of Head 6 of Part A1 apply in determining for the purpose of this paragraph whether an undertaking holds 20 per cent or more of the voting rights in another undertaking.

20. (1) The interest of an undertaking consolidated in the group financial statements in an associated undertaking, and the amount of profit or loss attributable to such an interest, shall be shown in the group financial statements by way of the equity method of accounting including dealing with any goodwill arising in accordance with paragraphs 19 to 21 and 23 of the First Schedule to this Part [equivalent of paragraphs 5 to 7 and 9 of the Schedule to the Companies (Amendment) Act, 1986].

(2) Where the associated undertaking is itself a holding undertaking, the net assets and profits or losses to be taken into account are those of the holding and its subsidiary undertakings (after making any consolidation adjustments).

(3) The equity method of accounting need not be applied if the amounts in question are not material for the purpose of giving a true and fair view.

### **Participating interest**

21. (1) A "participating interest" means an interest held by one undertaking in the equity shares of another undertaking which it holds on a long term basis for the purpose of securing a contribution to that undertaking's own activities by the exercise of control or influence arising from or related to that interest.

(2) The reference in subparagraph (1) to an interest in equity shares includes –

- (a) an interest which is convertible into an interest in equity shares; and
- (b) an option to acquire equity shares or any such interest;

and an interest or option falls within (a) or (b) notwithstanding that the equity shares to which it relates are, until the conversion or the exercise of the option unissued.

(3) Where an undertaking holds an interest in equity shares and such an interest represents 20 per cent or more of all such interests in the other undertaking it shall be presumed to hold that interest on the basis and for the purpose mentioned in (1) of this section unless the contrary is shown.

(4) For the purpose of this section an interest held on behalf of an undertaking shall be treated as held by it.

(5) In the balance sheet and profit and loss formats set out in the First Schedule to this Part [equivalent of the Schedule to the Companies (Amendment) Act 1986, as amended by the Schedule to European Communities (Companies: Group Accounts) Regulations 1992, SI No. 201/1992], "participating interest" does not include an interest in a group undertaking.

## **Part III**

### Information required by way of notes to group financial statements

22. Without prejudice to paragraph 1 of this Schedule [equivalent of Regulation 15 GAR], the notes to the group financial statements shall in addition to providing the information required by the First Schedule also state the information required by the following paragraphs of this Part.

23. Where sums originally denominated in currencies, other than the currency in which the group financial statements are presented, have been brought into account under any items shown in the balance sheet or profit and loss account, the basis on which those sums have been translated into the currency in which the group financial statements are presented shall be stated.

24. In respect of the aggregate of the amounts shown in the group balance sheet under the heading "Creditors" there shall be stated the information required by paragraph 56 of the First Schedule as if references in that paragraph to a company were to the company and its subsidiary undertakings taken as a whole.

25. In relation to each joint venture proportionately consolidated, there shall be stated the nature of the joint management arrangement.

26. In relation to acquisitions taking place in the financial year, there shall be stated in the notes to the group financial statements –

- (a) the name and registered office of the acquired undertaking, or where a group was acquired, the name and registered office of the parent undertaking of that group;
- (b) whether the acquisition has been accounted for by the acquisition method or the merger method of accounting.

#### **(Footnotes)**

<sup>7</sup> OJ No. L141, 11.6.1993, p.27





---

# Part A7 – Debentures and Charges

## Contents of Part A7

---

### Chapter 1 – Preliminary and Interpretation

1. Definitions

### Chapter 2 – Provisions as to Debentures

2. Liability of trustees for debenture holders
3. Perpetual debentures
4. Power to re-issue redeemed debentures
5. Saving of rights of certain mortgages in case of re-issued debentures
6. Specific performance of contracts to subscribe for debentures

### Chapter 3 – Registration and Priority

7. Registration of charges created by companies
8. Duty of company to register charges created by company
9. Duty of company to register charges existing on property acquired
10. Priority of charges
11. Registration and priority of judgment mortgages
12. Register of charges to be kept by Registrar
13. Certificate of registration
14. Entries of satisfaction and release of property from charge
15. Extension of time for registration of charges
16. Copies of instruments creating charges to be kept at registered office
17. Right to inspect copies of instruments creating charges
18. Registration of charges existing before application of this Part
19. Registration of charges in a Netting Agreement.

# Part A7 – Debentures & Charges

## Chapter 1 Interpretation

---

### Head 1 Definitions

---

- (1) For the purposes of this Part the expression “charge” means a mortgage or a charge in an agreement (written or oral) created by a company over an interest in any property, assets or undertaking of that company, but shall not include a mortgage or a charge in an agreement (written or oral) created by a company over an interest in cash, money credited to an account of a financial institution, or any other deposits, shares, bonds and debt instruments, units in collective investment undertakings, money market instruments and claims and rights (such as dividends or interest) in respect of any of the foregoing.
- (2) ‘Negative pledge’ has the meaning assigned to it in Part A7, Head 10.

#### **Explanatory note**

*This head is a new. Subhead (1) is taken, in substance, from Section 99(10)(a) of the Companies Act, 1963.*

*For the purposes of this Part, a charge is said to include a mortgage. This is also the position under Section 99(10)(a) of the Companies Act, 1963. The provision has been amended in accordance with the view of the Company Law Review Group in its Second Report to provide that a charge means a “a mortgage or a charge in an agreement (written or oral) created by a company over an interest in any property, assets or undertaking of that company, but shall not include a mortgage or a charge in an agreement (written or oral) created by a company over an interest in cash, money credited to an account of a financial institution, or any other deposits, shares, bonds and debt instruments, units in collective investment undertakings, money market instruments and claims and rights (such as dividends or interest) in respect of any of the foregoing”.*

*It is now expressly stated not to include a mortgage or charge over an interest in cash, accounts in financial institutions or any other deposits, shares or other financial instruments. This is in accordance with the exception to the registration requirement envisaged under Directive 2002/47/EC on Financial Collateral Arrangements. This directive was implemented by European Communities (Financial Collateral Arrangements) Regulations 2004 (S.I. No.1 of 2004) and European Communities (Financial Collateral Arrangements) (Amendment) Regulations 2004 (S.I. No. 89 of 2004.)*

## Chapter 2

### Provisions as to debentures

#### Head 2 Liability of trustees for debenture holders

- (1) Subject to Subheads (2) to (4), any provision contained in a trust deed for securing an issue of debentures or in any contract with the holders of debentures secured by a trust deed shall be void in so far as it would have the effect of exempting a trustee thereof from, or indemnifying him against, liability for breach of trust where he fails to show the degree of care and diligence required of him as trustee, having regard to the provisions of the trust deed conferring on him any powers, authorities or discretions.
- (2) Subhead (1) shall not invalidate—
  - (a) any release otherwise validly given in respect of anything done or omitted to be done by a trustee before the giving of the release; or
  - (b) any provision enabling such a release to be given—
    - (i) on the agreement thereto of a majority of not less than three-fourths in value of the debenture holders present and voting in person or where proxies are permitted by proxy at a meeting summoned for the purpose, and
    - (ii) either with respect to specific acts or omissions or on the trustee dying or ceasing to act.
- (3) Subhead (1) shall not operate—
  - (a) to invalidate any provision in force on the commencement of this Bill so long as any person then entitled to the benefit of that provision or afterwards given the benefit thereof under Subhead (4), remains a trustee of the deed in question; or
  - (b) to deprive any person of any exemption or right to be indemnified in respect of anything done or omitted to be done by him while any such provision was in force.
- (4) While any trustee of a trust deed remains entitled to the benefit of a provision saved by Subhead (3), the benefit of that provision may be given either—

- (a) to all trustees of the deed present and future; or
- (b) to any named trustee or proposed trustees thereof; by a resolution passed by a majority of not less than three-fourths in value of the debenture holders present in person or where proxies are permitted by proxy at a meeting summoned for the purpose in accordance with the provisions of the deed, or if the deed makes no provision for summoning meetings, a meeting summoned for the purpose in any manner approved by the court.

#### **Explanatory note**

*This head is a re-enactment of Section 93 of the Companies Act, 1963.*

#### Head 3 Perpetual debentures

A condition contained in any debentures or in any deed for securing any debentures, whether issued or executed before or after 1st April 1964, shall not be invalid by reason only that the debentures are thereby made irredeemable or redeemable only on the happening of a contingency however remote, or on the expiration of a period however long, notwithstanding any rule of law to the contrary.

#### **Explanatory note**

*This head is a slightly amended re-enactment of Section 94 of the Companies Act, 1963. The reference to the operative date has been replaced by that actual date.*

#### Head 4 Power to re-issue redeemed debentures

- (1) Where, either before, on or after 1<sup>st</sup> April 1964, a company has redeemed any debentures then—
  - (a) unless any provision to the contrary, whether express or implied, is contained in the constitution or in any contract entered into by the company; or

## Part A7 - Debentures & Charges

---

- (b) unless the company has, by passing a resolution to that effect or by some other act, shown its intention that the debentures shall be cancelled, the company shall have and shall be deemed always to have had, power to re-issue the debentures either by re-issuing the same debentures or by issuing other debentures in their place.
- (2) Subject to Part A7, Head 5 [equivalent of Section 96 of the Companies Act, 1963] on a re-issue of redeemed debentures, the person entitled to the debentures shall have and shall be deemed always to have had, the same priorities as if the debentures had never been redeemed.
- (3) Where a company has either before, on or after 1<sup>st</sup> April 1964, deposited any of its debentures to secure advances from time to time on current account or otherwise, the debentures shall not be deemed to have been redeemed by reason only of the account of the company having ceased to be in debit whilst the debentures remained so deposited.
- (4) Subject to Subhead (5), the re-issue of a debenture or the issue of another debenture in its place under the power by this head given to or deemed to have been possessed by a company, whether the re-issue or issue was made before, on or after the 1<sup>st</sup> April 1964, shall be treated as the issue of a new debenture for the purposes of stamp duty but it shall not be so treated for the purposes of any provision limiting the amount or number of debentures to be issued.
- (5) Any person lending money on the security of a debenture re-issued under this head, which appears to be duly stamped, may give the debenture in evidence in any proceedings for enforcing his security without payment of the stamp duty or any penalty in respect thereof unless he had notice or, but for his negligence, might have discovered that the debenture was not duly stamped but in any such case the company shall be liable to pay the proper stamp duty and penalty.

### **Explanatory note**

*This head is a slightly amended re-enactment of Section 95 of the Companies Act, 1963. All cross-references have been updated in accordance with the structure of the Bill. The references to the operative date have been replaced by that actual date.*

---

### **Head 5 Saving of rights of certain mortgages in case of re-issued debentures**

---

Where any debentures which have been redeemed before 1st April 1964 are re-issued on, or subsequently to, that date, the re-issue of the debentures shall not prejudice and shall be deemed never to have prejudiced, any right or priority which any person would have had under or by virtue of any mortgage or charge created before that date if Section 104 of the Companies (Consolidation) Act, 1908 had been enacted in the Companies Act, 1963 instead of Part A7, Head 4 [equivalent of Section 95 of the Companies Act, 1963].

### **Explanatory note**

*This head is a slightly amended re-enactment of Section 96 of the Companies Act, 1963. The reference to the "operative date" of the Companies Act, 1963 has been replaced by the insertion of the actual date (1st April 1964) and all cross-references have been updated in accordance with the structure of the Bill.*

---

### **Head 6 Specific performance of contracts to subscribe for debentures**

---

A contract with a company to take up and pay for any debentures of the company may be enforced by an order for specific performance.

### **Explanatory note**

*This head is a re-enactment of Section 97 of the Companies Act, 1963.*

## Chapter 3

### Registration and priority

#### Head 7 Registration of charges created by companies

- (1) Every charge, created after the commencement of this Part, by a company shall be void against the liquidator and any creditor of the company, unless either Subheads (2) or (3) are complied with.
- (2) The registration of a charge may be effected by the delivery of particulars, in the prescribed form, to the Registrar within 21 days after the date of its creation.
- (3)
  - (a) The registration of a charge may be effected by the delivery, in the prescribed form, to the Registrar of —
    - (i) a notice that it is intended to create a charge, and
    - (ii) within 21 days of the notice in Subhead(3)(a)(i), a further notice that the charge referred to therein has been created (whereupon no further filing is required);
  - (b) If the prescribed form referred to in Subhead (3)(a)(ii) is not delivered to the Registrar within the time referred to in Subhead (3)(a)(ii), the notice (referred to in Subhead (3)(a)(i)) shall be void and removed from the register.
- (4) Subhead (1) shall be without prejudice to any contract or obligation for repayment of the money thereby secured and when a charge becomes void under this head, the money secured thereby shall immediately become payable.
- (5) Compliance with Subheads (2) or (3) as the case may be, shall relieve the company from any requirement to register the charge under the Agricultural Credit Acts, 1978 - 1992.

#### Explanatory note

*This head is an amended re-enactment of Section 99 of the Companies Act, 1963, as amended by Section 122 of the Companies Act, 1990. Many subsections of Section 99 have been repealed in accordance with the views of the Company Law Review Group in its Second Report. Furthermore, subheads have been added in accordance with the recommendations of the Review Group in its Second Report. References to the "registrar of companies" have also been replaced with a reference to the "Registrar" throughout this Part.*

*Section 99(2) of the Companies Act, 1963 sets out the categories of charges requiring registration. The Review Group believes that the division of charges into categories is both a historical anachronism and cumbersome. In order to bring greater consistency, transparency and certainty to the law, the Review Group recommends that every charge, subject to EU requirements, should be subject to the requirement to register particulars with the CRO. The rationale for such a recommendation is that creditors should not be misled by a company appearing to have full title to an asset which it possesses, where such an asset is already encumbered in favour of another creditor. Accordingly, the Review Group recommended that the provision should be repealed.*

*An exception to the registration requirement is any charge falling within the ambit of Directive 2002/47/EC on financial collateral arrangements, as implemented by S.I. No.1 of 2004 and S.I. No. 89 of 2004. This exception is provided for in Head 1 of this Part.*

*Section 99(3) of the Companies Act, 1963 provides for an extension of the 21 day filing period where a charge is created outside of the State, comprising of property situate outside of the State, to allow for posting. The Review Group was of the opinion that such a provision was outdated given the accessibility of effective courier services. Accordingly, it was recommended that this provision be repealed.*

*Section 99(4) of the Companies Act, 1963 provides that where a charge comprises property situate outside the State, particulars may be sent for registration notwithstanding that further proceedings may be necessary to make the charge valid in the State where the property is located. All charges, subject to specific exceptions, created by companies incorporated in Ireland are required to be registered. Accordingly, the Review Group was of the opinion that this section is superfluous and recommended its repeal.*



## Part A7 - Debentures & Charges

---

Section 99(5) of the Companies Act, 1963 provides that where a charge comprises property outside of the State and registration in the country where the property is situated is necessary to make the charge valid, a further certificate, in the prescribed form, stating that the charge was presented for registration in that country, is to be delivered to the CRO. The Review Group was of the opinion that it was of no concern to the Registrar or the public whether the charge needs to be perfected in a foreign jurisdiction. This is a concern of the chargee only. Accordingly, the Review Group recommended that the provision should be repealed.

Section 99(6) of the Companies Act, 1963 provides that where a negotiable instrument is given for the securing of book debts of the company, the instrument shall not be treated as a charge on those book debts. The Review Group was of the opinion that encumbrances involving the delivery of the encumbered asset, to the person entitled to the encumbrance should not be subject to Section 99 as the asset is not in the purported ownership of the company. Accordingly, the Review Group was of the opinion that the continuation of this Subsection (6) was unnecessary and should be repealed. In addition the definition of a charge, in Head 1 of this Part, removes from the categories of what is registrable, the delivery of a negotiable instrument.

Sections 99(7) - 99(9) of the Companies Act, 1963 deal with debentures. Section 91 of the Companies Act, 1963 imposes a requirement on companies to keep a register of debentures. This provision has been disregarded for many years without any apparent impairment to creditors' rights. Accordingly, the Review Group recommended the repeal of Sections 91 and 92 of the Companies Act, 1963. The Review Group was further of the opinion that Sections 99(7) - (9) have become redundant and should be repealed.

Subhead (1) of this head is an amended re-enactment of Section 99(1) of the Companies Act, 1963. It has been amended insofar as the charge is now said to be void unless Subheads (2) and (3) have been complied with.

Subhead (2) is new. It sets out the manner in which registration of the charge with the Registrar is to be effected i.e. by filing a statement of the particulars of a charge in the prescribed form within 21 days of the creation of the charge.

Subhead (3) is new. It provides for a system of preliminary filing of notice of charges in accordance with the recommendations of the Review Group. The Review Group identified anomalies within the system of registration of charges owing to the fact that charges acquire their priority from the date of their creation as opposed to the date of their registration, provided that they are filed within the 21 day period. Essentially, a charge created earlier but filed later (but within 21 days of its creation) would take priority over a charge created earlier but filed earlier, despite the fact that the creditor filing earliest would have no knowledge of the first-ranked charge when carrying out a search with the CRO. Accordingly, the Review Group recommended that priority be given to the creditor who files first in time. This recommendation is given effect to in this Part.

To ensure that another charge is not filed in the period between a clear search and the filing of the charge for registration, the Review Group recommended that a filing could be submitted prior to the completion of the transaction, provided a further filing evidencing the actual creation of a charge was filed with the Registrar within 21 days of the first filing of the intention to create a charge. In such circumstances, a charge would take effect as to priority from the date of the first preliminary filing. In the absence of a second filing within 21 days of the preliminary filing, the preliminary filing of an intention to create a charge would lapse. Such a notice filing system has been applied in the U.S., Canada and New Zealand and has been recommended in the UK. Subhead (4) is new. It is a re-enactment of the last line of Section 99(1) of the Companies Act, 1963.

Subhead (5) is new and gives effect to the High Court decision of Costello J in *Re Castlemahon Poultry Products Ltd.* (13th Dec 1985, Unrep HC). The effect of this decision was that where a company registered a chattel mortgage under Section 99 of the Companies Act, 1963, then, even if it was a mortgage over stock within the meaning of the Agricultural Credit Act, 1978, registration under that Act was unnecessary. Commentators advised that it may be imprudent not to follow the registration procedure under that Act since it was not expressly stated that registration under the Companies Acts would displace the requirements as to registration under the 1978 Act.

---

### Head 8 Duty of company to register charges created by a company

---

- (1) It shall be the duty of a company to deliver to the Registrar for registration, within the time required by Part A7, Head 7 [equivalent of Section 99 of the Companies Act, 1963], the particulars of every charge created by the company, but registration of any such charge may be effected on the application of any person interested therein.
- (2) Where registration is effected on the application of some person other than the company, that person shall be entitled to recover from the company the amount of any fees properly paid by that person to the Registrar in respect of the registration.

#### **Explanatory note**

*This head is an amended re-enactment of Section 100 of the Companies Act, 1963. All cross-references have been updated in accordance with the structure of the new Bill and references to the “registrar of companies” have been replaced with references to the “Registrar”.*

*Sections 100(3) and 100(4) of the Companies Act, 1963 have been deleted in accordance with the recommendation of the Company Law Review Group in its Second Report. The Review Group noted that, although under Section 100 of the Companies Act, 1963 it is the duty of the company creating a charge to register particulars of the charge, in practice most particulars are filed by the chargee or its solicitor. The reason for the practice is that as the failure to file within 21 days of the charge’s creation will render the charge void against creditors and the liquidator of the company, the beneficiary of the charge wishes to ensure filing is done in a timely manner. Invariably, the company willingly permits the chargee the burden of preparing and filing the form, although the cost of so doing is usually borne by the company (as provided for in Section 100(2) of the Companies Act, 1963).*

*The Review Group acknowledged that such practice might warrant the repeal of Section 100 of the Companies Act, 1963. However, it considered the requirement that the officers of the company ensure that its file contains up to date, correct information for inspection by the public to be of over-riding importance.*

*The reference to the registration of the particulars of any debentures issued by the company has also been removed from Subsection (1) given that Sections 91 and 92 of the Companies Act, 1963 (which required the company to keep a register of debenture holders and make it available to the public for inspection) have now been repealed.*

---

### Head 9 Duty of company to register charges existing on property acquired

---

Where a company acquires any property which is subject to a charge of any such kind as would if it had been created after the acquisition of the property have been required to be registered under this Part, the company shall cause the prescribed particulars of the charge, verified in the prescribed manner, to be delivered to the Registrar for registration in the manner required by this Bill within 21 days after the date on which the acquisition is completed, so however that, if the property is situated outside the State 21 days after the date on which the prescribed particulars could in due course of post and if despatched with due diligence, have been received in the State, shall be substituted for 21 days after the completion of the acquisition as the time within which the particulars are to be delivered to the Registrar.

#### **Explanatory note**

*This head is an amended re-enactment of Section 101 of the Companies Act, 1963. Section 101(2) has been deleted in light of the fact that Section 100 of the Companies Act, 1963 has been repealed.*

---

### Head 10 Priority of charges

---

- (1) Subject to Subhead (2), in so far as the priority of a charge is not otherwise prescribed by law, a charge will take effect as to priority on the date of delivery of the prescribed form specified in Part A7, Head 7(2) [equivalent of Section 99 of the Companies Act, 1963] or the prescribed form specified in Head 7(3)(a)(i), as the case may be.
- (2) Subhead (1) shall not affect the terms of any agreement between charge-holders as to priority.
- (3) Subject to Section 33 and Schedule 3 of Part 2 of the Central Bank and Financial Services Authority of Ireland Act, 2004, the Registrar shall not enter particulars of a negative pledge in the register pursuant to Part A7, Head 12 [equivalent of Section 103 of the Companies Act, 1963] and the delivery of any such particulars shall have no legal effect but without prejudice to the validity of the prescribed particulars delivered.

## Part A7 - Debentures & Charges

---

- (4) In this head a “negative pledge” shall mean any covenant or agreement (written or oral) which provides that a company shall not, or shall not other than in specified circumstances —
- (a) borrow money or obtain credit from any person; or
  - (b) create or permit to subsist any mortgage, charge, lien or other encumbrance or any pledge over the whole, or any part of the property or undertaking of the company.

### **Explanatory note**

*This head is new. It sets out the priority of charges in accordance with the views of the Company Law Review Group in its Second Report. The Companies Acts, 1963-2005 are silent on the issue of priority of charges. The precise date was not expressly specified for the priority of charges, although it was accepted to be the date of creation of the charge.*

*Subhead (1) changes the relevant date for the priority of charges to the date of the delivery of the prescribed particulars to the Registrar for registration. The Review Group identified anomalies within the system of registration of charges owing to the fact that charges acquire their priority from the date of their creation as opposed to the date of their registration, provided that they are filed within the 21 day period. Essentially, a charge created earlier but filed later would take priority over a charge created later but filed earlier, despite the fact that the creditor filing earliest would have no knowledge of the first-ranked charge when carrying out a search with the CRO. Accordingly, the Review Group recommended that priority be given to the creditor who files first in time in order to minimise the potential for fraudulent abuse and thereby protect providers of finance. This priority will be subject to any over-riding priority applicable to certain assets, under already established principles applicable to Registry of Deeds, the Land Registry, the Shipping Registry or Chattel Registry.*

*Subhead (2) is new. It gives effect to the recommendations of the Review Group in its Second Report, that priority as to charges would also be subject to any contrary agreement between the creditors such as an inter-lender or priority agreement, often entered into by financial institutions where more than one such institution lends to a particular company.*

*Subhead (3) is also new. It restricts the particulars which are capable of being delivered for registration to the Registrar. The Review Group noted that it had been customary to insert additional details to the prescribed particulars being delivered for registration, the most common of which were details of negative pledge clauses, details of crystallisation events in relation to floating charges and other restrictive provisions. These are all contractual restrictions in the deed of charge. Currently, any such information on the form submitted to the Registrar is ignored when transcribing details onto the register of charges, applicable to the chargor-company. The Review Group noted that it should be regarded as quite exceptional by the public, that relevant charges would not contain these restrictions. Accordingly, the Review Group recommends that the practice of delivering this additional information for registration should be discontinued and this should be reflected in legislation.*

*Subhead(4) defines a negative pledge for the purpose of Subhead (3).*

---

## Head 11 Registration and priority of judgment mortgages

---

- (1) When a judgment is recovered against a company and such judgment is subsequently converted into a judgment mortgage affecting any property of the company, the judgment creditor shall cause a copy (certified by the Land Registry or Registry of Deeds as the case may be, to be correct) of the affidavit, required for the purpose of registering the judgment as a mortgage, to be delivered with the prescribed form to the Registrar for registration.
- (2) Subject to the law applicable to other registries, a judgment mortgage will take effect as to priority on the date of delivery for registration to the Registrar of the prescribed form.
- (3) This head shall not apply to any judgment mortgage created before the commencement of this Bill.

### **Explanatory note**

*This head is an amended re-enactment of Section 102 of the Companies Act, 1963. The amendments have been made in accordance with the views of the Company Law Review Group in its Second Report. Section 102(2) has been deleted as it was no longer relevant in light of these amendments.*

Subhead (1) is an amended re-enactment of Section 102(1) of the Companies Act, 1963. The obligation on the judgment debtor-company to file details of the judgment mortgage with the Registrar has been removed. Failure on the part of the company to do so resulted in a small financial penalty on the company and its officer under Section 102(2). The Review Group noted that the net result of the inaction by the company was the invalidity of the judgment mortgage. Thus, the provision was open to much abuse. Accordingly, the Review Group recommended that the role of the judgment debtor-company be removed and the requirement of the judgment creditor to deliver certified copies of the affidavit to the company be replaced with the requirement that it deliver one certified copy to the Registrar. The Review Group also recommended that the judgment mortgage should not be rendered invalid by the failure to deliver the affidavit to the Registrar within 21 days of the creation of the judgment mortgage.

Furthermore, the Review Group recommended that the affidavit be accompanied by the prescribed form when delivered for registration to the Registrar. This prescribed form is to be a modified version of that used to register charges. Under Section 102 of the Companies Act, 1963 there was no such prescribed form.

Subhead (2) is new. It provides that priority would be governed by the filing date. The Review Group recommended that the priority of judgment mortgages, subject to the priority of other registries (where appropriate), would arise from that date as is the case for the delivery of charges for registration to the Registrar under the previous head.

Subhead (3) is a slightly amended re-enactment of Section 102(3) of the Companies Act, 1963. "Operative date" has been replaced with "commencement of this Bill".

---

### Head 12 Register of charges to be kept by Registrar

---

- (1) The Registrar shall keep, in relation to each company, a register in the prescribed form, of all the charges requiring registration under this Part, and shall on payment of such fee as may be prescribed, enter in the register in relation to such charges, the following particulars—
- (a) if the charge is a charge created by the company, the date of its creation and filing (including notice filing referred to Part A7, Head 7 [equivalent of Section 99 of the Companies Act, 1963]);

- (b) if the charge was a charge existing on property acquired by the company, the date of the acquisition of the property;
- (c) if the charge was a judgment mortgage, the date of the creation and filing of such judgment mortgage;
- (d) short particulars of the property charged;
- (e) the persons entitled to the charge.
- (2) The register kept in pursuance of this head shall be open to inspection by any person on payment of such fee, if any, as may be prescribed.

#### Explanatory note

This head is an amended re-enactment of Section 103 of the Companies Act, 1963. The amendments have been made in accordance with the views of the Company Law Review Group in its Second Report.

Subhead (1) is an amended re-enactment of Section 103(1) of the Companies Act, 1963. The Review Group recommended the retention of the requirement for the Register of Charges to be kept by CRO and for it to be open to public inspection as it serves a useful purpose for the provision of relevant information on companies registered in the State.

Section 103(1)(b)(iv), which referred to the amount secured by the charge, has not been included. The Review Group noted that this provision had become redundant and was of little relevance today to a person making a search. The reason for this is that most charges now secure all sums due or to become due by the company to the creditor-chargee. A subsequent potential creditor is likely to require the first charge be released or to have sight of the first charge, which can be provided by the chargor-company, to ascertain exactly the nature of the security which will have priority. Thus, the information relating to the amount of the charge, as filed, has little practical significance. Accordingly the Review Group recommended its repeal.

Subhead (2) is a re-enactment of Section 103(2) of the Companies Act, 1963.

---

### Head 13 Certificate of registration

---

The Registrar shall give a certificate of the registration of any charge registered in pursuance of this Part. The certificate shall be conclusive evidence that the requirements of this Part, pertaining to any charges for which particulars have been filed, as to registration have been complied with.



### **Explanatory note**

*This head is an amended re-enactment of Section 104 of the Companies Act, 1963. It provides that the Registrar shall issue a Certificate of Registration of Charge and this shall be conclusive evidence that the requirements, pertaining to any charges for which prescribed particulars have been filed as to registration have been complied with.*

*The section has been amended in a number of respects. The amendments have been made in accordance with the views of the Company Law Review Group in its Second Report.*

*The certificate of charge is now to be conclusive evidence that registration has been complied with in regard to such prescribed particulars as have been filed. Section 104 of the Companies Act, 1963 provides that the Certificate of Charge shall be conclusive evidence that the requirements as to registration have been complied with. This is an important distinction. The Company Law Review Group noted that although a certified copy of the charge may be filed, there is no requirement under the Companies Acts, 1963 - 2005 to file a copy of the charge where the particulars have been signed on behalf of the chargor-company and the chargee-creditor. As a result, it is quite possible that, in such circumstances, Certificates of Registration of Charge confirming compliance may have been issued where the requirements have not been complied with (e.g. where details of the charge have been omitted from the required form filed).*

*The Review Group acknowledged that, without sight of the charge, the Registrar should not be required to issue a Certificate of Charge which is conclusive evidence that all registration requirements for all charges in a security document have been complied with. Furthermore, to require that a copy of the charge be submitted to the Registrar to be cross-checked is unduly burdensome on the Registrar.*

*Accordingly, the Review Group recommended that the security document be incapable of filing with the Registrar, and Certificates of Charge should be conclusive evidence that the registration requirements have been complied with, but only insofar as they relate to charges for which particulars have been filed.*

*The words "...under his hand..." have been deleted. This was done in accordance with the view of the Review Group that such wording was archaic.*

*The reference to the charge stating the amount thereby secured has also been deleted. This was done in accordance with the repeal of Section 103(1)(b)(iv) of the Companies Act, 1963 in Head 12 of this Part.*

---

## **Head 14 Entries of satisfaction and release of property from charge**

---

- (1) The Registrar, on evidence being given to his satisfaction with respect to any registered charge—
  - (a) that the debt in relation to which the charge was created has been paid or satisfied in whole or in part; or
  - (b) that part of the property or undertaking charged has been released from the charge or has ceased to form part of the company's property or undertaking,and after giving notice to the person to whom such charge was originally given or to the judgment creditor where the satisfaction or release has not been signed on behalf of the chargee, as the case may be, may enter on the register a memorandum of satisfaction in whole or in part, or of the fact that part of the property or undertaking has been released from the charge or has ceased to form part of the company's property or undertaking, as the case may be, and where he enters a memorandum of satisfaction in whole, he shall, if required, furnish the company with a copy thereof.
- (2) The Registrar may accept as evidence of such release, a statement signed by a director and secretary of the company or by two directors of the company, stating that the release has occurred.
- (3) Where a person signs such statement with knowledge of it not being true, the person shall be guilty of a category two offence.
- (4) Where a person signs such statement and in doing so did not honestly believe on reasonable grounds that the statement was true, and
  - (a) contributed to a company being unable to pay its debts;
  - (b) prevented or impeded the orderly winding-up of the company; or
  - (c) facilitated the defrauding of the creditors of the company,

the court may, on an application of any creditor, contributor, liquidator, examiner or receiver, declare that the signatories to the statement referred to in Subhead (2) are liable for all or such portion of the debts of the company, as the court deems just and equitable.



### **Explanatory note**

*This head is an amended re-enactment of Section 105 of the Companies Act, 1963. The section has been amended in accordance with the views of the Company Law Review Group in its Second Report.*

*The system of registering of satisfactions under Section 105 of the Companies Act, 1963 requires the company to submit a form C6 which the secretary and a director of the company sign. In addition, they are required to make a statutory declaration. Following this, the Registrar notifies the chargee-creditor and, unless he hears from the chargee within 21 days, he registers the satisfaction. The Review Group noted that this was open to abuse since the notice sent from the Registrar to the chargee-creditor may not reach him, yet the satisfaction would be registered since the chargee would have failed to object within the 21 day period. It was further noted that despite the fact that it appeared to prevent signatories making fraudulent declarations, the requirement to make a statutory declaration was cumbersome. To avoid making such statutory declarations, yet continuing to guard against the possibility of abuse, the Review Group recommended that a statement, in the prescribed form, signed by a director and secretary of the company or two directors of the company, be signed and submitted to the Registrar who would then send the 21 day notice to the chargee-creditor.*

*Subhead (1) is an amended re-enactment of Section 105(1) of the Companies Act, 1963. It has been amended insofar as the requirement for the Registrar to give notice to the chargee is expressed to apply in a situation "where the satisfaction or release has not been signed by or on behalf of the chargee".*

*Subhead (2) is new. It gives effect to the recommendations of the Review Group in relation to the signing of the release in the prescribed form.*

*Subhead (3) is new. It creates an offence for someone to knowingly sign a false release statement.*

*Subhead (4) is also new. It imposes personal liability on the signor in accordance with the views of the Review Group. Personal liability may be imposed for all the debts of the company, or such portion thereof as the court deems just and equitable, where the signor did not honestly believe on reasonable grounds that the statement was true. In addition, such action must have contributed to the insolvency of the company, prevented or impeded the orderly winding-up of the company or facilitated the defrauding of the creditors of the company.*

---

## **Head 15 Extension of time for registration of charges**

---

The court, on being satisfied that the omission to register a charge within the time required by this Bill or that the omission or mis-statement of any particular with respect to any such charge or in a memorandum of satisfaction, was accidental or due to inadvertence or to some other sufficient cause, or is not of a nature to prejudice the position of creditors or shareholders of the company, or that on other grounds it is just and equitable to grant relief, may, on the application of the company or any person interested, and on such terms and conditions as seem to the court just and expedient, order that the time for registration shall be extended, or, as the case may be, that the omission or mis-statement shall be rectified.

### **Explanatory note**

*This head is an amended re-enactment of Section 106 of the Companies Act, 1963.*

*Section 106 of the Companies Act, 1963 permits an application to be made to court for late registration where there has been a failure to file the prescribed particulars of a charge within the 21 days. The Court, when permitting late registration, is required to be satisfied that the late registration will not prejudice the position of the creditors or shareholders. In practice, such an application to Court is both costly and embarrassing for the chargee and/or its solicitor. It does, however, focus the attention on those taking charges to ensure that the correct particulars are filed in a timely manner. In 2002, over 7,000 charges were registered with the CRO but only 14 of these (0.2%) were registered pursuant to a court order. Accordingly, the Review Group recommended the retention of this section.*

*Section 106(2) has been deleted in light of the fact that Sections 100(3) and 100(4) of the Companies Act, 1963 have been repealed.*

---

## **Head 16 Copies of instruments creating charges to be kept at registered office**

---

Every company shall cause a copy of every instrument creating any charge requiring registration under this Part, including every affidavit, a copy of which has been delivered to a company under Part A7, Head 11 [equivalent of Section 102 of the Companies Act, 1963], to be kept at the registered office of the company or another place in the State, provided that such other place has been notified to the Registrar in the prescribed form.

## Part A7 - Debentures & Charges

---

### **Explanatory note**

*This head is an amended re-enactment of Section 109 of the Companies Act, 1963. References to the registrar of companies have also been replaced with references to the "Registrar" throughout. The last line, referring to debentures, has been removed in light of the repeal of Sections 91 and 92 of the Companies Act, 1963. Furthermore, in accordance with the views of the Company Law Review Group in its Second Report, provision has also been made for the register of charges to be kept in a place other than the registered office of the company.*

---

### **Head 17 Right to inspect copies of instruments creating charges**

---

- (1) The copies of instruments referred to in Part A7, Head 16 [equivalent of Section 109 of the Companies Act, 1963] may be inspected during business hours (but subject to such reasonable restrictions as the company in general meeting may impose, so that not less than 2 hours in each day shall be allowed for inspection) by any creditor or member of the company upon payment not exceeding the nominal fee.
- (2) If inspection is refused, every officer of the company who is in default shall be guilty of a category four offence.
- (3) In the event of any such refusal, the court may by order compel an immediate inspection.

### **Explanatory note**

*This is an amended re-enactment of Section 110 of the Companies Act, 1963. The amendments have been made in accordance with the views of the Company Law Review Group in its Second Report.*

*Subhead (1) has been amended insofar as copies of instruments creating charges are no longer open to creditors or members of a company without charge. Provision has now been made for a fee to be charged for such inspection by creditors or members, although this fee is not allowed to exceed the nominal fee. For this purpose, a definition of nominal fee, as may be prescribed by the Minister, shall be included in Part A1 of the Bill.*

*Subhead (2) has been amended insofar as the reference to a specific fine has been removed.*

---

### **Head 18 Registration of charges existing before application of this Part.**

---

Part A7 8, 9, 11 to 17, Part A8 9 and Part B10 22 [equivalents of Sections 99 to 112 of the Companies Act, 1963] shall continue to apply to charges created prior to the commencement of this Part.

### **Explanatory note**

*This head is new. It replaces Section 112 of the Companies Act, 1963.*

---

### **Head 19 Registration of charges in a Netting Agreement**

---

Section 4(1) of the Netting of Financial Contracts Act, 1995 shall not affect —

- (a) the requirement to register a charge; or
- (b) the consequences of failing to register a charge under this Part.

### **Explanatory note**

*This head is new. It was introduced in accordance with the recommendations of the Company Law Review Group in its Second Report.*

*The Netting of Financial Contracts Act, 1995 ("the Netting Act") facilitates the use of swap instruments and provides, inter alia, that a mortgage or charge to secure a liability under a "financial contract", shall be legally enforceable against the chargor, notwithstanding any "rule of law relating to bankruptcy, insolvency or receivership, or in the Companies Acts." The Netting Act was implemented in response to international bodies wishing to do business in Ireland. Such bodies were concerned particularly as to the effect of the appointment of an examiner to an Irish incorporated counterparty. The prohibition of set-off or other creditor remedies on the appointment of an examiner discouraged contractual relations for swaps and similar arrangements with Irish incorporated companies. The effect of the Netting Act has been to enable persons to enter into financial contracts with Irish incorporated counterparties without the risk that an examiner appointed to the counterparty would put a stay on the enforcement of the financial contracts.*

*The terms of the Netting Act are so broad that particulars of security created over a company's assets to secure its obligations under a "financial contract" may not require to be filed under Section 99 of the Companies Act, 1963. This goes beyond "the examinership difficulty" which the Netting Act successfully addressed. The absence of a requirement to register can give a distorted picture to a person inspecting a company's file at the CRO. Accordingly, the Review Group recommends the Netting Act be amended by specifying that particulars of a charge, within the meaning of the Head 1 of this Part, be filed in accordance with Head 7 of this Part. A charge, to secure obligations under a "financial contract", over cash, a bank account, shares, bonds and debt instruments would not require registration as it would not fall within the category of a registerable charge (under the definition Head 1 of this Part). Particulars of charges over other assets such as land or equipment, to secure obligations under a "financial contract" are generally filed with the CRO. Accordingly, the Review Group believes the foregoing recommendation in the previous paragraph will have no adverse effect on companies registered in the State which conclude financial contracts.*



---

# Part A8 – Receivers

## Contents of Part A8

---

### **Chapter 1 – Preliminary and Interpretation**

1. Construction of references to receiver

### **Chapter 2 - Appointment of Receivers**

2. Notification that receiver has been appointed
3. Information to be given when receiver is appointed
4. Contents of statement to be submitted to receiver
5. Consequences of contravention of Heads 3 or 4
6. Disqualification of certain persons from acting as receiver
7. Resignation of receiver
8. Removal of receiver
9. Notice to Registrar of appointment of receiver and of receiver ceasing to act

### **Chapter 3 - Powers and Duties of Receivers**

10. Powers of receiver
11. Power of receiver to apply to the court for directions and his liability on contracts
12. Duty of receiver selling property to get best price reasonably obtainable
13. Preferential payments when receiver is appointed under floating charge
14. Delivery to Registrar of accounts of receiver

### **Chapter 4 - Regulation and Enforcement of Receivers**

15. Enforcement of duty of receiver to make returns
16. Power of the court to order the return of assets which have been improperly transferred
17. Power of court to fix remuneration of receiver
18. Court may end or limit receivership on application of liquidator
19. Director of Corporate Enforcement may request production of receiver's books
20. Prosecution of criminal offences committed by officers and members of the company



## Part A8 – Receivers

---

### Chapter 1

#### Interpretation

---

#### Head 1 Construction of references to receiver

---

- (1) Unless the contrary intention appears-
- (a) any reference in this Bill to a receiver of the property of a company includes a reference to a receiver and manager of the property of a company and to a manager of the property of a company and includes a reference to a receiver or to a receiver and manager or to a manager, of part only of that property, and to a receiver only of the income arising from that property or from part thereof; and
  - (b) any reference in this Bill to the appointment of a receiver under powers contained in any instrument, includes a reference to an appointment made under powers which, by virtue of any enactment, are implied in and have effect as if contained in an instrument.
- (2) The provisions of Part A11, Chapter 5 [equivalent of S.I. No.333 of 2002, EC (Corporate Insolvency) Regulations 2002] apply to proceedings under this Part.

#### **Explanatory note**

*This head is new.*

*Subhead (1) is a slightly amended re-enactment of Section 323 of the Companies Act, 1963. The opening phrase “It is hereby declared...” has been deleted in accordance with the views of the Company Law Review Group.*

*Subhead (2) is new. It applies the provisions of S.I. No.333 of 2002, EC (Corporate Insolvency) Regulations, 2002 to receiverships. This is also the current position as “insolvency proceedings” are interpreted as including receiverships for the purpose of the Regulations.*

## Chapter 2

### Appointment of Receivers

#### Head 2 Notification that receiver has been appointed

- (1) Where a receiver of the property of a company has been appointed, every invoice, order for goods or business letter issued by or on behalf of the company or the receiver or the liquidator of the company, being a document on or in which the name of the company appears, shall contain a statement that a receiver has been appointed.
- (2) If default is made in complying with the requirements of this head, the company and any of the following persons who knowingly and wilfully authorises or permits the default, namely, any officer of the company, any liquidator of the company and any receiver, shall be guilty of a category four offence.

#### **Explanatory note**

*This head is an amended re-enactment of Section 317 of the Companies Act, 1963. Default in complying with the requirements as to notification is now said to be an offence as opposed to merely resulting in a fine.*

#### Head 3 Information to be given when receiver is appointed

- (1) Where a receiver of the whole, or substantially the whole, of the property of a company (hereinafter in this Part referred to as "the receiver") is appointed on behalf of the holders of any debentures of the company secured by a floating charge, then subject to the provisions of this head and Part A8 Head 4 [equivalent of Section 320 of the Companies Act, 1963] —
  - (a) the receiver shall forthwith send notice to the company of his appointment; and
  - (b) there shall, within 14 days after receipt of the notice, or such longer period as may be allowed by the court or by the receiver, be made out and submitted to the receiver in accordance with Part A8, Head 4 [equivalent of Section 320 of the Companies Act, 1963] a statement in the prescribed form as to the affairs of the company; and
- (2) The receiver shall, within one month after the expiration of the period of 6 months from the date of his appointment and of every subsequent period of 6 months, and within one month after he ceases to act as receiver of the property of the company, send to the Registrar an abstract in the prescribed form, showing the assets of the company of which he has taken possession since his appointment, their estimated value, the proceeds of sale of any such assets since his appointment, his receipts and payments during that period of 6 months or, where he ceases to act as aforesaid, during the period from the end of the period to which the last preceding abstract related up to the date of his so ceasing, and the aggregate amounts of his receipts and of his payments during all preceding periods since his appointment.
- (3) Where a receiver ceases to act as receiver of the property of the company, the abstract under subhead (2) shall be accompanied by a statement from the receiver of his opinion as to whether or not the company is solvent and the Registrar shall, on receiving the statement, forward a copy of it to the Director of Corporate Enforcement.
- (4) Where a receiver is appointed under the powers contained in any instrument, this head shall have effect with the omission of the references to the court in Subhead (1), and in any other case, references to the court shall be taken as referring to the court by which the receiver was appointed.
- (5) Subhead (1) shall not apply in relation to the appointment of a receiver to act with an existing receiver or in place of a receiver dying or ceasing to act, except that, where that Subhead applies to a receiver who dies or ceases to act before it has been fully complied with, the references in paragraphs (b) and (c) thereof to the receiver shall (subject to Subhead (6)) include references to his successor and to any continuing receiver. Nothing in this subhead shall be taken as limiting the meaning of "the receiver" where used in or in relation to Subhead (2).

- (c) the receiver shall, within 2 months after receipt of the said statement, send to the Registrar, to the court, to the company, to any trustees for the debenture holders on whose behalf he was appointed and, so far as he is aware of their addresses, to all such debenture holders, a copy of the statement and of any comments he sees fit to make thereon.

## Part A8 - Receivers

---

- (6) This head and Part A8, Head 4 [equivalent of Section 320 of the Companies Act, 1963], where the company is being wound up, shall apply notwithstanding that the receiver and the liquidator are the same person, but with any necessary modifications arising from that fact.
- (7) Nothing in Subhead (2) shall be taken to prejudice the duty of the receiver to render proper accounts of his receipts and payments to the persons to whom, and at the times at which, he may be required to do so apart from that Subhead.
- (8) Where the Registrar becomes aware of the appointment of a receiver under this head, he shall forthwith inform the Director of Corporate Enforcement of the appointment.
- (9) If the receiver makes default in complying with this head, he shall be guilty of a category four offence.
- (a) who are or have been officers of the company;
- (b) who have taken part in the formation of the company at any time within one year before the date of the receiver's appointment;
- (c) who are in the employment of the company or have been in the employment of the company within the said year, and are, in the opinion of the receiver, capable of giving the information required;
- (d) who are or have been within the said year, officers of or in the employment of a company which is, or within the said year was, an officer of the company to which the statement relates.
- (3) Any person making the statement and affidavit shall be allowed, and shall be paid by the receiver (or his successor) out of his receipts, such costs and expenses incurred in and about the preparation and making of the statement and affidavit as the receiver (or his successor) may consider reasonable, subject to an appeal to the court.
- (4) Where the receiver is appointed under the powers contained in any instrument, this head shall have effect with the substitution for references to an affidavit, of references to a statutory declaration; and in any other case, references to the court shall be taken to refer to the court by which the receiver was appointed.

### **Explanatory note**

*This section is a slightly amended re-enactment of section 319 of the Companies Act, 1963, as amended by section 52 of the Company Law Enforcement Act 2001. The numbering of the subheads, and the cross-references thereto, have been amended. References to the Director have been replaced by references to "the Director of Corporate Enforcement" throughout.*

---

## **Head 4      Contents of statement to be submitted to receiver**

---

- (1) The statement as to the affairs of a company required by Part A8, Head 3 [equivalent of Section 319 of the Companies Act, 1963] to be submitted to the receiver (or his successor) shall show as at the date of the receiver's appointment, particulars of the company's assets, debts and liabilities, the names and residences of its creditors, the securities held by them respectively, the dates when the securities were respectively given and such further or other information as may be prescribed.
- (2) The said statement shall be submitted by, and be verified by affidavit of, one or more of the persons who are, at the date of the receiver's appointment, the directors and by the person who is at that date the secretary of the company, or by such of the persons hereafter in this subhead mentioned as the receiver (or his successor), may require to submit and verify the statement, that is, persons—
- (5) If any person to whom subhead (2) applies makes default in complying with the requirements of this head, he shall, unless he can prove to the satisfaction of the court that it was not possible for him to comply with the requirements of the head, be guilty of a category three offence.
- (6) References in this head to the receiver's successor shall include a continuing receiver.

### **Explanatory note**

*This head is an amended re-enactment of Section 320 of the Companies Act, 1963, as amended by Section 173 of the Companies Act, 1990. Subhead (5) has been amended insofar as it now refers to an offence generally.*

**Head 5 Consequences of contravention of Heads 3 [equivalent of Section 319(1)(b) of the Companies Act, 1963] or 4 [equivalent of Section 320 of the Companies Act, 1963]**

Where, in contravention of Part A8, Head 3 (1) (b) [equivalent of Section 319(1)(b) of the Companies Act, 1963] and Part A8, Head 4 [equivalent of Section 320 of the Companies Act, 1963], a statement of affairs is not submitted to the receiver as required by those provisions, the court may, on the application of the receiver or any creditor of the company, and notwithstanding the provisions of Part A8, Head 4 (5) [equivalent of Section 320(5) of the Companies Act, 1963], make whatever order it thinks fit, including an order compelling compliance with Part A8, Head 3 [equivalent of Section 319 of the Companies Act, 1963] and Part A8, Head 4 [equivalent of Section 320 of the Companies Act, 1963].

**Explanatory note**

*This head is a slightly amended re-enactment of Section 320A of the Companies Act, 1963, as amended by Section 174 of the Companies Act, 1990. Cross-references to other heads have been updated in accordance with the structure of the Bill.*

**Head 6 Disqualification of certain persons from acting as receiver**

- (1) None of the following persons shall be qualified for appointment as receiver of the property of a company—
  - (a) an undischarged bankrupt;
  - (b) a person who is, or who has, within 12 months of the commencement of the receivership been, an officer or servant of the company;
  - (c) a parent, spouse, brother, sister or child of an officer of the company;
  - (d) a person who is a partner of, within the definition of Section (1) of the Partnership Act, 1890, or in the employment of an officer or servant of the company;

- (e) a person who is not qualified by virtue of this subhead for appointment as receiver of the property of any other body corporate which is that company's subsidiary or holding company or a subsidiary of that company's holding company, or would be so disqualified if the body corporate were a company;
- (f) a body corporate.

References in this subhead to an officer or servant of the company include references to an auditor.

- (2) If a receiver of the property of a company becomes disqualified by virtue of this head, he shall thereupon vacate his office and give notice in writing within 14 days to—
  - (a) the company;
  - (b) the Registrar;
  - (c)
    - (i) the debenture-holder, if the receiver was appointed by a debenture-holder, or
    - (ii) the court, if the receiver was appointed by the court,

that he has vacated it by reason of such disqualification.

- (3) Subhead (2) is without prejudice to Part A8, Head 9 [equivalent of Section 107 of the Companies Act, 1963], Part A8, Head 3(2) [equivalent of Section 319(2) of the Companies Act, 1963] and Part A8, Head 14 [equivalent of the Section 321 of Companies Act, 1963].
- (4) Nothing in this head shall require a receiver appointed before 1 August 1991, to vacate the office to which he was so appointed.
- (5) Any person who acts as a receiver when disqualified by this head from so doing or who fails to comply with Subhead (2), if that Subhead applies to him, shall be guilty of a category two offence.

**Explanatory note**

*This head is a slightly amended re-enactment of Section 315 of the Companies Act, 1963, as amended by Section 170 of the Companies Act, 1990. Cross-references to other heads have been updated in accordance with the structure of the Bill and references to the registrar of companies are replaced by references to the "Registrar".*

## Part A8 - Receivers

*Subhead (1)(f) has been newly inserted. This is taken in substance from Section 314 of the Companies Act, 1963.*

*Subsection (4) has been amended insofar as the specific date has now been inserted. [Query the possibility of a receiver appointed prior to 1991 still being active – if not, Section 6(4) would appear to be obsolete].*

*Subsection (5) has been amended insofar as it now refers to an offence generally.*

---

### Head 7 Resignation of receiver

---

- (1) A receiver of the property of a company, appointed under the powers contained in any instrument may resign, provided he has given one month's notice thereof to —
  - (a) the holders of floating charges over all or any part of the property of the company and the holders of any fixed charge over all or any part of the property of the company;
  - (b) the company or its liquidator.
- (2) A receiver appointed by the court may resign only with the authority of the court and on such terms and conditions, if any, as may be laid down by the court.
- (3) If any person makes default in complying with the requirements of this head, he shall be guilty of a category four offence.

#### **Explanatory note**

*This head is an amended re-enactment of Section 322C of the Companies Act, 1963, as inserted by section 177 of the Companies Act, 1990.*

*Subhead (1)(a) is a re-enactment of Sections 322C(1)(a) & (c) of the Companies Act, 1963. The Company Law Review Group noted that there was no reason to distinguish between holders of fixed and floating charges for the purpose of the receipt of notice in relation to the resignation of a receiver.*

*Subsection (3) has been amended insofar as it now refers to a categorised offence.*

---

### Head 8 Removal of receiver

---

- (1) The court may, on cause shown, remove a receiver and appoint another receiver.

- (2) Notice of such proceedings shall be served on the receiver and on the person who appointed him not less than 7 days before the hearing of such proceedings and, in any such proceedings, the receiver and the person who appointed him may appear and be heard.

#### **Explanatory note**

*This head is a re-enactment of Section 322A of the Companies Act, 1963, as inserted by Section 175 of the Companies Act, 1990.*

---

### Head 9 Notice to Registrar of appointment of receiver, and of receiver ceasing to act

---

- (1) If any person obtains an order for the appointment of a receiver of the property of a company or appoints such a receiver under any powers contained in any instrument, he shall, within 7 days after the date of the order or of the appointment, deliver to the Registrar, a notice in the form prescribed.
- (2) When any person appointed receiver of the property of a company ceases to act as such receiver, he shall, on so ceasing, deliver to the Registrar a notice in the form prescribed.
- (3) If any person makes default in complying with the requirements of this head, he shall be guilty of a category four offence .

#### **Explanatory note**

*This head is a slightly amended re-enactment of Section 107 of the Companies Act, 1963. References to the registrar of companies are replaced by references to the "Registrar" throughout the head and references to Iris Oifigiuil have been replaced with references to the "CRO Gazette".*

*Subsection (1) has been amended in accordance with the view of the Company Law Review Group. The requirement to publish a notice "...in at least one daily newspaper in the district in which the registered office is located" has been replaced by a requirement to simply publish the notice in the CRO Gazette. The reasons for this are the cost of publication; the inefficiency of the notice reaching the intended recipients; and the fact that the CRO Gazette will now be freely available on-line.*

*Subsection (3) has been amended insofar as it now refers to a categorised offence.*



## Chapter 3

### Powers and Duties of Receivers

#### Head 10 Powers of receiver

- (1) Subject to this head, a receiver of property of a company has power to do, in the State and elsewhere, all things necessary or convenient to be done for or in connection with, or as incidental to, the attainment of the objectives for which the receiver was appointed.
- (2) Without limiting the generality of Subhead(1), but subject to any provision of the court order by which, or the instrument under which, the receiver was appointed, being a provision that limits the receiver's powers in any way, a receiver of property of a company has, in addition to any powers conferred by that order or instrument, as the case may be, or by any other law, power, for the purpose of attaining the objectives for which the receiver was appointed —
  - (a) to enter into possession and take control of property of the company in accordance with the terms of that order or instrument; and
  - (b) to lease, let on hire or dispose of property of the company; and
  - (c) to grant options over property of the company on such conditions as the receiver thinks fit; and
  - (d) to borrow money on the security of property of the company; and
  - (e) to insure property of the company; and
  - (f) to repair, renew or enlarge property of the company; and
  - (g) to convert property of the company into money; and
  - (h) to carry on any business of the company; and
  - (i) to take on lease or on hire, or to acquire, any property necessary or convenient in connection with the carrying on of a business of the company; and
  - (j) to execute any document, bring or defend any proceedings or do any other act or thing in the name of and on behalf of the company; and
  - (k) to draw, accept, make and indorse a bill of exchange or promissory note; and
  - (l) to use a seal of the company; and
  - (m) to engage or discharge employees on behalf of the company; and
  - (n) to appoint a solicitor, accountant or other professionally qualified person to assist the receiver; and
  - (o) to appoint an agent to do any business that the receiver is unable to do, or that it is unreasonable to expect the receiver to do, in person; and
  - (p) where a debt or liability is owed to the company to prove the debt or liability in a bankruptcy, insolvency or winding-up and, in connection therewith, to receive dividends and to assent to a proposal for a composition or a scheme of arrangement; and
  - (q) if the receiver was appointed under an instrument that created a charge on uncalled share capital of the company—
    - (i) to make a call in the name of the company for the payment of money unpaid on the company's shares, or
    - (ii) on giving a proper indemnity to a liquidator of the company to make a call in the liquidator's name for the payment of money unpaid on the company's shares; and
  - (r) to enforce payment of any call that is due and unpaid, whether the calls were made by the receiver or otherwise; and
  - (s) to make or defend an application for the winding-up of the company; and
  - (t) to refer to arbitration, any question affecting the company.
- (3) The conferring, by this head, on a receiver, of powers in relation to property of a company, does not affect any rights in relation to that property of any other person other than the company.
- (4) In this head, a reference, in relation to a receiver to property of a company is, unless the contrary intention appears, a reference to the property of the company in relation to which the receiver was appointed.

## Part A8 - Receivers

### **Explanatory notes**

*This head is a new head introduced in accordance with the views of the Company Law Review Group.*

*The head is modeled on Section 420 of the Australian Corporations Law and gives certain specific powers to receivers in addition to those conferred on them by the court order or instrument under which they were appointed. Conferring statutory powers on receivers is intended to alleviate many of the problems which may arise from poorly drafted debentures.*

### **Head 11 Power of receiver to apply to the court for directions and his liability on contracts**

(1) Where a receiver of the property of a company is appointed under the powers contained in any instrument, any of the following persons may apply to the court for directions in relation to any matter in connection with the performance or otherwise, by the receiver, of his functions, that is to say—

- (a)
  - (i) the receiver,
  - (ii) an officer of the company,
  - (iii) a member of the company,
  - (iv) employees of the company comprising at least half in number of the persons employed in a permanent capacity by the company,
  - (v) a creditor of the company; and
- (b)
  - (i) a liquidator,
  - (ii) a contributory,

and on any such application, the court may give such directions, or make such order declaring the rights of persons before the court or otherwise, as the court thinks just.

(2) An application to the court under Subhead (1), except an application under paragraph (a)(i) of that Subhead, shall be supported by such evidence that the applicant is being unfairly prejudiced by any actual or proposed action or omission of the receiver as the court may require.

(3) For the purposes of Subhead (1), 'creditor' means one or more creditors to whom the company is indebted by more, in aggregate, than €13,000.

(4) A receiver of the property of a company shall be personally liable on any contract entered into by him in the performance of his functions, (whether such contract is entered into by him in the name of such company or in his own name as receiver or otherwise) unless the contract provides that he is not to be personally liable on such contract, and he shall be entitled in respect of that liability to indemnity out of the assets; but nothing in this subhead shall be taken as limiting any right to indemnity which he would have apart from this subhead,

or as limiting his liability on contracts entered into without authority or as conferring any right to indemnity in respect of that liability.

(5) Where a receiver of the property of a company has been appointed or purported to be appointed and it is subsequently discovered that the charge or purported charge in respect of which he was so appointed or purported to be appointed, was not effective as a charge on such property or on some part of such property, the court may, if it thinks fit, on the application of such receiver, order that he be relieved wholly or to such extent as the court shall think fit, from personal liability in respect of anything done or omitted by him in relation to any property purporting to be comprised in the charge by virtue of which, he was appointed or purported to be appointed which if such property had been effectively included in such charge or purported charge, would have been properly done or omitted by him and he shall be relieved from personal liability accordingly, but in that event the person by whom such receiver was appointed or purported to be appointed shall be personally liable for everything for which, but for such order, such receiver would have been liable.

(6) This head shall apply whether the receiver was appointed before, on, or after the 1st April 1964, but Subhead (4) shall not apply to contracts entered into before that date.

### **Explanatory note**

*This head is a slightly amended re-enactment of Section 316 of the Companies Act, 1963, as amended by Section 171 of the Companies Act, 1990. The numbering of the subsections, and the cross-references thereto, have been amended.*

*Subhead (1)(a)(iv) is an amended re-enactment of Section 316(1)(a)(iv) of the Companies Act, 1963. The reference to "...persons employed in a full-time capacity by the company" has been replaced by "...persons employed in a permanent capacity by the company" in accordance with the views of the Company Law Review Group.*

*Subhead (3) is an amended re-enactment of Section 316(1B) of the Companies Act, 1963. The specified debt has been converted to euro and rounded up to €13,000.*

*Subhead (6) is an amended re-enactment of Section 316(4) of the Companies Act, 1963. The reference to the operative date has been replaced by the specific date from the Companies Act, 1963.*

(b) In this subhead—

- (i) 'non-cash asset' and 'requisite value' have the meanings assigned to them by Part A5, Head 16 [equivalent of Section 29 of the Companies Act, 1990], and
- (ii) 'officer' includes a person connected, within the meaning of Part A5, Head 2 [equivalent of Section 26 of the Companies Act, 1990], with a director, a shadow director and a de facto director within the meaning Part A5, Head 3 [equivalent of Section 27 of the Companies Act, 1990] and Part A5, Head 4 [new] respectively.

---

## **Head 12 Duty of receiver selling property to get best price reasonably obtainable**

---

- (1) A receiver, in selling property of a company, shall exercise all reasonable care to obtain the best price reasonably obtainable for the property as at the time of sale.
- (2) Notwithstanding the provisions of any instrument—
  - (a) it shall not be a defence to any action or proceeding brought against a receiver in respect of a breach of his duty under Subhead (1) that the receiver was acting as the agent of the company or under a power of attorney given by the company; and
  - (b) notwithstanding anything in Part A8, Head 11 (4) [equivalent of Section 316(2) of the Companies Act, 1963], a receiver shall not be entitled to be compensated or indemnified by the company for any liability he may incur as a result of a breach of his duty under this head.
- (3)
  - (a) A receiver shall not sell by private contract a non-cash asset of the requisite value to a person who is, or who, within three years prior to the date of appointment of the receiver, has been, an officer of the company unless he has given at least 14 days' notice of his intention to do so to all creditors of the company who are known to him or who have been intimated to him.

### **Explanatory note**

*This head is a slightly amended re-enactment of Section 316A of the Companies Act, 1963, as inserted by Section 172 of the Companies Act, 1990. The cross-references have been amended in accordance with the structure of the Bill.*

---

## **Head 13 Preferential payments when receiver is appointed under floating charge**

---

- (1) Where either a receiver is appointed on behalf of the holders of any debentures of a company secured by a floating charge, or possession is taken by or on behalf of those debenture holders of any property comprised in or subject to the charge, then, if the company is not, at the time, in course of being wound up, the debts which in every winding-up are, under the provisions of Part A11 [equivalent of Part VI of the Companies Act, 1963] relating to preferential payments to be paid in priority to all other debts, shall be paid out of any assets coming to the hands of the receiver or other person taking possession as aforesaid in priority to any claim for principal or interest in respect of the debentures.
- (2) In the application of the said provisions Part A11, Head 58 [equivalent of Section 285 of the Companies Act, 1963] shall be construed as if the provision for payment of accrued holiday remuneration becoming payable on the termination of employment before or by the effect of the winding-up order or resolution, were a provision for payment of such remuneration becoming payable on the termination of employment before or by the effect of the appointment of the receiver or possession being taken as aforesaid.

## Part A8 - Receivers

---

- (3) The periods of time mentioned in the said provisions of Part A11 [equivalent of Part VI of the Companies Act, 1963] shall be reckoned from the date of the appointment of the receiver or of possession being taken as aforesaid, as the case may be.
- (4) Where the date referred to in Subhead (3) occurred before the 1st April 1964, Subheads (1) and (3) shall have effect with the substitution for references to the said provisions of Part A11 [equivalent of Part VI of the Companies Act, 1963] of references to the provisions which, by virtue of Part A11, Head 58 (11) [equivalent of Section 285(12) of the Companies Act, 1963] are deemed to remain in force in the case therein mentioned, and subhead (2) of this head shall not apply.
- (5) Any payments made under this head shall be recouped so far as may be out of the assets of the company available for payment of general creditors.

- (2) Every receiver who makes default in complying with this head shall be guilty of a category four offence.

### **Explanatory note**

*This head is a slightly amended re-enactment of Section 321 of the Companies Act, 1963. The cross-references have been amended in accordance with the structure of the Bill and references to the registrar of companies have been replaced by references to the "Registrar".*

*Subhead (2) has been amended insofar as it now refers to a categorised offence.*

### **Explanatory note**

*This head is a slightly amended re-enactment of Section 98 of the Companies Act, 1963. The cross-references have been amended in accordance with the structure of the Bill and the "operative date" has been replaced with that specific date from the Companies Act, 1963.*

---

## Head 14 Delivery to Registrar of accounts of receiver

---

- (1) Except where Subhead (2) of Part A8, Head 3 [equivalent of Section 319 of the Companies Act, 1963] applies, every receiver of the property of a company shall, within one month after the expiration of the period of 6 months from the date of his appointment and of every subsequent period of 6 months, and within one month after he ceases to act as receiver, deliver to the Registrar for registration an abstract in the prescribed form showing the assets of the company of which he has taken possession since his appointment, their estimated value, the proceeds of sale of any such assets since his appointment, his receipts and his payments during that period of 6 months or, where he ceases to act as aforesaid, during the period from the end of the period to which the last preceding abstract related up to the date of his so ceasing, and the aggregate amounts of his receipts and of his payments during all the preceding periods since his appointment.

## Chapter 4

### Regulation and Enforcement of Receivers

#### Head 15 Enforcement of duty of receiver to make returns

- (1) If any receiver of the property of a company—
- (a) having made default in filing, delivering or making any return, account or other document, or in giving any notice, which a receiver is by law required to file, deliver, make or give, fails to make good the default within 14 days after the service on him of a notice requiring him to do so; or
  - (b) having been appointed under the powers contained in any instrument, has, after being required at any time by the liquidator of the company to do so, failed to render proper accounts of his receipts and payments and to vouch the same and to pay over to the liquidator the amount properly payable to him,
- the court may, on an application made for the purpose, make an order directing the receiver to make good the default within such time as may be specified in the order.
- (2) In the case of any such default as is mentioned in paragraph (a) of Subhead(1), an application for the purposes of this head may be made by any member or creditor of the company or by the Registrar, and in the case of any such default as is mentioned in paragraph (b) of that Subhead, the application shall be made by the liquidator, and in either case the order may provide that all costs of and incidental to the application shall be borne by the receiver.
- (3) Nothing in this head shall be taken to prejudice the operation of any enactments imposing penalties on receivers in respect of any such default as is mentioned in Subhead (1).

#### **Explanatory note**

*This head is a slightly amended re-enactment of Section 322 of the Companies Act, 1963. The reference to the registrar of companies has been replaced with a reference to the "Registrar".*

#### Head 16 Power of the court to order the return of assets which have been improperly transferred.

- (1) Where, on the application of a receiver, creditor or member of a company that is in receivership, it can be shown to the satisfaction of the court that —
- (a) any property of the company of any kind whatsoever was disposed of either by way of conveyance, transfer, mortgage, security, loan, or in any way whatsoever whether by act or omission, direct or indirect; and
  - (b) the effect of such disposal was to perpetrate a fraud on the company, its creditors or members,
- the court may, if it deems it just and equitable to do so, order any person who appears to have the use, control or possession of such property or the proceeds of the sale or development thereof to deliver it or pay a sum in respect of it to the receiver on such terms or conditions as the court sees fit.
- (2) Subhead (1) shall not apply to any conveyance, mortgage, delivery of goods, payment, execution or other act relating to property made or done by or against a company to which Part A11, Head 43 (1) [equivalent of Section 286(1) of the Companies Act, 1963] applies.
- (3) In deciding whether it is just and equitable to make an order under this head, the court shall have regard to the rights of persons who have bona fide and for value acquired an interest in the property the subject of the application.

#### **Explanatory note**

*This head is a re-enactment of Section 139 of the Companies Act, 1990, as applied with modification by Section 178 of the Companies Act, 1990 to receivers. The reference to "contributory" in Subhead (1) has been replaced with "member". This is consistent with the similar provision in Part A11.*



### Head 17 Power of court to fix remuneration of receiver

---

- (1) The Court may, on an application made to it by the liquidator of a company or by any creditor or member of the company, by order fix the amount to be paid by way of remuneration to any person who, under the powers contained in any instrument, has been appointed as receiver of the property of the company notwithstanding that the remuneration of such receiver has been fixed by or under that instrument.
- (2) Subject to Subhead (3), the power of the court under Subhead (1) shall, where no previous order has been made in relation thereto under that Subhead—
  - (a) extend to fixing the remuneration for any period before the making of the order or the application therefore; and
  - (b) be exercisable notwithstanding that the receiver has died or ceased to act before the making of the order or the application therefore; and
  - (c) where the receiver has been paid or has retained for his remuneration for any period before the making of the order any amount in excess of that fixed by the court for that period, extend to requiring him or his personal representatives to account for the excess or such part thereof as may be specified in the order.
- (3) The power conferred by paragraph (c) of Subhead (2) shall not be exercised in relation to any period before the making of the application for the order unless in the opinion of the court there are special circumstances making it proper for the power to be so exercised.
- (4) The court may from time to time on an application made by the liquidator or by any creditor or member of the company or by the receiver, vary or amend an order made under Subhead (1).
- (5) This head shall apply whether the receiver was appointed before, on, or after the 1st April 1964 and to periods before, as well as to periods after, that date.
- (6) Nothing in this head shall affect a receiver's right to indemnity out of the assets of the company provided by Part A8, Head 11 [equivalent of Section 316 of the Companies Act, 1963].

#### **Explanatory note**

*This head is an amended re-enactment of Section 318 of the Companies Act, 1963. The references to the operative date have been replaced with references to specific dates.*

*Subhead (6) is new. It protects the receiver's right to an indemnity out of the assets of the company.*

---

### Head 18 Court may end or limit receivership on application of liquidator

---

- (1) On the application of the liquidator of a company that is being wound up (other than by means of a members' voluntary winding-up) and in respect of which a receiver has been appointed (whether before or after the commencement of the winding-up), the court may—
  - (a) order that the receiver shall cease to act as such from a date specified by the court, and prohibit the appointment of any other receiver; or
  - (b) order that the receiver shall, from a date specified by the court, act as such only in respect of certain assets specified by the court.

An order under this Subhead may be made on such terms and conditions as the court thinks fit.

- (2) The court may from time to time, on an application made either by the liquidator or by the receiver, rescind or amend an order made under Subhead (1).
- (3) A copy of an application made under this head shall be served on the receiver and on the person who appointed him not less than 7 days before the hearing of the application, and the receiver and any such party may appear before and be heard by the court in respect of the application.
- (4) Except as provided in Subhead (1), no order made under this head shall affect any security or charge over the undertaking or property of the company.

#### **Explanatory note**

*This head is a re-enactment of Section 322B of the Companies Act, 1963, as inserted by Section 176 of the Companies Act, 1990.*

---

## Head 19 Director of Corporate Enforcement may request production of receiver's books

---

- (1) The Director of Corporate Enforcement may, where he considers it necessary or appropriate, request (specifying the reason why the request is being made) the production of a receiver's books for examination, either in regard to a particular receivership or to all receiverships undertaken by the receiver.
- (2) Where the Director of Corporate Enforcement has requested the production of a receiver's books for examination under Subhead (1), the receiver to whom the request is made shall furnish the books to the Director of Corporate Enforcement and answer any questions concerning the content of the books and the conduct of a particular receivership or receiverships, and give to the Director of Corporate Enforcement all assistance in the matter as the receiver is reasonably able to give.
- (3) A request under Subhead (1) may not be made in respect of books relating to a receivership that has concluded more than 6 years prior to the request.
- (4) If the receiver makes default in complying with this section, he shall be guilty of a category three offence.

### **Explanatory note**

*This head is a slightly amended re-enactment of Section 323A of the Companies Act, 1963, as inserted by Section 53 of the Company Law Enforcement Act, 2001. References to the Director have been replaced by references to the "Director of Corporate Enforcement".*

---

## Head 20 Prosecution of criminal offences committed by officers and members of the company

---

- (1) If it appears to the receiver in the course of a receivership that any past or present officer, or any member, of the company has been guilty of any offence in relation to the company for which he is criminally liable, he shall forthwith report the matter to the Director of Public Prosecutions [or the Director of Corporate Enforcement] shall furnish to the Director of Public Prosecutions [or the Director of Corporate Enforcement] such information and give to him such access to and facilities for inspecting and taking copies of any documents, being information or documents in the possession or under the control of the liquidator and relating to the matter in question, as the Director of Public Prosecutions [or the Director of Corporate Enforcement] may require.
- (2) If, where any matter is reported or referred to the Director of Public Prosecutions and the Director of Corporate Enforcement under this head, either the Director of Public Prosecutions or the Director of Corporate Enforcement considers that the case is one in which a prosecution ought to be instituted and institutes proceedings accordingly, it shall be the duty of the receiver and of every officer and agent of the company past and present (other than the defendant in the proceedings) to give all assistance in connection with the prosecution which he is reasonably able to give.

For the purposes of this Subhead, "agent" in relation to a company, shall be deemed to include any banker or solicitor of the company and any person employed by the company as auditor, whether that person is or is not an officer of the company.

- (3) If any person fails or neglects to give assistance in the manner required by Subhead (2), the court may, on the application of the Director of Public Prosecutions or of the Director of Corporate Enforcement, direct that person to comply with the requirements of that Subhead, and where any such application is made in relation to a receiver the court may, unless it appears that the failure or neglect to comply was due to the receiver not having in his hands sufficient assets of the company to enable him so to do, direct that the costs of the application shall be borne by the liquidator personally.

## Part A8 - Receivers

---

### **Explanatory note**

*This head is new. It is, in substance, a slightly amended re-enactment of Section 299(2), (4) and (5) of the Companies Act, 1963 (as amended by Section 143 of the Companies Act, 1990 and Section 51 of the Company Law Enforcement Act 2001), as applied with modification by Section 179 of the Companies Act, 1990 to receivers.*

*Subhead (1) is an amended re-enactment of Section 299(2) of the Companies Act, 1963.*

*Subhead (2) is an amended re-enactment of Section 299(4) of the Companies Act, 1963.*

*Subhead (3) is an amended re-enactment of Section 299(5) of the Companies Act, 1963.*

*The numbering of the subsections has been updated and references to the Director have been replaced with references to the Director of Corporate Enforcement.*

---

# Part A9 – Reorganisations and Takeovers

## Contents of Part A9

---

### Chapter 1 – Schemes of Arrangement

1. Interpretation of this Chapter
2. Company approval and court sanction of scheme of arrangement
3. Information as to arrangements with members and creditors
4. Provisions to facilitate reconstruction and amalgamation of companies

### Chapter 2 – Takeover Offers

5. Interpretation of this Chapter
6. Power to acquire shares of shareholders dissenting from scheme or contract which has been approved by majority

### Chapter 3 – Mergers

7. Interpretation of this Chapter
8. Mergers to which this Chapter applies
9. Draft terms of merger
10. Directors' explanatory report
11. Merger by validation procedure
12. Independent person's report
13. Accounting statement
14. Registration and publication of documents
15. Inspection of documents
16. General meetings of merging companies
17. Meetings of classes of shareholders
18. Purchase of minority shares
19. Application for confirmation of merger by court
20. Protection of creditors
21. Preservation of rights of holders of securities
22. Confirmation order
23. Saver for enactments regulating mergers
24. Registration and publications of confirmation of merger
25. Civil liability of directors and independent persons
26. Criminal liability for untrue statements in merger documents

### Chapter 4 – Divisions

27. Interpretation of this Chapter
28. Divisions to which this Chapter applies
29. Draft terms of division
30. Directors' explanatory report
31. Division by validation procedure
32. Independent persons's report
33. Accounting statement
34. Registration and publication of documents
35. Inspection of documents
36. General meetings of the companies involved in division
37. Meetings of classes of shareholder
38. Purchase of minority shares
39. Application for confirmation of division by court
40. Protection of creditors
41. Preservation of rights of holders of securities
42. Confirmation order
43. Saver for enactments regulating divisions
44. Registration and publication of confirmation of division
45. Civil liability of directors and independent persons
46. Criminal liability for untrue statements in division documents

## Part A9 – Reorganisations

### Chapter 1

#### Schemes of Arrangement

##### Head 1 Interpretation of this Chapter

In this Part—

“arrangement” includes a reorganisation of the share capital of the company by the consolidation of shares of different classes or by the division of shares into shares of different classes or by both those methods;

“debenture trustees” in relation to a company means the trustees of a deed securing the issue of debentures by the company;

“new company” has the meaning in Part A9, Head 4 (1) (b) (ii) [equivalent of Section 203 of the Companies Act, 1963];

“old company” has the meaning in Part A9, Head 4 (1) (b) (ii) [equivalent of Section 203 of the Companies Act, 1963];

“scheme circular” means the statement to be sent as required by Part A9, Head 3 [equivalent of Section 202 of the Companies Act, 1963] to members and creditors, or classes of them, as the case may be;

“scheme meeting” means a meeting of creditors or any class of creditors or of members or any class of members;

“scheme order” means an order of the court sanctioning a compromise or scheme of arrangement referred to in Part A9, Head 3 [equivalent of Section 202 of the Companies Act, 1963].

##### **Explanatory note**

*This head is new.*

*The definitions have been compiled into Head (1) in order to create a comprehensive list of the defined terms for the purposes of the Part. Many of the defined terms in this head are concepts recognisable under the Companies Act, 1963-2003. Others are newly created terms.*

##### Head 2 Company approval and court sanction of a scheme of arrangement

- (1) Where a compromise or arrangement is proposed between a company and its creditors or any class of them or between the company and its members or any class of them—
  - (a) the directors may convene a scheme meeting or meetings; or
  - (b) where the directors have not convened a scheme meeting or meetings, the court may, on the application of the company or of any creditor or member of the company, or, in the case of a company being wound up, of the liquidator, order a scheme meeting or meetings to be summoned in such manner as the court directs.
- (2) Whenever such a meeting is convened or application is made as is mentioned in Subhead (1), the court may, on the application of the directors, the company, a creditor or liquidator, on such terms as seem just, stay all proceedings or restrain further proceedings against the company for such period as to the court seems fit.
- (3) If:
  - (a) a special majority vote in favour of a resolution agreeing to any compromise or arrangement; and
  - (b) the passing of the resolution or resolutions at the scheme meeting or meetings and notice of application to the court is advertised once in at least two daily newspapers circulating in the district where the registered office or principal place of business is situated; and
  - (c) the court by order sanctions the compromise or arrangement,



## Part A9 - Reorganisations and Takeovers

the compromise or arrangement shall be binding on all the creditors or the class of creditors, or on the members or class of members, as the case may be, and also on the company or, in the case of a company in the course of being wound up, on the liquidator and contributories of the company.

- (4) Part A4, Head 63 [equivalent of Section 144 of the Companies Act, 1963] shall apply to any such resolution as is mentioned in Subhead (3) (a) which is passed at any adjourned scheme meeting.
- (5)
- (a) Where a State authority is a creditor of the company, such authority shall be entitled to accept and to be bound by proposals under this head notwithstanding—
- (i) that any claim of such authority as a creditor would be impaired under the proposals, or
- (ii) any other enactment.
- (b) In this subhead, “State authority” means the State, a Minister of the Government or the Revenue Commissioners.
- (6)
- (a) Where a scheme order is made, the company shall cause an office copy thereof to be delivered to the Registrar for registration within 21 days after the making of the order;
- (b) A scheme order shall take effect immediately upon delivery of an office copy of the scheme order sanctioning the scheme to the Registrar for registration;
- (c) A company and any officer in default which fails to make a return in accordance with this subhead shall be guilty of a category three offence;
- (7)
- (a) A company shall attach a copy of every scheme order to every copy of the constitution of the company issued after the scheme order has been made.
- (b) A company and any officer in default which fails so to attach a scheme order in accordance with this subhead shall be guilty of a category three offence.

- (8) For the avoidance of doubt, nothing in this head or Heads 3 to 6 of this Part [equivalent of Sections 202 to 204 of the Companies Act, 1963] prejudices the jurisdiction of the Irish Takeover Panel under the Irish Takeover Panel Act, 1997, with respect to a compromise or scheme of arrangement that is proposed between a relevant company (within the meaning of that Act) and its members or any class of them and which constitutes a takeover within the meaning of that Act and, accordingly, the said Panel has, and shall be deemed always to have had, power to make rules under Section 8 of the said Act in relation to a takeover of the kind aforesaid, to the same extent and subject to the like conditions, as it has power to make rules under that section in relation to any other kind of takeover.

*(9) The Irish Takeover Panel, in exercising its powers under the Irish Takeover Panel Act, 1997, and the High Court, in exercising its powers under this head and Heads 4 and 6 of this Part [equivalent of Sections 203 and 204 of the Companies Act, 1963], shall each have due regard to the other’s exercise of powers under the said Act or those heads, as the case may be.*

### **Explanatory note**

*This head is an amended re-enactment of Section 201 of the Companies Act, 1963, as amended by Section 99 of the Company Law Enforcement Act, 2001. Section 23(5) of the Companies (Amendment) Act, 1990 has also been inserted into the head.*

*The Company Law Review Group examined the procedures for effecting a scheme of arrangement under Section 201 of the Companies Act, 1963 and noted that there were two principal shortcomings in the above procedure, namely the initiation of two separate legal proceedings to convene the scheme meetings and to approve the scheme and, secondly, the fact that the matter had to be brought before the Court three times in all in convening the scheme meeting, seeking direction as to advertising the petition and obtaining approval of the scheme. The section has been amended in accordance with the recommendations of the Review Group in its First Report.*

*Subhead (1)(a) is an amended re-enactment of Section 201(1) of the Companies Act, 1963. It has been amended in accordance with the recommendations of the Review Group, in its First Report, that Court approval should no longer be required to convene scheme meetings of shareholders or creditors, where the proposed meetings are convened by the board of directors. Currently, the court will not give pre-approval at this meeting - the court reserves its discretion at the third court hearing to disapprove a scheme. Therefore, there appears little virtue in retaining the court’s involvement. Such an amendment removes one of the two sets of legal proceedings as well as one of the court hearings.*

## Part A9 - Reorganisations and Takeovers

---

Subhead (1)(b) retains the court involvement where the directors have not convened the scheme meeting and the court is given a discretion to order scheme meetings to be summoned in such manner as it directs.

Subhead (2) is a re-enactment of Section 201(2) of the Companies Act, 1963.

Subhead (3) is an amended re-enactment of Section 201(3) of the Companies Act, 1963.

Subhead 3(a) is an amended expression of the phrase - "...a majority in number representing three-fourths in value of the creditors or class of creditors or members or class of members, as the case may be, present and voting either in person or by proxy at the meeting, vote in favour of a resolution agreeing to any compromise or arrangement...". The new wording is simpler and no change, in substance, is effected.

Subhead 3(b) has been newly inserted in accordance with the recommendations of the Review Group in its First Report. The Review Group recommended that the second court hearing, namely to advertise the passing of the scheme resolution and presentation of the scheme petition to the participants in the scheme, should be removed in most cases. This requirement to advertise is now satisfied by advertising in two daily newspapers circulated in the district where the registered office or principal place of business is located. The discretion of the court to apply extra advertising requirements can be accommodated for other companies in Pillar B of the Bill.

The Review Group further noted that the participants in the scheme ought to have been notified of the scheme meetings and, therefore there ought to be no requirement to re-notify them of the passing of the scheme resolutions. Currently, the courts appear to recognise this and the above amendments would remove what appears to be an otiose procedure.

Subhead 3(c) and the final phrase of Subhead (3) is a re-enactment of the final phrase in Section 201(3) of the Companies Act, 1963.

Subhead (4) is a slightly amended re-enactment of Section 201(4) of the Companies Act, 1963. Cross-references to other provisions have been amended as a result of the structure of the Bill.

Subhead (5) is a re-enactment of Section 23(5) of the Companies (Amendment) Act, 1990. It enables State Authorities to accept and be bound by schemes of arrangements under this head.

Subhead (6)(a) and (b) are an amended re-enactment of the first part of section 201(5) of the Companies Act, 1963 which deals with the requirement to deliver a copy of the scheme order to the Registrar. The requirement on the company to deliver a copy of the scheme order to the Registrar must now be effected within 21 days after the making of the order. All references to the registrar of companies have been replaced by references to the "Registrar".

Subhead (6)(c) is a slightly amended re-enactment of Section 201(6) of the Companies Act, 1963. It has been amended insofar as it now refers to a categorised offence.

Subhead (7)(a) is an amended re-enactment of the second part of Section 201(5) of the Companies Act, 1963 which deals with the requirement to attach a copy of the Scheme order to the memorandum of association. The new subhead simply refers to the constitution of the company as private companies will now have a single document constitution under Part II of the Bill.

Subhead (7)(b) is a slightly amended re-enactment of Section 201(6) of the Companies Act, 1963. It has been amended insofar as it now refers to a categorised offence.

Subheads (8) and (9) reenact Sections 201(6A) and 201(6B) of the Companies Act, 1963 with minor alterations.

Subhead 201(7) of the Companies Act, 1963 has been deleted. The interpretation of "arrangement" has been included in Head 1 of this Part. The interpretation of "company" has been removed since we are only concerned with private companies in Pillar A.

---

### Head 3 Information as to arrangements with members and creditors

---

- (1) Where a scheme meeting is convened or summoned under Part A9, Head 2 [equivalent of Section 201 of the Companies Act, 1963] there shall—
  - (a) with every notice convening or summoning the meeting which is sent to a creditor or member, be sent also a scheme circular—
    - (i) explaining the effect of the compromise or arrangement,

- (ii) stating any material interests of the directors of the company, whether as directors or as members or as creditors of the company or otherwise, and the effect thereon of the compromise or arrangement, in so far as it is different from the effect on the like interests of other persons,
- (iii) where the compromise or arrangement affects the rights of debenture holders of a company, giving the like explanation in relation to the debenture trustees as it is required under subparagraph (ii) to give in relation to the company's directors;
- (b) in every notice convening or summoning the meeting which is given by advertisement, be included the scheme circular or a notification of the place at which and the manner in which creditors or members entitled to attend the meeting may obtain copies of the scheme circular.
- (2) Where a notice given by advertisement includes a notification that copies of the scheme circular can be obtained by creditors or members entitled to attend the scheme meeting, every such creditor or member shall, on making application in the manner indicated by the notice, be furnished by the company free of charge with a copy of the scheme circular.
- (3) Each director and debenture trustee shall provide the company in writing with the information concerning such director or debenture trustee, as the case may be, that is required for the scheme circular.
- (4)
- (a) Subject to Subhead (5), where a company fails to comply with any requirement of this head, the company and every officer of the company who is in default shall be guilty of a category three offence;
- (b) For the purpose of this Subhead any liquidator of the company and any debenture trustee of the company shall be deemed to be an officer of the company.
- (5) A person shall not be liable to an offence under this head if that person shows that the default was due to the refusal of any other person, being a director or debenture trustee, to supply the necessary particulars as to his interests.
- (6) Reference in this head to directors includes reference to shadow directors and to de facto directors.

### **Explanatory note**

*This head is an amended re-enactment of Section 202 of the Companies Act, 1963. Amendments have been made in accordance with the recommendations of the Company Law Review Group in its First Report.*

*References to "a meeting of creditors or any class of creditors or members or any class of members" has been replaced by a reference to "a scheme meeting". The word "statement" is replaced by "scheme circular" where necessary and "debenture trustee" replaces "trustee for debenture holders of the company". All cross-references have been amended in accordance with the structure of the Bill.*

*Subhead (1)(a) is an amended re-enactment of Sections 201(1)(a) and 202(2) of the Companies Act, 1963.*

*Subhead (1)(b) is a re-enactment of Section 202(1)(b) of the Companies Act, 1963.*

*Subhead (2) is an amended re-enactment of Section 202(3) of the Companies Act, 1963.*

*Subhead (3) is an amended re-enactment of Section 202(6) of the Companies Act, 1963. The wording has been re-phrased and the fine has been removed in accordance with the views of the Review Group. The fine was seen as unnecessary as it was in the realm of private rights and if the subsection was not adhered to, it was open to the Courts to deprive the company of the scheme of arrangement.*

*Subhead (4) is an amended re-enactment of Section 202(4) of the Companies Act, 1963. The subsection has now been divided into two new paragraphs and it has been amended insofar as it now refers to a categorised offence.*

*Subhead (5) is an amended re-enactment of Section 202(5) of the Companies Act, 1963.*

*Subhead (6) is a new subhead. It includes shadow directors and de facto directors as directors for the purpose of this head. This has also been done in Part A5, Heads 3 and 4.*

### Head 4 Provisions to facilitate reconstruction and amalgamation of companies

(1) Where—

- (a) an application is made to the court for the sanctioning of a compromise or arrangement under Part A9, Head 2 [equivalent of Section 201 of the Companies Act, 1963];
- (b) it is shown to the court that—
  - (i) the compromise or arrangement has been proposed for the purposes of or in connection with a scheme for the reconstruction of any company or companies or the amalgamation of any two or more companies, and
  - (ii) under the scheme the whole or any part of the undertaking or the property of any company concerned in the scheme (in this head referred to as “the old company”) is to be transferred to another company (in this head referred to as “the new company”),

the court may, either by the order sanctioning the compromise or arrangement or by any subsequent order make provision for all the matters set out in Subhead (2).

(2) The matters for which the court may make provision are—

- (a) the transfer to the new company of the whole or any part of the undertaking and of the property or liabilities of any old company;
- (b) the allotting or appropriation by the new company of any shares, debentures, policies or other like interests in that company which, under the compromise or arrangement, are to be allotted or appropriated by that company to or for any person;
- (c) the continuation by or against the new company of any legal proceedings pending by or against any old company;
- (d) the dissolution, with or without winding-up, of any old company;

(e) the provision to be made for any persons who, within such time and in such manner as the court directs, dissent from the compromise or arrangement;

(f) such incidental, consequential and supplemental matters as are necessary to secure that the reconstruction or amalgamation shall be fully and effectively carried out.

(3) Where an order under this head provides for the transfer of property or liabilities, that property shall, by virtue of the order, be transferred to and vest in, and those liabilities shall, by virtue of the order, be transferred to and become the liabilities of the new company, and in the case of any property, if the order so directs, freed from any charge which is, by virtue of the compromise or arrangement, to cease to have effect.

(4)

(a) Where an order is made under this head, every company in relation to which the order is made shall cause a plain copy of it to be delivered to the Registrar for registration within 21 days after the making of the order;

(b) Where such copy is not so delivered, the company and every officer of the company who is in default shall be guilty of a category three offence.

(5) In this head, “property” includes property, rights and powers of every description, and “liabilities” includes duties.

#### **Explanatory note**

*This head is an amended re-enactment of Section 203 of the Companies Act, 1963.*

*Subhead (1) is an amended re-enactment of the initial part of Section 203(1) of the Companies Act, 1963. It has also been broken into paragraphs and subparagraphs to enhance clarity. The phrase “proposed between a company and any person mentioned in that section” (referring to a compromise or arrangement proposed under Section 201 of the Companies Act 1963) has been deleted. References to the “transferor company” and “transferee company” have been replaced by references to the “old company” and “new company” respectively.*

*Subhead (2) is an amended re-enactment of the latter part of Section 203(1) of the Companies Act, 1963. References to the “transferor company” and “transferee company” have been replaced by references to the “old company” and “new company” respectively.*

## Part A9 - Reorganisations and Takeovers

---

*Subhead (3) is a re-enactment of subsection 203(2) of the Companies Act 1963.*

*Subsection (4) is an amended re-enactment of Section 203(3) of the Companies Act, 1963. The section has been split into two paragraphs and references to the “transferor company” and “transferee company” have been replaced by references to the “old company” and “new company” respectively. References to the registrar of companies have been replaced by references to the “Registrar”. It has also been amended insofar as it now refers to a categorised offence .*

*Subhead (5) is a re-enactment of Section 203(4) of the Companies Act, 1963.*

*Section 203(5) of the Companies Act, 1963 has been deleted as it reverts to the definition of a company as defined by the Act, as opposed to the definition in Section 201(7) of the Companies Act, 1963. Since we are only concerned with private companies here, this subsection, like Section 201(7), is not relevant.*



# Chapter 2

## Takeover Offers

### Head 5 Interpretation of this Chapter

(1) In this Chapter—

“assenting shareholder” means a holder of any of the shares affected in respect of which a scheme, contract or offer has become binding or been approved or accepted;

“call notice” has the meaning in Part A9, Head 6 (2) (a) [equivalent of Section 204 of the Companies Act, 1963];

“dissenting shareholder” means a holder of any of the shares affected in respect of which the scheme, contract or offer has not become binding or been approved or accepted or who has failed or refused to transfer his shares in accordance with the scheme, contract or offer;

“group company” with respect to a body corporate, means a holding company or subsidiary of such body corporate and any subsidiary of such holding company;

“information notice” has the meaning in Part A9, Head 6 (4) (a) [equivalent of Section 204 of the Companies Act 1963];

“offeror” has the meaning in Part A9, Head 6 (1) [equivalent of Section 204 of the Companies Act, 1963];

“offeree company” has the meaning in Part A9, Head 6 (1) [equivalent of Section 204 of the Companies Act, 1963];

“special majority” means a majority in number representing 75 per cent in value of the creditors or class of creditors or members or class of members, as the case may be, present and voting either in person or by proxy at the scheme;

“shares affected” means the shares the acquisition of the beneficial ownership of which by an offeror is involved in the scheme, contract or offer referred to in Part A9, Head 6 [equivalent of Section 204 of the Companies Act, 1963].

(2) The provisions of Part A11, Chapter 5 [equivalent of S.I. No.333 of 2002, EC (Corporate Insolvency) Regulations 2002] applies to proceedings under this Part.

#### **Explanatory note**

*The definitions have been compiled into Subhead(1) in order to create a comprehensive list of the defined terms for the purposes of the Part. Many of the defined terms in this head are concepts recognisable under the Companies Act, 1963-2003. Others are newly created terms.*

*Subhead (2) is new. It applies the provisions of S.I. No.333 of 2002, EC (Corporate Insolvency) Regulations, 2002 to reconstructions. This is also the current position as “insolvency proceedings” are interpreted as including reconstructions for the purpose of the Regulations.*

### Head 6 Power to acquire shares of shareholders dissenting from scheme or contract which has been approved by majority

(1) Where a scheme, contract or offer involving the acquisition by a person (in this head referred to as “the offeror”) of the beneficial ownership of all the shares (other than shares in which the offeror already has a beneficial interest) in the capital of a company (in this head referred to as “the offeree company”) has become binding or been approved or accepted in respect of not less than 80 per cent in value of the shares affected not later than the date 4 months after publication generally to the holders of the shares affected of the terms of such scheme, contract or offer, the remaining subheads of this head shall apply.

(2) The offeror shall be entitled to acquire the beneficial ownership of all or any of the remaining shares affected on the same terms as have become binding or been approved or accepted if—

(a) the offeror at any time before the expiration of the period of 6 months immediately following such publication, gives notice in the prescribed form to any dissenting shareholder that it desires to acquire the beneficial ownership of his shares (which notice is referred to in this head as “the call notice”); and

## Part A9 - Reorganisations and Takeovers

---

- (b) one month passes following the date that the call notice was given without an application being made to the court by the dissenting shareholder, or following application to the court by the dissenting shareholder the court nonetheless approves such acquisition; and
  - (c) where shares in the offeree company are, at the date of such publication, already in the beneficial ownership of the offeror, its group companies to a value greater than 20 per cent of the aggregate value of those shares and the shares affected, the assenting shareholders besides holding not less than 80 per cent in value of the shares affected are not less than 50 per cent in number of the holders of those shares.
- (3) Where the scheme, contract or offer provides that an assenting shareholder may elect between 2 or more sets of terms for the acquisition by the offeror of the beneficial ownership of the shares affected—
- (a) the call notice shall be accompanied by or embody a notice stating the alternative sets of terms between which assenting shareholders are entitled to elect and specifying which of those sets of terms shall be applicable to the dissenting shareholder if he does not before the expiration of 14 days from the date of the giving of the notice, notify to the offeror in writing his election as between such alternative sets of terms; and
  - (b) the terms upon which the offeror shall under this head be entitled and bound to acquire the beneficial ownership of the shares of the dissenting shareholder shall be the set of terms which the dissenting shareholder shall so notify or, in default of such notification, the set of terms so specified as applicable.
- (4)
- (a) Save where the offeror has given a call notice, the offeror shall: within one month of the date of the scheme, contract or offer becoming binding, approved or accepted, give notice of that fact in the prescribed manner to all dissenting shareholders (which notice is in this head referred to as an “information notice”).
- (b) The offeror shall—
    - (i) be bound to acquire the beneficial ownership of the remaining shares affected on the same terms as have become binding or been approved or accepted if—
      - (I) the offeror has become entitled to acquire the shares under Subhead (2), or
      - (II) save where subparagraph (i) applies, the dissenting shareholder at any time within 3 months from the giving of the information notice to him, requires the offeror to acquire his shares,
    - (ii) pay the same consideration for all the shares affected, and where consideration is paid in cash by way of cheque to residents of the State, by way of a cheque drawn on a clearing bank in the State.
- (5) Subject to Subhead (6), call notices and information notices shall—
- (a) be signed by or on behalf of the offeror, provided that where there are several like call notices given, one or more of which has been signed by or on behalf of the offeror, the call notices not so signed shall be deemed to be so signed if such unsigned call notices state the name of the director who has so signed at least one of those call notices;
  - (b) be given to the shareholder—
    - (i) personally, or
    - (ii) by delivery to his address in the register of members of the offeree company, or
    - (iii) by sending it by ordinary post or by registered post to him—
      - (I) at his address in the register of members of the offeree company, or
      - (II) to the address, if any, within the State supplied by him in writing to the offeree company for the giving of notices to him.
- (6) Call notices and information notices shall be deemed to be correctly given—

## Part A9 - Reorganisations and Takeovers

---

- (a) to the joint holders of a share, by giving the notice to the joint holder first named in the register of members in respect of the share;
  - (b) to the persons entitled to a share in consequence of the death or bankruptcy of a member—
    - (i) by giving it to the persons claiming to be so entitled, or
    - (ii) by delivery to the address supplied to the offeree company by the persons claiming to be so entitled, or
    - (iii) by sending it by ordinary post or by registered post to the persons claiming to be so entitled by name or by the title of representatives of the deceased or Official Assignee in bankruptcy or by any like description at the address supplied to the offeree company by the persons claiming to be so entitled, or
    - (iv) in the case of shares other than share warrants to bearer, where such persons have not notified the company in writing of such death or bankruptcy—
      - (I) by delivery to the member's address in the register of members of the offeree company, or
      - (II) by sending it by ordinary post or by registered post to the member—
  - (A) at the member's address in the register of members of the offeree company, or
  - (B) to the address, if any, within the State supplied in writing by the member to the offeree company for the giving of notices to him, or
  - (c) to persons with addresses in the register of members or notified to the company which are in jurisdictions outside the State whose laws regulate the communication into those jurisdictions of schemes, contracts or offers to which this head applies, by advertisement published in the CRO Gazette.
- (7) A dissenting shareholder may—
- (a) following receipt of a call notice apply to the court to retain his shares;
  - (b) save where the offeror has served a call notice—
    - (i) require the offeror to acquire his shares,
    - (ii) apply to the court to vary the terms of the scheme, contract or offer as applies to that dissenting shareholder including a variation such as to require payment to the dissenting shareholder of a cash consideration.
- (8) Where an offeror has become bound to acquire the shares of dissenting shareholders, the offeror shall—
- (a) deliver to the offeree company—
    - (i) a copy of the form of any call notice or information notice given,
    - (ii) a list of the persons served with any call notice or information notice and the number of shares affected held by them,
    - (iii) an instrument of transfer of the shares of the dissenting shareholders executed on behalf of the dissenting shareholders as transferor by any person appointed by the offeror and by the transferee (being either the offeror or a subsidiary of the offeror or a nominee of the offeror or of such a subsidiary);
  - (b) pay to or vest in the offeree company the amount or other consideration representing the price payable by the offeror for the shares, the beneficial ownership of which by virtue of this head the offeror is entitled to acquire.
- (9) Where an offeror has complied with Subhead (8), the offeree company shall—
- (a) thereupon register as the holder of those shares the person who executed such instrument as the offeror, so however, that an instrument of transfer shall not be so required for any share for which a share warrant is for the time being outstanding;

- (b) pay any sums received by the offeree company under this head into a separate bank account and, for a period of 7 years following such receipt, hold any such sums and any other consideration so received on trust for the several persons entitled to the shares in respect of which the said sums or other consideration were respectively received;
- (c) after the expiry of the period of 7 years, transfer any money standing to the credit of that bank account and any shares other securities or other property vested in it as consideration, together with the names of the persons believed by the company to be entitled thereto to the Minister for Finance, who shall indemnify the company in respect of such sums, shares, securities or property and any claim which may be made therefor by the persons entitled thereto;
- (d) for as long as shares in the offeror are vested in the offeree company (where shares in the offeror have been issued as all or part of the consideration) not be entitled to exercise any right of voting conferred by those shares.
- (10) Where the scheme, contract or offer becomes binding on or is approved or accepted by a person in respect of a part only of the shares held by him, he shall be treated as an assenting shareholder as regards that part of his holding and as a dissenting shareholder as regards the remainder of his holding.
- (11) In the application of this head to an offeree company, the share capital of which consists of two or more classes of shares, references to the shares in the capital of the offeree company shall be construed as references to the shares in its capital of a particular class.
- (12) For the purposes of this head—
- (a) shares in the offeree company in the beneficial ownership of a group company of the offeror shall be deemed to be in the beneficial ownership of the offeror;
- (b) where—
- (i) a person has a beneficial interest, or pursuant to paragraph (a) is deemed to have a beneficial interest in shares in the shares of an offeree company (in this paragraph referred to as “that person’s shares”), and
- (ii) that person or a group company of that person has a beneficial interest in one third or more of the equity share capital of the offeror,
- then that person’s shares shall be deemed to be in the beneficial ownership of the offeror,
- (c) the acquisition of the beneficial ownership of shares in the offeree company by a group company of the offeror shall be deemed to be the acquisition of such beneficial ownership by the offeror;
- (d) where the offeror is not a body corporate (in this paragraph referred to as a “non-corporate offeror”) paragraphs (a), (b) and (c) shall apply to such non corporate offeror as they do to an offeror which is a body corporate, mutatis mutandis;
- (e) subject to paragraph (f), where a person agrees to acquire shares in an offeree company, such person shall be deemed to have acquired the beneficial interest in those shares and it shall be immaterial that any other person has any interest in those shares;
- (f) shares shall not be treated as being in the beneficial ownership of the offer or merely by reason of the fact that—
- (i) those shares are or may become subject to a charge in favour of another person, or
- (ii) those shares are the subject of a revocable or irrevocable undertaking on the part of their holder to accept an offer if such offer is made.

### **Explanatory note**

*This head is an amended re-enactment of Section 204 of the Companies Act, 1963. The section has been amended in accordance with the recommendations of the Company Law Review Group in its First Report. There have been some changes in style to the section and greater use has been made of the defined terms to make the section more easily navigable and succinct.*

## Part A9 - Reorganisations and Takeovers

---

The Review Group noted the complexity of descriptions applying to the entities involved in acquisitions and takeovers. In Section 204 of the Companies Act, 1963, they are referred to as the transferor and transferee. In view of the use by the proposed E.U. 13th Company Law Directive, the Irish Takeover Panel Act and the Rules under that Act (as well as the London City Code on which it is based), The Review Group recommended that “offeree” and “offeror” replace “transferor” and “transferee” respectively.

Furthermore, the application of these terms has also been amended in accordance with the view of the Review Group. The Review Group recommended that an offeror (previously a transferee), which must be a company under Section 204 of the Companies Act, 1963 to obtain rights, should be capable of being an individual. Hence, all references to an offeror include persons and companies, whereas references to an offeree apply to companies only. For this reason references are to offerors and offeree companies.

Subhead (1) is an amended re-enactment of the first part of Section 204(4) of the Companies Act, 1963. The style of the section has been changed as this new Subhead (1) sets out the conditions which must be met for the rest of the head to apply. The reference to “four fifths in value of the shares” has been replaced by “80 per cent in value of the shares”.

Subhead (2) is an amended re-enactment of the latter part of Subsections (1) and (2) of Section 204 of the Companies Act, 1963. It sets out the conditions necessary for the offeror company to acquire the beneficial ownership of the remaining shares on the same terms of those earlier acquired shares.

Subhead (2)(a) is taken, in substance, from part of Section 204(1) of the Companies Act, 1963. The notice referred to here has been named the “call notice” for ease of reference throughout this Part.

Subhead (2)(b) is taken, in substance, from the latter part of Section 204(1) of the Companies Act, 1963. There is no substantive change made. In the absence of the dissenting shareholders making application to the court within the specified one month period or where the dissenting shareholders make such application and the court approves of the acquisition, the offeror company acquires the shares.

Subhead (2)(c) is taken in substance from Sections 204(2) and (3) of the Companies Act 1963. The Review Group has made substantive changes to these provisions in accordance with its recommendations in its First Report. Under Section 204(2), where an offeror company and its subsidiaries have 20 per cent or more of the shares in the offeree company, then the offeror company must obtain approval from 75 per cent of the shareholders as well as 80 per cent in nominal value of the shares. Under Section 204(3), where shares in the

offeree company are held by a subsidiary of the offeror company, they are deemed to be held by the offeror company for the purposes of this head.

The Review Group noted an anomaly within these provisions. It failed to include shares of a holding company or a sister company of the offeror company and instead these were regarded as shares held independently of the offeror company for the purposes of this head. Thus, existing shareholders of the offeror company or its subsidiary were free to restructure in a new corporate entity in order to avoid the more stringent requirements as in the Supreme Court Case *Re: Fitzwilliam PLC, Duggan v Stoneworth Investment Ltd.* (2002) 1 IR 566. Accordingly, the Review Group recommended that the provisions be amended.

“Group companies” is a term which has also been newly inserted in this provision to include subsidiaries, holding companies and sister companies for the purpose of such amendment. It is defined in head 1 of this Part. The provisions have also been amended insofar as the requirement to obtain approval from 75 per cent of the shareholders has now been lowered to 50 per cent in accordance with the recommendations of the Review Group on its First Report.

Subhead (3) is an amended re-enactment of Section 204(10) of the Companies Act, 1963. “Notice” has been replaced by “call notice” as prescribed by the new Subhead (2)(a).

Subhead (4) is an amended re-enactment of Section 204(4) of the Companies Act, 1963.

Subheads (4)(a) and (4)(b)(i) are taken, in substance, from Section 204(4). The style of the subsection has been changed and the term “information notice” has been introduced for ease of reference. No substantive changes have been made.

Subhead (4)(b)(ii) has been newly inserted in accordance with the recommendations of the Review Group in its First Report requiring payment of cash consideration by means of a cheque drawn on an Irish clearing bank.

Subheads (5) & (6) are new subheads. They import Article 7 of the Companies (Forms) Order, S.I. No. 45 of 1964, which stipulate how notices under this head are to be served. The actual form of the notices will continue to be prescribed by the S.I.

References to the notices necessitated by Section 204 of the Companies Act, 1963 are now referred to “call notice” and “information notice” in accordance with the Part. The requirement of the directors to sign the call notice is now expressly stated in subhead (5)(a). Any references to a “share warrant to bearer” have been deleted as share warrants are only relevant to public companies (these will be included in Pillar B).



## Part A9 - Reorganisations and Takeovers

---

Subhead (6)(c) addresses the situation where it is not lawful to post the call notice or information notice into jurisdictions outside the State whose laws regulate the communication of notices in their own jurisdiction (in practice meaning Australia and the U.S.). In such circumstances notice is effected through the CRO Gazette.

Subhead (7) is new. It provides that the Court has a discretion to vary the terms of the scheme, contract or offer only where the offeror has not given a call notice. Where a call notice has been issued the dissenting shareholder may apply to the Court to retain his shares. The Court was given a discretion, following an application by the dissenting shareholder, to "...order otherwise" in Section 204(1) of the Companies Act, 1963.

Subhead (8) is an amended re-enactment of Section 204(5) of the Companies Act, 1963. The subsection has been split into paragraphs to enhance clarity. Subhead (8)(a)(ii), requiring the offeror to deliver a list of persons served with any call notice or information notice and the number of affected shares held by them, has been added in accordance with the views of the Review Group. The last phrase of Section 204(5), imposing a requirement on the offeree company to effect registration of shares in the name of the offeror, has been included in the following subhead.

Subhead (9) is a new subhead comprised of a number of subsections of Section 204 of the Companies Act, 1963.

Subhead (9)(a) is an amended re-enactment of the last phrase of Section 204(5), imposing a requirement on the offeree company to effect registration of shares in the name of the offeror. The reference to share warrants has been removed as these are the concern of public companies only. For this reason, such reference will be included in Pillar B.

Subhead (9)(b) is an amended re-enactment of Section 204(6) of the Companies Act, 1963. The wording has been amended slightly in order to integrate it into this subhead and the time period for holding such money or other consideration on trust has been increased from 6 to 7 years.

Subhead (9)(c) is a new Subhead. It has been inserted in accordance with the recommendations of the Review Group in its First Report that unclaimed consideration in respect of shares compulsorily acquired as a result of Section 204 can remain on trust for dissenting shareholders for, at longest, 7 years.

The Review Group recommended unclaimed consideration should be held for 7 years at the longest and then given to the Minister for Finance who should indemnify the company against any future claims.

Subhead (9)(d) is a slightly amended re-enactment of Section 204(7) of the Companies Act, 1963. The style of the subsection has been amended in order to integrate it into this subhead.

Subhead (10) is a re-enactment of Section 204(9) of the Companies Act, 1963.

Subhead (11) is a re-enactment of Section 204(11) of the Companies Act, 1963.

Subhead (12) is a new Subhead:

Subhead 12(a) is taken in substance from the first phrase of Section 204(3) of the Companies Act, 1963.

Subhead 12(b) is new. It has been inserted in accordance with the recommendations of the Review Group in its First Report. It imputes ownership of shares, held by a person or group company in the offeree company, to the offeror company where the person or group company has a beneficial interest in at least one third of the equity share capital of the offeror. The one third interest tallies with the provisions of Section 54(5) and Section 72(2) of the Companies Act, 1990 in relation to the attribution of interests which should accept the offer.

Subhead 12(c) is taken in substance from the second phrase of Section 204(3) of the Companies Act, 1963.

Subsection 12(d) has been newly inserted to address the application of the head where the offeror is not a body corporate.

Subhead 12(e) is new. It has been introduced in accordance with the view of the Review Group. This reverses the effect of the Supreme Court judgment in *Tempany v Hynes* (1976) I.R. 101 which, in practice, has impeded the operation of Section 204 of the Companies Act, 1963. The effect of this judgment is to suggest that where the entire purchase money for an asset agreed to be acquired has not been paid, the unpaid seller retains a beneficial interest in the asset, as opposed to a non-possessory lien, which had been the situation prior to that judgment. The subhead now provides that the person who agrees to acquire the shares is deemed to acquire the beneficial interest in those shares.

Subhead 12(f) further clarifies the position in respect of shares being treated as not being in the beneficial ownership of the offeror.

Sections 205(12) and (13) of the Companies Act, 1963 have been deleted as they were seen to be transitional provisions.

# Chapter 3

## Mergers

### Head 7 Interpretation of this Chapter

In this Chapter, unless the context otherwise requires—

“acquiring company”, has the meaning assigned to it by Part A9, Head 8 [equivalent of S.I No.137 of 1987, EC (Mergers and Divisions) Regulations 1987, Regulation 5];

“director”, in relation to a company which is being wound up, means liquidator;

“merger” means “merger by acquisition” or “merger by formation of a new company” within the meaning of Part A9, Head 8(1) [equivalent of S.I No.137 of 1987, EC (Mergers and Divisions) Regulations 1987, Regulation 5(1)].

#### **Explanatory note**

*This head is a slightly amended re-enactment of S.I No.137 of 1987, EC (Mergers and Divisions) Regulations 1987, Regulation 4. These Regulations are now applied to private companies whereas previously their application was limited to public companies. All cross-references have been updated in accordance with the structure of the Bill.*

### Head 8 Mergers to which this chapter applies

(1) In this Chapter—

- (a) “merger by acquisition” means an operation whereby an existing company (“the acquiring company”) acquires all the assets and liabilities of another company or companies in exchange for the issue to the shareholders of the company or companies being acquired of shares in the acquiring company, with or without any cash payment, and with a view to the dissolution of the company or companies being acquired; and
- (b) “merger by formation of a new company” means a similar operation where the acquiring company has been formed for the purpose of such acquisition.

(2) Where a company is being wound up it may—

- (a) become a party to a merger by acquisition or by formation of a new company, provided that the distribution of its assets to its shareholders has not begun at the date, under Part A9, Head 9 (4) [equivalent of S.I No.137 of 1987, EC (Mergers and Divisions) Regulations 1987, Regulation 6 (4)], of the draft terms of merger; or
- (b) opt to avail of the provisions of Part A9, Chapters 1 and 2 [equivalent of Sections 201 to 204 of the Companies Act, 1963] and Part A11, Head 40 [equivalent of Section 260 of the Companies Act, 1963].

(3) Subject to Subhead (2), the said provisions shall not apply to merger by acquisition or by formation of a new company.

#### **Explanatory note**

*This head is a slightly amended re-enactment of S.I No.137 of 1987, EC (Mergers and Divisions) Regulations 1987, Regulation 5. All cross-references have been updated in accordance with the structure of the Bill.*

### Head 9 Draft terms of merger

(1) Where a merger is proposed to be entered into, the directors of the merging companies shall draw up draft terms of the merger in writing.

(2) The draft terms of merger shall state, at least—

- (a) the name and registered office of each of the merging companies;
- (b) the proposed share exchange ratio and the amount of any cash payment;
- (c) the proposed terms relating to allotment of shares in the acquiring company;
- (d) the date from which holders of such shares will become entitled to participate in the profits of the acquiring company;
- (e) the date from which the transactions of the company or companies being acquired shall be treated for accounting purposes as being those of the acquiring company;

- (f) any special conditions, including special rights or restrictions, whether in regard to voting, participation in profits, share capital or otherwise, which will apply to shares or other securities issued by the acquiring company in exchange for shares or other securities in the company or companies being acquired;
- (g) any payment or benefit in cash or otherwise, paid or given or intended to be paid or given to any independent person referred to in Part A9, Head 12 [equivalent of S.I No.137 of 1987, EC (Mergers and Divisions) Regulations 1987, Regulation 8] and to any director of any of the merging companies insofar as it differs from the payment or benefit paid or given to other persons in respect of the merger and the consideration, if any, for any such payment or benefit.
- (3) Where the merger is a merger by formation of a new company the draft terms of merger shall include or be accompanied by the constitution or draft constitution of the new company.
- (4) The draft terms of merger shall be signed and dated on behalf of each of the merging companies by two directors of each such company and that date shall, for the purposes of this Part, be the date of the draft terms of merger.
- (2) The explanatory report shall at least detail and explain—
- (a) the draft terms of merger;
  - (b) the legal and economic grounds for and implications of the draft terms of merger with particular reference to the proposed share exchange ratio, organisation and management structures, recent and future commercial activities and the financial interests of the holders of the shares and other securities in the company;
  - (c) the methods used to arrive at the proposed share exchange ratio and the reasons for the use of these methods;
  - (d) any special valuation difficulties which have arisen.
- (3) The explanatory report shall be signed and dated on behalf of each of the merging companies by two directors of each such company.

### **Explanatory note**

*This head is a slightly amended re-enactment of S.I. No.137 of 1987, EC (Mergers and Divisions) Regulations 1987, Regulation 7. All cross-references have been updated in accordance with the structure of the Bill.*

### **Explanatory note**

*This head is a slightly amended re-enactment of S.I No.137 of 1987, EC (Mergers and Divisions) Regulations 1987, Regulation 6. All cross-references have been updated in accordance with the structure of the Bill.*

*References to the memorandum and articles of association have also been replaced by references to the constitution of the company.*

*Paragraph (2)(a) of Regulation 6 has not been included. This required the merging companies to state what form of company they were and is thus no longer relevant as this Part only applies to private companies limited by shares.*

---

## **Head 10 Directors' explanatory report**

---

- (1) A separate written report ("the explanatory report") shall be drawn up in respect of each of the merging companies by the directors of each such company.

---

## **Head 11 Merger by Validation Procedure**

---

- (1) A merger may be affected by the validation procedure provided for in Part A4, Head 71 and Part A9, Head 16 shall regulate the passing of the special resolution of the merging companies.
- (2) Where the directors of the merging companies decide to propose a merger otherwise than by means of the validation procedure, Part A9, Heads 12, 13, 15, 16, 17, 18 and 19 [equivalent of S.I No.137 of 1987, EC (Mergers and Divisions) Regulations 1987] shall apply.

### **Explanatory note**

*This head is new. It was introduced in accordance with the recommendations of the Company Law Review Group to provide an alternative merger procedure without the involvement of the courts.*

### Head 12 Independent person's report

- (1) Each of the merging companies shall appoint an independent person to examine the draft terms of merger and to prepare a written report on them to the shareholders of the company concerned.
- (2) No person shall act as an independent person for the purposes of Subhead(1) unless he is authorised by the Minister, on application by the company concerned, to be such a person for the purposes of the proposed merger.
- (3) One or more independent persons may be authorised by the Minister on joint application by the merging companies for all the said companies.
- (4) None of the following persons shall be qualified to act as an independent person in respect of a proposed merger—
  - (a) a person who is or, within 12 months of the date of the draft terms of merger, has been, an officer or servant of the company;
  - (b) except with the leave of the Minister, a parent, spouse, brother, sister or child of an officer of the company;
  - (c) a person who is a partner or in the employment of an officer or servant of the company.
- (5) If an independent person becomes disqualified by virtue of this regulation he shall thereupon cease to hold office and shall give notice in writing of his disqualification to the Minister within 14 days thereof, but without prejudice to the validity of any acts done by him in his capacity as independent person.
- (6) Any person who acts as an independent person when disqualified from doing so under this regulation or who makes default in complying with Subhead (5) shall be guilty of a category two offence.
- (7) The report referred to in Subhead (1) shall—
  - (a) state the method or methods used to arrive at the proposed share exchange ratio;
  - (b) give the opinion of the person making the report as to whether the proposed share exchange ratio is fair and reasonable;
  - (c) give the opinion of the person making the report as to whether the method or methods used are adequate in the case in question;
  - (d) indicate the values arrived at using each such method;
  - (e) give the opinion of the person making the report as to the relative importance attributed to such methods in arriving at the values decided on;
  - (f) any special valuation difficulties which have arisen.
- (8) A person making a report under this regulation shall be entitled to require from the merging companies and their officers such information and explanation (whether orally or in writing) and to carry out such investigations as he thinks necessary to enable him to make the report.
- (9) Any of the merging companies and any officer thereof who—
  - (a) fails to supply to an independent person any information or explanation in his power, possession or procurement which that person thinks necessary for the purposes of this report; or
  - (b) knowingly or recklessly makes a statement or provides a document which—
    - (i) is misleading, false or deceptive in a material particular, and
    - (ii) is a statement or document to which this paragraph applies,shall be guilty of a category two offence.
- (10) Subhead (9) applies to any statement made, whether orally or in writing, or any document provided to any person making a report under this regulation being a statement or document which conveys or purports to convey any information or explanation which that person requires, or is entitled to require, under Subhead (8).



### **Explanatory note**

*This head is a slightly amended re-enactment of S.I. No.137 of 1987, EC (Mergers and Divisions) Regulations 1987, Regulation 8. All cross-references have been updated in accordance with the structure of the Bill.*

### **Head 13 Accounting statement**

- (1) Where the latest annual accounts of any of the merging companies relate to a financial year ended more than six months before the date of the draft terms of merger, that company shall prepare an accounting statement in accordance with the provisions of this regulation.
- (2) The accounting statement shall, where required under Subhead (1), be drawn up—
  - (a) in the format of the last annual balance sheet and in accordance with the provisions of the Companies Acts; and
  - (b) as at a date not earlier than the first day of the third month preceding the date of the draft terms of merger.
- (3) Valuations shown in the last annual balance sheet shall, subject to the exceptions outlined in Subhead (4), only be altered to reflect entries in the books of account.
- (4) Notwithstanding the provisions of Subhead (3), the following shall be taken into account in preparing the accounting statement—
  - (a) interim depreciation and provisions; and
  - (b) material changes in actual value not shown in the books of account.
- (5) The provisions of the Part A6 relating to the auditor's report on the last annual accounts shall apply, with any necessary modifications, to the accounting statement required by Subhead (1).

### **Explanatory note**

*This head is a slightly amended re-enactment of S.I. No.137 of 1987, EC (Mergers and Divisions) Regulations, 1987, Regulation 9. All cross-references have been updated in accordance with the structure of the Bill.*

### **Head 14 Registration and publication of documents**

- (1) Each of the merging companies shall—
  - (a) deliver for registration to the Registrar, a copy of the draft terms of merger, signed and dated as required by Part A9, Head 9 [equivalent of S.I. No.137 of 1987, EC (Mergers and Divisions) Regulations 1987, Regulation 6]; and
  - (b) publish in the CRO Gazette notice of delivery to the Registrar of the draft terms of merger.
- (2) The requirements of Subhead (1) shall be fulfilled by each of the merging companies at least one month before the date of the general meeting of each such company which by virtue of Part A9, Head 16 [equivalent of S.I. No.137 of 1987, EC (Mergers and Divisions) Regulations 1987, Regulation 13] is to consider the draft terms of merger.

### **Explanatory note**

*This head is a slightly amended re-enactment of S.I. No.137 of 1987, EC (Mergers and Divisions) Regulations 1987, Regulation 11. All cross-references have been updated in accordance with the structure of the Bill and references to the "registrar of companies" have been replaced with "Registrar".*

*Subsection (1)(b) has been amended in accordance with the views of the Company Law Review Group. The reference to Iris Oifigiúil has been replaced by a reference to the CRO Gazette. The requirement to publish a notice "...in at least one daily newspaper in the district in which the registered office is located" in accordance with the view of the Review Group. The reasons for this are the cost of publication; the inefficiency of the notice reaching the intended recipients; and the fact that the CRO Gazette will now be freely available on-line.*

### **Head 15 Inspection of documents**

- (1) Each of the merging companies shall, subject to Subhead (2), make available for inspection free of charge by any member of the company at its registered office during business hours (subject to such reasonable restrictions as the company in general meeting may impose so that not less than 2 hours in each day be allowed for inspection)—



## Part A9 - Reorganisations and Takeovers

---

- (a) the draft terms of merger;
  - (b) the audited annual accounts for the preceding three financial years of each company or, where a company has traded for less than 3 financial years before the date of the draft terms of merger, the audited annual accounts for those financial years for which the company has traded;
  - (c) the explanatory reports relating to each of the merging companies referred to in Part A9, Head 10 [equivalent of S.I. No.137 of 1987, EC (Mergers and Divisions) Regulations 1987, Regulation 7];
  - (d) the independent person's report, if any, relating to each of the merging companies referred to in Part A9, Head 12 [equivalent of S.I. No.137 of 1987, EC (Mergers and Divisions) Regulations 1987, Regulation 8];
  - (e) the accounting statement, if any, in relation to any of the merging companies which is required to be prepared pursuant to Part A9, Head 13 [equivalent of S.I. No.137 of 1987, EC (Mergers and Divisions) Regulations 1987, Regulation 9].
- (2) The provisions of Subhead (1) shall apply in the case of each of the merging companies for a period of one month before the general meeting which is to consider the draft terms of merger.

### **Explanatory note**

*This head is a slightly amended re-enactment of S.I. No.137 of 1987, EC (Mergers and Divisions) Regulations 1987, Regulation 12. All cross-references have been updated in accordance with the structure of the Bill.*

---

## **Head 16 General meetings of merging companies**

---

- (1) Subject to Subhead (4) of this head and to Part A9, Head 17 [equivalent of S.I. No.137 of 1987, EC (Mergers and Divisions) Regulations 1987, Regulation 14], the draft terms of merger shall be approved by a special resolution passed at a general meeting of each of the merging companies.

- (2) Where the merger is a merger by formation of a new company, the constitution or draft constitution of the new company shall be approved by a special resolution of each of the companies being acquired.
- (3) The notice convening the general meeting referred to in Subhead (1) shall contain a statement of every shareholder's entitlement to obtain on request, free of charge, full or, if so desired, partial copies of the documents listed in Part A9, Head 15 [equivalent of S.I. No.137 of 1987, EC (Mergers and Divisions) Regulations 1987, Regulation 12].
- (4) In the case of—
- (a) a merger by acquisition; or
  - (b) an operation whereby one or more companies are acquired by another company which holds ninety per cent or more, but not all, of their shares and other securities conferring the right to vote at general meetings ("a voting right") (whether such shares and other securities are held either by the acquiring company together with or solely by other persons in their own names but on behalf of that company); or
  - (c) an operation to which Subhead (8) applies, approval of the draft terms of merger by means of a special resolution shall not be required in the case of the acquiring company provided that the following conditions are fulfilled—
    - (i) the provisions of Part A9, Head 14 [equivalent of S.I. No.137 of 1987, EC (Mergers and Divisions) Regulations 1987, Regulation 11] and Part A9, Head 15 [equivalent of S.I. No.137 of 1987, EC (Mergers and Divisions) Regulations 1987, Regulation 12] are complied with at least one month before the date of the general meeting of each of the companies being acquired, and

- (ii) one or more members of the company holding paid up share capital amounting in total value to not less than 5 per cent of such of the paid up share capital as confers a voting right, whether or not the shares held confer a voting right, shall be entitled, under the articles of association of the company, to require the convening of a general meeting of the company to consider the draft terms of merger.
- (5) The directors of each of the companies being acquired shall inform—
- (a) the general meeting of that company; and
  - (b) the directors of the acquiring company,
- of any material change in the assets and liabilities of the company or companies being acquired between the date of the draft terms of merger and the date of such general meeting.
- (6) The directors of the acquiring company shall inform the general meeting of that company of the matters referred to in Subhead (5).
- (7) Part A9, Heads 10, 12 and 15 [equivalent of S.I. No.137 of 1987, EC (Mergers and Divisions) Regulations 1987, Regulations 7, 8 and 12] shall not apply in the case of an operation under Subhead (4) (b) of this head, provided that the conditions under Part A9, Head 18 [equivalent of S.I. No.137 of 1987, EC (Mergers and Divisions) Regulations 1987, Regulation 15] are fulfilled.
- (8) Notwithstanding anything contained in Part A9, Head 8 [equivalent of S.I. No.137 of 1987, EC (Mergers and Divisions) Regulations 1987, Regulation 5], but subject to Subhead (9), this Chapter shall apply to an operation whereby a company (“the acquiring company”) acquires all the assets and liabilities of another company or companies and the acquiring company is the holder of all of the shares and other securities conferring the right to vote at general meetings of the company or companies being acquired, whether such shares and other securities are held either by the acquiring company together with or solely by other persons in their own name but on behalf of that company.

- (9) The following provisions of this Chapter shall not apply to an operation under Subhead (8), namely, Part A9, Heads 9 (2) (c), 9 (2) (d), 9 (2) (e), 10, 12, 15 (1) (c), 15 (1) (d), 22 (1) (b) and 24 [equivalent of S.I. No.137 of 1987, EC (Mergers and Divisions) Regulations 1987, Regulations 6 (2)(c), 6 (2)(d), 6 (2)(e), 7, 8, 12(1)(c), 12(1)(d), 19(1)(b) and 21].

### **Explanatory note**

*This head is a slightly amended re-enactment of S.I. No.137 of 1987, EC (Mergers and Divisions) Regulations 1987, Regulation 13. All cross-references have been updated in accordance with the structure of the Bill. References to the memorandum and articles of association have also been replaced by references to the constitution of the company.*

---

## **Head 17 Meetings of classes of shareholders**

---

Where the share capital of any of the merging companies is divided into shares of different classes, Part A3, Head 19 [equivalent of Section 38 of the Companies (Amendment) Act, 1983], shall apply.

### **Explanatory note**

*This head is a slightly amended re-enactment of S.I. No.137 of 1987, EC (Mergers and Divisions) Regulations 1987, Regulation 14. All cross-references have been updated in accordance with the structure of the Bill.*

---

## **Head 18 Purchase of minority shares**

---

- (1) Any person being—
- (a) a shareholder in any of the merging companies who voted against the special resolution of the company concerned relating to the draft terms of merger; or
  - (b) in a case to which Part A9, Head 16 (4) (b) [equivalent of S.I. No.137 of 1987, EC (Mergers and Divisions) Regulations 1987, Regulation 13(4)(b)] relates, any shareholder other than the acquiring company, may, not later than 15 days after the relevant date, request the acquiring company in writing to acquire his shares for cash.

## Part A9 - Reorganisations and Takeovers

---

- (2) In this head “the relevant date” in relation to a company means the date on which the latest general meeting of that company to consider the draft terms of merger, or of any class of the holders of shares or other securities of such company, as required by this Chapter, is held.
  - (3) Nothing in this head shall prejudice the power of the court to make any order necessary for the protection of the interests of a dissenting minority in a merging company.
- (2) If the court deems it necessary in order to secure the adequate protection of creditors of any of the merging companies it may—
    - (a) determine a list of creditors entitled to object and the nature and amount of their debts or claims, and may publish notices fixing a period within which creditors not entered on the list may have a claim for inclusion on that list considered;
    - (b) where an undischarged creditor on the list referred to in paragraph (a) does not consent to the merger, the court may dispense with the consent of that creditor, on the company securing payment of the debt or claim by apportioning to that creditor such following amount as the court may direct—
      - (i) if the company concerned admits the full amount of the debt or claim, that amount,
      - (ii) if the company concerned does not admit the debt or claim, or if the amount is contingent or not ascertained, an amount fixed by the court after the like inquiry and adjudication as if the company were being wound up by the court.

### **Explanatory note**

This head is a slightly amended re-enactment of S.I. No.137 of 1987, EC (Mergers and Divisions) Regulations 1987, Regulation 15. All cross-references have been updated in accordance with the structure of the Bill.

---

## **Head 19 Application for confirmation of merger by court**

---

Where Part A9, Head 11 does not apply-

- (1) An application to the court for an order confirming a merger shall be made jointly by all the merging companies.
- (2) The application shall be accompanied by a statement of the size of the shareholding of any shareholder who has requested the purchase of his shares under Part A9, Head 18 [equivalent of S.I. No.137 of 1987, EC (Mergers and Divisions) Regulations 1987, Regulation 15], and of the measures which the acquiring company

### **Explanatory note**

*This head is a slightly amended re-enactment of S.I. No.137 of 1987, EC (Mergers and Divisions) Regulations 1987, Regulation 16. All cross-references have been updated in accordance with the structure of the Bill.*

---

## **Head 20 Protection of creditors**

---

- (1) A creditor of any of the merging companies who, at the date of publication of the notice under Part A9, Head 14 (1) (b) [equivalent of S.I. No.137 of 1987, EC (Mergers and Divisions) Regulations 1987, Regulation 11(1)(b)], is entitled to any debt or claim against the company, shall be entitled to object to the confirmation by the court of the merger.

### **Explanatory note**

*This head is a slightly amended re-enactment of S.I. No.137 of 1987, EC (Mergers and Divisions) Regulations 1987, Regulation 17. All cross-references have been updated in accordance with the structure of the Bill.*

---

## **Head 21 Preservation of rights of holders of securities**

---

- (1) Subject to Subhead (2), holders of securities, other than shares, in any of the companies being acquired to which special rights are attached shall be given rights in the acquiring company at least equivalent to those they possessed in the company being acquired.
- (2) Subhead (1) shall not apply—
  - (a) where the alteration of the rights in the acquiring company has been approved—

- (i) by a majority of the holders of such securities at a meeting held for that purpose, or
  - (ii) by the holders of those securities individually; or
  - (b) where the holders of those securities are entitled under the terms of those securities to have their securities purchased by the acquiring company.
- (2) The order of the court confirming the merger shall, with effect from the appointed date, have the following effects—
    - (a) all the assets and liabilities of the company or companies being acquired shall stand transferred to the acquiring company in accordance with the draft terms of merger as approved by the court;
    - (b) the shareholders of the company or companies being acquired shall become shareholders in the acquiring company in accordance with the draft terms of the merger as approved by the court;
    - (c) the company or companies being acquired shall, subject to Subhead (4), be dissolved;
    - (d) all legal proceedings pending by or against any of the dissolved companies shall be continued with the substitution, for the dissolved company, of the acquiring company.

### **Explanatory note**

*This head is a slightly amended re-enactment of S.I. No.137 of 1987, EC (Mergers and Divisions) Regulations 1987, Regulation 18. All cross-references have been updated in accordance with the structure of the Bill.*

## **Head 22 Confirmation order**

Where Part A9, Head 11 does not apply-

- (1) The court, on being satisfied that—
    - (a) the requirements of this Chapter have been complied with;
    - (b) proper provision has been made for—
      - (i) any dissenting shareholder of any of the merging companies who has made a request under Part A9, Head 18 [equivalent of S.I. No.137 of 1987, EC (Mergers and Divisions) Regulations 1987, Regulation 15], and
      - (ii) any creditor of any of the merging companies who objects to the merger in accordance with Part A9, Head 20 [equivalent of S.I. No.137 of 1987, EC (Mergers and Divisions) Regulations 1987, Regulation 17]; and
    - (c) the rights of holders of securities other than shares in any of the companies being acquired are safeguarded in accordance with Part A9, Head 21 [equivalent of S.I. No.137 of 1987, EC (Mergers and Divisions) Regulations 1987, Regulation 18],
- may make an order confirming the merger with effect from such date as the court appoints ("the appointed date").
- (3) The court may, either by the order confirming the merger or by a separate order, make provision for such matters as the court considers necessary to secure that the merger shall be fully and effectively carried out.
  - (4) The court may, in particular, by order—
    - (a) direct that the acquiring company shall, on a date specified by the court, purchase the shares of a dissenting shareholder who has made a request under Part A9, Head 18 [equivalent of S.I. No.137 of 1987, EC (Mergers and Divisions) Regulations 1987, Regulation 15], and pay therefor the sum determined by the court, being not less than the market sale price of the shares on the appointed date; and
    - (b) provide for the reduction accordingly of the company's capital.
  - (5) Part A3, Head 36 (1) [equivalent of Section 41(1) of the Companies (Amendment) Act, 1983 (which restricts the right of a company to purchase its own shares)] shall not apply to the purchase of any shares in pursuance of an order of the court under this head.

## Part A9 - Reorganisations and Takeovers

---

- (6) If it is necessary for any of the companies being acquired to take any steps to ensure that its assets and liabilities are fully transferred, the court may specify a date which, save in exceptional cases, shall not be later than 6 months after the appointed date by which such steps must be taken and for that purpose may order that the dissolution of such company shall take effect on that date.

### **Explanatory note**

*This head is a slightly amended re-enactment of S.I. No.137 of 1987, EC (Mergers and Divisions) Regulations 1987, Regulation 19. All cross-references have been updated in accordance with the structure of the Bill.*

---

### **Head 23 Saver for enactments regulating mergers**

---

A merger shall not take effect under this Chapter in the absence of the approval, consent or clearance required by any other enactment.

### **Explanatory note**

*This head is a new head introduced in accordance with the recommendation of the Company Law Review Group. It simply provides for the regulation of mergers through other enactments and no merger is effected in the absence of compliance with such regulation.*

---

### **Head 24 Registration and publication of confirmation of merger**

---

- (1) Where the court has made an order confirming a merger an office copy thereof shall forthwith be sent to the Registrar for registration by such officer of the court as the court may direct.
- (2) The acquiring company shall cause to be published in the CRO Gazette notice of delivery to the registrar of companies of the order of the court confirming the merger within fourteen days of such delivery.

### **Explanatory note**

*This head is a slightly amended re-enactment of S.I. No.137 of 1987, EC (Mergers and Divisions) Regulations 1987, Regulation 21. All cross-references have been updated in accordance with the structure of the Bill and references to the "registrar of companies" have been replaced with "Registrar".*

*Subhead (2) has been amended in accordance with the views of the Company Law Review Group. The reference to Iris Oifigiúil has been replaced by a reference to the CRO Gazette.*

---

### **Head 25 Civil liability of directors and independent persons**

---

- (1) Any shareholder of any of the merging companies who has suffered loss or damage by reason of misconduct in the preparation or implementation of the merger by a director of any such company or by the independent person, if any, who has made a report under Part A9, Head 12 [equivalent of S.I. No.137 of 1987, EC (Mergers and Divisions) Regulations 1987, Regulation 8], shall be entitled to have such loss or damage made good to him by—
- (a) in the case of misconduct by a person who was a director of that company at the date of the draft terms of merger — that person;
  - (b) in the case of misconduct by any independent person who prepared a report under Part A9, Head 12 [equivalent of S.I. No.137 of 1987, EC (Mergers and Divisions) Regulations 1987, Regulation 8], in respect of any of the merging companies — that person.
- (2) Without prejudice to the generality of Subhead (1), any shareholder of any of the merging companies who has suffered loss or damage arising from the inclusion of any untrue statement in the draft terms of merger, the explanatory report, the independent person's report, if any, or the accounting statement, if any, provided for under Part A9, Head 13 [equivalent of S.I. No.137 of 1987, EC (Mergers and Divisions) Regulations 1987, Regulation 9], shall, subject to Subheads (3) and (4), be entitled to have such loss or damage made good to him by every person who was a director of that company at the date of the draft terms of merger or, in the case of the independent person's report by the person who made that report in relation to that company.
- (3) A director of a company shall not be liable under Subhead (2) if he proves—



- (a) that any of the documents referred to in Subhead (2) were issued without his knowledge or consent and that, on becoming aware of their issue, he forthwith informed the shareholders of that company that they were issued without his knowledge or consent; or
- (b) that as regards every untrue statement he had reasonable grounds, having exercised all reasonable care and skill, for believing and did, up to the time the merger took effect, believe that the statement was true.
- (4) A person who makes a report required by Part A9, Head 12 [equivalent of S.I. No.137 of 1987, EC (Mergers and Divisions) Regulations 1987, Regulation 8], in relation to a company shall not be liable in the case of untrue statements in his own report if he proves—
- (i) that on becoming aware of the statement he forthwith informed the company concerned and its shareholders of the untruth, or
- (ii) that he was competent to make the statement and that he had reasonable grounds for believing and did up to the time the merger took effect believe that the statement was true.
- (3) It shall be a defence for a person charged with an offence under subhead (1) or (2) to show that, having exercised all reasonable care and skill, he had reasonable grounds for believing and did, up to the time of the issue of the documents, believe that the statement was true.

### **Explanatory note**

*This head is a slightly amended re-enactment of S.I. No.137 of 1987, EC (Mergers and Divisions) Regulations 1987, Regulation 23. All cross-references have been updated in accordance with the structure of the Bill.*

### **Explanatory note**

*This head is a slightly amended re-enactment of S.I. No.137 of 1987, EC (Mergers and Divisions) Regulations 1987, Regulation 22. All cross-references have been updated in accordance with the structure of the Bill.*

---

## **Head 26 Criminal liability for untrue statements in merger documents**

---

- (1) Where any untrue statement has been included in the draft terms of merger, the explanatory report or the accounting statement, each of the directors and any person who authorised the issue of those documents shall be guilty of a category two offence.
- (2) Where any untrue statement has been included in the independent person's report the independent person and any person who authorised the issue of the report shall be guilty of a category two offence.

# Chapter 4

## Divisions

### Head 27 Interpretation of this Chapter

In this Chapter, unless the context otherwise requires—

“acquiring companies” has the meaning assigned to it by Part A9, Head 28 [equivalent of S.I. No.137 of 1987, EC (Mergers and Divisions) Regulations 1987, Regulation 25];

“division” means “division by acquisition” or “division by formation of new companies”, within the meaning of Part A9, Head 28 (1) [equivalent of S.I. No.137 of 1987, EC (Mergers and Divisions) Regulations 1987, Regulation 25].

#### **Explanatory note**

*This head is a slightly amended re-enactment of S.I. No.137 of 1987, EC (Mergers and Divisions) Regulations 1987, Regulation 24. These Regulations are now applied to private companies whereas previously their application was limited to public companies. All cross-references have been updated in accordance with the structure of the Bill.*

### Head 28 Divisions to which this Chapter applies

(1) In this Chapter—

- (a) “division by acquisition” means an operation whereby two or more companies (“the acquiring companies”) of which one or more but not all may be a new company acquire between them all the assets and liabilities of another company in exchange for the issue to the shareholders of that company of shares in one or more of the acquiring companies with or without any cash payment and with a view to the dissolution of the company being acquired; and
- (b) “division by formation of new companies” means a similar operation whereby the acquiring companies have been formed for the purposes of such acquisition.

(2) Where a company is being wound up it may—

(a) become a party to a division by acquisition or by formation of new companies, provided that the distribution of its assets to its shareholders has not begun at the date, under Part A9, Head 29 (4) [equivalent of S.I. No.137 of 1987, EC (Mergers and Divisions) Regulations 1987, Regulation 26(4)], of the draft terms of division; or

(b) opt to avail of the provisions of Part A9, Chapters 1 and 2 [equivalent of Sections 201 to 204 of the Companies Act 1963], Part A11, Head 40 [equivalent of Section 260 of the Companies Act, 1963].

(3) Subject to Subhead (2), the said provisions shall not apply to a division by acquisition or by formation of new companies.

#### **Explanatory note**

*This head is a slightly amended re-enactment of S.I. No.137 of 1987, EC (Mergers and Divisions) Regulations 1987, Regulation 25. All cross-references have been updated in accordance with the structure of the Bill. Note the reference to Section 271 of the Companies Act, 1963 may be redundant as it appears the section is not being re-enacted in Part A11.*

### Head 29 Draft terms of division

- (1) Where a division is proposed to be entered into, the directors of the companies involved in the division shall draw up draft terms of the division in writing.
- (2) The draft terms of division shall state, at least—
  - (a) the name and registered office of each of the companies involved in the division;
  - (b) as to each of such companies, whether it is a public company limited by shares, a public company limited by guarantee and having a share capital or a body corporate to which Part B8, Head 2(1) [equivalent of Section 377 (1) of the Companies Act, 1963] relates;
  - (c) the proposed share exchange ratio and the amount of any cash payment;
  - (d) the proposed terms relating to allotment of shares in the acquiring companies;

- (e) the date from which holders of such shares will become entitled to participate in the profits of one or more of the acquiring companies;
  - (f) the date from which the transactions of the company being acquired shall be treated for accounting purposes as being those of any of the acquiring companies;
  - (g) any special conditions, including special rights or restrictions, whether in regard to voting, participation in profits, share capital or otherwise, which will apply to shares or other securities issued by the acquiring companies in exchange for shares or other securities in the company being acquired;
  - (h) any payment or benefit in cash or otherwise paid or given or intended to be paid or given to any independent person referred to in Part A9, Head 32 [equivalent of S.I No.137 of 1987, EC (Mergers and Divisions) Regulations 1987, Regulation 28] and to any director of any of the companies involved in the division insofar as it differs from the payment or benefit paid or given or intended to be paid or given to other persons in respect of the division and the consideration, if any, for any such payment or benefit;
  - (i) the precise description and allocation of the assets and liabilities of the company being acquired to be transferred to each of the acquiring companies;
  - (j) the allocation of shares in the acquiring companies to the shareholders of the company being acquired and the criteria on which such allocation is based.
- (3) Where the division involves the formation of one or more new companies the draft terms of division shall include or be accompanied by the constitution or draft constitution of each of the new companies.
- (4) The draft terms of division shall be signed and dated on behalf of each of the companies involved in the division by two directors of each such company and that date shall, for the purposes of this Chapter, be the date of the draft terms of division.
- (5) Where an asset of the company being acquired is not allocated by the draft terms of division and where the interpretation of those terms does not make a decision on its allocation possible, the asset or the consideration therefor shall be allocated to the acquiring companies in proportion to the share of the net assets allocated to each of those companies under the draft terms of division.

### **Explanatory note**

*This head is a slightly amended re-enactment of S.I. No.137 of 1987, EC (Mergers and Divisions) Regulations 1987, Regulation 26. All cross-references have been updated in accordance with the structure of the Bill and references to the memorandum and articles of association have also been replaced with "constitution".*

---

## **Head 30 Directors' explanatory report**

---

- (1) A separate written report ("the explanatory report") shall be drawn up in respect of each of the companies involved in the division by the directors of each such company.
- (2) The explanatory report shall at least detail and explain—
- (a) the draft terms of division;
  - (b) the legal and economic grounds for and implications of the draft terms of division with particular reference to the proposed share exchange ratio, organisation and management structures, recent and future commercial activities and the financial interests of holders of the shares and other securities in the company;
  - (c) the methods used to arrive at the proposed share exchange ratio and the reasons for the use of these methods;
  - (d) any special valuation difficulties which have arisen.
- (3) Where it is proposed that any of the acquiring companies will allot shares for a consideration other than in cash, the explanatory report shall state that the report required by Part B2, Head 21 [equivalent of Section 30 of the Companies (Amendment) Act, 1983], is being or has been prepared and that it will be delivered to the Registrar for registration in accordance with Part B2, Head 22 [equivalent of Section 31 of the Companies (Amendment) Act, 1983].

## Part A9 - Reorganisations and Takeovers

---

- (4) The explanatory report shall be signed and dated on behalf of each of the companies involved in the division by two directors of each such company.

### **Explanatory note**

*This head is a slightly amended re-enactment of S.I. No.137 of 1987, EC (Mergers and Divisions) Regulations 1987, Regulation 27. All cross-references have been updated in accordance with the structure of the Bill and references to the "registrar of companies" have been replaced by a reference to the "Registrar".*

---

### **Head 31 Division by validation procedure**

---

- (1) A division may be affected by the validation procedure provided for in Part A4, Head 71 and Part A9, Head 16 shall regulate the passing of the special resolution of the merging companies.
- (2) Where the directors of the merging companies decide to propose a merger otherwise than by means of the validation procedure, Part A9, Head 32, 33, 35, 36, 37, 38 and 39 [equivalent of S.I. No.137 of 1987, EC (Mergers and Divisions) Regulations 1987, shall apply.

### **Explanatory note**

*This head is new. It was introduced in accordance with the recommendations of the Company Law Review Group to provide an alternative division procedure without the involvement of the courts.*

---

### **Head 32 Independent person's report**

---

- (1) Each of the companies involved in the division shall appoint an independent person to examine the draft terms of division and to prepare a written report on them to the shareholders of the company concerned.
- (2) No person shall act as an independent person for the purposes of Subhead (1) unless he is authorised by the Minister on application by the company concerned to be such a person for the purposes of the proposed division.
- (3) One or more independent persons may be authorised by the Minister on joint application by the companies involved in the division for all the said companies.

- (4) None of the following persons shall be qualified to act as an independent person in respect of a proposed division—
- (a) a person who is or, within 12 months of the date of the draft terms of division, has been an officer or servant of the company;
  - (b) except with the leave of the Minister, a parent, spouse, brother, sister or child of an officer of the company;
  - (c) a person who is a partner or in the employment of an officer or servant of the company.
- (5) If an independent person becomes disqualified by virtue of this head he shall thereupon cease to hold office and shall give notice in writing of his disqualification to the Minister within 14 days thereof, but without prejudice to the validity of any acts done by him in his capacity as independent person.
- (6) Any person who acts as an independent person when disqualified from doing so under this head or who makes default in complying with Subhead (5) shall be guilty of a category two offence.
- (7) The report referred to in Subhead (1) shall—
- (a) state the method or methods used to arrive at the proposed share exchange ratio;
  - (b) give the opinion of the person making the report as to whether the proposed share exchange ratio is fair and reasonable;
  - (c) give the opinion of the person making the report as to whether such method or methods are adequate in the case in question;
  - (d) indicate the values arrived at using each such method;
  - (e) give the opinion of the person making the report as to the relative importance attributed to such methods in arriving at the values decided on;
  - (f) any special valuation difficulties which have arisen.

- (8) The report required by Part B2, Head 21 [equivalent of Section 30 of the Companies (Amendment) Act, 1983], may be prepared by the person preparing the report required by this head.
- (9) A person making a report under this head shall be entitled to require from the companies involved in the division and their officers such information and explanation (whether orally or in writing) and to carry out such investigations as the independent person thinks necessary to enable him to make the report.
- (10) Any of the companies involved in the division and any officer thereof who—
- (a) fails to supply to an independent person any information or explanation in his power, possession or procurement, and which that person thinks necessary for the purpose of his report; or
  - (b) knowingly or recklessly makes a statement or provides a document which—
    - (i) is misleading, false or deceptive in a material particular, and
    - (ii) is a statement or document to which this subsection applies,
- shall be guilty of a category two offence.
- (11) Subhead (10) applies to any statement made, whether orally or in writing, or any document provided to any person making a report under this head being a statement or document which conveys or purports to convey any information or explanation which that person requires, or is entitled to require, under Subhead (9).
- (2) The accounting statement shall, where required under Subhead (1), be drawn up—
- (i) in the format of the last annual balance sheet and in accordance with the provisions of the Companies Acts, and
  - (ii) as at a date not earlier than the first day of the third month preceding the date of the draft terms of division.
- (3) Valuations shown in the last annual balance sheet shall, subject to the exceptions outlined in Subhead (4), only be altered to reflect entries in the books of account.
- (4) Notwithstanding the provisions of Subhead (3), the following shall be taken into account in preparing the accounting statement—
- (a) interim depreciation and provisions; and
  - (b) material changes in actual value not shown in the books of account.
- (5) The provisions of [the Companies Acts] relating to the auditor's report on the last annual accounts shall apply, with any necessary modifications, also to the accounting statement required by Subhead (1).

### **Explanatory note**

*This head is a slightly amended re-enactment of S.I. No.137 of 1987, EC (Mergers and Divisions) Regulations 1987, Regulation 29. All cross-references have been updated in accordance with the structure of the Bill.*

### **Explanatory note**

*This head is a slightly amended re-enactment of S.I. No.137 of 1987, EC (Mergers and Divisions) Regulations 1987, Regulation 28. All cross-references have been updated in accordance with the structure of the Bill.*

## **Head 33 Accounting statement**

- (1) Where the latest annual accounts of any of the companies involved in the division relate to a financial year ended more than six months before the date of the draft terms of division, that company shall prepare an accounting statement in accordance with the provisions of this head.

## **Head 34 Registration and publication of documents**

- (1) Each of the companies involved in the division shall—
- (a) deliver for registration to the Registrar a copy of the draft terms of division, signed and dated as required by Part A9, Head 29 [equivalent of S.I. No.137 of 1987, EC (Mergers and Divisions) Regulations 1987, Regulation 26]; and
  - (b) publish in the CRO Gazette notice of delivery to the Registrar of the draft terms of division.



## Part A9 - Reorganisations and Takeovers

---

- (2) The requirements of Subhead(1) shall be fulfilled by each of the companies at least one month before the date of the general meeting of each such company which by virtue of Part A9, Head 34 [equivalent of S.I. No 187 of 1987 EC (Mergers and Divisions) Regulations 1987, Regulation 30].

### **Explanatory note**

*This head is a slightly amended re-enactment of S.I. No.137 of 1987, EC (Mergers and Divisions) Regulations 1987, Regulation 30. All cross-references have been updated in accordance with the structure of the Bill and references to the "registrar of companies" have been replaced with "Registrar".*

*Subsection (1)(b) has been amended in accordance with the views of the Company Law Review Group. The reference to Iris Oifigiúil has been replaced by a reference to the CRO Gazette. The requirement to publish a notice "...in at least one daily newspaper in the district in which the registered office is located" in accordance with the view of the Review Group. The reasons for this are the cost of publication; the inefficiency of the notice reaching the intended recipients; and the fact that the CRO Gazette will now be freely available on-line.*

---

### **Head 35 Inspection of documents**

---

- (1) Each of the companies involved in the division shall, subject to subsection (2), make available for inspection free of charge by any member of the company at its registered office during business hours (subject to such reasonable restrictions as the company in general meeting may impose so that not less than 2 hours in each day be allowed for inspection)—
- (a) the draft terms of division;
  - (b) the audited annual accounts for the preceding three financial years of each company, or where a company has traded for less than 3 financial years before the date of the draft terms of division, the audited annual accounts for those financial years for which the company has traded;
  - (c) the explanatory reports relating to each of the companies referred to in Part A9, Head 30 [equivalent of S.I No.137 of 1987, EC (Mergers and Divisions) Regulations 1987, Regulation 27];

- (d) the independent person's report, if any, relating to each of the companies referred to in Part A9, Head 32 [equivalent of S.I. No.137 of 1987, EC (Mergers and Divisions) Regulations 1987, Regulation 28];
- (e) the accounting statement, if any, in relation to any of the companies which is required to be prepared pursuant to Part A9, Head 33 [equivalent of S.I. No.137 of 1987, EC (Mergers and Divisions) Regulations 1987, Regulation 29].

- (2) The provisions of Subhead (1) shall apply in the case of each of the companies for a period of one month before the general meeting which is to consider the draft terms of division.

### **Explanatory note**

*This head is a slightly amended re-enactment of S.I. No.137 of 1987, EC (Mergers and Divisions) Regulations 1987, Regulation 31. All cross-references have been updated in accordance with the structure of the Bill.*

---

### **Head 36 General meetings of the companies involved in a division**

---

- (1) Subject to Subhead (4) of this head and to Part A9, Head 37 [equivalent of S.I. No.137 of 1987, EC (Mergers and Divisions) Regulations 1987, Regulation 33], the draft terms of division shall be approved by a special resolution passed at a general meeting of each of the companies involved in the division.
- (2) Where the division involves the formation of one or more new companies, the constitution or draft constitution of each of the new companies shall also be approved by a special resolution of the company being acquired.
- (3) The notice convening the general meeting referred to in Subhead (1) shall contain a statement of every shareholder's entitlement to obtain on request, free of charge, full or, if so desired, partial copies of the documents listed in Part A9, Head 35 [equivalent of S.I. No.137 of 1987, EC (Mergers and Divisions) Regulations 1987, Regulation 31];
- (4) This head shall not apply in the case of an acquiring company provided that the following conditions are fulfilled—

- (i) the provisions of Part A9, Head 34 [equivalent of S.I. No.137 of 1987, EC (Mergers and Divisions) Regulations 1987, Regulation 30] and Part A9, Head 35 [equivalent of S.I. No.137 of 1987, EC (Mergers and Divisions) Regulations 1987, Regulation 31], are complied with at least one month before the date of the general meeting of the company being acquired, and
- (ii) one or more members of the company holding paid up share capital amounting in total value to not less than 5 per cent of such of the paid up share capital as confers the right to vote at general meetings, whether or not the shares held confer such voting right, shall be entitled, under the constitution of the company, to require the convening of a general meeting of the company to consider the draft terms of division.
- (5) The directors of the company being acquired shall inform—
- (a) the general meeting of that company; and
- (b) the directors of the acquiring companies,
- of any material change in the assets and liabilities of the company being acquired between the date of the draft terms of division and the date of the general meeting.
- (6) The directors of each acquiring company shall inform the general meeting of that company of the matters referred to in Subhead (5).
- (7) This head shall not apply in the case of the company being acquired where the acquiring companies together hold all the shares and other securities conferring the right to vote at general meetings of that company and where the information delivered under Subhead (4) covers any material change in the assets and liabilities after the date of the draft terms of the division.

### **Explanatory note**

*This head is a slightly amended re-enactment of S.I. No.137 of 1987, EC (Mergers and Divisions) Regulations 1987, Regulation 32. All cross-references have been updated in accordance with the structure of the Bill and references to the memorandum and articles of association have also been replaced with "constitution".*

---

## **Head 37 Meetings of classes of shareholder**

---

Where the share capital of any of the companies involved in a division is divided into shares of different classes, Part A3, Head 21 [equivalent of Section 38 of the Companies (Amendment) Act, 1983], shall apply.

### **Explanatory note**

*This head is a slightly amended re-enactment of S.I. No.137 of 1987, EC (Mergers and Divisions) Regulations 1987, Regulation 33. All cross-references have been updated in accordance with the structure of the Bill.*

---

## **Head 38 Purchase of minority shares**

---

- (1) Any of the shareholders in any of the companies involved in a division who voted against the special resolution of the company concerned relating to the draft terms of division may, not later than 15 days after the relevant date, request the acquiring company in writing to acquire his shares for cash.
- (2) In this regulation "the relevant date" in relation to a company means the date on which the latest general meeting of that company to consider the draft terms of division, or of any class of the holders of shares or other securities of such company, as required by this chapter, is held.
- (3) Nothing in this head shall prejudice the power of the court to make any order necessary for the protection of the interests of a dissenting minority in a company involved in a division.

### **Explanatory note**

*This head is a slightly amended re-enactment of S.I. No.137 of 1987, EC (Mergers and Divisions) Regulations 1987, Regulation 34. All cross-references have been updated in accordance with the structure of the Bill.*

---

## **Head 39 Application for confirmation of division by court**

---

Where Part A9, Head 32 does not apply—

- (1) An application to the court for an order confirming a division shall be made by all the companies involved in a division.

## Part A9 - Reorganisations and Takeovers

---

- (2) The application shall be accompanied by a statement of the size of the shareholding of any shareholder who has requested the purchase of his shares under Part A9, Head 38 [equivalent of S.I. No.137 of 1987, EC (Mergers and Divisions) Regulations 1987, Regulation 34] and of the measures which the acquiring companies propose to take to comply with such shareholder's request.
- (ii) if the company concerned does not admit the debt or claim, or if the amount is contingent or not ascertained, an amount fixed by the court after the like inquiry and adjudication as if the company were being wound up by the court.

### **Explanatory note**

*This head is a slightly amended re-enactment of S.I. No.137 of 1987, EC (Mergers and Divisions) Regulations 1987, Regulation 35. All cross-references have been updated in accordance with the structure of the Bill.*

---

## Head 40 Protection of creditors

---

- (1) A creditor of any of the companies involved in a division who, at the date of publication of the notice under Part A9, Head 34 [equivalent of S.I. No.137 of 1987, EC (Mergers and Divisions) Regulations 1987, Regulation 30(1)(b)], is entitled to any debt or claim against the company, shall be entitled to object to the confirmation by the court of the division.
- (2) If the court deems it necessary in order to secure the adequate protection of creditors of any of the companies involved in the division it may—
- (a) determine a list of creditors entitled to object and the nature and amount of their debts or claims, and may publish notices fixing a period within which creditors not entered on the list may have a claim for inclusion on that list considered;
- (b) where an undischarged creditor on the list referred to in paragraph (a) does not consent to the division, the court may dispense with the consent of that creditor, on the company securing payment of the debt or claim by appropriating to that creditor such following amount as the court may direct—
- (i) if the company concerned admits the full amount of the debt or claim, that amount,

- (3) If, having regard to any special circumstances of the case, it thinks proper so to do, the court may direct that Subhead (2) shall not apply as regards any class of creditors.
- (4) Each of the acquiring companies shall be jointly and severally liable for all the liabilities of the company being acquired.

### **Explanatory note**

*This head is a slightly amended re-enactment of S.I. No.137 of 1987, EC (Mergers and Divisions) Regulations 1987, Regulation 36. All cross-references have been updated in accordance with the structure of the Bill.*

---

## Head 41 Preservation of rights of holders of securities

---

- (1) Subject to Subhead (2), holders of securities, other than shares, in any of the companies being acquired, to which special rights are attached shall be given rights in the acquiring companies at least equivalent to those they possessed in the company being acquired.
- (2) Subhead (1) shall not apply—
- (a) where the alteration of the rights in an acquiring company has been approved—
- (i) by a majority of the holders of such securities at a meeting held for that purpose, or
- (ii) by the holders of those securities individually; or
- (b) where the holders of those securities are entitled under the terms of those securities to have their securities purchased by an acquiring company.

### **Explanatory note**

*This head is a slightly amended re-enactment of S.I. No.137 of 1987, EC (Mergers and Divisions) Regulations 1987, Regulation 37. All cross-references have been updated in accordance with the structure of the Bill.*

### Head 42 Confirmation order

Where Part A9, Head 32 does not apply—

- (1) The court, on being satisfied that—
    - (a) the requirements of this Chapter have been complied with;
    - (b) proper provision has been made for—
      - (i) any dissenting shareholder of any of the companies involved in the division who has made a request under Part A9, Head 38 [equivalent of S.I. No.137 of 1987, EC (Mergers and Divisions) Regulations 1987, Regulation 34], and
      - (ii) any creditor of any of the companies who objects to the division in accordance with Part A9, Head 40 [equivalent of S.I. No.137 of 1987, EC (Mergers and Divisions) Regulations 1987, Regulation 36]; and
    - (c) the rights of holders of securities other than shares in any of the companies being acquired are safeguarded in accordance with Part A9, Head 41 [equivalent of S.I. No.137 of 1987, EC (Mergers and Divisions) Regulations 1987, Regulation 37],
- may make an order confirming the division with effect from such date as the court appoints (“the appointed date”).
- (2) The order of the court confirming the division shall, with effect from the appointed date, have the following effects—
    - (a) all the assets and liabilities of the company or companies being acquired shall stand transferred to the acquiring companies in accordance with the draft terms of division as approved by the court;
    - (b) the shareholders of the company being acquired shall become shareholders in the acquiring companies or any of them in accordance with the draft terms of division as approved by the court;
    - (c) the company or companies being acquired shall, subject to Subhead (4), be dissolved;

- (d) all legal proceedings pending by or against any of the dissolved companies shall be continued with the substitution, for the dissolved company, of the acquiring companies or such of them as the court having seisin of the proceedings may order.
- (3) The court may, either by the order confirming the division or by a separate order, make provision for such matters as the court considers necessary to secure that the division shall be fully and effectively carried out.
  - (4) The court may, in particular, by order—
    - (a) direct that an acquiring company shall, on a date specified by the court, purchase the shares of a dissenting shareholder who has made a request under Part A9, Head 38 [equivalent of S.I. No.137 of 1987, EC (Mergers and Divisions) Regulations 1987, Regulation 34] and pay therefor the sum determined by the court, being not less than the market sale price of the shares on the appointed date; and
    - (b) provide for the reduction accordingly of the company's capital.
  - (5) If it is necessary for the company being acquired to take any steps to ensure that its assets and liabilities are fully transferred, the court may specify a date which, save in exceptional cases, shall not be later than 6 months after the appointed date, by which such steps must be taken and for that purpose may order that the dissolution of such company shall take effect on that date.
  - (6) Part A3, Head 36 [equivalent of Section 41 (1) of the Companies (Amendment) Act, 1983] (which restricts the right of a company to purchase its own shares) shall not apply to the purchase of any shares in pursuance of an order of the court under this regulation.

#### **Explanatory note**

*This head is a slightly amended re-enactment of S.I. No.137 of 1987, EC (Mergers and Divisions) Regulations 1987, Regulation 38. All cross-references have been updated in accordance with the structure of the Bill.*



## Part A9 - Reorganisations and Takeovers

---

### Head 43 Saver for enactments regulating divisions

---

A division shall not take effect under this Chapter in the absence of the approval, consent or clearance required by any other enactment.

#### **Explanatory note**

*This head is a new head introduced in accordance with the recommendation of the Company Law Review Group. It simply provides for the regulation of divisions through other enactments and no merger is effected in the absence of compliance with such regulation.*

---

### Head 44 Registration and publication of confirmation of division

---

- (1) Where the court has made an order confirming a division an office copy thereof shall forthwith be sent to the Registrar for registration by such officer of the court as the court may direct.
- (2) Each of the acquiring companies shall cause to be published in the CRO Gazette notice of delivery to the Registrar of the order of the court confirming the division within fourteen days of such delivery.

#### **Explanatory note**

*This head is a slightly amended re-enactment of S.I. No.137 of 1987, EC (Mergers and Divisions) Regulations 1987, Regulation 40. All cross-references have been updated in accordance with the structure of the Bill. All cross-references have been updated in accordance with the structure of the Bill and references to the "registrar of companies" have been replaced with "Registrar".*

*Subhead (2) has been amended in accordance with the views of the Company Law Review Group. The reference to Iris Oifigiúil has been replaced by a reference to the CRO Gazette.*

---

### Head 45 Civil liability of directors and independent persons

---

- (1) Any shareholder of any of the companies involved in a division who has suffered loss or damage by reason of misconduct in the preparation or implementation of the division by a director of any such company or by the independent person, if any, who has made a report under Part A9, Head 33 [equivalent of S.I No.137 of 1987, EC (Mergers and Divisions) Regulations 1987, Regulation 28] shall be entitled to have such loss or damage made good to him by—
  - (a) in the case of misconduct by a person who was a director of that company at the date of the draft terms of division - that person;
  - (b) in the case of misconduct by any independent person who prepared a report under Part A9, Head 32 [equivalent of S.I. No.137 of 1987, EC (Mergers and Divisions) Regulations 1987, Regulation 28] in respect of any of the companies — that person.
- (2) Without prejudice to the generality of Subhead (1), any shareholder of any of the companies who has suffered loss or damage arising from the inclusion of any untrue statement in the draft terms of division, the explanatory report, the independent person's report, if any, or the accounting statement, if any, shall, subject to Subheads (3) and (4), be entitled to have such loss or damage made good to him by every person who was a director of that company at the date of the draft terms of division or, in the case of the independent person's report, by the person who made that report, in relation to that company.
- (3) A director of a company shall not be liable under Subhead (2) if he proves—
  - (a) that any of the documents referred to in Subhead(2) was issued without his knowledge or consent, and that on becoming aware of their issue he forthwith informed the shareholders of that company that they were issued without his knowledge or consent; or



- (b) that as regards every untrue statement he had reasonable grounds, having exercised all reasonable care and skill, for believing and did, up to the time the division took effect, believe that the statement was true.

### **Explanatory note**

*This head is a slightly amended re-enactment of S.I. No.137 of 1987, EC (Mergers and Divisions) Regulations 1987, Regulation 42. All cross-references have been updated in accordance with the structure of the Bill.*

- (4) A person who made a report required by Part A9, Head 32 [equivalent of S.I. No.137 of 1987, EC (Mergers and Divisions) Regulations 1987, Regulation 28] in relation to a company shall not be liable in the case of untrue statements in his own report if he proves—

- (i) that on becoming aware of the statement, he forthwith informed the company concerned and its shareholders of the untruth, or
- (ii) that he was competent to make the statement and that he had reasonable grounds for believing and did up to the time the division took effect believe that the statement was true.

### **Explanatory note**

*This head is a slightly amended re-enactment of S.I. No.137 of 1987, EC (Mergers and Divisions) Regulations 1987, Regulation 41. All cross-references have been updated in accordance with the structure of the Bill.*

---

## **Head 46 Criminal liability for untrue statements in division documents**

---

- (1) Where any untrue statement has been included in the draft terms of division, the explanatory report or the accounting statement, each of the directors and any person who authorised the issue of those documents shall be guilty of a category two offence.
- (2) Where any untrue statement has been included in the independent person's report, the independent person and any person who authorised the issue of the report shall be guilty of a category two offence.
- (3) It shall be a defence for a person charged with an offence under Subhead (1) or (2) to show that, having exercised all reasonable care and skill, he had reasonable grounds for believing and did, up to the time of the issue of the documents, believe that the statement was true.



---

# Part A10 – Examinerships

## Contents of Part A10

---

### Chapter 1 – Preliminary and Interpretation

1. Defined terms

### Chapter 2 – Appointment of Examiner

2. Power of court to appoint an examiner
3. Petition for court
4. Pre-petition report in relation to company
5. Creditors to be heard
6. Availability of independent accountant's report.
7. Related companies
8. Duty to act in good faith
9. Disqualification of examiners
10. Effect of petition to appoint examiner on creditors and others
11. Restriction on payment of pre-petition debts
12. Effect on receiver or provisional liquidator of order appointing examiner
13. Part A8, Head 13 [equivalent of Section 98 of the Companies Act, 1963] does apply to receivers in certain circumstances

### Chapter 3 – Powers of Examiner

14. Powers of an examiner
15. Protection of documents and evidence
16. No lien over company's books, records, etc
17. Further powers of court
18. Incurring of certain liabilities incurred by examiner
19. Power to deal with charged property, etc
20. Notification of appointment of examiner
21. General provisions as to examiners
22. Hearing regarding irregularities
23. Report by examiner
24. Content of examiner's report
25. Repudiation of certain contracts
26. Appointment of creditors' committee
27. Proposals for compromise of scheme or scheme of arrangement
28. Consideration by members and creditors of proposals
29. Confirmation of proposals
30. Objection to confirmation by court of proposals
31. Liability of third parties for the debts of the company
32. Provisions with respect to leases

### Chapter 4 – Conclusion of Examinership

33. Cessation of protection of company and termination of appointment of examiner
34. Revocation
35. Costs and remuneration of examiners
36. Publicity
37. Hearing of proceedings otherwise than in public
38. Power of court to order the return of assets which have been improperly transferred
39. Enforcement of reconstruction orders made outside the State
40. Cross-border effect of examinerships within the European Community
41. Reporting to Director of Corporate Enforcement of misconduct by liquidators, receivers or examiners

### Schedule - List of companies for the purposes of Head 3 (2)

## Part A10 – Examinerships

### Chapter 1

#### Interpretation

##### Head 1 Defined terms

(1) “examiner” means an examiner appointed under Part A10, Head 2 [equivalent of Section 2 of the Companies (Amendment) Act, 1990];

“interested party”, in relation to a company to which Part A10, Head 2 [equivalent of Section 2 of Companies (Amendment) Act, 1990] relates, means the —

- (a) a creditor of the company;
- (b) a member of the company;

“the Act” means the Companies Act. Any reference where so ever to any previous enactment shall be construed as referring to that Act;

“director” includes a shadow director within the meaning of Part A5, Head 3 [equivalent of Section 27 of the Companies Act, 1990];

“officer”, in relation to a company, includes—

- (a) a director, secretary or employee;
- (b) a liquidator;
- (c) any person administering a compromise or arrangement made between the company and its creditors;
- (d) an examiner;
- (e) an auditor; and
- (f) a receiver;

“the Minister” means the Minister for Enterprise, Trade and Employment;

“related company”, in relation to a company, has the meaning given to it by Subhead (2).

(2) For the purposes of this Part, a company is related to another company if—

- (a) that other company is its holding company or subsidiary;

(b) or more than half in nominal value of its equity share capital (as defined in Part A1, Head 6 (9) [equivalent of Section 155 (5) of the Companies Act, 1963]) is held by the other company and companies related to that other company (whether directly or indirectly, but other than in a fiduciary capacity); or

(c) more than half in nominal value of the equity share capital (as defined in Part A3, Head 6 (9) [equivalent of Section 155 (5) of the Companies Act, 1963]) of each of them is held by members of the other (whether directly or indirectly, but other than in a fiduciary capacity);

(d) or that other company or a company or companies related to that other company or that other company together with a company or companies related to it are entitled to exercise or control the exercise of more than one half of the voting power at any general meeting of the company;

(e) or the businesses of the companies have been so carried on that the separate business of each company, or a substantial part thereof, is not readily identifiable; or

(f) there is another body corporate to which both companies are related,

and “related company” has a corresponding meaning.

(3) For the purposes of this Part “company” includes any body which is liable to be wound up under this Bill.

(4) This Part is subject to Council Regulation (EC) No 1346/2000 of 29 May 2000 on insolvency proceedings.

(5) The provisions of Part A11, Chapter 5 [equivalent of S.I. No.333 of 2002, EC (Corporate Insolvency) Regulations 2002] applies to proceedings under this Part.

##### **Explanatory note**

*This head is a new.*

*Subhead (1) is taken in substance from Section 1 of the Companies (Amendment) Act, 1990. All cross-references have been updated in accordance with the structure of the Bill. The section has been amended insofar as new definitions have been added in order to create a comprehensive list of the defined terms for the purposes of the Part in accordance with the recommendation of the Company Law Review Group in its First Report.*

*The newly inserted definitions include the definition of a "director" to include a shadow director for the purpose of this Part. Shadow directors are also treated as directors for the purpose of Part A5 and a definition of an "officer" of a company has been newly inserted. All cross-references have been updated in accordance with the structure of the Bill.*

*Subhead (2) is a slightly amended re-enactment of Section 4(5) of the Companies (Amendment) Act, 1990, as amended by Section 180(1)(b) of the Companies Act, 1990 and Section 12 of the Companies (Amendment) (No.2) Act, 1999.*



# Chapter 2

## Appointment of Examiner

### Head 2 Power of Court to appoint examiner

- (1) Subject to Subhead (2), where it appears to the court that—
- (a) a company is or is likely to be unable to pay its debts;
  - (b) no resolution subsists for the winding-up of the company;
  - (c) no order has been made for the winding-up of the company,

it may, on application by petition presented, appoint an examiner to the company for the purpose of examining the state of the company's affairs and performing such duties in relation to the company as may be imposed by or under the this Bill.

- (2) The court shall not make an order under this head unless it is satisfied that there is a reasonable prospect of the survival of the company and the whole or any part of its undertaking as a going concern.
- (3) For the purposes of this head, a company is unable to pay its debts if, —
- (a) it is unable to pay its debts as they fall due;
  - (b) the value of its assets is less than the amount of its liabilities, taking into account its contingent and prospective liabilities; or
  - (c) Part A11, Head 11 (a) and (c) [equivalent of Section 214(a) or (b) of the Companies Act, 1963] applies to the company.
- (4) In deciding whether to make an order under this head, the court may also have regard to whether the company has sought from its creditors significant extensions of time for the payment of its debts, from which it could reasonably be inferred that the company was likely to be unable to pay its debts.

#### Explanatory note

*This head is a slightly amended re-enactment of Section 2 of the Companies (Amendment) Act, 1990, as amended by Section 181(1)(a) of the Companies Act, 1990 and Section 55 of the Companies (Amendment)(No.2) Act, 1999. All cross-references have been updated in accordance with the structure of the Bill.*

*Subhead (3) is new. It applies the provisions of S.I. No.333 of 2002, EC (Corporate Insolvency) Regulations 2002 to reconstructions. This is also the current position as "insolvency proceedings" are interpreted as including reconstructions for the purpose of the Regulations.*

### Head 3 Petition for court

- (1) Subject to Subhead (2), a petition under Part A10, Head 2 [equivalent of Section 2 of the Companies (Amendment) Act, 1990] may be presented by—
- (a) the company; or
  - (b) the directors of the company; or
  - (c) a creditor, or contingent or prospective creditor (including an employee), of the company; or
  - (d) members of the company holding at the date of the presentation of a petition under that section not less than one tenth of such of the paid-up capital of the company as carries at that date the right of voting at general meetings of the company,
- or by all or any of those parties, together or separately.
- (2)
- (a) Where the company referred to in Part A10, Head 2 [equivalent of Section 2 of the Companies (Amendment) Act, 1990] is an insurer, a petition under that head may be presented only by the Minister, and Subhead (1) of this head shall not apply to the company.
  - (b) Where the company referred to in Part A10, Head 2 [equivalent of Section 2 of the Companies (Amendment) Act, 1990] is—
    - (i) the holder of a licence under Section 9 of the Central Bank Act, 1971,

- 
- (ii) a company which a building society has converted itself into under Part A10 of the Building Societies Act, 1989,
- (iii) a company which one or more trustee savings banks have been reorganised into pursuant to an order under Section 57 of the Trustee Savings Banks Act, 1989;
- (c) Where the company referred to in Part A10, Head 2 [equivalent of Section 2 of the Companies (Amendment) Act, 1990] is a company referred to in the Schedule [equivalent of Second Schedule of Companies (Amendment) (No. 2) Act, 1999], (not being a company referred to in paragraph 18, 19 or 20 of that Schedule or to which paragraph (b) applies) the following provisions shall apply—
- (i) a petition under Part A10, Head 2 [equivalent of Section 2 of the Companies (Amendment) Act, 1990] may be presented by—
- (I) any of the persons referred to in paragraph (a), (b), (c) or (d) of Subhead (1) of this head (including by one or more of such persons acting together),
- (II) the Central Bank, or
- (III) one or more of such persons and the Central Bank acting together,
- (ii) if the Central Bank does not present such a petition—
- (I) the petitioner shall, before he presents the petition at the office of the court, cause to be received by the Central Bank a notice in writing of his intention to present the petition, and shall serve a copy of the petition on the Central Bank as soon as may be after the presentation of it at the said office,
- (II) the Central Bank shall be entitled to appear and be heard at any hearing relating to the petition.
- (3) A petition presented under Part A10, Head 2 [equivalent of Section 2 of the Companies (Amendment) Act, 1990] shall nominate a person to be appointed as examiner.
- (4) In addition to the matters specified in Subhead (6), a petition presented under Part A10, Head 2 [equivalent of Section 2 of the Companies (Amendment) Act, 1990] shall be accompanied by a report in relation to the company prepared by a person (in this Bill referred to as 'the independent accountant') who is either the auditor of the company or a person who is qualified to be appointed as an examiner of the company.
- (5) The report of the independent accountant shall comprise the following—
- (a) the names and permanent addresses of the officers of the company and, in so far as the independent accountant can establish, any person in accordance with whose directions or instructions the directors of the company are accustomed to act;
- (b) the names of any other bodies corporate of which the directors of the company are also directors;
- (c) a statement as to the affairs of the company, showing in so far as it is reasonably possible to do so, particulars of the company's assets and liabilities (including contingent and prospective liabilities) as at the latest practicable date, the names and addresses of its creditors, the securities held by them respectively and the dates when the securities were respectively given;
- (d) whether in the opinion of the independent accountant any deficiency between the assets and liabilities of the company has been satisfactorily accounted for or, if not, whether there is evidence of a substantial disappearance of property that is not adequately accounted for;
- (e) his opinion as to whether the company, and the whole or any part of its undertaking, would have a reasonable prospect of survival as a going concern and a statement of the conditions which he considers are essential to ensure such survival, whether as regards the internal management and controls of the company or otherwise;
-

## Part A10 - Examinerships

---

- (f) his opinion as to whether the formulation, acceptance and confirmation of proposals for a compromise or scheme of arrangement would offer a reasonable prospect of the survival of the company, and the whole or any part of its undertaking, as a going concern;
  - (g) his opinion as to whether an attempt to continue the whole or any part of the undertaking would be likely to be more advantageous to the members as a whole and the creditors as a whole than a winding-up of the company;
  - (h) recommendations as to the course he thinks should be taken in relation to the company including, if warranted, draft proposals for a compromise or scheme of arrangement;
  - (i) his opinion as to whether the facts disclosed would warrant further inquiries with a view to proceedings under Part A11, Head 152 [equivalent of Section 297 of the Companies Act, 1963] and Part A11, Head 152 [equivalent of Section 297 of the Companies Act, 1963],
  - (j) details of the extent of the funding required to enable the company to continue trading during the period of protection and the sources of that funding;
  - (k) his recommendations as to which liabilities incurred before the presentation of the petition should be paid;
  - (l) his opinion as to whether the work of the examiner would be assisted by a direction of the court in relation to the role or membership of any creditor's committee referred to in Part A10, Head 26 [equivalent of Section 21 of the Companies (Amendment) Act, 1990]; and
  - (m) such other matters as he thinks relevant.
- (6) A petition presented under Part A10, Head 2 [equivalent of Section 2 of the Companies (Amendment) Act, 1990] shall be accompanied—
- (a) by a consent signed by the person nominated to be examiner; and
  - (b) if proposals for a compromise or scheme of arrangement in relation to the company's affairs have been prepared for submission to interested parties for their approval, by a copy of the proposals.
- (7) The court shall not give a hearing to a petition under Part A10, Head 2 [equivalent of Section 2 of the Companies (Amendment) Act, 1990] presented by a contingent or prospective creditor until such security for costs has been given as the court thinks reasonable.
- (8) The court shall not give a hearing to a petition under Part A10, Head 2 [equivalent of Section 2 of the Companies (Amendment) Act, 1990] if a receiver stands appointed to the company the subject of the petition and such receiver has stood so appointed for a continuous period of at least 3 days prior to the presentation of the petition.
- (9) On hearing a petition under this head, the court may dismiss it, or adjourn the hearing conditionally or unconditionally, or make any interim order, or any other order it thinks fit.
- (10) Without prejudice to the generality of Subhead (9), an interim order under that Subhead may restrict the exercise of any powers of the directors or of the company (whether by reference to the consent of the court or otherwise).
- (11)
- (a) Where it appears to the court that the total liabilities of the company (taking into account its contingent and prospective liabilities) do not exceed €500,000, the court may, after making such interim or other orders as it thinks fit, order that the matter be remitted to the judge of the Circuit Court in whose circuit the company has its registered office or principal place of business;
  - (b) Where an order is made by the court under this Subhead the Circuit Court shall have full jurisdiction to exercise all the powers of the court conferred by this Bill in relation to the company and every reference to the court in this Bill shall be construed accordingly;
  - (c) Where, in any proceedings under this Bill which have been remitted to the Circuit Court by virtue of this Subhead, it appears to the Circuit Court that the total liabilities of the company exceed €500,000, it shall make, after making such interim orders as it thinks fit, an order transferring the matter to the court.

**Explanatory note**

*This head is an amended re-enactment of Section 3 of the Companies (Amendment) Act, 1990, as amended by Section 180(1)(a) of the Companies Act, 1990 and Section 6, Section 7, Section 8 and Section 30 of the Companies (Amendment)(No.2) Act, 1999. The Subheads have been renumbered and all cross-references have been updated in accordance with the structure of the Bill.*

*Sections 3(2)(b)(iv), (v) and (vi) of the Companies Act, 1963 have not been included. These provisions related to applications to the court to appoint an examiner of ACC Bank PLC, ICC Bank PLC and ICC Investment Bank Ltd. As these are all Pillar B companies, they will all be dealt with in that Pillar of Parts.*

*The Review Group noted the High Court decision Re Tuskar Resources (2001) 1 IR 668 where, in his judgment, McCracken J expressed reservations about the independence of the person nominated to become the examiner in drawing up the independent accountant's report. It considered whether the proposed examiner should be explicitly allowed to prepare the independent accountant's report and following discussion, it was deemed unnecessary.*

*Subhead (11) is an amended re-enactment of Section 3(9) of the Companies (Amendment) Act, 1990. The Company Law Review Group decided to retain the Circuit Court jurisdiction under Section 3 (9) of the Companies (Amendment) Act, 1990. Although it is rarely, if ever, used, it is seen as a facilitatory jurisdiction and in the view of the Review Group should be retained for that reason.*

*The maximum figure for total liabilities of the company (taking into account its contingent and prospective liabilities) where an application to the Circuit Court is involved has been converted into euro and raised to €500,000.*

**Head 4 Pre-petition report in relation to company**

(1) If a petition is presented under Part A10, Head 2 and the court is satisfied—

- (a) that, by reason of exceptional circumstances outside the control of the petitioner, the report of the independent accountant is not available in time to accompany the petition; and

(b) that the petitioner could not reasonably have anticipated the circumstances referred to in paragraph (a), and, accordingly, the court is unable to consider the making of an order under that head, the court may make an order under this head placing the company concerned under the protection of the court for such period as the court thinks appropriate in order to allow for the submission of the independent accountant's report.

(2) That period shall be a period that expires not later than the 10th day after the date of making of the order concerned or, if the 10th day after that date would fall on a Saturday, Sunday or public holiday, the first following day that is not a Saturday, Sunday or public holiday.

(3) For the avoidance of doubt, the fact that a receiver stands appointed to the whole or any part of the property or undertaking of the company at the time of the presentation of a petition under Part A10, Head 2 [equivalent of Section 2 of the Companies (Amendment) Act, 1990] in relation to the company shall not, in itself, constitute, for the purposes of Subhead (1), exceptional circumstances outside the control of the petitioner.

(4) If the petition concerned has been presented by any of the persons referred to in paragraph (c) or (d) of Part A10, Head 3(1) [equivalent of Section 3(1) of the Companies (Amendment) Act, 1990] and an order under Subhead (1) is made in relation to the company concerned, the directors of the company shall co-operate in the preparation of the report of the independent accountant, particularly in relation to the matters specified in paragraphs (a), (b) and (c) of Part A10, Head 3(5) [equivalent of Section 3(3B) of the Companies (Amendment) Act, 1990].

(5) If the directors of the company concerned fail to comply with Subhead (4), the person who has presented the petition concerned or the independent accountant may apply to the court for an order requiring the directors to do specified things by way of compliance with Subhead (4) and the court may, as it thinks fit, grant such an order accordingly.

(6) If the report of the independent accountant is submitted to the court before the expiry of the period of protection specified in an order under Subhead (1), the court shall proceed to consider the petition together with the report as if they were presented in accordance with Part A10, Head 2 [equivalent of Section 2 of the Companies (Amendment) Act, 1990].

- (7) If the report of the independent accountant is not submitted to the court before the expiry of the period of protection specified in an order under Subhead (1), then, at the expiry of that period, the company concerned shall cease to be under the protection of the court, but without prejudice to the presentation of a further petition under Part A10, Head 2 [equivalent of Section 2 of the Companies (Amendment) Act, 1990].
- (8) Any liabilities incurred by the company concerned during the period of protection specified in an order under Subhead (1) may not be the subject of a certificate under Part A10, Head 18(2) [equivalent of Section 10(2) of the Companies (Amendment) Act, 1990].

### **Explanatory note**

*This Subhead is a slightly amended re-enactment of Section 3A of the Companies (Amendment) Act, 1990, as inserted by Section 9 of the Companies (Amendment) (No.2) Act, 1999. All cross-references have been updated in accordance with the structure of the Bill.*

---

## **Head 5 Creditors to be heard**

---

- (1) The court shall not make an order dismissing a petition presented under Part A10, Head 2 [equivalent of Section 2 of the Companies (Amendment) Act, 1990] or an order appointing an examiner to a company without having afforded each creditor of the company who has indicated to the court his desire to be heard in the matter an opportunity to be so heard.
- (2) Nothing in this head shall affect the power of the court under Part A10, Head 3(9) [equivalent of Section 3(7) of the Companies (Amendment) Act, 1990] to make an interim order, including the appointment of an examiner on an interim, in the matter.

### **Explanatory note**

*This Subhead is an amended re-enactment of Section 3B of the Companies (Amendment) Act, 1990, as inserted by Section 10 of the Companies (Amendment) (No.2) Act, 1999. All cross-references have been updated in accordance with the structure of the Bill.*

*Section 3B(2) of the Companies (Amendment) Act, 1990 has been amended insofar as the appointment of an interim examiner is now expressly provided for.*

---

## **Head 6 Availability of independent accountant's report**

---

- (1) The independent accountant shall supply a copy of the report prepared by him under Part A10, Head 3(4) [equivalent of Section 3(3A) of the Companies (Amendment) Act, 1990] to the company concerned or any interested party on written application being made to him in that behalf.
- (2) If the court, on application to it in that behalf, directs that that supply may be the subject of such omission, there may be omitted from any copy of the report supplied to the company or an interested party such parts of it as are specified in the direction of the court.
- (3) The court may, in particular, on such an application, direct that there may be omitted from such a supply of a copy of the report any information the inclusion of which in such a copy would be likely to prejudice the survival of the company or the whole or any part of its undertaking as a going concern.
- (4) If the company concerned is a company referred to in Part A10, Head 3(2)(c) [equivalent of Section 3(2)(c) of the Companies (Amendment) Act, 1990] and the Central Bank does not propose to present, or has not presented, (whether alone or acting together with other persons) a petition under Part A10, Head 2 [equivalent of Section 2 of the Companies (Amendment) Act, 1990] in relation to the company, the independent accountant shall, as soon as may be after it is prepared, supply a copy of the report prepared by him under Part A10, Head 3(4) [equivalent of Section 3(3A) of the Companies (Amendment) Act, 1990] to the Central Bank and Subheads (2) and (3) shall not apply to such a copy.

### **Explanatory note**

*This Subhead is a slightly amended re-enactment of Section 3C of the Companies (Amendment) Act, 1990, as inserted by Section 11 of the Companies (Amendment) (No.2) Act, 1999. All cross-references have been updated in accordance with the structure of the Bill.*



---

## Head 7 Related companies

---

- (1) Subject to Subhead (2), where the court appoints an examiner to a company, it may, at the same or any time thereafter, make an order—
- (a) appointing the examiner to be examiner for the purposes of this Bill to a related company; or
  - (b) conferring on the examiner, in relation to such company, all or any of the powers or duties conferred on him in relation to the first-mentioned company.
- (2) In deciding whether to make an order under Subhead (1), the court shall have regard to whether the making of the order would be likely to facilitate the survival of the company, or of the related company, or both, and the whole or any part of its or their undertaking, as a going concern and shall not, in any case, make such an order unless it is satisfied that there is a reasonable prospect of the survival of the related company, and the whole or any part of its undertaking, as a going concern.
- (3) A related company to which an examiner is appointed shall be deemed to be under the protection of the court for the period beginning on the date of the making of an order under this head and continuing for the period during which the company to which it is related is under such protection.
- (4) Where an examiner stands appointed to two or more related companies, he shall have the same powers and duties in relation to each company, taken separately, unless the court otherwise directs.

### **Explanatory note**

*This head is an amended re-enactment of Section 4 of the Companies (Amendment) Act, 1990, as amended by Section 180(1)(b) of the Companies Act, 1990 and Section 12 of the Companies (Amendment) (No.2) Act, 1999. All cross-references have been updated in accordance with the structure of the Bill.*

*Section 4(5) of the Companies (Amendment) Act, 1990 has been included in Head 1 of this Part. That subsection defines a related company for the purpose of this Part.*

---

## Head 8 Duty to act in good faith

---

The court may decline to hear a petition presented under Part A10, Head 2 [equivalent of Section 2 of the Companies (Amendment) Act, 1990] or, as the case may be, may decline to continue hearing such a petition if it appears to the court that, in the preparation or presentation of the petition or in the preparation of the report of the independent accountant, the petitioner or independent accountant—

- (a) has failed to disclose any information available to him which is material to the exercise by the court of its powers under this Bill; or
- (b) has in any other way failed to exercise utmost good faith.

### **Explanatory note**

*This Subhead is a slightly amended re-enactment of Section 4A of the Companies (Amendment) Act, 1990, as inserted by Section 13 of the Companies (Amendment) (No.2) Act, 1999. All cross-references have been updated in accordance with the structure of the Bill.*

---

## Head 9 Disqualification of examiners

---

- (1) A person shall not be qualified to be appointed or act as an examiner of a company if he would not be qualified to act as its liquidator.
- (2) A person who acts as examiner of a company while disqualified under this head shall be guilty of a category two offence.

### **Explanatory note**

*This head is a slightly amended re-enactment of Section 28 of the Companies (Amendment) Act, 1990.*

*Subhead (2) now provides for a categorised offence, as opposed to merely resulting in a fine.*

### Head 10 Effect of petition to appoint examiner on creditors and others

- (1) Subject to Part A10, Head 4 [equivalent of Section 3A of the Companies (Amendment) Act, 1990], during the period beginning with the date of the presentation of a petition under Part A10, Head 2, and (subject to Part A10, Head 23(3) & (4) [equivalent of Section 18 of the Companies (Amendment) Act, 1990] ending on the expiry of 70 days from that date or on the withdrawal or refusal of the petition, whichever first happens, the company shall be deemed to be under the protection of the court.
- (2) For so long as a company is under the protection of the court in a case under this Bill, the following provisions shall have effect—
  - (a) no proceedings for the winding-up of the company may be commenced or resolution for winding-up passed in relation to that company and any resolution so passed shall be of no effect;
  - (b) no receiver over any part of the property or undertaking of the company shall be appointed, or, if so appointed before the presentation of a petition under Part A10, Head 2 [equivalent of Section 2 of the Companies (Amendment) Act, 1990], shall, subject to Part A10, Head 18 [equivalent of Section 10 of the Companies (Amendment) Act, 1990], be able to act;
  - (c) no attachment, sequestration, distress or execution shall be put into force against the property or effects of the company, except with the consent of the examiner;
  - (d) where any claim against the company is secured by a mortgage, charge, lien or other encumbrance or a pledge of, on or affecting the whole or any part of the property, effects or income of the company, no action may be taken to realise the whole or any part of that security, except with the consent of the examiner;
  - (e) no steps may be taken to repossess goods in the company's possession under any hire-purchase agreement, except with the consent of the examiner;
- (f) where, under any enactment, rule of law or otherwise, any person other than the company is liable to pay all or any part of the debts of the company—
  - (i) no attachment, sequestration, distress or execution shall be put into force against the property or effects of such person in respect of the debts of the company, and
  - (ii) no proceedings of any sort may be commenced against such person in respect of the debts of the company;
- (g) no order for relief shall be made under Part A4, Head 72 [equivalent of Section 205 of the Companies Act, 1963] against the company in respect of complaints as to the conduct of the affairs of the company or the exercise of the powers of the directors prior to the presentation of the petition.
- (3) Subject to Subhead (2), no other proceedings in relation to the company may be commenced except by leave of the court and subject to such terms as the court may impose and the court may on the application of the examiner make such order as it thinks proper in relation to any existing proceedings including an order to stay such proceedings.
- (4) Complaints concerning the conduct of the affairs of the company while it is under the protection of the court shall not constitute a basis for the making of an order for relief under Part A4, Head 72 [equivalent of Section 205 of the Companies Act, 1990].

#### **Explanatory note**

*This head is a slightly amended re-enactment of Section 5 of the Companies (Amendment) Act, 1990, as amended by Section 180(1)(b) of the Companies Act, 1990 and Section 5 of the Companies (Amendment) (No.2) Act, 1999. All cross-references have been updated in accordance with the structure of the Bill.*

---

## Head 11 Restriction on payment of pre-petition debts

---

- (1) Subject to Subhead (2), no payment may be made by a company, during the period it is under the protection of the court, by way of satisfaction or discharge of the whole or a part of a liability incurred by the company before the date of the presentation under Part A10, Head 2 [equivalent of Section 2 of the Companies (Amendment) Act, 1990] of the petition in relation to it unless the report of the independent accountant contains a recommendation that the whole or, as the case may be, the part of that liability should be discharged or satisfied.
- (2) Notwithstanding Subhead (1), the court may, on application being made to it in that behalf by the examiner or any interested party, authorise the discharge or satisfaction, in whole or in part, by the company concerned of a liability referred to in Subhead (1) if it is satisfied that a failure to discharge or satisfy, in whole or in part, that liability would considerably reduce the prospects of the company or the whole or any part of its undertaking surviving as a going concern.

### **Explanatory note**

*This head is a slightly amended re-enactment of section 5A of the Companies (Amendment) Act, 1990, as inserted by Section 15 of the Companies (Amendment) (No.2) Act, 1999. All cross-references have been updated in accordance with the structure of the Bill.*

---

## Head 12 Effect on receiver or provisional liquidator of order appointing examiner

---

- (1) Where, at the date of the presentation of a petition under Part A10, Head 2 [equivalent of Section 2 of the Companies (Amendment) Act, 1990], in relation to a company, a receiver stands appointed to the whole or any part of the property or undertaking of that company the court may make such order as it thinks fit including an order as to any or all of the following matters—

- (a) that the receiver shall cease to act as such from a date specified by the court;

- (b) that the receiver shall, from a date specified by the court, act as such only in respect of certain assets specified by the court;
- (c) directing the receiver to deliver all books, papers and other records, which relate to the property or undertaking of the company (or any part thereof) and are in his possession or control, to the examiner within a period to be specified by the court;
- (d) directing the receiver to give the examiner full particulars of all his dealings with the property or undertaking of the company.
- (2) Where, at the date of the presentation of a petition under Part A10, Head 2 [equivalent of Section 2 of the Companies (Amendment) Act, 1990] in relation to a company, a provisional liquidator stands appointed to that company, the court may make such order as it thinks fit including an order as to any or all of the following matters—
- (a) that the provisional liquidator be appointed as examiner of the company;
- (b) appointing some other person as examiner of the company;
- (c) that the provisional liquidator shall cease to act as such from the date specified by the court;
- (d) directing the provisional liquidator to deliver all books, papers and other records, which relate to the property or undertaking of the company or any part thereof and are in his possession or control, to the examiner within a period to be specified by the court;
- (e) directing the provisional liquidator to give the examiner full particulars of all his dealings with the property or undertaking of the company.
- (3) The court shall not make an order under paragraph (a) or (b) of Subhead (1) or paragraph (c) of Subhead (2) unless the court is satisfied that there is a reasonable prospect of the survival of the company, and the whole or any part of its undertaking, as a going concern.
- (4) Where the court makes an order under Subhead (1) or (2), it may, for the purpose of giving full effect to the order, include such conditions in the order and make such ancillary or other orders as it deems fit.

## Part A10 - Examinerships

---

- (5) Where a petition is presented under Part A10, Head 2 [equivalent of Section 2 of the Companies (Amendment) Act, 1990] in respect of a company at a date subsequent to the presentation of a petition for the winding-up of that company, but before a provisional liquidator has been appointed or an order made for its winding-up, both petitions shall be heard together.

### **Explanatory note**

*This head is a slightly amended re-enactment of Section 6 of the Companies (Amendment) Act, 1990, as amended by Section 16 of the Companies (Amendment) (No.2) Act, 1999. All cross-references have been updated in accordance with the structure of the Bill.*

- (2) An order under Subhead (1) shall not be made without each creditor of the company of the following class being afforded an opportunity to be heard, namely a creditor any of the debts owed to whom by the company are debts which in a winding-up are, by virtue of the provisions of Part A11 [equivalent of Part VI of the Companies Act, 1963] relating to preferential payments, required to be paid in priority to all other debts.

### **Explanatory note**

*This head is a slightly amended re-enactment of Section 6A of the Companies (Amendment) Act, 1990, as inserted by Section 17 of the Companies (Amendment) (No.2) Act, 1999. All cross-references have been updated in accordance with the structure of the Bill.*

---

## **Head 13 [Part A8, Head 13] equivalent of Section 98 of the Companies Act, 1963] does apply to receivers in certain circumstances**

---

- (1) Without prejudice to the generality of Part A10, Head 12(1) [equivalent of Section 6(1) of the Companies (Amendment) Act, 1990], the court, on application being made in that behalf, may, in relation to a receiver who stands appointed to the whole or any part of the property or undertaking of a company, make an order providing that Part A8, Head 13 [equivalent of Section 98 of the Companies Act, 1963] shall not apply as respects payments made by the receiver out of assets coming into his hands as such receiver if—
- (a)
- (i) an examiner has been appointed to the company, or
  - (ii) an examiner has not been appointed to the company but, in the opinion of the court, such an appointment may yet be made;
- and
- (b) the making of the order would, in the opinion of the court, be likely to facilitate the survival of the company, and the whole or any part of its undertaking, as a going concern.

## Chapter 3

### Powers of Examiner

#### Head 14 Powers of an examiner

- (1) Any provision of this Bill relating to the rights and powers of an auditor of a company and the supplying of information to and co-operation with such auditor shall, with the necessary modifications, apply to an examiner.
- (2) Notwithstanding any provision of this Bill relating to notice of general meetings, an examiner shall have power to convene, set the agenda for, and preside at meetings of the board of directors and general meetings of the company to which he is appointed and to propose motions or resolutions and to give reports to such meetings.
- (3) An examiner shall be entitled to reasonable notice of, to attend and be heard at, all meetings of the board of directors of a company and all general meetings of the company to which he is appointed.
- (4) For the purpose of Subhead (3) "reasonable notice" shall be deemed to include a description of the business to be transacted at any such meeting.
- (5) Where an examiner becomes aware of any actual or proposed act, omission, course of conduct, decision or contract, by or on behalf of the company to which he has been appointed, its officers, employees, members or creditors or by any other person in relation to the income, assets or liabilities of that company which, in his opinion, is or is likely to be to the detriment of that company, or any interested party, he shall, subject to the rights of parties acquiring an interest in good faith and for value in such income, assets or liabilities, have full power to take whatever steps are necessary to halt, prevent or rectify the effects of such act, omission, course of conduct, decision or contract.
- (6) Without prejudice to Subhead (7), nothing in this head shall enable an examiner to repudiate a contract that has been entered into by the company prior to the period during which the company is under the protection of the court.
- (7) A provision referred to in Subhead (8) shall not be binding on the company at any time after the service of the notice under this Subhead and before the expiration of the period during which the company concerned is under the protection of the court if the examiner is of the opinion that the provision, were it to be enforced, would be likely to prejudice the survival of the company or the whole or any part of its undertaking as a going concern and he serves a notice on the other party or parties to the agreement in which the provision is contained informing him or them of that opinion.
- (8) The provision referred to in Subhead (7) is a provision of an agreement entered into by the company concerned and any other person or persons at any time (including a time that is prior to the period during which the company is under the protection of the court) that provides that the company shall not, or shall not otherwise than in specified circumstances—
  - (a) borrow moneys or otherwise obtain credit from any person other than the said person or persons; or
  - (b) create or permit to subsist any mortgage, charge, lien or other encumbrance or any pledge over the whole or any part of the property or undertaking of the company.
- (9) The examiner may apply to the court to determine any question arising in the course of his office, or for the exercise in relation to the company of all or any of the powers which the court may exercise under this Bill, upon the application to it of any member, contributory, creditor or director of a company.
- (10) The examiner shall, if so directed by the court, have power to ascertain and agree claims against the company to which he has been appointed.
- (11) No professional or legal duty to which an examiner is subject by virtue of his appointment shall be regarded as contravened by, and no liability to the company, its shareholders, creditors or other interested parties shall attach to an examiner by reason of his compliance with an obligation imposed on him by or under this head.

#### **Explanatory note**

*This head is an amended re-enactment of Section 7 of the Companies (Amendment) Act, 1990, as amended by Section 18 of the Companies (Amendment) (No.2) Act, 1999. The subsections have been re-numbered and all cross-references have been updated in accordance with the structure of the Bill.*



*Subhead (11) has been newly inserted. This provides that no liability will result from compliance with this head where the examiners are subject to a professional or legal duty.*

---

### Head 15 Production of documents and evidence

---

- (1) It shall be the duty of all officers and agents of the company or a related company to produce to the examiner all books and documents of or relating to any such company which are in their custody or power, to attend before him when required so to do and otherwise to give to him all assistance in connection with his functions which they are reasonably able to give.
  - (2) If the examiner considers that a person other than an officer or agent of any such company is or may be in possession of any information concerning its affairs, he may require that person to produce to him any books or documents in his custody or power relating to the company, to attend before him and otherwise to give him all assistance in connection with his functions which he is reasonably able to give; and it shall be the duty of that person to comply with the requirement.
  - (3) If the examiner has reasonable grounds for believing that a director, of any such company maintains or has maintained a bank account of any description, whether alone or jointly with another person and whether in the State or elsewhere, into or out of which there has been paid—
    - (a) any money which has resulted from or been used in the financing of any transaction, arrangement or agreement particulars of which have not been disclosed in the accounts of any company for any financial year as required by law; or
    - (b) any money which has been in any way connected with any act or omission, or series of acts or omissions, which on the part of that director constituted misconduct (whether fraudulent or not) towards that company or its members,
- the examiner may require the director to produce to him all documents in the director's possession, or under his control, relating to that bank account; and in this subsection "bank account" includes an account with any person exempt by virtue of Section 7 (4) of the Central Bank Act, 1971, from the requirement of holding a licence under Section 9 of that Act and 'director' includes any present or past director or any person connected, within the meaning of Part A5, Head 2 [equivalent of Section 26 of the Companies Act, 1990], with such director, and any present or past shadow director.
- (4) An examiner may examine on oath, either by word of mouth or on written interrogatories, the officers and agents of such company or other person as is mentioned in Subhead (1) or (2) in relation to its affairs and may—
    - (a) administer an oath accordingly; or
    - (b) reduce the answers of such person to writing and require him to sign them.
  - (5) If any officer or agent of such company or other person—
    - (a) refuses to produce to the examiner any book or document which it is his duty under this section to produce; or
    - (b) refuses to attend before the examiner when requested to do so; or
    - (c) refuses to answer any question which is put to him by the examiner with respect to the affairs of the company,
- the examiner may certify the refusal under his hand to the court, and the court may thereupon enquire into the case and, after hearing any witnesses who may be produced against or on behalf of the said officer, agent or other person or any statement which may be offered in defence, make any order or direction it thinks fit.
- (6) Without prejudice to the generality of Subhead (5), the court may, after a hearing under that subsection, make a direction—
    - (a) to the person concerned to attend or re-attend before the examiner or produce particular books or documents or answer particular questions put to him by the examiner; or
    - (b) that the person concerned need not produce a particular book or document or answer a particular question put to him by the examiner.

- (7) Part A13, Head 19 (1) [equivalent of Section 23(1) of the Companies Act, 1990] shall apply for the purposes of this head.
- (8) In this head, any reference to officers or to agents shall include past, as well as present, officers or to agents shall include past, as well as present, officers or agents, as the case may be, and “agents”, in relation to a company, shall include the bankers and solicitors of the company and any persons employed by the company as auditors, whether those persons are or are not officers of the company.

**Explanatory note**

*This head is an amended re-enactment of Section 8 of the Companies (Amendment) Act, 1990, as amended by Sections 180(1)(c), (1)(d) and (1)(e) and Section 19 of the Companies (Amendment) (No.2) Act, 1999. The Subheads have been re-numbered and all cross-references have been updated in accordance with the structure of the Bill.*

---

## Head 16 No lien over company's books, records, etc.

---

Where the court has appointed an examiner or a company under the protection of the court, no person shall be entitled as against the examiner to withhold possession of any deed, instrument, or other document belonging to the company, or the books of account, receipts, bills, invoices, or other papers of a like nature relating to the accounts or trade, dealings or business of the company, or to claim any lien thereon provided that—

- (a) where a mortgage, charge or pledge has been created by the deposit of any such document or paper with a person, the production of the document or paper to the liquidator or provisional liquidator by the person shall be without prejudice to the person's rights under the mortgage, charge or pledge (other than any right to possession of the document or paper);
- (b) where by virtue of this head an examiner has possession of any document or papers of a receiver or that a receiver is entitled to examine, the liquidator or provisional liquidator shall, unless the court otherwise orders, make the document or papers available for inspection by the receiver at all reasonable times.

**Explanatory note**

*This head is re-enacts Section 244A of the Companies Act, 1963, as applied to examinership by Section 180(2) of the Companies Act, 1990.*

---

## Head 17 Further powers of court

---

- (1) Where it appears to the court, on the application of the examiner, that, having regard to the matters referred to in Subhead (2), it is just and equitable to do so, it may make an order that all or any of the functions or powers which are vested in or exercisable by the directors (whether by virtue of the memorandum or articles of association of the company or by law or otherwise) shall be performable or exercisable only by the examiner.
- (2) The matters to which the court is to have regard for the purpose of Subhead (1) are—
- (a) that the affairs of the company are being conducted, or are likely to be conducted, in a manner which is calculated or likely to prejudice the interests of the company or of its employees or of its creditors as a whole; or
- (b) that it is expedient, for the purpose of preserving the assets of the company or of safeguarding the interests of the company or of its employees or of its creditors as a whole, that the carrying on of the business of the company by, or the exercise of the powers of, its directors or management should be curtailed or regulated in any particular respect; or
- (c) that the company, or its directors, have resolved that such an order should be sought; or
- (d) any other matter in relation to the company the court thinks relevant.
- (3) Where the court makes an order under Subhead (1), it may, for the purpose of giving full effect to the order, include such conditions in the order and make such ancillary or other orders as it sees fit.

## Part A10 - Examinerships

- (4) Without prejudice to the generality of Subheads (1) and (3), an order under this head may provide that the examiner shall have all or any of the powers that he would have if he were a liquidator appointed by the court in respect of the company and, where such order so provides, the court shall have all the powers that it would have if it had made a winding-up order and appointed a liquidator in respect of the company concerned.

### **Explanatory note**

*This head is a re-enactment of Section 9 of the Companies (Amendment) Act, 1990.*

---

### **Head 18 Incurring of certain liabilities incurred by examiner**

---

- (1) Any liabilities incurred by the company during the protection period which are referred to in Subhead (2) shall be treated as expenses properly incurred, for the purpose of Part A10, Head 35 [equivalent of Section 29 of the Companies (Amendment) Act, 1990], by the examiner.
- (2) The liabilities referred to in Subhead (1) are those certified in writing by the examiner at the time they are incurred, to have been incurred in circumstances where, in the opinion of the examiner, the survival of the company as a going concern during the protection period would otherwise be seriously prejudiced.
- (3) In this head, "protection period" means the period, beginning with the appointment of an examiner, during which the company is under the protection of the court.

### **Explanatory note**

*This head is a slightly amended re-enactment of Section 10 of the Companies (Amendment) Act, 1990, as amended by Section 180(1)(f) of the Companies Act, 1990. All cross-references have been updated in accordance with the structure of the Bill.*

*Furthermore Subhead (2) has been amended insofar the examiner is now required to certify his expenses "in writing".*

---

### **Head 19 Power to deal with charged property, etc**

---

- (1) Where, on an application by the examiner, the court is satisfied that the disposal (with or without other assets) of any property of the company which is subject to a security which, as created, was a floating charge or the exercise by the examiner of his powers in relation to such property would be likely to facilitate the survival of the whole or any part of the company as a going concern, the court may by order authorise the examiner to dispose of the property, or exercise his powers in relation to it, as the case may be, as if it were not subject to the security.
- (2) Where, on an application by the examiner, the court is satisfied that the disposal (with or without other assets) of—
- (a) any property of the company subject to a security other than a security to which Subhead (1) applies; or
  - (b) any goods in the possession of the company under a hire-purchase agreement, would be likely to facilitate the survival of the whole or any part of the company as a going concern, the court may, by order, authorise the examiner to dispose of the property as if it were not subject to the security or to dispose of the goods as if all rights of the owner under the hire-purchase agreement were vested in the company.
- (3) Where property is disposed of under Subhead (1), the holder of the security shall have the same priority in respect of any property of the company directly or indirectly representing the property disposed of as he would have had in respect of the property subject to the security.
- (4) It shall be a condition of an order under Subhead (2) that—
- (a) the net proceeds of the disposal; and
  - (b) where those proceeds are less than such amount as may be determined by the court to be the net amount which would be realised on a sale of the property or goods in the open market by a willing vendor, such sums as may be required to make good the deficiency, shall be applied towards discharging the sums secured by the security or payable under the hire-purchase agreement.

- (5) Where a condition imposed in pursuance of Subhead (4) relates to two or more securities, that condition requires the net proceeds of the disposal and, where paragraph (b) of that Subhead applies, the sums mentioned in that paragraph to be applied towards discharging the sums secured by those securities in the order of their priorities.
    - (i) 21 days after his appointment in the case of CRO Gazette, and
    - (ii) 7 days after his appointment in the other case referred to in that paragraph.
  - (6) An office copy of an order under Subhead (1) or (2) in relation to a security shall, within 7 days after the making of the order, be delivered by the examiner to the Registrar.
  - (7) If the examiner without reasonable excuse fails to comply with Subhead (6), he shall be guilty of a category four offence.
  - (8) References in this head to a hire-purchase agreement include a conditional sale agreement, a retention of title agreement and an agreement for the bailment of goods which is capable of subsisting for more than 3 months.
- (3) An examiner shall, within three days after his appointment, deliver to the Registrar a copy of the order appointing him.
  - (4) Where a company is, by virtue of Part A10, Head 10 [equivalent of Section 5 of the Companies (Amendment) Act, 1990], deemed to be under the protection of the court, every invoice, order for goods or business letter issued by or on behalf of the company, being a document on or in which the name of the company appears, shall, immediately after the mention of that name, include the words 'in examination under Part A10 of the Companies Act 0000.'
  - (5) A person who fails to comply with the provisions of this head shall be guilty of a category four offence.

### **Explanatory note**

*This head is a slightly amended re-enactment of Section 11 of the Companies (Amendment) Act, 1990, as amended by Section 181(1)(d) of the Companies Act, 1990.*

*Subhead (7) now provides for a categorised offence, as opposed to merely resulting in a fine.*

---

## **Head 20 Notification of appointment of examiner**

---

- (1) Where a petition is presented under Part A10, Head 2 [equivalent of Section 2 of the Companies (Amendment) Act, 1990], notice of the petition in the prescribed form shall, within 7 days after its presentation, be delivered by the petitioner to the Registrar.
- (2)
  - (a) An examiner shall, within the time limits specified in paragraph (b), cause to be published in the CRO Gazette and in at least two daily newspapers circulating in the district in which the registered office or principal place of business of the company is situated a notice of his appointment and the date thereof;
  - (b) The time limits referred to in paragraph (a) are—

### **Explanatory note**

*This head is an amended re-enactment of Section 12 of the Companies (Amendment) Act, 1990, as amended by Section 20 of the Companies (Amendment) (No.2) Act. All cross-references have been updated in accordance with the structure of the Bill. Furthermore, all references to the Registrar of Companies have been replaced by "Registrar" and references to Iris Oifigiúil have been replaced with references to the "CRO Gazette".*

*Subhead (5) now provides for a categorised offence as opposed to merely resulting in a fine.*

---

## **Head 21 General Provisions as to examiners**

---

- (1) An examiner may resign or, on cause shown, be removed by the court.
- (2) If for any reason a vacancy occurs in the office of examiner, the court may by order fill the vacancy.
- (3) An application for an order under Subhead (2) may be made by—
  - (a) any committee of creditors established under Part A10, Head 26 [equivalent of Section 21 of the Companies (Amendment) Act, 1990]; or

## Part A10 - Examinerships

---

- (b) the company or any interested party.
- (4) An examiner shall be described by the style of “the examiner” of the particular company in respect of which he is appointed and not by his individual name.
- (5) The acts of an examiner shall be valid notwithstanding any defects that may afterwards be discovered in his appointment or qualification.
- (6) An examiner shall be personally liable on any contract entered into by him in the performance of his functions (whether such contract is entered into by him in the name of the company or in his own name as examiner or otherwise) unless the contract provides that he is not to be personally liable on such contract, and he shall be entitled in respect of that liability to indemnity out of the assets; but nothing in this Subhead shall be taken as limiting any right to indemnity which he would have apart from this Subhead, or as limiting his liability on contracts entered into without authority or as conferring any right to indemnity in respect of that liability.
- (7) A company to which an examiner has been appointed or an interested party may apply to the court for the determination of any question arising out of the performance or otherwise by the examiner of his functions.
- (3) The examiner shall supply a copy of a report prepared by him under Subhead (2) to the company concerned on the same day as he causes the report to be delivered to the office of the court.
- (4) The examiner shall also supply a copy of a report prepared by him under Subhead (2) to each person who is mentioned in the report and any interested party on written application being made to him in that behalf.
- (5) If the court, on application to it in that behalf, directs that that supply may be the subject of such omission, there may be omitted from any copy of the report supplied to a person referred to in Subhead (4) or an interested party such parts of it as are specified in the direction of the court.
- (6) The court may, in particular, on such an application, direct that there may be omitted from such a supply of a copy of the report any information the inclusion of which in such a copy would be likely to prejudice the survival of the company or the whole or any part of its undertaking as a going concern.
- (7) The examiner shall, as soon as may be after it is prepared, supply a copy of the report prepared by him under Subhead (2) to—

### **Explanatory note**

*This head is an amended re-enactment of Section 13 of the Companies (Amendment) Act, 1990. All cross-references have been updated in accordance with the structure of the Bill.*

---

## **Head 22 Hearing regarding irregularities**

---

- (1) Where, arising out of the presentation to it of the report of the independent accountant or otherwise, it appears to the court that there is evidence of a substantial disappearance of property of the company concerned that is not adequately accounted for, or of other serious irregularities in relation to the company’s affairs having occurred, the court shall, as soon as it is practicable, hold a hearing to consider that evidence.
- (2) If, before the hearing referred to in Subhead (1) is held, the court directs the examiner to do so, the examiner shall prepare a report setting out any matters which he considers will assist the court in considering the evidence concerned on that hearing.
- (a) if the company concerned is a company referred to in paragraph (a) of Part A10, Head 3 (2) [equivalent of Section 3(2) of the Companies (Amendment) Act, 1990], the Minister; or
- (b) if the company concerned is a company referred to in paragraph (b) or (c) of Part A10, Head 3 (2) [equivalent of Section 3(2) of the Companies Act, 1990], the Central Bank, and Subheads (5) and (6) shall not apply to such a copy.
- (8) The following persons shall be entitled to appear and be heard at a hearing under this head—
- (a) the examiner;
- (b) if the court decided to hold a hearing under this head because of matters contained in the report of the independent accountant, the independent accountant;
- (c) the company concerned;
- (d) any interested party;



- (e) any person who is referred to in the report of the independent accountant or the report prepared under Subhead (2);
- (f) the company concerned is a company referred to in paragraph (a) of Part A10, Head 3 (2) [equivalent of Section 3(2) of the Companies Act, 1990], the Minister;
- (g) if the company concerned is a company referred to in paragraph (b) or (c) of Part A10, Head 3 (2) [equivalent of Section 3(2) of the Companies Act, 1990], the Central Bank;
- (h) the Director of Corporate Enforcement.
- (9) The court may, on a hearing under this head, make such order or orders as it deems fit (including, where appropriate, an order for the trial of any issue relating to the matter concerned).
- (10) The court may, if it considers it appropriate to do so, direct that an office copy of an order under Subhead (9) shall be delivered to the Registrar by the examiner or such other person as it may specify.
- (2) Notwithstanding any provision of the Companies Acts relating to notice of general meetings, (but subject to notice of not less than three days in any case) the examiner shall convene and preside at such meetings of members and creditors as he thinks proper for the purpose of Part A10, Head 30 [equivalent of Section 25 of the Companies (Amendment) Act, 1990 and shall report on those proposals to the court, within 35 days of his appointment or such longer period as the court may allow, in accordance with Part A10, Head 28 [equivalent of Section 23 of the Companies (Amendment) Act, 1990].
- (3) Where, on the application of the examiner, the court is satisfied that the examiner would be unable to report to the court within the period of 70 days referred to in Part A10, Head 10 (1) [equivalent of Section 5(1) of the Companies (Amendment) Act, 1990] but that he would be able to make a report if that period were extended, the court may by order extend that period by not more than 30 days to enable him to do so.
- (4) Where the examiner has submitted a report under this head to the court and, but for this Subhead, the period mentioned in Part A10, Head 10 (1) [equivalent of Section 5(1) of the Companies (Amendment) Act, 1990] (and any extended period allowed under Subhead (3) of this head) would expire, the court may, of its own motion or on the application of the examiner, extend the period concerned by such period as the court considers necessary to enable it to take a decision under Part A10, Head 27 [equivalent of Section 22 of the Companies (Amendment) Act, 1990].
- (5) The examiner shall supply a copy of his report under this head—

- (a) to the company concerned on the same day as he causes the report to be delivered to the office of the court; and
- (b) to any interested party on written application being made to him in that behalf.

- (6) The examiner shall, as soon as may be after it is prepared, supply a copy of his report under this head to—

- (a) if the company concerned is a company referred to in paragraph (a) of Part A10, Head 3 (2) [equivalent of Section 3(2) of the Companies Act, 1990], the Minister; or

### **Explanatory note**

*This head is an amended re-enactment of Section 13A of the Companies (Amendment) Act, 1990, as inserted by Section 21 of the Companies (Amendment) (No.2) Act, 1999. All cross-references have been updated in accordance with the structure of the Bill and all references to the Registrar of Companies have been replaced by "Registrar".*

*Subsection (8) has been amended insofar as the Director of Corporate Enforcement is now entitled to appear and be heard at a hearing under this head.*

## **Head 23 Report by examiner**

- (1) An examiner shall—

- (a) as soon as practicable after he is appointed, formulate proposals for a compromise or scheme of arrangement in relation to the company concerned;
- (b) without prejudice to any other provision of this Bill, carry out such other duties as the court may direct him to carry out.

## Part A10 - Examinerships

---

- (b) if the company concerned is a company referred to in paragraph (b) or (c) of Part A10, Head 3 (2) [equivalent of Section 3(2) of the Companies Act, 1990], the Central Bank; or
  - (c) the Director of Corporate Enforcement.
- (7) If the court, on application to it in that behalf, directs that that supply may be the subject of such omission, there may be omitted from any copy of the report supplied under Subhead (5)(b) to an interested party such parts of it as are specified in the direction of the court.
- (8) The court may, in particular, on such an application, direct that there may be omitted from such a supply of a copy of the report any information the inclusion of which in such a copy would be likely to prejudice the survival of the company or the whole or any part of its undertaking as a going concern.
- (9) If the examiner is not able to enter into an agreement with the interested parties and any other persons concerned in the matter or formulate proposals for a compromise or scheme of arrangement in relation to the company concerned, he may apply to the court for the grant of directions in the matter and the court may, on such application, give such directions or make such order as it deems fit, including, if it considers it just and equitable to do so, an order for the winding-up of the company.
- (b) any modification of those proposals adopted at any of those meetings;
  - (c) the outcome of each of the required meetings;
  - (d) the recommendation of the committee of creditors, if any;
  - (e) a statement of the assets and liabilities (including contingent and prospective liabilities) of the company as at the date of his report;
  - (f) a list of the creditors of the company, the amount owing to each such creditor, the nature and value of any security held by any such creditor, and the priority status of any such creditor under Part A11, Head 58 [equivalent of Section 285 of the Companies Act, 1963] or any other statutory provision or rule of law;
  - (g) a list of the officers of the company;
  - (h) his recommendations;
  - (i) such other matters as the examiner deems appropriate or the court directs.

### **Explanatory note**

*This head is an amended re-enactment of Section 18 of the Companies (Amendment) Act, 1990, as amended by Section 10 of the Companies (Amendment) (No.2) Act, 1999. All cross-references have been updated in accordance with the structure of the Bill.*

*Subhead 6(c) has been newly inserted. This requires the examiner to furnish the Director of Corporate Enforcement with a copy of his report prepared under this head.*

---

## **Head 24 Content of Examiner's report**

---

An examiner's report under Part A10, Head 23 [equivalent of Section 18 of the Companies (Amendment) Act, 1990] shall include—

- (a) the proposals placed before the required meetings;

### **Explanatory note**

*This head is a slightly amended re-enactment of Section 19 of the Companies (Amendment) Act, 1990. All cross-references have been updated in accordance with the structure of the Bill.*

---

## **Head 25 Repudiation of certain contracts**

---

- (1) Where proposals for a compromise or scheme of arrangement are to be formulated in relation to a company, the company may, subject to the approval of the court, affirm or repudiate any contract under which some element of performance other than payment remains to be rendered both by the company and the other contracting party or parties.
- (2) Any person who suffers loss or damage as a result of such repudiation shall stand as an unsecured creditor for the amount of such loss or damage.

- (3) In order to facilitate the formulation, consideration or confirmation of a compromise or scheme of arrangement, the court may have a hearing and make an order determining the amount of any such loss or damage and the amount so determined shall be due by the company to the creditor as a judgment debt.
- (4) Where the examiner is not a party to an application to the court for the purposes of Subhead (1), the company shall serve notice of such application on the examiner and the examiner may appear and be heard on the hearing of any such application.
- (5) Where the court approves the affirmation or repudiation of a contract under this head, it may in giving such approval make such orders as it thinks fit for the purposes of giving full effect to its approval including orders as to notice to, or declaring the rights of, any party affected by such affirmation or repudiation.

**Explanatory note**

*This head is a re-enactment of Section 20 of the Companies (Amendment) Act, 1990.*

---

**Head 26 Appointment of creditors' committee**

---

- (1) An examiner may, and if so directed by the court shall, appoint a committee of creditors to assist him in the performance of his functions.
- (2) Save as otherwise directed by the court, a committee appointed under Subhead (1) shall consist of not more than five members and shall include the holders of the three largest unsecured claims who are willing to serve.
- (3) The examiner shall provide the committee with a copy of any proposals for a compromise or scheme of arrangement and the committee may express an opinion on the proposals on its own behalf or on behalf of the creditors or classes of creditors represented thereon.
- (4) As soon as practicable after the appointment of a committee under Subhead (1) the examiner shall meet with the committee to transact such business as may be necessary.

**Explanatory note**

*This head is an amended re-enactment of Section 21 of the Companies (Amendment) Act, 1990.*

---

**Head 27 Proposals for compromise of scheme or scheme of arrangement**

---

- (1) Proposals for a compromise or scheme of arrangement shall—
  - (a) specify each class of members and creditors of the company;
  - (b) specify any class of members and creditors whose interests or claims will not be impaired by the proposals;
  - (c) specify any class of members and creditors whose interests or claims will be impaired by the proposals;
  - (d) provide equal treatment for each claim or interest of a particular class unless the holders of a particular claim or interest agrees to less favourable treatment;
  - (e) provide for the implementation of the proposals;
  - (f) if the examiner considers it necessary or desirable to do so to facilitate the survival of the company, and the whole or any part of its undertaking, as a going concern, specify whatever changes should be made in relation to the management or direction of the company;
  - (g) if the examiner considers it necessary or desirable as aforesaid, specify any changes he considers should be made in the constitution of the company, whether as regards the management or direction of the company or otherwise;
  - (h) include such other matters as the examiner deems appropriate.
- (2) A statement of the assets and liabilities (including contingent and prospective liabilities) of the company as at the date of the proposals shall be attached to each copy of the proposals to be submitted to meetings of members and creditors under Part A10, Head 28 [equivalent of Section 23 of the Companies (Amendment) Act, 1990].

## Part A10 - Examinerships

- (3) There shall also be attached to each such copy of the proposals a description of the estimated financial outcome of a winding-up of the company for each class of members and creditors.
- (4) The court may direct that the proposals include whatever other provisions it deems fit.
- (5) For the purposes of this head, Part A10, Head 29 [equivalent of Section 24 of the Companies (Amendment) Act 1990] and Part A10, Head 30 [equivalent of Section 25 of the Companies (Amendment) Act 1990], a creditor's claim against a company is impaired if he receives less in payment of his claim than the full amount due in respect of the claim at the date of presentation of the petition for the appointment of the examiner.
- (6) For the purposes of this head, Part A10, Head 29 [equivalent of Section 24 of the Companies (Amendment) Act, 1990] and Part A10, Head 30 [equivalent of Section 25 of the Companies (Amendment) Act, 1990], the interest of a member of a company in a company is impaired if—
  - (a) the par value of his shareholding in the company is reduced;
  - (b) where he is entitled to a fixed dividend in respect of his shareholding in or membership of the company, the amount of that dividend is reduced;
  - (c) he is deprived of all or any part of the rights accruing to him by virtue of his shareholding in or membership of the company;
  - (d) his percentage interest in the total issued share capital of the company is reduced; or
  - (e) he is deprived of his shareholding in or membership of the company.

### **Explanatory note**

*This head is a slightly amended re-enactment of Section 22 of the Companies (Amendment) Act, 1990. All references have been updated in accordance with the structure of the Bill and references to the nominal value of share capital have been replaced by references to par value of the share capital of the company.*

*Subsection (6) has been amended insofar as references to a "...shareholding in the company..." have been replaced by "...shareholding in or membership of the company".*

---

## **Head 28 Consideration by members and creditors of proposals**

---

- (1) This head applies to a meeting of members or creditors or any class of members or creditors summoned to consider proposals for a compromise or scheme of arrangement; save where expressly provided otherwise in this head, this head shall not authorise, at such a meeting, anything to be done in relation to such proposals by any member or creditor.
- (2) At a meeting to which this head applies a modification of the proposals may be put to the meeting but may only be accepted with the consent of the examiner.
- (3) Proposals shall be deemed to have been accepted by a meeting of creditors or of a class of creditors when a majority in number representing a majority in value of the claims represented at that meeting have voted, either in person or by proxy, in favour of the resolution for the proposals.
- (4) Nothing in Subhead (3) shall, in the case of a creditor who abstains from voting, or otherwise fails to cast a vote, in respect of the proposals, be construed as permitting such an abstention or failure to be regarded as a casting by that person of a vote against the proposals.
- (5) Part A4, Head 63 [equivalent of Section 144 of the Companies Act, 1963] shall apply to any resolution to which Subhead (3) relates which is passed at any adjourned meeting.
- (6) Part A9, Head 3 [equivalent of Section 202(2)-(6) of the Companies Act, 1963] shall, with the necessary modifications, apply to meetings held under this head.
- (7) With every notice summoning a meeting to which this head applies which is sent to a creditor or member, there shall be sent also a statement explaining the effect of the compromise or scheme of arrangement and in particular stating any material interests of the directors of the company, whether as directors or as members or as creditors of the company or otherwise and the effect thereon of the compromise or arrangement, insofar as it is different from the effect on the like interest of other persons.

- (8) Without prejudice to Subheads (1) to (8), in the case of a company referred to in paragraph (b) or (c) of Head 2(2), the examiner shall also afford the Central Bank an opportunity to consider the proposals for a compromise or scheme of arrangement and for this purpose shall furnish to the Central Bank a statement containing the like information to that referred to in Subhead (8).

**Explanatory note**

*This head is an amended re-enactment of Section 23 of the Companies (Amendment) Act, 1990, as amended by Section 180(1)(h) of the Companies Act, 1990 and Section 23 of the Companies (Amendment) (No.2) Act, 1999. The subsections have been renumbered and all cross-references have been updated in accordance with the structure of the Bill.*

*Subsection 23(5) has been deleted from this head and migrated to Part A9.*

- (a) unless at least one class of creditors whose interests or claims would be impaired by implementation of the proposals has accepted the proposals; or
- (b) if the sole or primary purpose of the proposals is the avoidance of payment of tax due; or
- (c) unless the court is satisfied that—
- (i) the proposals are fair and equitable in relation to any class of members or creditors that has not accepted the proposals and whose interests or claims would be impaired by implementation, and
- (ii) the proposals are not unfairly prejudicial to the interests of any interested party.

---

**Head 29 Confirmation of proposals**

---

- (1) The report of the examiner under Part A10, Head 23 [equivalent of Section 18 of the Companies (Amendment) Act, 1990] shall be set down for consideration by the court as soon as may be after receipt of the report by the court.
- (2) The following persons may appear and be heard at a hearing under Subhead (1)—
- (a) the company;
- (b) the examiner;
- (c) any creditor or member whose claim or interest would be impaired if the proposals were implemented;
- (d) in case the company is a company referred to in paragraph (b) or (c) of Part A10, Head 3 (2) [equivalent of Section 3(2) of the Companies (Amendment) Act, 1990], the Central Bank.
- (3) At a hearing under Subhead (1) the court may, as it thinks proper, subject to the provisions of this head and Part A10, Head 30 [equivalent of Section 25 of the Companies (Amendment) Act, 1990], confirm, confirm subject to modifications, or refuse to confirm the proposals.
- (4) The court shall not confirm any proposals—

- (5) Without prejudice to Subhead (4), the court shall not confirm any proposals in respect of a company to which an examiner has been appointed under Part A10, Head 7 [equivalent of Section 4 of the Companies (Amendment) Act, 1990] if the proposals would have the effect of impairing the interests of the creditors of the company in such a manner as to unfairly favour the interests of the creditors or members of any company to which it is related, being a company to which that examiner has been appointed examiner under Part A10, Head 2 [equivalent of Section 2 of the Companies (Amendment) Act 1990] or, as the case may be, Part A10, Head 7 [equivalent of Section 4 of the Companies (Amendment) Act, 1990].
- (6) Where the court confirms proposals (with or without modification), the proposals shall be binding on all the members or class or classes of members, as the case may be, affected by the proposal and also on the company.
- (7) Where the court confirms proposals (with or without modification), the proposals shall, notwithstanding any other enactment, be binding on all the creditors or the class or classes of creditors, as the case may be, affected by the proposals in respect of any claim or claims against the company and any person other than the company who, under any statute, enactment, rule of law or otherwise, is liable for all or any part of the debts of the company.



## Part A10 - Examinerships

---

- (8) Any alterations in, additions to or deletions from the constitution of the company which are specified in the proposals shall, after confirmation of the proposals by the court and notwithstanding any other provisions of the Companies Acts, take effect from a date fixed by the court.
- (9) Where the court confirms proposals under this head it may make such orders for the implementation of its decision as it deems fit.
- (10) A compromise or scheme of arrangement, proposals for which have been confirmed under this head shall come into effect from a date fixed by the court, which date shall be not later than 21 days from the date of their confirmation.
- (11) On the confirmation of proposals a copy of any order made by the court under this head shall be delivered by the examiner, or by such person as the court may direct, to the Registrar for registration.
- (12) Where—
- (a) the court refuses to confirm proposals under this head; or
  - (b) the report of an examiner under Part A10, Head 23 [equivalent of Section 18 of the Companies Act, 1990] concludes that, following the required meetings of creditors of a company under this Bill, it has not been possible to reach agreement on a compromise or scheme of arrangement,

the court may, if it considers it just and equitable to do so, make an order for the winding-up of the company, or any other order as it deems fit.

- (13) Notwithstanding Subhead (4), or any other provision of this Bill, nothing in this Bill shall prevent the examiner from including in a report under Part A10, Head 23 [equivalent of Section 18 of the Companies (Amendment) Act, 1990] proposals which will not involve the impairment of the interests of members or creditors of the company, nor the court from confirming any such proposals.

### **Explanatory note**

*This head is an amended re-enactment of Section 24 of the Companies (Amendment) Act, 1990, as amended by Section 180(1)(i) of the Companies Act, 1990 and Section 24 of the Companies (Amendment) (No.2) Act, 1999.*

*The subsections have been renumbered and all cross-references have been updated in accordance with the structure of the Bill.*

*Subhead (5) is an amended re-enactment of Section 24(4A) of the Companies (Amendment) Act, 1990. The proposals must now have the effect of impairing the interests of the creditors of the company in such a manner as to “unfairly” favour the interests of the creditors or members of any company to which the company is related.*

---

## **Head 30 Objection to confirmation by court of proposals**

---

- (1) At a hearing under Part A10, Head 28 [equivalent of Section 23 of the Companies (Amendment) Act, 1990] in relation to proposals a member or creditor whose interest or claim would be impaired by the proposals may object in particular to their confirmation by the court on any of the following grounds—
- (a) that there was some material irregularity at or in relation to a meeting to which Part A10, Head 34 [equivalent of section 27 of the Companies (Amendment) Act, 1990] applies;
  - (b) that acceptance of the proposals by the meeting was obtained by improper means;
  - (c) that the proposals were put forward for an improper purpose;
  - (d) that the proposals unfairly prejudice the interests of the objector.
- (2) Any person who voted to accept the proposals may not object to their confirmation by the court except on the grounds—
- (a) that such acceptance was obtained by improper means; or
  - (b) that after voting to accept the proposals he became aware that the proposals were put forward for an improper purpose.
- (3) Where the court upholds an objection under this head, the court may make such order as it deems fit, including an order that the decision of any meeting be set aside and an order that any meeting be reconvened.

**Explanatory note**

*This head is a slightly amended re-enactment of Section 25 of the Companies (Amendment) Act, 1990. All cross-references have been updated in accordance with the structure of the Bill.*

---

## **Head 31 Liability of third parties for the debts of the company**

---

- (1) The following provisions shall have effect in relation to the liability of any person ('the third person') whether under a guarantee or otherwise, in respect of a debt ('the debt') of a company to which an examiner has been appointed—
- (a) subject to paragraph (b) and save where the contrary is provided in an agreement entered into by the third person and the person to whom he is liable in respect of the debt ('the creditor'), the liability shall, notwithstanding Part A10, Head 29 (7) [equivalent of Section 24(6) of the Companies (Amendment) Act, 1990], not be affected by the fact that the debt is the subject of a compromise or scheme of arrangement that has taken effect under Part A10, Head 28 (10) [equivalent of Section 24(9) of the Companies (Amendment) Act, 1990];
  - (b) neither paragraph (a) nor any of the subsequent provisions of this subhead shall apply if the third person is a company to which an examiner has been appointed;
  - (c) if the creditor proposes to enforce, by legal proceedings or otherwise, the obligation of the third person in respect of the liability, then—
    - (i) he shall—
      - (I) if 14 days or more notice is given of such meeting, at least 14 days before the day on which the meeting concerned under Part A10, Head 30 [equivalent of Section 25 of the Companies (Amendment) Act, 1990] to consider the proposals is held, or
      - (II) if less than 14 days' notice is given of such meeting, not more than 48 hours after he has received notice of such meeting, serve a notice on the third person containing an offer in writing by the creditor to transfer to the third person (which the creditor is hereby empowered to do) any rights, so far as they relate to the debt, he may have under Part A10, Head 30 [equivalent of Section 25 of the Companies (Amendment) Act, 1990] to vote in respect of proposals for a compromise or scheme of arrangement in relation to the company,
      - (ii) if the said offer is accepted by the third person, that offer shall, if the third person furnishes to the examiner at the meeting concerned, a copy of the offer and informs the examiner of his having accepted it, operate, without the necessity for any assignment or the execution of any other instrument, to entitle the third person to exercise the said rights, but neither the said transfer nor any vote cast by the third person on foot of the transfer shall operate to prejudice the right of the creditor to object to the proposals under Part A10, Head 34 [equivalent of Section 27 of the Companies (Amendment) Act, 1990],
      - (iii) if the creditor fails to make the said offer in accordance with subparagraph (ii), then, subject to subparagraph (iv), the creditor may not enforce by legal proceedings or otherwise the obligation of the third person in respect of the liability,
      - (iv) subparagraph (iii) shall not apply if a compromise or scheme of arrangement in relation to the company is not entered into or does not take effect under Part A10, Head 29 (10) [equivalent of Section 24(9) of the Companies (Amendment) Act, 1990] and the creditor has obtained the leave of the court to enforce the obligation of the third person in respect of the liability;

## Part A10 - Examinerships

---

- (d) if the third person makes a payment to the creditor in respect of the liability after the period of protection has expired, then any amount that would, but for that payment, be payable to the creditor in respect of the debt under a compromise or scheme of arrangement that has taken effect under Part A10, Head 29 (10) [equivalent of Section 24(9) of the Companies (Amendment) Act, 1990] in relation to the company shall become and be payable to the third person upon and subject to the same terms and conditions as the compromise or scheme of arrangement provided that it was to be payable to the creditor.
- (2) Nothing in Subhead (1) shall affect the operation of—
- (a) Part A10, Head 10 (2) (f) [equivalent of Section 5(2)(f) of the Companies (Amendment) Act, 1990]; or
  - (b) any rule of law whereby any act done by the creditor referred to in that subsection results in the third person referred to therein being released from his obligation in respect of the liability concerned.

### **Explanatory note**

*This section is a slightly amended re-enactment of Section 25A of the Companies (Amendment) Act, 1990, as amended by Section 25 of the Companies (Amendment) (No.2) Act, 1999. All cross-references have been updated in accordance with the structure of the Bill.*

---

## **Head 32 Provisions with respect to leases**

---

- (1) Subject to Subhead (3), proposals for a compromise or scheme of arrangement shall not contain, nor shall any modification by the court under Part A10, Head 9 [equivalent of Section 28 of the Companies (Amendment) Act, 1990] of such proposals result in their containing, a provision providing for either or both—
  - (a) a reduction in the amount of any rent or other periodical payment reserved under a lease of land that falls to be paid after the compromise or scheme of arrangement would take effect under Part A10, Head 29 (10) [equivalent of Section 24(9) of the Companies (Amendment) Act, 1990] or the complete extinguishment of the right of the lessor to any such payments;
  - (b) as respects a failure—
    - (i) to pay an amount of rent or make any periodical payment reserved under a lease of land, or
    - (ii) to comply with any other covenant or obligation of such a lease, that falls to be paid or complied with after the date referred to in paragraph (a), a requirement that the lessor under such a lease shall not exercise, or shall only exercise in specified circumstances, any right, whether under the lease or otherwise, to recover possession of the land concerned, effect a forfeiture of the lease or otherwise enter on the land or to recover the amount of such rent or other payment or to claim damages or other relief in respect of the failure to comply with such a covenant or obligation.
- (2) Subject to Subhead (3), proposals for a compromise or scheme of arrangement in relation to a company shall not be held by the court to satisfy the condition specified in paragraph(c)(ii) of Part A10, Head 29 (4) [equivalent of Section 24(4) of the Companies (Amendment) Act, 1990] if the proposals contain a provision relating to a lease of, or any hiring agreement in relation to, property other than land and, in the opinion of the court—
  - (a) the value of that property is substantial; and
  - (b) the said provision is of like effect to a provision referred to in paragraph (a) or (b) of Subhead (1).
- (3) Subhead (1) or (2) shall not apply if the lessor or owner of the property concerned has consented in writing to the inclusion of the provision referred to in Subhead (1) or (2) in the proposals for the compromise or scheme of arrangement.

- (4) In deciding, for the purposes of Subhead (2), whether the value of the property concerned is substantial the matters to which the court shall have regard shall include the length of the unexpired term of the lease or hiring agreement concerned.

**Explanatory note**

*This head is a slightly amended re-enactment of Section 25B of the Companies (Amendment) Act, 1990, as amended by Section 26 of the Companies (Amendment) (No.2) Act, 1999. All cross-references have been updated in accordance with the structure of the Bill.*

# Chapter 4

## Conclusion of Examinership

### Head 33 Cessation of protection of company and termination of appointment of examiner

- (1) Subject to Part A10, Head 10 [equivalent of Section 5 of the Companies Act, 1990], the protection deemed to be granted to a company under that head shall cease—
  - (a) on the coming into effect of a compromise or scheme of arrangement under this Bill; or
  - (b) on such earlier date as the court may direct.
- (2) Where a company ceases to be under the protection of the court, the appointment of the examiner shall terminate on the date of such cessation.

#### **Explanatory note**

*This head is a slightly amended re-enactment of Section 26 of the Companies (Amendment) Act, 1990. All cross-references have been updated in accordance with the structure of the Bill.*

### Head 34 Revocation

- (1) The company or any interested party may, within 180 days after the confirmation of the proposals by the court, apply to the court for revocation of that confirmation on the grounds that it was procured by fraud and the court, if satisfied that such was the case, may revoke that confirmation on such terms and conditions, particularly with regard to the protection of the rights of parties acquiring interests or property in good faith and for value in reliance on that confirmation, as it deems fit.
- (2) As soon as practicable after the revocation under this head of such a confirmation, a copy of the order made by the court shall be delivered to—
  - (a) the Registrar;

- (b) in case the company to which the order relates is a company referred to in paragraph (a) of Part A10, Head 3 (2) [equivalent of Section 3(2) of the Companies (Amendment) Act, 1990], the Minister; and
- (c) in case the company to which the order relates is a company referred to in paragraph (b) or (c) of Part A10, Head 3 (2) [equivalent of Section 3(2) of the Companies (Amendment) Act, 1990], the Central Bank;
- (d) the Director of Corporate Enforcement,

by such person as the court may direct.

#### **Explanatory note**

*This head is an amended re-enactment of Section 27 of the Companies (Amendment) Act, 1990, as amended by Section 27 of the Companies (Amendment) (No.2) Act, 1999. All cross-references have been updated in accordance with the structure of the Bill.*

*Subhead (2) has been amended insofar as a copy of the order made by the Court is now required to be delivered to the Director of Corporate Enforcement.*

### Head 35 Costs and remuneration of examiners

- (1) The court may from time to time make such orders as it thinks proper for payment of the remuneration and costs of, and reasonable expenses properly incurred by, an examiner.
- (2) Unless the court otherwise orders, the remuneration, costs and expenses of an examiner shall be paid and the examiner shall be entitled to be indemnified in respect thereof out of the revenue of the business of the company to which he has been appointed, or the proceeds of realisation of the assets (including investments).
- (3) The remuneration, costs and expenses of an examiner which have been sanctioned by order of the court (other than the expenses referred to in Subhead (4)) shall be paid in full and shall be paid before any other claim, secured or unsecured, under any compromise or scheme of arrangement or in any receivership or winding-up of the company to which he has been appointed.



- (4) Liabilities incurred by the company to which an examiner has been appointed that, by virtue of Part A10, Head 18(1) [equivalent of Section 10(1) of the Companies (Amendment) Act, 1990], are treated as expenses properly incurred by the examiner shall be paid in full and shall be paid before any other claim (including a claim secured by a floating charge), but after any claim secured by a mortgage, charge, lien or other encumbrance of a fixed nature or a pledge, under any compromise or scheme of arrangement or in any receivership or winding-up of the company to which he has been appointed.
- (5) In Subheads (3) and (4), references to a claim shall be deemed to include references to any payment in a winding-up of the company in respect of the costs, charges and expenses of that winding-up (including the remuneration of any liquidator).
- (6) The functions of an examiner may be performed by him with the assistance of persons appointed or employed by him for that purpose provided that an examiner shall, insofar as is reasonably possible, make use of the services of the staff and facilities of the company to which he has been appointed to assist him in the performance of his functions.
- (7) In considering any matter relating to the costs, expenses and remuneration of an examiner the court shall have particular regard to the proviso to Subhead (6).

### **Explanatory note**

*This head is a slightly amended re-enactment of Section 29 of the Companies (Amendment) Act, 1990, as amended by Section 28 of the Companies (Amendment) (No.2) Act, 1999. The numbering of the subsections has been revised and all cross-references have been updated in accordance with the structure of the Bill.*

*The Review Group considered amending Section 3B of the Companies (Amendment) Act, 1990. Section 3B was inserted by Section 28 of the Companies (Amendment) Act, 1999 to give statutory expression to the Supreme Court decision in *Re Springline* [1999] 1 IR 478. The net effect of this decision, and the newly inserted provision, was that the costs, expenses and remuneration of an examiner of a company that had been under the protection of the court would not be given priority to those of the official liquidator of that company if the company is subsequently wound-up.*

*The Review Group believed that any reversal of this decision would be a substantive deterrent to an examiner taking up such position in a company wishing to avail of court protection.*

---

## **Head 36 Publicity**

---

- (1) An examiner or, where appropriate, such other person as the court may direct, shall, within 14 days after the delivery to the Registrar of every order made under Part A10, Head 22 [equivalent of Section 13A of the Companies (Amendment) Act 1990], Part A10, Head 29 [equivalent of section 24 of Companies (Amendment) Act, 1990] or Part A10, Head 34 [equivalent of the Section 27 of the Companies (Amendment) Act, 1990] cause to be published in the CRO Gazette notice of such delivery.
- (2) Where a person fails to comply with this head, that person, and where that person is a company, the company and every officer of the company who is in default, shall be guilty of a category four offence

### **Explanatory note**

*This head is a slightly amended re-enactment of Section 30 of the Companies (Amendment) Act, 1990, as amended by Section 181(1)(2) of the Companies (Amendment) Act, 1990 and Section 29 of the Companies (Amendment) (No.2) Act, 1999. The numbering of the subsections has been revised and all cross-references have been updated in accordance with the structure of the Bill. Any references to the registrar of companies and *Iris Oifigiúil* have been replaced by "Registrar" and the "CRO Gazette". Furthermore, Subhead (2) now provides for a categorised offence as opposed to merely resulting in a fine. The amount of the fine will be prescribed later.*

---

## **Head 37 Hearing of proceedings otherwise than in public**

---

The whole or part of any proceedings under this Bill may be heard otherwise than in public if the court, in the interests of justice, considers that the interests of the company concerned or of its creditors as a whole so require.

### **Explanatory note**

*This head is a re-enactment of Section 31 of the Companies (Amendment) Act, 1990.*

### **Head 38 Power of court to order the return of assets which have been improperly transferred**

---

- (1) Where, on the application of an examiner of a company that is under the protection of the court it can be shown to the satisfaction of the court that—
  - (a) any property of the company of any kind whatsoever was disposed of either by way of conveyance, transfer, mortgage, security, loan, or in any way whatsoever whether by act or omission, direct or indirect; and
  - (b) the effect of such disposal was to perpetrate a fraud on the company, its creditors or members, the court may, if it deems it just and equitable to do so, order any person who appears to have the use, control or possession of such property or the proceeds of the sale or development thereof to deliver it or pay a sum in respect of it to the liquidator on such terms or conditions as the court sees fit.
- (2) Subhead (1) shall not apply to any conveyance, mortgage, delivery of goods, payment, execution or other act relating to property made or done by or against a company to which Part A11, Head 43 [equivalent of Section 286(1) of the Companies Act, 1963] applies.
- (3) In deciding whether it is just and equitable to make an order under this head, the court shall have regard to the rights of persons who have bona fide and for value acquired an interest in the property the subject of the application.

#### **Explanatory note**

*This head is a new head. It is taken from Section 139 of the Companies Act, 1990, as applied to examiners by Section 180(2) of the Companies Act, 1990.*

### **Head 39 Enforcement of reconstruction orders made by courts outside the State.**

---

- (1) Any order made by a court of any country recognised for the purposes of this head and made for or in the course of the reorganisation or reconstruction of a company may be enforced by the High Court in all respects as if the order had been made by the High Court.
- (2) When an application is made to the High Court under this head, an office copy of any order sought to be enforced shall be sufficient evidence of the order.
- (3) In this head, “company” means a body corporate incorporated outside the State, and “recognised” means recognised by order made by the Minister.

#### **Explanatory note**

*This head is a re-enactment of Section 36 of the Companies (Amendment) Act, 1990.*

### **Head 40 Cross-border effect of examinerships within the European Community.**

---

The provisions of Part A11, Chapter 14 [equivalent of Council Regulation (EC) No 1346/2000] shall apply to this Part.

#### **Explanatory note**

*This head is new. It applies the Cross Border Insolvency Regulations [Council Regulation (EC) No. 1346/2000 of 29 May 2000] to this Part. Once insolvency litigation is commenced in the appropriate Member State, that State’s courts direct the proceedings, where so ever in the EU the other assets are located. Examinerships are included in the definition of “insolvency proceedings” for the purposes of the Regulation.*

---

**Head 41 Reporting to Director of Corporate Enforcement of misconduct by liquidators, receivers or examiners**

---

- (1) Where a disciplinary committee or tribunal (however called) of a prescribed professional body finds that a member conducting an examinership, liquidation or receivership has not maintained appropriate records, or it has reasonable grounds for believing that a member has committed a category one or two offence during the course of an examinership, liquidation or receivership the body shall report the matter, giving details of the finding or, as the case may be, of the alleged offence, to the Director of Corporate Enforcement forthwith and if the body fails to comply with this head it, and every officer of the body to whom the failure is attributable, is guilty of a category three offence.
  
- (2) No professional or legal duty to which an auditor is subject by virtue of his appointment as an auditor of a company shall be regarded as contravened by, and no liability to the company, its shareholders, creditors or other interested parties shall attach to, an auditor, by reason of his compliance with an obligation imposed on him by or under this head.

**Explanatory note**

*This head is an amended re-enactment of Section 58 of the Company Law Enforcement Act, 2001. It has been amended in accordance with the recommendation of the Company Law Review Group in its First Report that examiners should be made accountable to the Director of Corporate Enforcement.*

*Subhead (2) is re-enactment of Section 194(6) of the Companies Act, 1990.*

# Schedule

## List of companies for the purposes of Head 3 (2)

1. A company that is a member firm within the meaning of the Stock Exchange Act, 1995.
2. A company that is a stock exchange within the meaning of the Stock Exchange Act, 1995.
3. A company that is an associated undertaking or a related undertaking of a member firm or stock exchange within the meaning of the Stock Exchange Act, 1995.
4. A company that is an investment business firm within the meaning of the Investment Intermediaries Act, 1995.
5. A company that is an associated undertaking or a related undertaking of an investment business firm within the meaning of the Investment Intermediaries Act, 1995.
6. A company to which Chapter VII, VIII or IX of Part II of the Central Bank Act 1989, applies.
7. A company that is engaged in the business of accepting deposits or other repayable funds or granting credit for its own account.
8. A company that is an associated body of a building society within the meaning of the Building Societies Act, 1989.
9. A company that is an associated enterprise of a credit institution within the meaning of the European Communities (Consolidated Supervision of Credit Institutions) Regulations, 1992 (S.I. No. 396 of 1992).
10. An investment company within the meaning of Part B9 [equivalent of Part XIII of the Companies Act, 1990].
11. A company that is a management company or trustee within the meaning of Part B9 [equivalent of Part XIII of the Companies Act, 1990].
12. A company that is an undertaking for collective investment in transferable securities within the meaning of the European Communities (Undertakings for Collective Investment in Transferable Securities) Regulations, 1989 (S.I. No. 78 of 1989).
13. A company that is a management company or trustee of an undertaking for collective investment in transferable securities within the meaning of the European Communities (Undertakings for Collective Investment in Transferable Securities) Regulations, 1989 (S.I. No. 78 of 1989).
14. A company that is a management company or trustee of a unit trust scheme within the meaning of the Unit Trusts Act, 1990.
15. A company that is a general partner or custodian of an investment limited partnership within the meaning of the Investment Limited Partnerships Act, 1994.
16. A company that is an undertaking with close links with a financial undertaking within the meaning of the Supervision of Credit Institutions, Stock Exchange Member Firms and Investment Business Firms Regulations, 1996 (S.I. No. 267 of 1996).
17. Any other company the carrying on of business by which is required, by virtue of any enactment or instrument thereunder, to be authorised by the Central Bank.
18. A company that is—
  - (a) a holder of an authorisation within the meaning of—
    - (i) Regulation 2 of the European Communities (Non-Life Insurance) Regulations, 1976 (S.I. No. 115 of 1976),
    - (ii) Regulation 2 of the European Communities (Non-Life Insurance) Framework Regulations, 1994 (S.I. No. 359 of 1994),
    - (iii) Regulation 2 of the European Communities (Life Assurance) Regulations, (S.I. No. 57 of 1984), or
    - (iv) Regulation 2 the European Communities (Life Assurance) Framework Regulations, (S.I. No. 360 of 1994);
  - or
  - (b) a holder of an authorisation granted under the European Communities (Non-Life Insurance) (Amendment) (No. 2) Regulations, 1991 (S.I. No. 142 of 1991).
19. A company that is an insurance intermediary within the meaning of the Insurance Act, 1989.
20. A company that is an excepted body within the meaning of the Trade Union Acts, 1871 to 1990.

---

# Part A11 – Winding-Up

## Contents of Part A11

---

### Chapter 1 – Preliminary and definitions

1. Definitions for this Part
2. Restriction of this Part
3. Modes of winding-up
4. Jurisdiction to wind up companies
5. Rules in respect of winding-up
6. Powers of court cumulative
7. Court may have regard to wishes of creditors and contributories
8. Application of certain provisions to companies not in liquidation

### Chapter 2 – Court Ordered Winding-Up

9. Application of Chapter
10. Circumstances in which company may be wound up by the court
11. Circumstances in which company deemed to be unable to pay its debts
12. Provisions as to applications for winding-up.
13. Powers of court on hearing petition
14. Appointment of provisional liquidator
15. Power to stay or restrain proceedings against company
16. Appointment of liquidator by the court
17. Effect of winding-up order
18. Saving for rights of creditors and members.

### Chapter 3 – Members' Voluntary Winding-Up

19. Application of Chapter
20. Resolution for and commencement of Members' Voluntary Winding-Up
21. Publication of resolution to wind up voluntarily
22. Declaration of solvency
23. Power of company to appoint liquidators and cesser of directors' powers
24. Duty of liquidator to call creditors' meeting if he is of opinion that company unable to pay its debts

### Chapter 4 – Creditors' Voluntary Winding Up

25. Application of Chapter
26. Resolutions for and commencement of Creditors' Voluntary Winding-Up
27. Meeting of creditors
28. Appointment of liquidator

### Chapter 5 – Conduct of Winding Up

29. Commencement of court ordered winding-up
30. Commencement of voluntary winding -p.
31. Copy of order for winding-up or appointment to be forwarded to Registrar
32. Notice by liquidator of his appointment
33. Statement of company's affairs
34. Notification that a company is in liquidation

### Chapter 6 – Realisation of assets and related matters

35. Custody of company's property
  36. Circumstances in which floating charge is invalid
  37. Other circumstances in which floating charge is invalid
  38. Company may be required to contribute to debts of related companies
  39. Pooling of assets of related companies
  40. Power of liquidator to accept shares as consideration for sale of property of company
  41. Avoidance of dispositions of property etc. after commencement of winding-up
  42. Avoidance of executions against property of company
  43. Unfair preference; effect of winding-up on antecedent and other transactions
  44. Liabilities and rights of persons who have been unfairly preferred
  45. Restriction of rights of creditor as to execution or attachment in case of company being wound up
-



## Part A11 - Winding-Up

---

46. Duties of sheriff as to goods taken in execution
47. Power of the court to order the return of assets which have been improperly transferred
48. Personal liability of officers of company where proper books of account kept
49. Civil liability for fraudulent or reckless trading of company
50. Power of court to assess damages
51. Extension of power of court to assess damages against directors
52. Vesting of property of company in liquidator
53. Disclaimer of onerous property in case of company being wound up

### Chapter 7 – Distribution

54. Costs, etc. in winding-up
55. Distribution of property of company
56. Application of bankruptcy rules in winding-up of insolvent companies
57. Debts which may be proved
58. Preferential payments in a winding-up
59. Unclaimed dividends and balances to be paid in Companies Liquidation Account

### Chapter 8 – Liquidators

60. Duties of liquidators
61. General provisions as to liquidators
62. Powers of provisional liquidators
63. Liquidator's powers
64. Restrictions upon powers
65. Restrictions in Creditors' Voluntary Winding-Up.
66. Power to apply to court for determination of questions or concerning exercise of powers.
67. No lien over company's books, records etc
68. Qualifications for appointment as liquidator
69. Disqualification from appointment as liquidator
70. Appointment and removal in a Members' Voluntary Winding-Up
71. Appointment and removal in a Creditors' Voluntary Winding-Up
72. Appointment and removal by the Court
73. Consent to act
74. Where there is more than one liquidator
75. Resignation
76. Prohibition on rewards for appointment
77. Notification and filings
78. Custody of books and property upon vacation of office
79. Liquidator's remuneration
80. Disclosure of interest by creditors etc at creditors' meeting
81. Duty of liquidators and receivers to include certain information in returns etc
82. Penalty for default of receiver of liquidator in making certain accounts and returns.
83. Enforcement of duty of liquidator to make returns.
84. Director of Corporate Enforcement's power to examine books and records

### Chapter 9 – Contributories

85. Liability of contributory
86. Liability as contributories of past and present members
87. Settlement of list of contributories and application of property
88. Power to make calls
89. Adjustment of rights of contributories
90. Payment of debts due by contributory to the company and extent to which set-off allowed
91. Order on contributory to be conclusive evidence
92. Liability in case of death of contributory
93. Bankruptcy of contributory
94. Corporate insolvency of contributory
95. Winding-up of an unlimited company which re-registered as a limited company

### **Chapter 10 – Committee of Inspection**

- 96. Appointment of committee of inspection in a court ordered winding-up
- 97. Appointment of committee of inspection in a Creditors' Voluntary Winding-Up
- 98. Constitution and proceedings of committee of inspection

### **Chapter 11 – Court's Powers**

- 99. Power to annul order for winding up or to stay winding-up.
- 100. Attendance of officers of company at meetings
- 101. Power of court to summon persons for examination
- 102. Order for payment or delivery of property against person examined under Head 101
- 103. Delivery of property of company to liquidator
- 104. Power to exclude creditors not proving in time
- 105. Order for arrest and seizure etc
- 106. Provisions as to arrangement binding creditors

### **Chapter 12 – Provisions supplemental to conduct of winding-up**

- 07. Change of name
- 108. Effect of winding-up on business and status of company
- 109. Actions against company stayed on winding up order
- 110. Director of Corporate Enforcement may direct convening of meetings
- 111. Duty of Liquidator to call meeting at end of each year
- 112. Information about progress of liquidation
- 113. Liquidator to report on conduct of directors
- 114. Inspection of books by creditors and members
- 115. Resolutions passed at adjourned meetings of creditors and members
- 116. Books of company to be evidence
- 117. Liquidator may have regard to wishes of creditors, members and contributories

### **Chapter 13 - General rules as to meetings of members and creditors of a company in liquidation**

- 118. Meetings in court ordered windings-up
- 119. Meetings in voluntary windings-up
- 120. Entitlement to attend and notice
- 121. Location of meeting
- 122. Costs of meetings
- 123. Chairman
- 124. Passing resolutions
- 125. Filing
- 126. Proceedings at the meeting
- 127. Entitlement to vote
- 128. Duties of the chairman
- 129. Proxies

### **Chapter 14 – Completion of winding-up**

- 130. Dissolution of company by court
- 131. Final meeting and dissolution in Members' Voluntary Winding-Up
- 132. Final meeting and dissolution in Creditors' Voluntary Winding-Up
- 133. Disposal of books and papers of company in winding-up
- 134. Power of court to declare dissolution of company void
- 135. Disposal of documents filed with Registrar

## Part A11 - Winding-Up

---

### Chapter 15 – Insolvency proceedings outside the State

- 136. Preliminary
- 137. Recognition of winding up orders of non-European Union states and Denmark
- 138. Registration of judgments given in insolvency proceedings
- 139. Publication in relation to insolvency proceedings
- 140. Confirmation of Creditors' Voluntary Winding Up
- 141. Provisions of certain documents to liquidator or examiner
- 142. Registration of insolvency judgments
- 143. Enforcement in State of insolvency judgments.
- 144. Interest on insolvency judgments and payment of costs
- 145. Currency of payments under enforceable insolvency judgments
- 146. Preservation measures
- 147. Venue
- 148. Language of claims
- 149. Non-recognition or non-enforcement of judgments
- 150. Revocation

### Chapter 16 - Offences

- 151. Offences by officers of companies in liquidation
- 152. Criminal liability for fraudulent or reckless trading of company.
- 153. Prosecution of criminal offences committed by officers and members of company.
- 154. Frauds by officers of companies which have gone into liquidation.
- 155. Liability of officers of company to penalty where proper books of account not kept.

# Part A11 – Winding-Up

## Chapter 1

### Preliminary and Definitions

#### Head 1 Definitions for this Part

In this Part—

“contributory” means every person liable to contribute to the assets of a company in the event of its being wound up, and for the purposes of all proceedings for determining, and all proceedings prior to the final determination of, the persons who are to be deemed contributories, include any person alleged to be a contributory;

“enforcement order” means an order under Head 143 (5) of this Part.

“a members’ voluntary winding-up” means a winding-up in the case of which a declaration referred to in paragraph (c) of Part A4, Head 71 (4) has been made and has been delivered in accordance with Part A11, Head 22 [equivalent of Section 256(2) of the Companies Act, 1963] of this Bill;

“a creditors’ voluntary winding-up” means a voluntary winding-up in the case of which a company in general meeting has resolved, in accordance with Part A11, Head 20 (2) [equivalent of Section 251(1)(c) of the Companies Act, 1963], that it cannot by reason of its liabilities continue its business, and that it be wound up as a creditors’ voluntary winding-up, or in the case to which paragraph (a), paragraph (b) or paragraph (c) of Part A11, Head 26 (3) applies;

“a connected person” means a person who, at the time the transaction was made, was—

- (a) a director of the company;
- (b) a shadow director of the company;
- (c) a person connected, within the meaning of Part A5, Head 2 (1) (a) [equivalent of Section 26(1) (a) of the Companies Act, 1990], with a director;
- (d) a related company, within the meaning of Part A11, Head 38 [equivalent of Section 140 of the Companies Act, 1990]; or

- (e) any trustee of, or surety or guarantor for the debt due, to any person described in paragraph (a), (b), (c) or (d);

“property” shall mean all real and personal property, and shall include any right of action by the company or liquidator under the provisions of this Bill or any other Act.

#### **Explanatory note**

*The definition of contributory is a reenactment of Section 208 of the Companies Act 1963.*

*The definition of “a members’ voluntary winding-up” is an amended partial reenactment of Section 256(11) of the Companies Act, 1963.*

*The definition of “a creditors’ voluntary winding-up” is an amended partial reenactment of Section 256(11) of the Companies Act, 1963.*

*The definition of “a connected person is derived from Sections 286(5) and 288(4) of the Companies Act, 1963, which formerly duplicated each other.*

*The definition of “property” is new. It extends beyond common law and equitable concepts of property to the proceeds of any statutory rights conferred upon the liquidator or company by this Bill, which may not otherwise as a matter of statutory interpretation confer a “property” right.*

*Section 140(5) of the Companies Act, 1990 must be moved to the general definitions section of the Bill. i.e. it is not specific to this Part. Section 140(5) provides as follows:*

*For the purposes of this Act, a company is related to another company if—*

- (a) that other company is its holding company or subsidiary; or*
- (b) more than half in nominal value of its equity share capital (as defined in Section 155 (5) of the Companies Act, 1963) is held by the other company and companies related to that other company (whether directly or indirectly, but other than in a fiduciary capacity); or*
- (c) more than half in nominal value of the equity share capital (as defined in Section 155 (5) of the Companies Act, 1963) of each of them is held by members of the other (whether directly or indirectly, but other than in a fiduciary capacity); or*

## Part A11 - Winding-Up

(d) that other company or a company or companies related to that other company or that other company together with a company or companies related to it are entitled to exercise or control the exercise of more than one half of the voting power at any general meeting of the company; or

(e) the businesses of the companies have been so carried on that the separate business of each company, or a substantial part thereof, is not readily identifiable; or

(f) there is another company to which both companies are related; and "related company" has a corresponding meaning.

---

### Head 2 Restriction of this Part

---

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

#### **Explanatory note**

This head re-enacts Section 343A of the Companies Act, 1963.

---

### Head 3 Modes of winding up

---

(1) The winding-up of a company may be:

(a) by the court; or

(b) voluntary.

(2) The provisions of this Part relating to winding-up apply, unless the contrary appears, to the winding-up of a company in either of those modes.

#### **Explanatory note**

Amended re-enactment of Section 206 of the Companies Act, 1963

Reference to "Act" in subsection (2) has been amended to "Part", to reflect that all provisions relating to winding up are now contained within this Part.

---

### Head 4 Jurisdiction to wind up companies

---

The High Court shall have jurisdiction to wind up any company.

#### **Explanatory note**

Re-enactment of Section 212 of the Companies Act, 1963.

---

### Head 5 Rules in respect of winding up.

---

The Minister may for the purposes of this Part, and save in respect of matters of pleading, practice and procedure in proceedings before a court, make rules in respect of the winding up of companies whether by the court or voluntarily.

#### **Explanatory note**

This is a new head.

Section 312 of the Companies Act, 1963 has not been reenacted. In respect of windings-up the Superior Courts Rules Committee in consequence is now limited to the same rule making powers in relation to winding-up proceedings as they have in relation to proceedings generally.

The definition of "prescribed" is to be adjusted in Part A1. The current definition in Section 2 of the Companies Act, 1963 is as follows:

"prescribed" means, in relation to the provisions of this Act dealing with the winding up of companies, prescribed by rules of court, and in relation to the other provisions of this Act, prescribed by order made by the Minister;

A replacement definition is proposed as follows:

"prescribed" means prescribed by order made by the Minister.

This would necessarily involve a review of the rules to reflect the new winding-up regime. Part A11 incorporates various provisions of Order 74, Rules of the Superior Courts, considered appropriate for incorporation as primary legislative provisions.

---

### Head 6 Powers of court cumulative

---

Any powers conferred on the court by this Bill shall be in addition to and not in restriction of any existing powers of instituting proceedings against any contributory or debtor of the company or the estate of any contributory or debtor, for the recovery of any call or other sums.

#### **Explanatory note**

Amended re-enactment of Section 248 of the Companies Act, 1963

The text of this head has been rearranged for grammatical reasons.



---

## Head 7 Court may have regard to wishes of creditors or contributories

---

- (1) The court may, as to all matters relating to the winding-up of a company, have regard to the wishes of the creditors or contributories of the company, as proved to it by any sufficient evidence, and may, if it thinks fit, for the purpose of ascertaining those wishes, direct meetings of the creditors or members to be called, held and conducted in such manner as the court directs, and may appoint a person to act as chairman of any such meeting and report the result thereof to the court.
- (2) In the case of creditors, regard shall be had to the value of each creditor's debt.
- (3) In the case of contributories, regard shall be had to the number of votes conferred on each contributory by this Bill or the constitution.

### **Explanatory note**

*Reenactment of Section 309 of the Companies Act, 1963.*

*Reference to "articles" has been amended to read "constitution".*

---

## Head 8 Application of certain provisions to companies not in liquidation

---

- (1) This head applies in relation to a company that is not being wound up where—
  - (a) execution or other process issued on a judgment, decree or order of any court in favour of a creditor of the company is returned unsatisfied in whole or in part; or
  - (b) it is proved to the satisfaction of the court that the company is unable to pay its debts, taking into account the contingent and prospective liabilities of the company, and

it appears to the court that the reason or the principal reason for its not being wound up is the insufficiency of its assets.

- (2) The following heads, with the necessary modifications, shall apply to a company to which this head applies, notwithstanding that it is not being wound up—

- (a) Part A11, Heads 38, 47, 48 and 155 and Part A13, Head 31 [equivalent of Sections 139, 140, 204, 203, and 149 of the Companies Act, 1990]; and
- (b) the provisions of [the Act] mentioned in the Table to this head.
- (3) The Director of Corporate Enforcement may apply to the court pursuant to this head for an order or judgement, as the case may be, under any of the heads which apply to a company to which this head applies.
- (4) References in the heads mentioned in Subhead (2) to the commencement of the winding-up of a company, the appointment of a provisional liquidator or the making of a winding-up order and to the "relevant date" shall, for the purposes of this head, be construed as references to the date—
  - (a) of the judgment, decree or order mentioned in Subhead (1) (a); or
  - (b) on which the court determines that the company is unable to pay its debts.
- (5)
  - (a) Where, by virtue of this head, proceedings are instituted under Part A11, Heads 38, 47, and 48 [the equivalent of Sections, 140, 139 and 204 of the Companies Act, 1990 ] or Part A11, Heads 49, 50 or 102 [equivalent of Section 245A, 297A or 298 of the Companies Act, 1963] Part A11, Head 49 (7) (b) [equivalent of Section 297A(7)(b) of the Companies Act, 1963 ] shall apply in relation to any order made as a result of those proceedings except that an order made as a result of an application by the Director of Corporate Enforcement pursuant to subhead (3) shall not be made in favour of the Director of Corporate Enforcement, otherwise than as to his costs and expenses;
  - (b) A person having a claim against the company may apply for an enforcement order for a share of any sums or assets recovered or available following a successful action by the Director of Corporate Enforcement pursuant to Subhead (3), provided that the order is sought within a period of one month from the date of judgement on behalf of the Director of Corporate Enforcement.

## Part A11 - Winding-Up

- (6) Where Part A11, Head 154 [equivalent of Section 295 of the Companies Act, 1963] is applied by virtue of this head, it shall apply as if the words “which is subsequently ordered to be wound up or subsequently passes a resolution for voluntary winding-up” were deleted therefrom.

<b>TABLE</b>	
<b>Heads of [this Bill] to which this Head applies</b>	
Section	Subject
Part A11, Head 114 [Equivalent of Section 243 of the Companies Act, 1963]	Inspection of books by creditors and contributories
Part A11, Head 101 [Equivalent of Section 245 of the Companies Act, 1963]	Power of court to summon persons for examination
Part A11, Head 102 [Equivalent of Section 245A of the Companies Act, 1963]	Order for payment or delivery of property against person examined under section 245
Part A11, Head 103 [Equivalent of Section 247 of the Companies Act, 1963]	Power to arrest absconding contributory
Part A11, Head 154 [Equivalent of Section 295 of the Companies Act, 1963]	Frauds by officers of companies which have gone into liquidation
Part A11, Head 152 [Equivalent of Section 297 of the Companies Act, 1963]	Criminal liability for fraudulent trading.
Part A11, Head 49 [Equivalent of Section 297A of the Companies Act, 1963]	Civil liability for fraudulent trading
Head 50 [Equivalent of Section 298 of the Companies Act, 1963]	Power of court to assess damages against directors

Head	Subject
[Part A11, Head 112 114 -- [Equivalent of Section 243 of the Companies Act, 1963]	Inspection of books by creditors and contributories
[Part A11, Head 99101 -- [Equivalent of Section 245 of the Companies Act, 1963]	Power of court to summon persons for examination
[Part A11, Head 1002 -- [Equivalent of Section 245A of the Companies Act, 1963]	Order for payment or delivery of property against person examined under section 245
[Part A11, Head 103 - [Equivalent of Section 247 Companies Act, 1963]	Power to arrest absconding contributory
[Part A11, Head 154 - [Equivalent of Section 295 of the Companies Act, 1963]	Frauds by officers of companies which have gone into liquidation
[Part A11, Head 138 - [Equivalent of Section 297 of the Companies Act, 1963]	Criminal liability for fraudulent trading.
[Part A11, Head 489 - [Equivalent of Section 297A of the Companies Act 1963]	Civil liability for fraudulent trading
[Part A11, Head 50 - [Equivalent of section 298 of the Companies Act, 1963]	Power of court to assess damages against directors

### **Explanatory note**

*Amended reenactment of Section 251 of the Companies Act, 1990 as amended by Section 54 of the Company Law Enforcement Act, 2001. The subsections have been renumbered to eliminate the use of subsection “(2A)”.*

*Signpost provisions are to be inserted into A13 Powers of Investigation and Enforcement*

## Chapter 2

### Court Ordered Winding-Up

#### Head 9 Application of Chapter

*The provisions of [this Chapter] shall apply only to a court ordered winding-up, save to the extent that any of those provisions expressly provides to the contrary.*

##### **Explanatory note**

*This is a new head. Its purpose is self-evident.*

#### Head 10 Circumstances in which company may be wound up by the court

A company may be wound up by the court—

- (a) if the company has by special resolution resolved that the company be wound up by the court;
- (b) if the company does not commence its business within a year from its incorporation or suspends its business for a continuous period of 12 months;
- (c) if the members of the company are all deceased or no longer exist;
- (d) if the company is unable to pay its debts;
- (e) if the court is of opinion that it is just and equitable that the company should be wound-up;
- (f) if the court is satisfied that the company's affairs are being conducted, or the powers of the directors are being exercised, in a manner oppressive to any member or in disregard of his interests as a member and that, despite the existence of an alternative remedy, winding-up would be justified in the general circumstances of the case so, however, that the court may dismiss a petition to wind up under this paragraph if it is of opinion that proceedings under Part A4, Head 72 [equivalent of Section 205 of the Companies Act, 1963] would, in all the circumstances, be more appropriate;
- (g) if the court is satisfied, on a petition of the Director of Corporate Enforcement, that it is in the public interest that the company should be wound up;
- (h) in the circumstances referred to in Part A10, Head 29 (12) [equivalent of Section 24(11) of the Companies (Amendment) Act, 1990, as amended by Section 24 of the Companies (Amendment) (No.2) Act, 1999]

##### **Explanatory note**

*This head is an amended reenactment of Section 213 of the Companies Act, 1963 as amended by Section 260 Companies Act, 1990, section 93 of the Company Law Enforcement Act, 2001, Section 3 of the Companies (Amendment) Act, 1983 and Regulation 11, European Communities (Single Member Private Limited Companies) Regulations, 1994.*

*Section 213(c) of the Companies Act, 1963 has been amended to explicitly require the period to be continuous. The time period has also been amended to refer to 12 months rather than a year, to maintain consistency with the method of describing time throughout the remainder of the Part.*

*Section 213(d) of the Companies Act, 1963 has been amended so that it also encompasses the cessation of existence of corporate as well as natural person, and so as to reflect the existence of single member companies. This subsection stated:*

*“(d) the number of members is reduced, in the case of a private company below two, or, in the case of any other company, below seven”*

*The amendments to the text of Section 213(f) effected by Section 93 of the Company Law Enforcement Act 2001 have been moved to Pillar B. This text stated: “other than an investment company within the meaning of Part XIII of the Companies Act, 1990, or the European Communities (Undertakings for Collective Investment in Transferable Securities) Regulations, 1989 (S.I. No.78 of 1989)”.*

*Section 213(1)(fa) of the Companies Act, 1963, inserted by Section 93 of the Company Law Enforcement Act, 2001 has been moved to Pillar B. This subsection stated:*

*“(fa) the court is of opinion that it is just and equitable that the company, being an investment company within the meaning aforesaid, should be wound up and the following conditions are complied with:*

- (i) in the case of an investment company within the meaning of Part XIII of the Companies Act, 1990:*
  - (I) the petition for such winding-up has been presented by the trustee of the company, that is to say, the person nominated by the Central Bank of Ireland under Section 257(4)(c) of the Companies Act, 1990, in respect of that company;*
  - (II) the said trustee has notified the investment company of its intention to resign as such trustee and six or more months have elapsed since the giving of that notification without a trustee having been appointed to replace it;*

(III) the court, in considering the said petition, has regard to:

(A) any conditions imposed under Section 257 of the Companies Act, 1990, in relation to the resignation from office of such a trustee and the replacement of it by another trustee; and

(B) whether a winding-up would best serve the interests of shareholders in the company; and

(IV) the petition for such winding-up has been served on the company (if any) discharging, in relation to the first-mentioned company, functions of a company referred to in conditions imposed under Section 257 of the Companies Act, 1990, as a 'management company'; and

(ii) in the case of an investment company within the meaning of the European Communities (Undertakings for Collective Investment in Transferable Securities) Regulations, 1989, such conditions as the Minister may prescribe by regulations”.

Paragraph (g) is new. This provision has been inserted to grant locus standi to the Director of Corporate Enforcement to petition for winding-up on public interest grounds.

Section 213(1)(h) and (i), inserted by Regulation 17 of 3rd Schedule to Companies (Amendment) Act 1983 have been moved to Pillar B. These subsections stated:

“(h) after the end of the general transitional period, within the meaning of the Companies (Amendment) Act, 1983, the company is an old public limited company within the meaning of that Act;

(i) after the end of the transitional period for share capital, within the meaning of the Companies (Amendment) Act, 1983, the company has not complied with the conditions specified in Section 12 (9) of that Act.”

Paragraph (h) is merely a signpost to the provision in the Part dealing with Examinership allowing the court, in certain circumstances, to make a winding-up order.

Following the removal of a number of subsections the remaining and new Subheads have been renumbered.

### Head 11 Circumstances in which company deemed to be unable to pay its debts

A company shall be deemed to be unable to pay its debts—

- (a) if a creditor, by assignment or otherwise, to whom the company is indebted in a sum exceeding €10,000 then due, has served on the company, by leaving it at the registered office of the company, a demand in writing requiring the company to pay the sum so due, and the company has for 21 days thereafter neglected to pay the sum or to secure or compound for it to the reasonable satisfaction of the creditor; or
- (b) if two or more creditors, by assignment or otherwise, to whom, in aggregate, the company is indebted in a sum exceeding €20,000 then due, have served on the company, by leaving it at the registered office of the company, a demand in writing requiring the company to pay the sum so due, and the company has for 21 days thereafter neglected to pay the sum or to secure or compound for it to the reasonable satisfaction of each of the creditors; or
- (c) if execution or other process issued on a judgment, decree or order of any court in favour of a creditor of the company is returned unsatisfied in whole or in part; or
- (d) if it is proved to the satisfaction of the court that the company is unable to pay its debts, and in determining whether a company is unable to pay its debts, the court shall take into account the contingent and prospective liabilities of the company.

#### Explanatory note

Amended reenactment of Section 214 of the Companies Act, 1963, as amended by Section 123 of the Companies Act, 1990.

Paragraphs (a), (c) and (d) restate Section 214(a)-(c) of the Companies Act, 1963. Paragraph (a) has been amended to state time periods in days. The minimum amount upon which a creditor may petition has also been revised to €5000 in accordance with the reasoning in the CLRG Second Report at 4.15.22.



Paragraph (b) is new. It seeks to enable petitions for winding-up by creditors where there are large numbers of small creditors who would otherwise be unable to petition individually. The ability for small creditors to collectively petition, to a certain extent, offsets the increase in the minimum threshold in paragraphs (a). See also CLRG Second Report 4.15.21.

**Explanatory note**

This is an amended reenactment of Section 215 of the Companies Act, 1963 as amended by Section 94 of the Company Law Enforcement Act, 2001, Section 3 of the Companies (Amendment) Act, 1983, Schedule 3, Part 1 of the Companies (Amendment) Act, 1983 and Schedule 1 Paragraph 18, of the Companies (Amendment) Act, 1983.

The text “so, however” in Subhead (1) has been altered for purely grammatical reasons.

The following text from Section 215(a)(i) of the Companies Act, 1963 has been moved to Pillar B: “(a) a contributory shall not be entitled to present a winding-up petition unless—  
(i) either the number of members is reduced, in the case of a private company, below two, or in the case of any other company, below seven; or”  
The removal from Pillar A reflects the existence of single member companies and the transfer of non CLS provisions into Pillar B. The remainder of the subsection has been reworded and now comprises the new paragraph (e).

Paragraph (a) is a restatement of Section 215(c) of the Companies Act, 1963.

Paragraph (b) is a restatement of Section 215(d) of the Companies Act, 1963, substituting the reference to Part A13 , Head 9 [equivalent of Section 12 of the Companies Act, 1990] for the reference to Section 170(3) of the Companies Act, 1963, which has been repealed.

Paragraph (c) is a restatement of Section 215(e) of the Companies Act, 1963.

Paragraph (e) is a restatement of Section 215(a)(ii) of the Companies Act, 1963.

A new paragraph (d) has been inserted naming the Director of Corporate Enforcement as an applicant upon the grounds detailed in the new paragraph (g) of Head 10.

Section 215(f) of the Companies Act, 1963 has been moved to Pillar B. That subsection stated:

“(f) a petition for winding-up on the grounds mentioned in sections 213(h) or (i), may be presented by the registrar of companies;”

Section 215(g) of the Companies Act, 1963 has been moved to Pillar B. That paragraph stated:

“(g) a petition for winding-up on the grounds mentioned in paragraph (fa) of Section 213 shall be presented by the person referred to in subparagraph (i) of that paragraph or, as the case may be, the person specified in that behalf by regulations under subparagraph (ii) of that paragraph.”

## Head 12 Provisions as to applications for winding-up

An application to the court for the winding-up of a company shall be by petition presented, subject to the provisions of this head, either by the company or by any creditor or creditors (including any contingent or prospective creditor or creditors), contributory or contributories, or by all or any of those parties, together or separately, provided that—

- (a) the court shall not give a hearing to a winding-up petition presented by a contingent or prospective creditor until such security for costs has been given as the court thinks reasonable, and until a prima facie case for winding-up has been established to the satisfaction of the court; and
- (b) in a case falling within Part A13 , Head 9 [equivalent of Section 12 of the Companies Act, 1990] a winding-up petition may be presented by the Minister;
- (c) a petition for winding-up on the grounds mentioned in Part A11, Head 10 (f) [equivalent of paragraph (g) of Section 213 of the Companies Act, 1963 ] may be presented by any person entitled to bring proceedings for an order under Part A4, Head 72 [equivalent of Section 205 of the Companies Act, 1963];
- (d) in the circumstances referred to in Part A11, Head 10 (g), a winding-up petition may be presented by the Director of Corporate Enforcement; and
- (e) a contributory shall not be entitled to present a winding-up petition unless the shares in respect of which he is a contributory, or some of them, either were originally allotted to him or have been held by him, and registered in his name, for at least 6 months during the 18 months before the commencement of the winding-up, or have devolved on him through the death of a former holder.



---

### Head 13 Powers of court on hearing petition

---

- (1) On hearing a winding-up petition, the court may dismiss it, or adjourn the hearing conditionally or unconditionally, or make any interim order, or any other order that it thinks fit, but the court shall not refuse to make a winding-up order on the ground only that the assets of the company have been mortgaged to an amount equal to or in excess of those assets, or that the company has no assets.
- (2) The court may, upon the making of an order to wind up a company based upon any of the circumstances provided for in Part A11, Head 10 (a) to (f) [equivalent of Section of the 213 Companies Act, 1963], order that the company be wound up as if it was a members' voluntary winding-up and, in such event, the provisions of this Part shall apply as if the company was being so wound up.
- (3) Where a petitioner does not proceed with his winding-up petition, the court may, upon such terms as it shall deem just, substitute as petitioner any person who would have a right to present a petition, and who wishes to proceed with the petition.

#### **Explanatory note**

*Subhead (1) is a reenactment of Section 216 of the Companies Act, 1963 as amended by Schedule 3 Companies (Amendment) Act, 1983.*

*Subhead (2) is new. It empowers the court to provide that in certain circumstances it may order a company to be wound up as if it was a members' voluntary winding-up.*

*Subhead (3) incorporates the substance of Order 74, Rule 18 of the Rules of the Superior Courts (RSC).*

---

### Head 14 Appointment of provisional liquidator

---

The court may appoint a liquidator provisionally at any time after the presentation of a winding-up petition and before the first appointment of a liquidator.

#### **Explanatory note**

*Amended reenactment of Section 226(1) of the Companies Act, 1963.  
The plural "liquidators" has been amended to "a liquidator".*

*Section 226(2) has been replaced by Head 63 Part A11 – Liquidators Powers.*

---

### Head 15 Power to stay or restrain proceedings against company

---

At any time after the presentation of a winding-up petition, and before a winding-up order has been made, the company or any creditor or contributory may—

- (a) where any action or proceeding against the company is pending in the High Court or on appeal in the Supreme Court, apply to the court in which the action or proceeding is pending for a stay of proceedings therein; and
- (b) where any other action or proceeding is pending against the company, apply to the High Court to restrain further proceedings in the action or proceeding,

and the court to which application is so made may, as the case may be, stay or restrain the proceedings accordingly on such terms and for such period as it thinks fit.

#### **Explanatory note**

*Reenactment of Section 217 of the Companies Act, 1963.*

---

### Head 16 Appointment of liquidator by the court

---

For the purpose of conducting the proceedings in winding-up a company, the court may appoint a liquidator or liquidators.

#### **Explanatory note**

*Amended reenactment of Section 225 of the Companies Act, 1963. Appointments in the event of a vacancy or the removal of a liquidator are covered by Part A11, Head 72 (1).*

---

### Head 17 Effect of winding-up order

---

- (1) An order for winding-up a company shall operate in favour of all the creditors and of all the contributories of the company, as if made on the joint petition of a creditor and of a contributory.

- (2) Where an order is made winding up a company, the provisions of this Part applicable to a creditors' voluntary winding-up shall, save where otherwise provided in this Part, apply to such winding-up.

**Explanatory note**

*Expanded re-enactment of Section 223 of the Companies Act, 1963.*

*Subhead (2) is new, and is designed to ensure that, save where a distinction is expressly intended to be made between creditors' voluntary windings-up and court ordered windings-up, the same regime will apply to both modes of winding-up.*

---

### **Head 18 Saving for rights of creditors and members**

---

The winding-up of a company shall not bar the right of any creditor or contributory to have it wound up by the court, but in the case of an application by a contributory the court must be satisfied that the rights of the members will be prejudiced by a voluntary winding-up.

**Explanatory note**

*Re-enactment of Section 282 of the Companies Act, 1963.*

## Chapter 3

### Members' Voluntary Winding Up

#### Head 19 Application of Chapter

The provisions of this Chapter shall apply only to a Members' Voluntary Winding-Up, save to the extent that any of those provisions expressly provides to the contrary.

**Explanatory note**

*This is a new head. Its purpose is self-evident.*

#### Head 20 Resolution for and commencement of Members' Voluntary Winding-Up

- (1) A company may be wound up voluntarily as a members' voluntary winding-up.
- (2) A winding-up of a company as a members' voluntary winding-up pursuant to subhead (1) shall be a restricted activity which may only occur upon—
  - (a) compliance with the requirements of the validation procedure in accordance with Part A4, Head 71 applicable to a members' voluntary winding-up; or
  - (b) when the period, if any, fixed for the duration of the company by the articles expires, or the event, if any, occurs, on the occurrence of which the articles provide that the company is to be dissolved, and the company in general meeting has passed a resolution that the company be wound up voluntarily.

**Explanatory note**

*Subhead (1) is new.*

*Subhead (2) replaces Section 251(1)(a) and (b) of the Companies Act, 1963 dealing with member's voluntary windings-up.*

*Initiation of a members' voluntary winding up is now effected by use of the validation procedure.*

*Section 251(1)(c) of the Companies Act, 1963 is replaced by Head 26 (2).*

#### Head 21 Publication of resolution to wind up voluntarily

- (1) When a company has passed a resolution for voluntary winding-up, it shall, within 14 days after the passing of the resolution, give notice of the resolution by advertisement in the Companies Registration Office Gazette.
- (2) If default is made in complying with this head, the company and every officer of the company who is in default shall be guilty of a category three offence and for the purposes of this Subhead, the liquidator of the company shall be deemed to be an officer of the company.

**Explanatory note**

*Reenactment, with amendment, of Section 252 of the Companies Act, 1963.*

*The previous reference in this head to Iris Oifigiúil has been changed to CRO Gazette.*

#### Head 22 Declaration of solvency

- (1) The declaration made in accordance with Part A4, Head 71 (3) shall, notwithstanding Part A4, Head 71 (1) (b), be delivered by the company to the Registrar within seven days of the passing of a special resolution in accordance with Subhead 1 (a) of Part A4, Head 71.
- (2) If within 28 days after the resolution for voluntary winding-up has been advertised under Subhead (1) of Part A11, Head 21 [equivalent of Section 252(1) of the Companies Act, 1963], a creditor applies to the court for an order under this subhead, and the court is satisfied that such creditor together with any creditors supporting him in his application represents one-fifth at least in number or value of the creditors of the company, and the court is of opinion that it is unlikely that the company will be able to pay its debts within the period specified in the declaration, the court may order that all the provisions of this Bill relating to a creditors' voluntary winding-up shall apply to the winding-up.
- (3) If the court orders that all the provisions of this Bill in relation to a creditors' voluntary winding-up shall apply to the winding-up, the person who held the office of liquidator immediately prior to the making of the order or, if no liquidator is acting, the company shall within 21 days after the making of the order, deliver an office copy of such order to the Registrar.

- (4) If default is made in complying with Subhead (3), any person who is in default shall be guilty of a category four offence.
- (5) Where a declaration is made in accordance with Part A4, Head 71 (3) and it is subsequently proved to the satisfaction of the court that the company is unable to pay its debts, the court on the application of the liquidator or any creditor or contributory of the company may, if it thinks it proper to do so, declare that any director who was a party to the declaration without having reasonable grounds for the opinion that the company would be able to pay its debts in full within the period specified in the declaration shall be personally responsible, without any limitation of liability, for all or any of the debts or other liabilities of the company as the court may direct.
- (6) Where a company's debts are not paid or provided for in full within the period stated in the declaration of solvency, it shall for the purposes of Subhead (5) be presumed, until the contrary is shown, that the director did not have reasonable grounds for his opinion.
- (7) Where the court makes a declaration under Subhead (3), it may give such further directions as it thinks proper for the purpose of giving effect to that declaration.

**Explanatory note**

*This is an amended reenactment of Section 256 of the Companies Act, 1963 (inserted by Section 128 of the Companies (Amendment) Act, 1990).*

*Section 256(1)-(4) of the Companies Act, 1963 have been replaced by the new (1), reflecting the use of the validation procedure.*

*Section 256(5)-(7) and (9)-(10) of the Companies Act, 1963 have been restated.*

*Section 256(8) has been re-inserted on the basis that it has not been included in Part A4.*

*Section 256(11) has been moved to the definitions section of the Part.*

*References to Registrar of Companies have been amended to Registrar.*

---

**Head 23 Power of company to appoint liquidators**

---

The company in general meeting shall appoint one or more liquidators for the purpose of winding-up the affairs and distributing the assets of the company.

**Explanatory note**

*Amended reenactment of Section 258 of the Companies Act, 1963. That part of the provision dealing with remuneration has been moved to the general remuneration provision [Head 79]. The remaining part of subsection (1) duplicates part of the new general appointment and removal provision, however it was retained in this Chapter, as it is a vital part of the initiation process.*

*Section 258(2) has been replaced by Head 108 (2).*

---

**Head 24 Duty of liquidator to call creditors' meeting if he is of opinion that company unable to pay its debts**

---

- (1) If the liquidator appointed in accordance with Part A11, Head 23 [equivalent of Section 258(1) of the Companies Act, 1963] is at any time of the opinion that the company will not be able to pay its debts in full within the period stated in the declaration referred to in Part A11, Head 22 (1) [equivalent of Section 256 of the Companies Act, 1966] he shall—
  - (a) summon a meeting of creditors for a day not later than the fourteenth day after the day on which he formed that opinion;
  - (b) send notices of the creditors' meeting to the creditors by post not less than seven days before the day on which that meeting is to be held;
  - (c) cause notice of the creditors' meeting to be advertised, at least ten days before the date of the meeting, once in the Companies Registration Office Gazette and once at least in two daily newspapers circulating in the locality in which the company's principal place of business in the State was situated during the relevant period; and
  - (d) during the period before the day on which the creditors' meeting is to be held, furnish creditors free of charge with such information concerning the affairs of the company as they may reasonably require,

and the notice of the creditors' meeting shall state the duty imposed by paragraph (d).

- (2) The liquidator shall also—

## Part A11 - Winding-Up

---

- (a) make out a statement in the prescribed form as to the affairs of the company, including a statement of the company's assets and liabilities, a list of the outstanding creditors and the estimated amount of their claims;
  - (b) lay that statement before the creditors' meeting; and
  - (c) attend and preside at that meeting.
- (3) As from the day on which the creditors' meeting is held under this head, the Bill shall have effect as if—
- (a) without prejudice to the powers of the court under Part A11, Head 22 [equivalent of Section 256 of the Companies Act, 1963], the directors' declaration under that head had not been made; and
  - (b) the creditors' meeting and the company meetings at which it was resolved that the company be wound up voluntarily were the meetings mentioned in Part A11, Head 27 [equivalent of Section 266 of the Companies Act, 1963];

and, accordingly, the winding-up shall become a creditors' voluntary winding-up and any appointment made or committee established by the creditors' meeting shall be deemed to have been made or established by the creditors' meeting so mentioned.

- (4) The appointment of a liquidator at a meeting called under this head shall not, subject to Subhead (5), affect the validity of any action previously taken by the liquidator appointed by the members of the company.
- (5) Where the creditors appoint a liquidator at a meeting called under this head and there is a dispute as to any or all of the costs, charges or expenses incurred by, the liquidator appointed by the members of the company, the liquidator appointed by the creditors, or any creditor, may apply to the court to determine the dispute and the court may, on such application, make such order as it deems fit.
- (6) Nothing in this head shall be deemed to take away any right in this Bill of any person to present a petition to the court for the winding-up of a company.
- (7) If the liquidator fails to comply with Subhead (1) he shall be guilty of a category three offence.

### **Explanatory note**

*Reenactment of Section 261 of the Companies Act, 1963 as substituted by Section 129 of the Companies Act, 1990.*

*There have been slight amendments to this section. The previous reference in this section to Iris Oifigiúil has been changed to CRO Gazette. The text "appointed in accordance with Part A11, Head 23 [equivalent of Section 258(1) of the Companies Act, 1963] has been inserted into Subsection (1) for the sake of clarity.*



## Chapter 4

### Creditors' Voluntary Winding-Up

#### Head 25 Application of Chapter

The provisions of this Chapter shall apply only to a creditors' voluntary winding-up, save to the extent that any of those provisions expressly provides to the contrary.

**Explanatory note**

*This is a new head. Its purpose is self-evident.*

#### Head 26 Resolution for and commencement of Creditors' Voluntary Winding-Up

- (1) A company may be wound up voluntarily as a creditors' voluntary winding-up.
- (2) A winding-up of a company as a creditors' voluntary winding-up pursuant to Subhead (1) may be initiated by the company in general meeting resolving that it cannot by reason of its liabilities continue its business, and that it be wound up as a creditors' voluntary winding-up.
- (3) A company shall be wound up as a creditors' voluntary winding-up—
  - (a) if a creditors' meeting is held in accordance with Part A11, Head 24 (3) [equivalent of Section 261(3) of the Companies Act, 1963]; or
  - (b) if the court makes an order under Part A11, Head 22 (2) [equivalent of Section 256(5) of the Companies Act, 1963];
  - (c) if a members voluntary winding-up has been commenced pursuant to Part A11, Head 20 but a declaration is not subsequently made and has not been delivered in accordance with Part A11, Head 22 [equivalent of Section 256(2) of the Companies Act, 1963].

**Explanatory note**

*Subhead (1) is new.*

*Subhead (2) is an amended restatement of paragraph 251(1)(c) of the Companies Act, 1963.*

*Subhead (3) provides for the three circumstances (other than those referred to in Head 26(2)) in which a company is liable to be wound up as a creditors' voluntary winding-up. Subhead (3)(c) reflects the position as provided for in Section 256(11) of the Companies Act, 1963 as substituted by section 128 of the Companies Act, 1990. Section 256(11) of the Companies Act, 1963 reads:*

*"(11) A winding-up in the case of which a declaration has been made and delivered in accordance with this section is in this Act referred to as 'a members' voluntary winding up' and a voluntary winding-up in the case of which a declaration has not been made and delivered as aforesaid or in the case of which an order is made under Subsection (5) or in the case to which Section 261 (3) applies is in this Act referred to as 'a creditors' voluntary winding-up'."*

*The definition of creditors' voluntary winding-up has been moved to the definitions section, Part A11 Head 1.*

#### Head 27 Meeting of creditors

- (1) The company shall cause a meeting of the creditors of the company to be summoned for the day, or the day next following the day, on which there is to be held the meeting at which the resolution for a creditors' voluntary winding-up is to be proposed, and shall send to each creditor at least 10 days before the date of the said meeting of the company written notice of such meeting.
- (2) The notice required by Subhead (1) shall—
  - (a) state the date, time and location of the creditors' meeting;
  - (b) state the name and address of the person at that time proposed for appointment as liquidator, if any; and
  - (c) either—
    - (i) attach a list of the creditors of the company; or
    - (ii) notify the recipient of their rights under Subhead (3) together with details of the location at which the list of creditors of the company may be inspected.
- (3) A creditor who has not been provided with a copy of the list of the creditors of the company under Subhead (2)(c)(i) may at any time prior to the meeting held pursuant to Subhead (1)—

## Part A11 - Winding-Up

---

- (a) upon 24 hours written notice to the company of their intention to do so, inspect during business hours the list of creditors of the company at the registered office of the company; or
  - (b) require the company by written request to deliver a copy of the list of creditors of the company to them, and any such copy may be delivered by the company by post or, with consent of the requesting person, in any other manner.
- (4) The company shall cause notice of the meeting referred to in Subhead (1), excluding the list of creditors referred to in any attachment pursuant to Subhead (2)(c)(i), to be advertised at least 10 days before the meeting once at least in 2 daily newspapers circulating in the district where the registered office or principal place of business of the company is situate.
- (5) The directors of the company shall—
- (a) cause a full statement of the position of the company's affairs, together with a list of the creditors of the company and the estimated amount of their claims to be laid before the meeting of the creditors to be held as aforesaid; and
  - (b) appoint one of their number to preside at the said meeting.
- (6) It shall be the duty of the director appointed to preside at the meeting of creditors to attend the meeting and preside thereat.
- (7) If the meeting of the company at which the resolution for voluntary winding-up is to be proposed is adjourned and the resolution is passed at an adjourned meeting, any resolution passed at the meeting of the creditors held in pursuance of Subhead (1) shall have effect as if it had been passed immediately after the passing of the resolution for winding-up the company.
- (8) If default is made by the company in complying with Subheads (1), (2) or (4) the company and every officer of the company who is in default shall be guilty of a category three offence.
- (9) If default is made by the directors of the company in complying with Subhead (5) or by any director in complying with Subhead (6) the directors or director, as the case may be, shall be guilty of a category three offence.

### **Explanatory note**

*Amended reenactment of Section 266 of the Companies Act, 1963 as amended by Section 130 of the Companies Act, 1990.*

*Subhead (1) is a modified restatement of Section 266(1) of the Companies Act, 1963.*

*Subsection (2) is new. It details the contents of the notice under Subhead (1).*

*Subhead (3) is new. It provides, in the event that a copy of the list of creditors is not provided to a person with the notice of the meeting, that that person may inspect or obtain a copy of the list upon written request.*

*Subheads (4) to (7) are an amended reenactment of Section 266(2) to (5) of the Companies Act, 1963. Subsection (2) of Section 266 has been altered so that it is clear that the contents of any attachments need not be detailed in the advertisement under that section.*

*Subheads (8) and (9) replace Section 266(6) of the Companies Act, 1963. The provision has been split.*

---

## **Head 28 Appointment of liquidator**

---

- (1) Subject to Subhead (2), the creditors and the company at their respective meetings mentioned in Part A11, Head 27 [equivalent of Section 266 of the Companies Act, 1963] may nominate a person to be liquidator for the purpose of winding up the company, and if the creditors and the company nominate different persons, the person nominated by the creditors shall be liquidator, and if no person is nominated by the creditors, the person, if any, nominated by the company shall be liquidator.
- (2) Where different persons are nominated as liquidator, any director, member or creditor of the company may, within 14 days after the date on which the nomination was made by the creditors, apply to the court for an order either directing that the person nominated as liquidator by the company shall be liquidator instead of or jointly with the person nominated by the creditors, or appointing some other person to be liquidator instead of the person appointed by the creditors.
- (3) If at a meeting of creditors mentioned in Part A11, Head 27 (1) –[equivalent of Section 266(1) of the Companies Act, 1963] a resolution as to the creditors' nominee as liquidator is proposed, it shall be deemed to be passed when a majority, in value only, of the creditors present personally or by proxy and voting on the resolution have voted in favour of the resolution

**Explanatory note**

*Reenactment of Section 267 of the Companies Act, 1963 as amended by Section 47 of the Company Law Enforcement Act, 2001. This head only applies to the initial appointment of a liquidator. Subsequent appointments are now covered by Part A11, Heads 71 to 72.*

*Subsection (1) has been amended by the removal of the text "the affairs and distributing the assets of the company".*

## Chapter 5

### Conduct of Winding-Up

#### Head 29 Commencement of court ordered winding-up

- (1) Where, before the presentation of a petition for the winding-up of a company by the court, a resolution has been passed by the company for voluntary winding-up, the winding-up of the company shall be deemed to have commenced at the time of the passing of the resolution, and unless the court, on proof of fraud or mistake, thinks fit to direct otherwise, all proceedings taken in the voluntary winding-up shall be deemed to have been validly taken.
- (2) In any other case, the winding-up of a company by the court shall be deemed to commence at the time of the presentation of the petition for the winding-up.

**Explanatory note**

Reenactment of Section 220 of the Companies Act, 1963.

#### Head 30 Commencement of voluntary winding up.

A voluntary winding-up shall be deemed to commence at the time of the passing of the resolution for voluntary winding-up.

**Explanatory note**

Reenactment of Section 253 of the Companies Act, 1963.

#### Head 31 Copy of order for winding-up or appointment to be forwarded to Registrar

- (1) On the making of a winding-up order, such officer of the court as may be prescribed shall forthwith cause the Registrar to be furnished with the particulars of the order for registration prescribed.
- (2) On the making of an order appointing a liquidator, such officer of the court as may be prescribed shall forthwith cause the Registrar to be furnished with the particulars of the order for registration prescribed.

- (3) On the making of a winding-up order, a copy of the order shall, save where the company is the petitioner, be served by the petitioner upon the company at its registered office (if any) or, if there is no registered office or notice has not been given to the Registrar of such office, at its principal or last known principal place of business or upon such other person or persons or in such other manner as the Court may direct.

**Explanatory note**

Subhead (1) amends Section 221(1) of the Companies Act, 1963. The obligation to furnish to the Registrar, particulars of the winding-up order now rests with the prescribed officer of the court.

Subhead (2) replaces Section 227(1) of the Companies Act 1963. The obligation to deliver notice now rests with the prescribed officer of the court, rather than the liquidator. The obligation to advertise the making of the order has been removed.

There is no longer any related offence provision for non-compliance (i.e. Sections 221(2) and 227(2) of the Companies Act, 1963).

The heading has been amended by the insertion of "or appointment"

Subhead (3) incorporates a modified version of Order 74, rule 22, RSC.

#### Head 32 Notice by voluntary liquidator of his appointment

- (1) In a voluntary winding-up the liquidator shall, within 14 days after his appointment, deliver to the Registrar for registration a notice of his appointment and the Registrar shall forward a copy to the Director of Corporate Enforcement.
- (2) If the liquidator fails to comply with the requirements of this head, he shall be guilty of a category four offence.

**Explanatory note**

Amended reenactment of Section 278 of the Companies Act, 1963 as amended by Section 48 of the Company Law Enforcement Act, 2001.

As this head has been moved out of a chapter that only applies to voluntary windings-up the reenactment now contains an explicit statement that it applies only to voluntary windings-up.

*The wording of the offence provision has been amended to conform to the new form of such provisions.*

### **Head 33 Statement of company's affairs**

- (1) Where the court has made a winding-up order or appointed a provisional liquidator, there shall, unless the court thinks fit to order otherwise and so orders, be made out and filed with the Registrar a statement as to the affairs of the company in the prescribed form, verified by affidavit, and showing the particulars of its assets, debts and liabilities, the names, residences and occupations of its creditors, the securities held by them respectively, the dates when the securities were respectively given, and such further or other information as may be prescribed or as the court may require.
- (2) The statement shall be filed and verified by one or more of the persons who are at the relevant date the directors, and by the person who is at that date the secretary of the company or by such of the persons hereinafter mentioned in this Subhead as the court may require to file and verify the statement, that is, persons—
  - (a) who are or have been officers of the company;
  - (b) who have taken part in the formation of the company at any time within 12 months before the relevant date;
  - (c) who are in the employment of the company, or have been in the employment of the company within the said year, and are in the opinion of the court, capable of giving the information required;
  - (d) who are or have been within the said year officers of or in the employment of a company which is, or within the said year was, an officer of the company to which the statement relates.
- (3) The statement shall be filed within 21 days from the relevant date or within such extended time as the court may for special reasons appoint.
- (4) Any person making or concurring in making the statement and affidavit required by this head shall be allowed, and shall be paid out of the assets of the company, such costs and expenses incurred in and about the preparation and making of the statement and affidavit as the court may allow.
- (5) If any person, without reasonable excuse, makes default in complying with the requirements of this head, he shall be guilty of a category three offence.
- (6) Any person who states in writing that he is a creditor or contributory of the company shall be entitled by himself or by his agent at all reasonable times, on payment of the prescribed fee, to inspect the statement filed in pursuance of this head, and to a copy thereof or extract therefrom.
- (7) Any person fraudulently so stating himself to be a creditor or contributory shall be guilty of a category three offence.
- (8) The person who has made the statement of affairs shall serve a copy of the statement on the liquidator immediately following the liquidator's appointment.
- (9) The person who has made the statement of affairs shall, at the liquidator's request, provide to the liquidator such information in relation to the company as the liquidator may reasonably require.
- (10) Where a person fails to comply with the request of a liquidator made in accordance with Subhead (9), the court may, on the application of the liquidator, direct the person to comply with such request.
- (11) A person who is required to make or concur in making any statement of affairs of a company, shall before incurring any costs or expenses in and about the preparation and making of the statement, apply to the liquidator for his sanction and submit a statement of the estimated costs and expenses which it is intended to incur and if there shall be no liquidator, shall apply to the court; and, except by order of the court, no person shall be allowed out of the assets of the company any costs or expenses which have not, before being incurred, being sanctioned by the liquidator or the Court.
- (12) In this head, "the relevant date" means, in a case where a provisional liquidator is appointed, the date of his appointment, and, in a case where no such appointment is made, the date of the winding-up order.



## Part A11 - Winding-Up

---

### **Explanatory note**

*Amended restatement of Section 224 of the Companies Act, 1963*

*Subhead (1) has been amended to require the filing of the statement of affairs with the Registrar instead of the Court. The head has also been amended to conform to the standard form for offence provisions.*

*The sanction in Section 224(7) for a person “untruthfully” stating himself to be a creditor or contributory has been reformulated as a fine and substituting “fraudulently” for “untruthfully”.*

*Subhead (8) incorporates a modified version of Order 74 rule 24(1), RSC. The obligation of the person making the statement of affairs has been reformulated, requiring the statement to be served on the liquidator following the latter’s appointment, rather than being filed with the court.*

*Subhead (9) incorporates a modified version of Order 74 rule 24(1), RSC. The obligation of the person making the statement of affairs has been reformulated, requiring such person to provide information to the liquidator rather than to the court.*

*Subhead (10) is new, and is designed to give effect to the liquidators’ entitlement to obtain information under Subhead (9).*

*Subhead (11) incorporates the requirements of Order 74 rule 25, RSC.*

- (3) Where the winding-up of a company commences within one year after the company has changed its name, the former name as well as the existing name of the company shall appear on all notices and advertisements in relation to the winding-up.
- (4) If default is made in complying with this head, the company and any of the following persons who knowingly and wilfully authorises or permits the default, namely, any officer of the company, any liquidator of the company and any receiver, shall be guilty of a category three offence.

### **Explanatory note**

*This is an amended reenactment of Section 303 of the Companies Act, 1963, with the insertion of a new Subhead (2), which requires notice of the appointment of a provisional liquidator and the insertion of a new Subhead (3) which is a re-enactment of Section 23(6) of the Companies Act, 1963, as amended by Section 87 of the Company Law Enforcement Act, 2001.*

*The section has also been amended to conform to the standard form for offence provisions.*

*The superfluous text “whether by the court or voluntarily” has been removed from subsection (1).*

---

## **Head 34 Notification that a company is in liquidation**

---

- (1) Where a company is being wound up, every invoice, order for goods or business letter issued by or on behalf of the company or a liquidator of the company, or a receiver of the property of the company, being a document on or in which the name of the company appears, shall contain a statement that the company is being wound up.
- (2) Where a provisional liquidator has been appointed to a company, every invoice, order for goods or business letter issued by or on behalf of the company or the provisional liquidator of the company, or a receiver of the property of the company, being a document on or in which the name of the company appears, shall contain a statement that a provisional liquidator has been appointed to the company.

## Chapter 6

### Realisation of assets and related matters

#### Head 35 Custody of company's property

- (1) Where a winding-up order has been made, upon the appointment of a liquidator, the liquidator shall take into his custody or under his control the seal, books and records of the company, and all the property to which the company is or appears to be entitled.
- (2) A person who, without lawful entitlement or authority, has possession or control of the books, records or other property of a company in liquidation at the date of the appointment of a liquidator, or subsequent to such date comes into such possession or control, shall surrender immediately to the liquidator such books, records or other property, as the case may be.

#### **Explanatory note**

*Amended reenactment of Section 229(1) of the Companies Act, 1963. Subhead 2 is new and is designed to facilitate recovery of records and assets generally by liquidators from persons who would not have a right in law to withhold same from the liquidator*

*This section has been amended so that it now applies also to voluntary windings-up.*

*Provisional liquidators are now excluded from the operation of this head as the duties of a provisional liquidator, including the extent of their duties to take possession of property, will now be determined by the court [see Head 60(3)].*

*In Subsection (1) the term "things in action" has been deleted as property is defined to include a right of action in Head 1 of the Part.*

#### Head 36 Circumstances in which floating charge is invalid

- (1) Where a company is being wound up, a floating charge on the undertaking or property of the company created within 12 months before the commencement of the winding-up shall, unless it is proved that the company immediately after the creation of the charge was solvent, be invalid, except as to money actually advanced or paid, or the actual price or value of goods or services sold or supplied, to the company at the time of or subsequently to the creation of, and in consideration for, the charge, together with interest on that amount at the appropriate rate.
- (2) For the purposes of Subhead (1) the value of any goods or services sold or supplied by way of consideration for a floating charge is the amount in money which at the time they were sold supplied could reasonably have been expected to be obtained for the goods or services in the ordinary course of business and on the same terms (apart from the consideration) as those on which they were sold or supplied to the company.
- (3) Where a floating charge on the undertaking or property of a company is created in favour of a connected person, Subhead (1) shall apply to such a charge as if the period of 12 months mentioned in that Subhead were a period of 2 years.
- (4) In Subhead (1), "the appropriate rate" means such rate of interest annually as the Minister may by order prescribe.

#### **Explanatory note**

*Amended reenactment of Section 288 of the Companies Act, 1963. The reference in Section 288(1) to an interest rate of five per cent has been changed to "the appropriate rate" to be prescribed by the Minister under Subsection (4) of this head. Subhead (4) has been moved to the definitions section of the Part.*

*Subhead (4) is new.*

---

### Head 37 Other circumstances in which floating charge is invalid

---

- (1) Subject to Subhead (2), where—
- (a) a company is being wound up; and
  - (b) the company was, within 12 months before the commencement of the winding-up, indebted to any officer of the company; and
  - (c) such indebtedness was discharged whether wholly or partly by the company or by any other person; and
  - (d) the company created a floating charge on any of its assets or property within 12 months before the commencement of the winding-up in favour of the officer to whom such company was indebted; then (without prejudice to any rights or liabilities arising apart from this head) such charge shall be invalid to the extent of the repayment referred to in paragraph (c) unless it is proved that the company immediately after the creation of the charge was solvent.
- (2) Subhead (1) shall not apply if the charge referred to in paragraph (d) was created before the operative date.
- (3) In this head, “officer” includes the spouse, child or nominee of an officer.

#### **Explanatory note**

*Restatement of Section 289 of the Companies Act, 1963.*

---

### Head 38 Company may be required to contribute to debts of related companies

---

- (1) On the application of the liquidator or any creditor or contributory of any company that is being wound up, the court, if it is satisfied that it is just and equitable to do so, may order that any company that is or has been related to the company being wound up shall pay to the liquidator of that company an amount equivalent to the whole or part of all or any of the debts provable in that winding-up, and any order under this head may be made on such terms and conditions as the court thinks fit.
- (2) In deciding whether it is just and equitable to make an order under Subhead (1) the court shall have regard to the following matters—
- (a) the extent to which the related company took part in the management of the company being wound up;
  - (b) the conduct of the related company towards the creditors of the company being wound up;
  - (c) the effect which such order would be likely to have on the creditors of the related company concerned.
- (3) No order shall be made under Subhead (1) unless the court is satisfied that the circumstances that gave rise to the winding-up of the company are attributable to the actions or omissions of the related company.
- (4) Notwithstanding any other provision, it shall not be just and equitable to make an order under Subhead (1) if the only ground for making the order is—
- (a) the fact that a company is related to another company; or
  - (b) that creditors of the company being wound up have relied on the fact that another company is or has been related to the first mentioned company.

- (5) For the purposes of this head “company” includes any body which is liable to be wound up under this Bill and “creditor” means a creditor, by assignment or otherwise, to whom the company is indebted in a sum exceeding €10,000 or two or more creditors, by assignment or otherwise, to whom in aggregate the company is indebted in a sum exceeding €20,000.
- (6) Where an application for an order under Subhead (1) seeks to require a licensed bank, within the meaning of Head 1 (1) of Part A5 [equivalent of Section 25 of the Companies Act, 1990], to contribute to the debts of a related company, a copy of every such application shall be sent by the applicant to the Central Bank who shall be entitled to be heard by the court before an order is made.
- (a) the court may remove any liquidator of any of the companies, and appoint any person to act as liquidator of an one or more of the companies;
- (b) the court may give such directions as it thinks fit for the purpose of giving effect to the order;
- (c) nothing in this head or the order shall affect the rights of any secured creditor of any of the companies;
- (d) debts of a company that are to be paid in priority to all other debts of the company pursuant to Part A11, Head 58 [equivalent of Section 285 of the Companies Act, 1963] shall, to the extent that they are not paid out of the assets of that company, be subject to the claims of holders of debentures under any floating charge (as defined in that head) created by any of the other companies;
- (e) unless the court otherwise orders, the claims of all unsecured creditors of the companies shall rank equally among themselves.

**Explanatory note**

*Amended reenactment of Section 140 of the Companies Act, 1990.*

*Section 140(5) has been moved to the definitions section of the Bill.*

*The definition of creditor in Subhead (5) has been modified to correspond to the requirements for a creditor to have standing to petition the court for the winding-up of a company.*

- (4) In deciding whether it is just and equitable to make an order under Subhead (1) the court shall have regard to the following matters—

**Head 39 Pooling of assets of related companies**

- (1) Where two or more related companies are being wound up and the court, on the application of the liquidator of any of the companies, is satisfied that it is just and equitable to make an order under this head, the court may order that, subject to such terms and conditions as the court may impose and to the extent that the court orders, the companies shall be wound up together as if they were one company, and, subject to the provisions of this head, the order shall have effect and all the provisions of this Part [equivalent of Part VI of the Companies Act, 1963] shall apply accordingly.
- (2) In deciding the terms and conditions of an order under this head the court shall have particular regard to the interests of those persons who are members of some, but not all, of the companies.
- (3) Where the court makes an order under Subhead (1)—
- (a) the extent to which any of the companies took part in the management of any of the other companies;
- (b) the conduct of any of the companies towards the creditors of any of the other companies;
- (c) the extent to which the circumstances that gave rise to the winding-up of any of the companies is attributable to the actions or omissions of any of the other companies;
- (d) the extent to which the businesses of the companies has been intermingled.
- (5) Notwithstanding any other provision, it shall not be just and equitable to make an order under Subhead (1) if the only ground for making the order is—
- (a) the fact that a company is related to another company; or
- (b) that creditors of a company being wound up have relied on the fact that another company is or has been related to the first mentioned company.

- (6) Notice of an application to the court for the purposes of this head shall be served on every company specified in the application, and on such other persons as the court may direct, not later than the end of the eighth day before the day the application is heard.

**Explanatory note**

*Amended reenactment of Section 141 of the Companies Act, 1990.*

---

### **Head 40 Power of liquidator to accept shares as consideration for sale of property of company**

---

- (1) Where a company is proposed to be, or is in course of being, wound up as a members voluntarily winding-up, and the whole or part of its business or property is proposed to be transferred or sold to another company, whether a company within the meaning of this Bill or not (in this head referred to as “the transferee company”), the liquidator of the first-mentioned company (in this head referred to as “the transferor company”) may, with the sanction of that company obtained in accordance with the validation procedure in accordance under Part A4, Head 71, conferring either a general authority on the liquidator or an authority in respect of any particular arrangement, receive in compensation or part compensation for the transfer or sale, shares, policies or other like interests in the transferee company for distribution among the members of the transferor company, or may enter into any other arrangement whereby the members of the transferor company may, in lieu of receiving cash, shares, policies or other like interests, or in addition thereto, participate in the profits of or receive any other benefit from the transferee company.
- (2) Any sale or arrangement in pursuance of this head shall be binding on the members of the transferor company.
- (3) If the voting rights conferred by any shares in the company were not cast in favour of the sanction in accordance with the validation procedure under Part A4, Head 71 and the holder of those shares expresses his dissent from the such sanction in writing addressed to the liquidator and left at the registered office of the company within 7 days after the obtaining of the sanction under the validation procedure in accordance with Part A4, Head 71, he may require the liquidator either to abstain from carrying the resolution into effect or to purchase that part of his interest which those shares represent at a price to be determined by agreement, or by arbitration in accordance with Subheads (6) and (7).
- (4) If the liquidator elects to purchase the member’s interest, the purchase money must be paid before the company is dissolved and, unless otherwise provided for, shall be deemed to be and shall be paid as part of the costs, charges and expenses of the winding-up.
- (5) A sanction obtained under sanction under the validation procedure in accordance with Part A4, Head 71 shall not be invalid for the purposes of this head by reason that it was obtained before or concurrently with a resolution for voluntary winding-up or for appointing liquidators, but, if an order is made within a year for winding-up the company by the court, the sanction under the validation procedure in accordance with Part A4, Head 71 shall not be valid unless sanctioned by the court.
- (6) An arbitration referred to in Subhead (3) shall be conducted by a single arbitrator appointed by agreement in writing between the holder of shares referred to in that Subhead and the liquidator or, in the absence of such agreement, by two arbitrators, one of whom shall be appointed in writing by each party to the arbitration.
- (7) The provisions of the Arbitration Act, 1954 applicable to arbitrations referred to in Section 48 of that Act shall apply to an arbitration referred to in Subhead (3).

**Explanatory note**

*Amended reenactment of Section 260 of the Companies Act, 1963.*

*This head has been amended so that it now explicitly states that it only applies to members’ voluntary windings-up.*



Subheads (6) and (7) replace Subsection (6) of Section 260, of the Companies Act, 1963, which incorporated in the 1963 Act, Sections 128 to 134 of the Companies Clauses (Consolidation) Act, 1845 and applied it to arbitrations referred to in Subsection (3) of Section 260. The Arbitration Act, 1954 applied to arbitrations under statute (i.e. as distinct from arbitration agreements) provisions which are similar to those of the 1845 Act mentioned, and it is no longer necessary or appropriate to rely further in this Bill on the provisions of the 1845 Act concerned. Note : reference is made to the 1845 Act in other legislation, primary and secondary: see, e.g. Gas Regulation Act, 1982.

## Head 41 Avoidance of dispositions of property etc. after commencement of winding-up

In a winding-up, any disposition of the property of the company, and any transfer of shares or alteration in the status of the members of the company, made after the commencement of the winding-up, not having—

- (a) the sanction of the liquidator; or
- (b) the sanction of a director who has retained the power to effect such disposition, transfer or alteration by virtue of Part A11, 108 (2) [equivalent of Section 269(3) of the Companies Act, 1963],

shall, unless the court otherwise orders, be void, provided that any person who effects the disposition or transfer at the request of the company shall have no liability for such disposition or transfer, save where prior to such disposition or transfer, such person had received actual notice that the company was being wound up pursuant to this Part.

### **Explanatory note**

*This head is a merger and expansion of Section 255 of the Companies Act, 1963, which dealt with voluntary windings-up, and Section 218 of the Companies Act, 1963, which dealt with court ordered windings-up.*

*The head now creates an express avoidance of property dispositions in voluntary windings-up, identical to that in court ordered windings-up.*

*The possibility of transfers of shares post commencement of winding-up being sanctioned by the liquidator has been extended from voluntary windings-up to all modes of winding-up. Alterations in the status of members of the company and dispositions of company property may now be sanctioned by the liquidator in all modes of winding-up. This reflects the general trend in these amendments towards a transfer of powers from the court to liquidators and the removal of differences between the types of winding-up. This, and all powers of the liquidator, remain subject to review by the court under [Head 66]. Head 41 gives to the court a residual power, as it currently has under Section 218 of the Companies Act, 1963, to validate such transactions.*

*With the expansion of Head 109 (2) Part A11 [equivalent of Section 269(3) of the Companies Act, 1963] to all types of winding-up, it is also necessary to provide that if a director, with the sanction of the committee of inspection or creditors, retains certain powers then any dispositions, transfers or alterations made pursuant to those retained powers are not invalidated by the operation of the head.*

*The avoidance provision is now subject to a proviso that third parties acting on the direction of the company will not be liable under the head if they do so without actual notice of the winding-up. This is a response to the decision of *Re Industrial Services Company (Dublin)* 2001 2 IR 118.*

## Head 42 Avoidance of executions against property of company

Unless the court orders otherwise, where any company is being wound up, any attachment, sequestration, distress or execution put in force against the property or effects of the company after the commencement of the winding-up shall be void.

### **Explanatory note**

*Amended reenactment of Section 219 of the Companies Act, 1963.*

*This head has been amended to apply to all types of winding-up, not merely to court ordered windings-up. This recognises that two primary objectives of winding-up, common to both court ordered and voluntary windings-up, are to enable the orderly realisation and the fair distribution of the company's assets. Both of these objectives are subverted by allowing individual creditors to obtain payment out of a company's assets other than by the ordinary rules of realisation and distribution in a winding-up.*

## Part A11 - Winding-Up

---

*The head is now subject to the power of the court to permit enforcement action to continue, notwithstanding the commencement of winding-up. This has been provided to allow the court to act where the winding-up is not being used in a bona fide manner and amounts to an abuse of process to impede or delay enforcement. This court power is not intended to allow an individual to be unfairly preferred to other creditors.*

*The words "to all intents" has been removed as unnecessary verbiage and inconsistent with other provisions in the Part, which merely use the term "void".*

---

### Head 43 Unfair preference; effect of winding-up on antecedent and other transactions

---

- (1) Subject to the provisions of this head, any conveyance, mortgage, delivery of goods, payment, execution or other act relating to property made or done by or against a company which is unable to pay its debts as they become due in favour of any creditor, or of any person on trust for any creditor, with a view to giving such creditor, or any surety or guarantor for the debt due to such creditor, a preference over the other creditors, shall, if a winding-up of the company commences within 6 months of the making or doing the same and the company is at the time of the commencement of the winding-up unable to pay its debts (taking into account the contingent and prospective liabilities), be deemed an unfair preference of its creditors and be invalid accordingly.
- (2) Any conveyance or assignment by a company of all its property to trustees for the benefit of all its creditors shall be void.
- (3) A transaction to which Subhead (1) applies in favour of a connected person which was made within two years before the commencement of the winding-up of the company shall, unless the contrary is shown, be deemed in the event of the company being wound up—
  - (a) to have been made with a view to giving such person a preference over the other creditors; and
  - (b) to be an unfair preference, and be invalid accordingly.

- (4) Subheads (1) and (3) shall not affect the rights of any person making title in good faith and for valuable consideration through or under a creditor of the company.

#### **Explanatory note**

*Amended reenactment of Section 286 of the Companies Act, 1963 as substituted by Section 135 of the Companies Act, 1990.*

*Subhead (5) has been moved to the definitions section for the Part.*

*The term "fraudulent" has been changed to "unfair" to reflect that the head may be triggered in the absence of fraud.*

---

### Head 44 Liabilities and rights of persons who have been unfairly preferred

---

- (1) Where—
  - (a) a company is being wound up; and
  - (b) anything made or done on or after the operative date is void under Part A11, Head 43 – [equivalent of Section 286 of the Companies Act, 1963] as an unfair preference of a person interested in property mortgaged or charged to secure the company's debt,then (without prejudice to any rights or liabilities arising apart from this head) the person preferred shall be subject to the same liabilities and shall have the same rights as if he had undertaken to be personally liable as surety for the debt to the extent of the charge on the property or the value of his interest, whichever is the less.
- (2) The value of the said person's interest shall be determined as at the date of the transaction constituting the unfair preference, and shall be determined as if the interest were free of all encumbrances other than those to which the charge for the company's debt was then subject.

- (3) On any application made to the court in relation to any payment on the ground that the payment was an unfair preference of a surety or guarantor, the court shall have jurisdiction to determine any questions relating to the payment arising between the person to whom the payment was made and the surety or guarantor, and to grant relief in respect thereof notwithstanding that it is not necessary so to do for the purposes of the winding-up, and for that purpose may give leave to bring in the surety or guarantor as a third party as in the case of an action for the recovery of the sum paid.
- (4) Subhead (3) shall apply, with the necessary modifications, in relation to transactions other than the payment of money as it applies to payments.

**Explanatory note**

*Restatement of Section 287 of the Companies Act, 1963.*

*The term "fraudulent" has been changed to "unfair" to reflect that the head may be triggered in the absence of fraud.*

- (4) The rights conferred by Subhead (1) on the liquidator may be set aside by the court in favour of the creditor to such extent and subject to such terms as the court thinks fit.
- (5) For the purposes of this head, an execution against goods shall be taken to be completed by seizure and sale, and an attachment of a debt shall be deemed to be completed by receipt of the debt, and an execution against land shall be deemed to be completed by seizure and, in the case of an equitable interest, by the appointment of a receiver.
- (6) Nothing in this head shall give any validity to any payment constituting an unfair preference.
- (7) In this head, "goods" includes all chattels personal and "sheriff" includes any officer charged with the execution of a writ or other process.

**Explanatory note**

*Reenactment of Section 291 of the Companies Act, 1963.*

*The term "fraudulent" has been changed to "unfair" to reflect that the head may be triggered in the absence of fraud.*

---

**Head 45    Restriction of rights of creditor as to execution or attachment in case of company being wound up**

---

- (1) Subject to Subheads (2) to (4), where a creditor has issued execution against the goods or lands of a company or has attached any debt due to the company, and the company is subsequently wound up, he shall not be entitled to retain the benefit of the execution or attachment against the liquidator in the winding-up of the company unless he has completed the execution or attachment before the commencement of the winding-up.
- (2) Where any creditor has had notice of a meeting having been called at which a resolution for voluntary winding-up is to be proposed, the date on which the creditor so had notice shall, for the purposes of Subhead (1), be substituted for the date of the commencement of the winding-up.
- (3) A person who purchases in good faith under a sale by the sheriff, any goods of a company on which an execution has been levied, shall in all cases, acquire a good title to them against the liquidator.

---

**Head 46    Duties of sheriff as to goods taken in execution**

---

- (1) Subject to Subhead (3), where any goods of a company are taken in execution, and, before the sale thereof or the completion of the execution by the receipt or recovery of the full amount of the levy, notice is served on the sheriff that a provisional liquidator has been appointed or that a winding-up order has been made or that a resolution for voluntary winding-up has been passed, the sheriff shall, on being so required, deliver the goods and any money seized or received in part satisfaction of the execution to the liquidator, but the costs of the execution shall be a first charge on the goods or the money so delivered, and the liquidator may sell the goods or a sufficient part thereof for the purpose of satisfying that charge.

## Part A11 - Winding-Up

---

- (2) Subject to Subhead (3), where under an execution in respect of a judgment for a sum exceeding [€1000] the goods of a company are sold or money is paid in order to avoid sale, the sheriff shall deduct the costs of the execution from the proceeds of the sale or the money paid and retain the balance for 14 days, and if within that time notice is served on him of a petition for the winding-up of the company having been presented or of a meeting having been called at which there is to be proposed a resolution for the voluntary winding-up of the company and an order is made or a resolution is passed, as the case may be, for the winding-up of the company, the sheriff shall pay the balance to the liquidator who shall be entitled to retain it as against the execution creditor.
- (3) The rights conferred by this head on the liquidator may be set aside by the court in favour of the creditor to such extent and subject to such terms as the court thinks fit.
- (4) The notice to be served on the sheriff in accordance with (1) may be served by being delivered by hand, or by pre-paid registered post, at his office.
- (5) In this head, "goods" includes all chattels personal and "sheriff" includes any officer charged with the execution of a writ or other process.
- (a) any property of the company of any kind whatsoever was disposed of either by way of conveyance, transfer, mortgage, security, loan, or in any way whatsoever whether by act or omission, direct or indirect; and
- (b) the effect of such disposal was to perpetrate a fraud on the company, its creditors or members, the court may, if it deems it just and equitable to do so, order any person who appears to have the use, control or possession of such property or the proceeds of the sale or development thereof to deliver it or pay a sum in respect of it to the liquidator on such terms or conditions as the court sees fit.
- (2) Subhead (1) shall not apply to any conveyance, mortgage, delivery of goods, payment, execution or other act relating to property made or done by or against a company to which Part A11, Head 43 [equivalent of Section 286 (1) of the Companies Act, 1963] applies.
- (3) In deciding whether it is just and equitable to make an order under this head, the court shall have regard to the rights of persons who have bona fide and for value acquired an interest in the property the subject of the application.

### **Explanatory note**

*Amended reenactment of Section 292 of the Companies Act, 1963.*

*The monetary figure in Subhead (2) will be updated from £20 to \$1000.*

*Subhead (4) incorporates the requirement specified in Order 74, rule 23, RSC.*

---

### **Head 47 Power of the court to order the return of assets which have been improperly transferred**

---

- (1) Where, on the application of a liquidator, creditor or contributory of a company which is being wound up, it can be shown to the satisfaction of the court that—

### **Explanatory note**

*Reenactment of Section 139 of the Companies Act, 1990.*

---

### **Head 48 Personal liability of officers of company where proper books of account not kept**

---

- (1) Subject to Subhead (2), if—
- (a) a company that is being wound up and that is unable to pay all of its debts has contravened Part A6, Heads 5, 6, 7, or 8 [equivalent of Section 202 of the Companies Act, 1990], and

- (b) the court considers that such contravention has contributed to the company's inability to pay all of its debts or has resulted in substantial uncertainty as to the assets and liabilities of the company or has substantially impeded the orderly winding-up thereof,

the court, on the application of the liquidator or any creditor or contributory of the company, may, if it thinks it proper to do so, declare that any one or more of the officers and former officers of the company who is or are in default shall be personally liable, without any limitation of liability, for all, or such part as may be specified by the court, of the debts and other liabilities of the company.

- (2) On the hearing of an application under this Subhead, the person bringing the application may himself give evidence or call witnesses.

(3)

- (a) Where the court makes a declaration under Subhead (1), it may give such directions as it thinks proper for the purpose of giving effect to the declaration and in particular may make provision for making the liability of any such person under the declaration a charge on any debt or obligation due from the company to him, or on any mortgage or charge or any interest in any mortgage or charge on any assets of the company held by or vested in him or any company or other person on his behalf, or any person claiming as assignee from or through the person liable under the declaration or any company or person acting on his behalf, and may from time to time make such further order as may be necessary for the purpose of enforcing any charge imposed under this Subhead;

- (b) In Paragraph (a) "assignee" includes any person to whom or in whose favour, by the directions of the person liable, the debt, obligation, mortgage or charge was created, issued or transferred or the interest created, but does not include an assignee for valuable consideration (not including consideration by way of marriage) given in good faith and without notice of any of the matters on the ground of which the declaration is made.

- (4) The court shall not make a declaration under Subhead (1) in respect of a person if it considers that—

- (a) he took all reasonable steps to secure compliance by the company with Part A6 Heads 5, 6, 7 and 8 [equivalent of Section 202 of the Companies Act, 1990]; or

- (b) he had reasonable grounds for believing and did believe that a competent and reliable person, acting under the supervision or control of a director of the company who has been formally allocated such responsibility, was charged with the duty of ensuring that that head was complied with and was in a position to discharge that duty.

- (5) This head shall have effect notwithstanding that the person concerned may be criminally liable in respect of the matters on the ground of which the declaration is to be made.

- (6) In this head "officer", in relation to a company, includes a person who has been convicted of an offence under Part A6, Head 107 (1) or (4) or Head 108 (1) or Part A13, Head 62 [equivalent of Section 194 or 242 of the Companies Act, 1990] in relation to a statement concerning the keeping of proper books of account by the company.

**Explanatory note**

*Amended reenactment of Section 204 of the Companies Act, 1990.*

*The reference to Section 197 in Subsection (6) has been deleted as that section has not been reenacted in the Consolidated Bill.*

---

**Head 49 Civil liability for fraudulent or reckless trading of company**

---

- (1) If in the course of winding-up of a company or in the course of proceedings under the Bill, it appears that—
- (a) any person was, while an officer of the company, knowingly a party to the carrying on of any business of the company in a reckless manner; or
- (b) any person was knowingly a party to the carrying on of any business of the company with intent to defraud creditors of the company, or creditors of any other person or for any fraudulent purpose,



## Part A11 - Winding-Up

---

the court, on the application of the receiver, examiner, liquidator or any creditor or contributory of the company, may, if it thinks it proper to do so, declare that such person shall be personally responsible, without any limitation of liability, for all or any part of the debts or other liabilities of the company as the court may direct.

(2) Without prejudice to the generality of Subhead (1) (a), an officer of a company shall be deemed to have been knowingly a party to the carrying on of any business of the company in a reckless manner if—

(a) he was a party to the carrying on of such business and, having regard to the general knowledge, skill and experience that may reasonably be expected of a person in his position, he ought to have known that his actions or those of the company would cause loss to the creditors of the company, or any of them; or

(b) he was a party to the contracting of a debt by the company and did not honestly believe on reasonable grounds that the company would be able to pay the debt when it fell due for payment as well as all its other debts (taking into account the contingent and prospective liabilities).

(3) Notwithstanding anything contained in Subhead (1) the court may grant a declaration on the grounds set out in paragraph (a) of that Subhead only if—

(a) paragraph (a), (b) or (c) of Part A11, Head 11 [equivalent of Section 214 of the Companies Act, 1963]; applies to the company concerned, and

(b) an applicant for such a declaration, being a creditor or contributory of the company or any person on whose behalf such application is made, suffered loss or damage as a consequence of any behaviour mentioned in Subhead (1).

(4) In deciding whether it is proper to make an order on the ground set out in Subhead (2) (b), the court shall have regard to whether the creditor in question was, at the time the debt was incurred, aware of the company's financial state of affairs and, notwithstanding such awareness, nevertheless assented to the incurring of the debt.

(5) On the hearing of an application under this head, the applicant may himself give evidence or call witnesses.

(6) Where it appears to the court that any person in respect of whom a declaration has been sought under Subhead (1) (a), has acted honestly and responsibly in relation to the conduct of the affairs of the company or any matter or matters on the ground of which such declaration is sought to be made, the court may, having regard to all the circumstances of the case, relieve him either wholly or in part, from personal liability on such terms as it may think fit.

(7) Where the court makes any such declaration, it may—

(a) give such further directions as it thinks proper for the purpose of giving effect to that declaration and in particular may make provision for making the liability of any such person under the declaration a charge on any debt or obligation due from the company to him, or on any mortgage or charge or any interest in any mortgage or charge on any assets of the company held by or vested in him or any company or person on his behalf, or any person claiming as assignee from or through the person liable or any company or person acting on his behalf, and may from time to time make such further order as may be necessary for the purpose of enforcing any charge imposed under this subhead;

(b) provide that sums recovered under this head shall be paid to such person or classes of persons, for such purposes, in such amounts or proportions at such time or times and in such respective priorities among themselves as such declaration may specify.

(8) Subhead (1) (a) shall not apply in relation to the carrying on of the business of a company during a period when the company is under the protection of the court.

(9) This head shall have effect notwithstanding that—

(a) the person in respect of whom the declaration has been sought under Subhead (1) may be criminally liable in respect of the matters on the ground of which such declaration is to be made; or

- (b) any matter or matters on the ground of which the declaration under Subhead (1) is to be made have occurred outside the State.

(10) For the purposes of this head:

'assignee' includes any person to whom or in whose favour, by the directions of the person liable, the debt, obligation, mortgage or charge was created, issued or transferred or the interest created, but does not include an assignee for valuable consideration (not including consideration by way of marriage) given in good faith and without notice of any of the matters on the ground of which the declaration is made;

'officer' includes any auditor, liquidator, receiver, or shadow director.

**Explanatory note**

*Amended reenactment of Section 297A of the Companies Act, 1963, inserted by Section 138 of the Companies Act, 1990.*

*Definition of "company" in Subsection (10) moved to Pillar B.*

*'company' includes any body which may be wound up under the Bill.*

---

**Head 50 Power of court to assess damages**

---

- (1) Subhead (2) applies if in the course of winding-up a company it appears that any person who has taken part in the formation or promotion of the company, or any past or present officer, liquidator, receiver or examiner of the company, has misapplied or retained or become liable or accountable for any money or property of the company, or has been guilty of any misfeasance or other breach of duty or trust in relation to the company.
- (2) The court may, on the application of the Director of Corporate Enforcement, liquidator, or any creditor or contributory, examine into the conduct of the promoter, officer, liquidator, receiver or examiner, and compel him—
  - (a) to repay or restore the money or property or any part thereof respectively with interest at such rate as the court thinks just; or

- (b) to contribute such sum to the assets of the company by way of compensation in respect of the misapplication, retainer, misfeasance or other breach of duty or trust as the court thinks just.

- (3) This head has effect notwithstanding that the offence is one for which the offender may be criminally liable.

**Explanatory note**

*Amended reenactment of Section 298 of the Companies Act, 1963, inserted by Section 142 of the Companies Act, 1990 and amended by Section 50 of the Company Law Enforcement Act, 2001.*

*The title has been amended to reflect that it does not relate solely to damages against directors.*

---

**Head 51 Extension of power of court to assess damages against directors**

---

- (1) Subhead (2) applies if in the course of winding-up a company which is a subsidiary of another company, it appears that any director of the subsidiary's holding company has misapplied or retained or become liable or accountable for any money or property of the subsidiary, or has been guilty of any misfeasance or other breach of duty or trust in relation to the subsidiary.
- (2) The court may, on the application of the liquidator, any creditor, contributory or member of the subsidiary, examine into the conduct of the director concerned and compel him—
  - (a) to repay or restore the money or property or any part thereof respectively with interest at such rate as the court thinks just; or
  - (b) to contribute such sum to the assets of the subsidiary by way of compensation in respect of the misapplication, retainer, misfeasance or other breach of duty or trust as the court thinks just.

**Explanatory note**

*Reenactment of Section 148 of the Companies Act, 1990.*

### Head 52 Vesting of property of company in liquidator

---

Where a company is being wound up, the court may, on the application of the liquidator, by order, direct that all or any part of the property of whatsoever description belonging to the company or held by trustees on its behalf shall vest in the liquidator by his official name, and thereupon the property to which the order relates shall vest accordingly, and the liquidator may, after giving such indemnity, if any, as the court may direct, bring or defend in his official name any action or other legal proceeding which relates to that property or which it is necessary to bring or defend for the purpose of effectually winding-up the company and recovering its property.

#### **Explanatory note**

*Amended reenactment of the Section 230 Companies Act, 1963.*

*It has been amended so that it also applies to voluntary windings-up.*

### Head 53 Disclaimer of onerous property in case of company being wound up

---

- (1) Subject to Subheads (2) and (5), where any part of the property of a company which is being wound up consists of land of any tenure burdened with onerous covenants, of shares or stock in companies, of unprofitable contracts, or of any other property which is unsaleable or not readily saleable by reason of its binding the possessor thereof to the performance of any onerous act or to the payment of any sum of money, the liquidator of the company, notwithstanding that he has endeavoured to sell or has taken possession of the property or exercised any act of ownership in relation thereto, may, with the leave of the court and subject to the provisions of this head, by writing signed by him, at any time within 12 months after the commencement of the winding-up or such extended period as may be allowed by the court, disclaim the property.
- (2) Where any such property as aforesaid has not come to the knowledge of the liquidator within one month after the commencement of the winding-up, the power under this head of disclaiming the property may be exercised at any time within 12 months after he has become aware thereof or such extended period as may be allowed by the court.

- (3) The disclaimer shall operate to determine, as from the date of disclaimer, the rights, interests and liabilities of the company, and the property of the company, in or in respect of the property disclaimed, but shall not, except so far as is necessary for the purpose of releasing the company and the property of the company from liability, affect the rights or liabilities of any other person.
- (4) The court, before or on granting leave to disclaim, may require such notices to be given to persons interested and impose such terms as a condition of granting leave, and make such other order in the matter as the court thinks just.
- (5) The liquidator shall not be entitled to disclaim any property under this head in any case where an application in writing has been made to him by any persons interested in the property requiring him to decide whether he will or will not disclaim, and the liquidator has not, within a period of 28 days after the receipt of the application or such further period as may be allowed by the court, given notice to the applicant that he intends to apply to the court for leave to disclaim.
- (6) The court may, on the application of any person who is, as against the liquidator, entitled to the benefit or subject to the burden of a contract made with the company, make an order rescinding the contract on such terms as to payment by or to either party of damages for the non-performance of the contract, or otherwise as the court thinks just, and any damages payable under the order to any such person shall be deemed to be a debt proved and admitted in the winding-up.
- (7) Subject to Subhead (8), the court may, on an application by any person who either claims any interest in any disclaimed property or is under any liability not discharged by this Bill in respect of any disclaimed property and on hearing any such persons as it thinks fit, make an order for the vesting of the property in or the delivery of the property to any person entitled thereto, or to whom it may seem just that the property should be delivered by way of compensation for such liability as aforesaid, or a trustee for him, and on such terms as the court may think just, and on any such vesting order being made, the property comprised therein shall vest accordingly in the person therein named in that behalf without any conveyance or assignment for the purpose.

(8) Where the property disclaimed is of a leasehold nature, the court shall not make a vesting order in favour of any person claiming under the company, whether as under-lessee or as mortgagee by demise, except upon the terms of making that person—

- (a) subject to the same liabilities and obligations as those to which the company was subject under the lease in respect of the property at the commencement of the winding-up; or
- (b) if the court thinks fit, subject only to the same liabilities and obligations as if the lease had been assigned to that person at that date,

and in either event (if the case so requires), as if the lease had comprised only the property comprised in the vesting order, and any mortgagee or under-lessee declining to accept a vesting order upon such terms shall be excluded from all interest in and security upon the property, and, if there is no person claiming under the company who is willing to accept an order upon such terms, the court shall have power to vest the estate and interest of the company in the property in any person liable either personally or in a representative character, and either alone or jointly with the company, to perform the lessee's covenants in the lease, freed and discharged from all estates, encumbrances and interests created therein by the company.

(9) Any person damaged by the operation of a disclaimer under this head shall be deemed to be a creditor of the company to the amount of the damages, and may accordingly prove the amount as a debt in the winding-up.

**Explanatory note**

*Reenactment of Section 290 of the Companies Act, 1963.*

## Chapter 7

### Distribution

#### Head 54 Costs, etc. in winding-up

- (1) All costs, charges and expenses properly incurred in the winding-up, including the remuneration of the liquidator, remaining after payment of—
- (a) the fees and expenses properly incurred in preserving, realising or getting in the assets; and,
  - (b) where the company has previously commenced to be wound up voluntarily, such remuneration, costs and expenses as the court may allow to a liquidator appointed in such voluntary winding-up,

shall be payable out of the property of the company in priority to all other claims, and shall be paid or discharged in the order of priority set out in Subhead (2).

- (2) The costs, charges and expenses referred to in Subhead (1) shall, subject in the case of a court ordered winding up to any order of the court, be liable to the following payments which shall be made in the following order of priority, namely—
- (a) First— In the case of a court ordered winding-up, the costs of the petition, including the costs of any person appearing on the petition whose costs are allowed by the Court;
  - (b) Next— Any costs and expenses necessarily incurred in connection with the summoning, advertisement and holding of a creditors' meeting under Head 27;
  - (c) Next— The costs and expenses necessarily incurred in and about the preparation and making of, or concurring in the making of, the statement of the company's affairs and the accompanying list of creditors and the amounts due to them as required by Head 27 (5);
  - (d) Next— The necessary disbursements of the liquidator, other than expenses properly incurred in preserving, realising or getting in the assets hereinbefore provided for;

- (e) Next— The costs payable to the solicitor for the liquidator;
- (f) Next— The remuneration of the liquidator;
- (g) Next— The out-of-pocket expenses necessarily incurred by the committee of inspection (if any).

- (3) Where a person has provided funds to discharge any such costs, charges or expenses (other than costs or expenses referred to at paragraphs (b) or (c) of Subhead (2)) as are referred to in Subhead (1), he shall be entitled to be reimbursed to the extent of the funds so provided by him in the same order of priority as to payment out of the property of the company as would otherwise have applied to the costs, charges or expenses concerned.

#### **Explanatory note**

*Subhead (1) is an amended reenactment of section 281 of the Companies Act, 1963, and incorporates part of Order 74, rule 128(1), RSC. Subhead (1) was formerly restricted to voluntary windings-up. The provision applies to all modes of winding-up.*

*Subhead (2) is a new provision. Subhead (2) incorporates the order of priorities as to payment set out in Order 74 rule 128(1), RSC. with the addition, second in the order of priority, of any costs and expenses necessarily incurred in connection with the summoning, advertisement and holding of a creditors' meeting under Head 27.*

*References to assets of the company have been amended to property of the company.*

#### Head 55 Distribution of property of company

- (1) Subject to the provisions of this Bill as to preferential payments, the property of a company on its winding-up—
- (a) shall, subject to Subhead (2), be applied in satisfaction of its liabilities *pari passu*; and
  - (b) shall, subject to such application, and unless the articles otherwise provide, be distributed among the members according to their rights and interests in the company.



- (2) Nothing in paragraph (a) of Subhead (1) shall in any way affect any rights or obligations of the company or any other person arising as a result of any agreement entered into (whether before or after the commencement of this head) by any person under which any particular liability of the company to any general creditor is postponed in favour of or subordinated to the rights or claims of any other person to whom the company may be in any way liable.
- (3) Subject to the provisions of this Part, in the event of a members' voluntary winding-up, the liquidator may, with the sanction of a special resolution of the company and any other sanction required by the Bill, divide among the members, in specie or kind, the whole or any part of the property of the company (whether they shall consist of property of the same kind or not) and may, for such purpose, set such value as he deems fair upon any property to be divided as aforesaid and may determine how such division shall be carried out as between the members or different classes of members. The liquidator may, with the like sanction, vest the whole or any part of such property in trustees upon such trusts for the benefit of the members as the liquidator, with the like sanction, shall think fit, but so that no member shall be compelled to accept any shares or other securities whereon there is any liability
- (4) In Subhead (2), 'liability' includes a contingent liability; and 'person' includes a class of persons.

**Explanatory note**

*Subheads (1), (2) and (4) are a reenactment of Section 275 of the Companies Act, 1963 as substituted by Section 132 of the Companies Act, 1990.*

*Subhead (3) is an amended re-enactment of Article 137 of Table A. The provision has been amended so that its application is subject to the general provisions (in particular those as to distribution of the proceeds of realisation of assets) of Part A11 and the scope of its application is clearly limited to members' voluntary windings-up. The use of the term "asset" has been changed to "property" so that a consistent term is used within the head and within the Part. References to assets of the company have been amended to property of the company.*

---

## Head 56 Application of bankruptcy rules in winding-up of insolvent companies

---

- (1) In the winding-up of an insolvent company the same rules shall prevail and be observed relating to the respective rights of secured and unsecured creditors and to debts provable and to the valuation of annuities and future and contingent liabilities as are in force for the time being under the law of bankruptcy relating to the estates of persons adjudged bankrupt, and all persons who in any such case would be entitled to prove for and receive dividends out of the property of the company may come in under the winding-up and make such claims against the company as they respectively are entitled to by virtue of this head.
- (2) Subsection (1) of Section 51 of the Bankruptcy Act, 1988 shall apply in the winding-up of an insolvent company and accordingly the reference in that head to the date of adjudication shall be read as a reference to the presentation of a petition for the winding-up of the company by the court or the passing of a resolution for voluntary winding-up, as the case may be, and where, before the presentation of a petition for the winding-up of the company by the court, a resolution has been passed by the company for voluntary winding-up, shall be read as a reference to the passing of the resolution.

**Explanatory note**

*This is an amended reenactment of Section 284 of the Companies Act, 1963.*

*Subsection (2) has been altered to reflect that Section 331 of the Irish Bankrupt and Insolvent Act, 1857 has been replaced by Section 51(1) of the Bankruptcy Act, 1988. This also necessitates substituting the reference to "filing of the petition" with "date of adjudication", being the term now used in Section 52(2) of the Bankruptcy Act, 1988.*

*The former Section 284(3) of the Companies Act, 1963 has not been reenacted as judgment mortgages registered before the commencement of the 1963 Act and not declared well charged would not remain enforceable.*

### Head 57 Debts which may be proved

- (1) Subject to the provisions of this head, in every winding-up (subject, in the case of insolvent companies, to the application in accordance with the provisions of this Bill of the law of bankruptcy) all debts payable on a contingency, and all claims against the company, present or future, certain or contingent, ascertained or sounding only in damages, shall be admissible to proof against the company, a just estimate being made, so far as possible, of the value of such debts or claims which may be subject to any contingency or which sound only in damages, or for some other reason do not bear a certain value.
- (2) The value of such debts and claims as are made admissible to proof by Subhead (1) shall, as far as possible, be estimated according to the value thereof at the date on which the winding-up shall be deemed to have commenced by virtue of Head 29 or Head 30, as the case may be (in this head referred to as "the commencement date").
- (3) When any rent or other payment falls due at stated times and the order or resolution to wind up is made at any time other than at one of those times, the persons entitled to the rent or payment may prove for a proportionate part thereof up to the commencement date as if the rent or payment accrued due from day to day, provided that where the liquidator remains in occupation of premises demised to a company which is being wound up, nothing herein contained shall prejudice or affect the right of the landlord of such premises to claim payment of rent during the period of the company's or the liquidator's occupation.
- (4) On any debt or sum certain, payable at a certain time or otherwise, on which interest is not reserved or agreed for, and which is overdue at the commencement date, the creditor may prove for interest at a rate not exceeding the appropriate rate to the commencement date from the time when the debt or sum was payable, if the debt or sum is payable by virtue of a written instrument at a certain time, and if payable otherwise, then from the time when a demand in writing has been made, giving notice that interest will be claimed from the date of the demand until the time of payment.
- (5) A creditor may prove for a debt not payable at the commencement date as if it were payable presently, and may receive dividends equally with the other creditors, deducting only thereout a rebate of interest at the appropriate rate computed from the declaration of a dividend to the time when the debt would have become payable according to the terms on which it was contracted.
- (6) Where a company is being wound up, dividends declared by the company more than 6 years preceding the commencement of the winding-up which have not been claimed within the said 6 years shall not be a claim admissible to proof against the company for the purposes of the winding-up, unless the articles of the company or the conditions of issue provide otherwise.
- (7) In this head, "the appropriate rate" means such rate of interest annually as the Minister may by order prescribe.

#### **Explanatory note**

*Amended reenactment of Section 283 of the Companies Act, 1963.*

*Order 74 rule 99, RSC, provides:*

*"The value of such debts and claims as are made admissible to proof by Section 283 [now Head 57 (1)] shall, as far as possible, be estimated according to the value thereof at the date of the order to wind up the company."*

*No provision is made in statute for the date at which such claims are to be valued in the case of voluntary liquidations. It would seem appropriate that there be consistency between the various modes of winding-up for this purpose and, as appears from Subhead (2) it is proposed to fix the valuation date for all modes of winding-up as the date of commencement of the winding-up (see Heads 29 and 30 of this Part).*

*Subheads (3), (4) and (5) replace Order 74 rules 106, 107 and 108, respectively. Consistently with Subhead (2), the reference made in Order 74 rules 106 and 108 to the date of the winding-up order in the case of court ordered windings-up has been replaced with a reference to the date of commencement of the winding-up, applicable to all modes of winding-up. Reference in rules 107 and 108 to an interest rate of six per cent have been replaced with "the appropriate rate", to be prescribed by the Minister under Subhead(7).*

*Subhead (7) is new.*

---

## Head 58 Preferential payments in a winding-up

---

- (1) In this head “the relevant date” means—
- (i) where the company is ordered to be wound up compulsorily, the date of the appointment (or first appointment) of a provisional liquidator or, if no such appointment was made, the date of the winding-up order, unless in either case the company had commenced to be wound up voluntarily before that date; and
  - (ii) where subparagraph (i) does not apply, the date of the passing of the resolution for the winding up of the company.
- (2) In a winding-up there shall be paid in priority to all other debts—
- (a) the following rates and taxes, —
    - (i) all local rates due from the company at the relevant date and having become due and payable within 12 months next before that date;
    - (ii) all assessed taxes, including income tax, assessed on the company in respect of any chargeable period (within the meaning of Section 321 of the Taxes Consolidation Act, 1997) ending on or before the relevant date and not exceeding in the whole one year’s assessment;
    - (iii) any amount due at the relevant date in respect of sums which an employer is liable under Chapter 4 of Part 42 of the Taxes Consolidation Act, 1997 and regulations thereunder to deduct from emoluments to which that Chapter applies paid by that employer during the period of 12 months next before the relevant date reduced by any amount which that employer was under that Chapter and regulations thereunder liable to repay during the said period, with the addition of interest payable under Section 991 of that Act;
  - (b) all wages or salary (whether or not earned wholly or in part by way of commission) of any employee in respect of services rendered to the company during the 4 months next before the relevant date;
  - (c) all wages (whether payable for time or for piece work) of any workman or labourer in respect of services rendered to the company during the 4 months next before the relevant date;
  - (d) all accrued holiday remuneration becoming payable to any employee (or in the case of his death to any other person in his right) on the termination of his employment before or by the effect of the winding-up order or resolution;
  - (e) unless the company is being wound up voluntarily merely for the purposes of reconstruction or of amalgamation with another company, all amounts due in respect of contributions payable during the 12 months next before the relevant date by the company as the employer of any persons under the Insurance (Intermittent Unemployment) Act, 1942, or the Social Welfare (Consolidation) Act, 1993;
  - (f) unless the company is being wound up voluntarily merely for the purposes of reconstruction or of amalgamation with another company, all amounts due from the company in respect of damages and costs or liability for damages and costs, payable to a person employed by it in connection with an accident occurring before the relevant date and in the course of his employment with the company, to the extent that the company is not effectively indemnified by insurers against such damages and costs;
  - (g) all sums due to any employee pursuant to any scheme or arrangement for the provision of payments to the employee while he is absent from employment due to ill health;

## Part A11 - Winding-Up

---

- (h) any payments due by the company pursuant to any scheme or arrangement for the provision of superannuation benefits to or in respect of employees of the company whether such payments are due in respect of the company's contribution to that scheme or under that arrangement or in respect of such contributions payable by the employees to the company under any such scheme or arrangement which have been deducted from the wages or salaries of employees.
- (3) Subject to Subhead (4), and notwithstanding anything in paragraphs (b) and (c) of Subhead (2) the sum to which priority is to be given under those paragraphs respectively shall not, in the case of any one claimant, exceed [€10,000.]
- (4) Where a claimant under paragraph (c) of Subhead (2) is a farm labourer who has entered into a contract for payment of a portion of his wages in a lump sum at the end of the year of hiring, he shall have priority in respect of the whole of such sum, or such part thereof as the court may decide to be due under the contract, proportionate to the time of service up to the relevant date.
- (5) Where any payment has been made—
- (a) to any employee of a company, on account of wages or salary; or
  - (b) to any employee or, in the case of his death, to any other person in his right, on account of accrued holiday remuneration; or
  - (c) to any employee while he is absent from employment due to ill health or pursuant to any scheme or arrangement for the provision of superannuation benefit to or in respect of him,
- out of money advanced by some person for that purpose, the person by whom the money was advanced shall, in a winding-up, have a right of priority in respect of the money so advanced and paid up to the amount by which the sum, in respect of which the employee or other person in his right, would have been entitled to priority in the winding-up has been diminished by reason of the payment having been made.
- (6) The foregoing debts shall—
- (a) rank equally among themselves and be paid in full, unless the assets are insufficient to meet them, in which case they shall abate in equal proportions; and
  - (b) so far as the assets of the company available for payment of general creditors are insufficient to meet them, have priority over the claims of holders of debentures under any floating charge created by the company, and be paid accordingly out of any property comprised in or subject to that charge.
- (7) Subject to the retention of such sums as may be necessary for the costs and expenses of the winding-up, the foregoing debts shall be discharged forthwith so far as the assets are sufficient to meet them, and in the case of debts to which priority is given by paragraph (e) of Subhead (2), formal proof thereof shall not be required except in so far as is otherwise provided by rules of court.
- (8) Subject to Subhead (10), in the event of a landlord or other person distraining or having distrained on any goods or effects of the company within 3 months next before the relevant date, the debts to which priority is given by this head shall be a first charge on the goods or effects so distrained on, or the proceeds of the sale thereof.
- (9) In respect of any money paid under any such charge as is referred to in Subhead (9), the landlord or other person shall have the same rights of priority as the person to whom the payment is made.
- (10) Any remuneration in respect of a period of holiday, or absence from work through good cause shall be deemed to be wages in respect of services rendered to the company during that period.
- (11) This head shall not apply in the case of a winding-up where the relevant date occurred before the operative date, and in such a case, the provisions relating to preferential payments which would have applied if this Bill had not been passed shall be deemed to remain in full force.
- (12) The Minister may by order made under this Subhead vary the sum of money specified in Subhead (3) of this head.

(13) The priority conferred by Subhead (2) shall apply only to those debts which, within the period of six months after advertisement by the liquidator for claims in at least two daily newspapers circulating in the district where the registered office of the company is situated, either—

- (a) have been notified to him; or
- (b) have become known to him.

**Explanatory note**

*Amended reenactment of Section 285 of the Companies Act, 1963, as amended by Section 134, of the Companies Act, 1990 and Section 10 of the Companies (Amendment) Act, 1982. References to other Acts have been updated.*

*Former paragraph (a)(ii) and (iii) of Section 285(2) have been amended to alter the period of calculation and update statutory references.*

*Former paragraph (f) of Section 285(2) and Section 285(5) has been repealed to reflect that there is no longer any statutory right to compensation such as that in Workmen's Compensation Acts, 1934 to 1955 and that any liability under former Acts would be statute barred.*

(4) At the expiration of 7 years from the date of any lodgment made in pursuance of Subhead (1), the amount of the lodgment remaining unclaimed shall be paid into the Exchequer, but where the court is satisfied that any person claiming is entitled to any dividend or payment out of the moneys paid into the Exchequer, it may order payment of the same and the Minister for Finance shall issue such sum as may be necessary to provide for that payment.

(5) Where moneys invested or deposited at interest by a liquidator form part of the amount required to be lodged to The Companies Liquidation Account pursuant to Subhead (1) the liquidator shall realise the investment or withdraw the deposit and shall pay the proceeds into The Companies Liquidation Account.

**Explanatory note**

*Amended reenactment of Section 307 of the Companies Act, 1963.*

*The reference to "in the Bank of Ireland" has been removed from Subsection (1).*

*Subsection (3) has been amended so that the Minister prescribes the rules regarding claims from the account.*

*The application of the section has been extended from voluntary windings-up to include court ordered windings-up. This is in accordance with the recommendation at para 4.22.7 of the Second Report.*

*Subhead (5) incorporates the provisions of Order 74 rule 131(3), RSC.*

---

**Head 59 Unclaimed dividends and balances to be paid into Companies Liquidation Account**

---

(1) Where a company has been wound up, and is about to be dissolved, the liquidator shall lodge to an account to be known as The Companies Liquidation Account in such manner as may be prescribed, the whole unclaimed dividends admissible to proof and unapplied or undistributable balances.

(2) The Companies Liquidation Account shall be opened by the Minister with a company or institution holding a licence to carry on banking business within the State and shall be under the control of the Minister.

(3) Any application by a person claiming to be entitled to any dividend or payment out of a lodgment made in pursuance of Subhead (1), and any payment out of such lodgment in satisfaction of such claim, shall be made in manner prescribed by the Minister.



# Chapter 8

## Liquidators

### Head 60 Duties of liquidators

- (1) Subject to Subhead (3), it shall be the duty of every liquidator to administer the property of the company to which he is appointed.
- (2) For the purpose of Subhead (1), “administer the property of the company” includes ascertaining the extent of the property of the company and, where appropriate, the collection and gathering in of the company’s property, its realisation and its distribution in accordance with law.
- (3) The duties of a provisional liquidator appointed by the court shall be confined to those duties provided in the order appointing him.

#### **Explanatory note**

*This is a new head. Subheads (1) and (2) seek to codify the duties in law of a liquidator.*

*This head should be read in light of the new definition of “property” for the purposes of the Part, contained in Head 1, Part A11.*

### Head 61 General provisions as to liquidators

- (1) A liquidator shall be described by the style of “the liquidator” of the particular company in respect of which he is appointed and not by his individual name.
- (2) Subject to Part A11, Head 69 – [equivalent of Sections 300 and 300A of the Companies Act, 1963], the acts of a liquidator shall be valid notwithstanding any defects that may afterwards be discovered in his appointment or qualification

#### **Explanatory note**

*Amendment of Section 228 of the Companies Act, 1963.*

*Former paragraph 228(a) of the Companies Act, 1963 has been removed as liquidators will now require professional indemnity insurance in order to be qualified.*

*Paragraph 228(c) Companies Act 1963 has been removed. This is now dealt with in Part A11, Heads 72 and 75.*

*Paragraph 228(d) has been removed. Part A11, Head 79 now governs remuneration.*

*Paragraph 228(e) of the Companies Act, 1963 has been deleted. The current law is maintained by the expansion of the scope of the restatement in Part A11, Head 72 of Section 277 of the Companies Act, 1963 to apply also to windings-up by the Court.*

*Paragraph 228(f) of the Companies Act, 1963 has been deleted. This is now dealt with in Part A11, Head 74.*

*Subhead (2) is a restatement of Section 228(1)(g) of the Companies Act, 1963.*

### Head 62 Powers of provisional liquidators

- (1) Where a liquidator is provisionally appointed by the court, the liquidator shall only have such powers as the court orders.
- (2) Where a liquidator is provisionally appointed by the court, the court may place such limitations and conditions upon the powers of any other officers of the company as it thinks fit.

#### **Explanatory note**

*Subhead (1) replaces Section 226(2) of the Companies Act, 1963. This Subhead reverses the previous position where a provisional liquidator’s powers were commensurate with the powers of a non-provisional liquidator, except to the extent that the court limited his powers in the order appointing him. The new head reflects the desire that a provisional liquidator have as little impact as possible on the running of the company, while fulfilling his obligations to secure and preserve the assets of the company from dissipation. It is noted that the head would not prevent the court from making an order that the provisional liquidator have the same powers as an ordinary liquidator with some limitations – effectively maintaining the status quo.*

*Subhead (2) is new. The acts were previously silent as to the effect on directors’ powers upon the appointment of a liquidator by the court (whether provisional or not). The ability of the court to tailor the extent to which a provisional liquidators’ powers replace or overlap those of officers or to remove powers from officers without granting them to the provisional liquidator will facilitate the continuation of the running of a respondent company as normally as is possible while securing and preserving its assets.*

---

**Head 63 Liquidator's powers**


---

- (1) The liquidator shall have power—
- (a) to bring any action or other legal proceeding in the name and on behalf of the company;
  - (b) to defend any action or other legal proceeding in the name and on behalf of the company;
  - (c) to recommence and carry on the business of the company so far as may be necessary for the beneficial winding-up thereof, where such business was not continuing at the date of the appointment of the liquidator or had ceased after such appointment;
  - (d) to continue to carry on the business of a company so far as may be necessary for the beneficial winding-up thereof, where such business was continuing at the date of the appointment of the liquidator and had not subsequently ceased;
  - (e) to appoint a legal practitioner to assist him in the performance of his duties;
  - (f) to pay any classes of creditors in full;
  - (g) to make any compromise or arrangement with creditors or persons claiming to be creditors or having or alleging themselves to have any claim present or future, certain or contingent, ascertained or sounding only in damages against the company, or whereby the company may be rendered liable;
  - (h) to compromise all calls and liabilities to calls, debts and liabilities capable of resulting in debts, and all claims, present or future, certain or contingent, ascertained or sounding only in damages, subsisting or supposed to subsist between the company and a contributory or alleged contributory or other debtor or person apprehending liability to the company, and all questions in any way relating to or affecting the assets or winding-up of the company, on such terms as may be agreed, and take any security for the discharge of any such call, debt, liability or claim and give a complete discharge in respect thereof;
  - (i) to ascertain the debts and liabilities of the company;
  - (j) to sell the property of the company by public auction or private contract, with power to transfer the whole thereof to any person or company or to sell the same in lots and for the purpose of selling the company's land or any part thereof to carry out such sales by fee farm grant, sub fee farm grant, lease, sublease, or otherwise, and to sell any rent reserved on any such grant or any reversion expectant upon the determination of any such lease;
  - (k) to do all acts and to execute, in the name and on behalf of the company, all deeds, receipts and other documents, and for that purpose to use, when necessary, the company's seal;
  - (l) where any contributory has been adjudged bankrupt or has presented a petition for arrangement with his creditors in pursuance of the Bankruptcy Act, 1988, to prove, rank and claim in the bankruptcy or arrangement for any balance against his estate, and to receive dividends in the bankruptcy or arrangement in respect of that balance, as a separate debt due from the bankrupt or arranging debtor, and rateably with the other separate creditors;
  - (m) to draw, accept, make and endorse any bill of exchange or promissory note in the name and on behalf of the company, with the same effect with respect to the liability of the company as if the bill or note had been drawn, accepted, made or endorsed by or on behalf of the company in the course of its business;
  - (n) to obtain credit, whether on the security of the property of the company or otherwise;
  - (o) to take out in his official name letters of administration to any deceased contributory, or debtor, and to do in his official name any other act necessary for obtaining payment of any money due from a contributory or debtor or his estate which cannot be conveniently done in the name of the company, and in all such cases the money due shall, for the purpose of enabling the liquidator to take out the letters of administration or recover the money, be deemed to be due to the liquidator himself;
-

## Part A11 - Winding-Up

- (p) to give security for costs in any proceedings commenced by the company or by him in the name of the company;
  - (q) to appoint an agent to do any business which the liquidator is unable to do or that it is unreasonable to expect the liquidator to do, in person;
  - (r) to take into his custody or under his control all the property to which the company is or appears to be entitled;
  - (s) to dispose of perishable goods and other goods the value of which is likely to diminish if they are not immediately disposed of;
  - (t) to do all such other things as may be necessary for the protection of the company's property; and
  - (u) to do all such other things as may be necessary for winding up the affairs of the company and distributing its assets
- (2) The liquidator may summon general meetings of the company, meetings of the creditors of the company or meetings of the committee of inspection for the purpose of obtaining the sanction by resolution of members, creditors or the committee of inspection or for any other purpose he may think fit.

### **Explanatory note**

*This is a new head.*

*Subhead (1)(a) to (h) are an amended restatement of the powers referred to in Section 231(1)(a) to (f) of the Companies Act, 1963, expanded so as to explicitly allow recommencement and continuation of the carrying on of the company's business.*

*Subhead (1)(i) is new.*

*Subhead (1)(j) to (q) and (u) are an amended restatement of the powers referred to in Section 231(2) of the Companies Act, 1963. The reference to "raising... of money" in section 231(2)(e) has been modified to refer to obtaining credit.*

*Subheads (1)(r) to (t) are a restatement of the powers referred to in Section 131(3) of the Companies Act, 1990.*

*In Subhead (1)(t) the reference to assets of the company has been amended to a reference to the property of the company.*

*This Read replaces Section 276 of the Companies Act, 1963, except for paragraph 276(1)(e) which is reenacted and expanded in Head 64 (1).*

*This provision and those that immediately follow replace the separate provisions granting powers to liquidators in court, members' and creditors' voluntary windings-up. The powers of liquidators and the restrictions on those powers in the three types of winding-up are, with the exception of the powers of a liquidator in a creditors' winding-up prior to the first meeting of creditors, now uniform.*

*Subhead (2) is an expanded version of Section 276(1)(e) of the Companies Act, 1963. It expands the current section by also explicitly empowering the calling of members and committee meetings, powers that were in any event most likely previously implied in the 1963 Act as amended.*

---

## **Head 64 Restrictions upon powers**

---

- (1) Where a liquidator exercises any of the powers in Head 63 (a) to (h), he shall, within 14 days of such exercise, give notice—
  - (i) in the case of a court ordered winding-up or a creditors' voluntary winding-up, to the committee of inspection or, if there is no such committee, to all of the creditors of the company who are known to him or who have been intimated to him; or
  - (ii) in the event of a members' voluntary winding-up, to the members of the company.
- (2) A liquidator exercising or seeking to exercise the powers pursuant to Part A11, Head 63 (1) (g) or (h) shall not be required to give notice pursuant to Subhead (1) if the amount of the claim or call with respect to which the power is being or is sought to be exercised does not exceed €500.
- (3)
  - (a) The liquidator of a company shall not sell, by private contract, a non-cash asset of the requisite value, to a person who is, or who, within three years prior to the date of commencement of the winding-up, has been, an officer of the company unless the liquidator has given at least 14 days' notice of his intention to do so to all creditors of the company who are known to him or who have been intimated to him.

- (b) In this Subhead—
- (i) 'non-cash asset' and 'requisite value' have the meanings assigned to them by Head 16 (2) of Part A5 [equivalent of Section 29 of the Companies Act, 1990], and
  - (ii) 'officer' includes a person connected, within the meaning of Part A5, Head 2 – [equivalent of Section 26 of the Companies Act, 1990], with a director, and a shadow director.

(4) The liquidator or any member of the committee of inspection of a company shall not, while acting as liquidator or member of such committee, without the express sanction—

- (i) in the case of a court ordered winding-up or a creditors' voluntary winding-up, of the committee of inspection or, if there is no such committee, a majority in number and value of the creditors of the company who are known to him or who have been intimated to him, or
- (ii) in the event of a members' voluntary winding-up, of a majority in number and value of the members of the company,

either directly or indirectly, by himself or any employer, partner, clerk, agent or servant, become purchaser of any part of the company's assets and any such purchase made contrary to the provisions of this subhead may be set aside by the court on the application of any creditor or contributory.

- (5) Where the liquidator carries on the business of the company, he shall not, without the express sanction
- (i) in the case of a court ordered winding-up or a creditors' voluntary winding-up, of the committee of inspection or, if there is no such committee, a majority in number and value of the creditors of the company who are known to him or who have been intimated to him, or
  - (ii) in the event of a members' voluntary winding-up, of a majority in number and value of the members of the company,

purchase goods for the carrying on of such business from any person whose connection with him is of such a nature as would result in his obtaining any portion of the profit (if any) arising out of the transaction.

- (6) The costs and expenses of obtaining sanction under Subheads (4) or (5) shall be borne by the person in whose interest such sanction is sought and shall not be payable out of the company's assets..

**Explanatory note**

Subhead (1) replaces parts of Section 231(1) and (3) of the Companies Act, 1963.

*The requirements for sanction previously contained within Section 231(1) of the Company Act 1963 (for court ordered windings-up) and paragraph 276(1)(a) of the Company Act, 1963 (voluntary windings-up) have been removed. The provisions covered by Section 231(1) (of which the provisions covered by Section 276(1)(a) are a subset) are now covered by the new notice provisions. Having exercised any of these powers, the liquidator must advise relevant stakeholders of the exercise of the power concerned.*

*The removal of the requirement for sanction should be viewed in light of the amendments to require liquidators to be qualified and regulated by a professional body, liquidators being required to take out professional indemnity insurance and the changes in recent years to the role of the ODCE. As in other provisions of the Bill, there has been a shift towards relying on arm's length supervision of an appropriately regulated profession rather than direct supervision by the court in liquidations.*

*Subhead (3) is a reenactment of section 231(1A) of the Companies Act, 1963, inserted by Section 124 of the Companies Act, 1990.*

*Subheads (4) and (5) incorporate the restrictions provided for in Order 74, rules 39 and 40, RSC, respectively, modified to allow for sanction to be given by the committee of inspection, or a majority in number and value of the creditors or members, as the case may be.*

*Subhead (6) incorporates a restriction similar to that provided for in Order 74, rule 41, RSC.*

---

## Head 65 Restrictions in Creditors' Voluntary Winding-Up

---

- (1) This head applies where, in the case of a creditors' voluntary winding-up, a liquidator has been nominated by the company.



- (1) The powers conferred on the liquidator by Part A11, Head 63 [the equivalent of Section 276 of the Companies Act, 1963] shall not be exercised, except with sanction of the court, during the period before the holding of the creditors' meeting under Part A11, Head 27 [the equivalent of Section 266 of the Companies Act, 1963].
- (2) Subhead (2) does not apply in relation to the powers of the liquidator under paragraphs (1) (r) to (t) of Part A11, Head 63.
- (3) The liquidator shall attend the creditors' meeting held under Part A11, Head 27 [equivalent of Section 266 of the Companies Act, 1963] and shall report to the meeting on any exercise by him of his powers (whether or not under this head or Part A11, Head 63 or Head 66 [equivalent of Section 276 and 280 of the Companies Act, 1963 respectively]).
- (5) If default is made—
  - (a) by the company in complying with [Part A11, subheads (1) or (4) of Head 27 [the equivalent of Subsection (1) or (2) of Section 266 of the Companies Act, 1963] or;
  - (b) by the directors in complying with Part A11, Subhead (5) of Head 27 [equivalent of Subhead (3) of Section 266 of the Companies Act, 1963], the liquidator shall, within 7 days of the relevant day, apply to the court for directions as to the manner in which that default is to be remedied.
- (6) 'The relevant day' means the day on which the liquidator was nominated by the company or the day on which he first became aware of the default, whichever is the later.
- (7) If a liquidator without reasonable excuse fails to comply with this head, he shall be guilty of a category three offence.

### **Explanatory note**

*Amended reenactment of Section 131 of the Companies Act, 1990.*

*The powers referred to in Section 131(3) have now been moved to Head 63 and this Subhead now refers to them rather than enumerates them.*

---

## **Head 66 Power to apply to court for determination of questions or concerning exercise of powers**

---

- (1) The liquidator, whether appointed provisionally or otherwise, any contributory or creditor or the Director of Corporate Enforcement may apply to the court to determine any question arising in the winding-up of a company.
- (2) The court, if satisfied that the determination of the question will be just and beneficial, may accede wholly or partially to the application on such terms and conditions as it thinks fit or may make such other order on the application as it thinks just.
- (3) The liquidator, any contributory, creditor or the Director of Corporate Enforcement may apply to the court in relation to any exercise or proposed exercise of any of the powers of a liquidator, and the Court may make such order in the matter as it thinks just .
- (4) An office copy of an order made by virtue of this head annulling the resolution to wind up or staying the proceedings in the winding-up shall forthwith be forwarded by the company to the Registrar for registration.
- (5) If a company fails to comply with Subhead (3), the company and every officer of the company who is in default shall be guilty of a category four offence.

### **Explanatory note**

*This head is new. It replaces Section 231(3) and Section 280 of the Companies Act, 1963.*

*Subsection (1) repeats part only of Section 280(1) of the Companies Act, 1963.*

*Subhead (2) repeats Section 280 (2) of the Companies Act, 1963.*

*Subhead (3) is new, and serves in part as a replacement for Section 231(3) of the Companies Act, 1963.*

*Subhead (4) repeats Section 280(3) of the Companies Act, 1963.*



*Subsection (5) repeats Section 280(4) of the Companies Act, 1963 with minor amendments. The changes made to Subsection (5) are to ensure that the Subhead is in line with the general form of offence provisions throughout the Bill*

## Head 67 No lien over company's books, records etc.

- (1) No person shall be entitled as against the liquidator or provisional liquidator to withhold possession of any deed, instrument, or other document belonging to the company, or the books of account, receipts, bills, invoices, or other papers of a like nature relating to the accounts or trade, dealings or business of the company, or to claim any lien thereon provided that—
- (a) where a mortgage, charge or pledge has been created by the deposit of any such document or paper with a person, the production of the document or paper to the liquidator or provisional liquidator by the person shall be without prejudice to the person's rights under the mortgage, charge or pledge (other than any right to possession of the document or paper);
  - (b) where by virtue of this head a liquidator or provisional liquidator has possession of any document or papers of a receiver or that a receiver is entitled to examine, the liquidator or provisional liquidator shall, unless the court otherwise orders, make the document or papers available for inspection by the receiver at all reasonable times.
- (2) Any person who, without just cause, fails to comply with Subhead (1) shall be guilty of a category three offence.

### **Explanatory note**

*Subhead (1) is an amended reenactment of Section 244A of the Companies Act, 1963 as inserted by Section 125 of the Companies Act, 1990. This provision now applies to members' voluntary windings up as well as court ordered or creditors' voluntary windings-up.*

*Subhead (2) is new.*

## Head 68 Qualifications for appointment as liquidator

- (1) Subject to Part A11, Head 68, a person shall not be qualified for appointment as a liquidator of a company, whether provisionally or otherwise, whether in a court ordered winding-up or in a voluntary winding-up, unless he—
- (a) is a member of a [prescribed/regulated] accountancy body within the meaning of Part A14 Head 10 [equivalent of Section 4 of the Companies (Auditing and Accounting) Act, 2003] who holds a [current practicing certificate] unless prohibited by that body from acting as a liquidator;
  - (b) is a member of the Law Society of Ireland who holds a current practicing certificate from such body unless prohibited by that body from acting as a liquidator; or
  - (c) is a member of such other professional body as the Supervisory Authority may from time to time recognise for the purposes of this head, with authority from such body to practice, unless prohibited by that body from acting as a liquidator; or
  - (d) having made application to the Supervisory Authority within two years from the operative date in the prescribed form and paid the prescribed fee in such manner as may be prescribed, has been authorised by the Supervisory Authority to be so appointed, on the grounds that—
    - (i) he has prior to the coming into operation of this Bill obtained adequate relevant experience and knowledge of the law applicable to winding-up of companies by virtue of having been employed in relevant work by a person who was a member of a body referred to in paragraphs (a), (b) or (c) or by virtue of having practised in a Member State as a liquidator, and
    - (ii) he is, in the opinion of the Supervisory Authority following consultation with the Director of Corporate Enforcement a fit and proper person to act as a liquidator, and

## Part A11 - Winding-Up

---

- (iii) he is not a member of a body referred to in paragraphs (1)(a) to (c).
- (2) Nothing in Subhead (1) shall prevent a person to whom paragraph (d) of Subhead (1) applies from acting as a liquidator pending the making and determination of an application pursuant to that paragraph.
- (3) Subject to Part A11, Head 68, a person shall not be qualified for appointment as a liquidator of a company unless he holds insurance indemnity cover relating to him and to any servant or agent employed or engaged by him which complies with the requirements of Subhead (4).
- (4) The insurance indemnity cover referred to in Subhead (3) shall be in such amount and on such terms as may from time to time be prescribed by the Supervising Authority, and shall be provided by a qualified insurer pursuant to a contract of insurance or to written terms of membership of a mutual fund, against losses and claims arising in respect of civil liability incurred by the person insured in respect of any act or omission by him, his servants or agents in the conduct of liquidation of the company concerned.
- (5) A person shall not act as liquidator of a company at a time when he is not qualified under this section for appointment to that office.
- (6) Subject to Subhead (7) if, while acting as liquidator of a company, a person ceases to be qualified under this head for appointment to that office, he shall thereupon vacate his office and give notice in writing within 2 days to the Registrar, the Director of Corporate Enforcement and, if authorised pursuant to (1)(d) to be appointed as a liquidator, to the Supervisory Authority, and within 14 days—
  - (a) in the case of a court ordered winding up-or creditors' voluntary winding-up—
    - (i) if a committee of inspection has been appointed, to the members of that committee, or
    - (ii) if no committee of inspection has been appointed, to the creditors of the company;
  - (b) in the case of a members' voluntary winding-up, to the members of the company, that he has vacated his office by reason of ceasing to be qualified.
- (7) A person who has been appointed as a liquidator of a company prior to the operative date shall not be prohibited from acting as liquidator of that company by the operation of Subhead (5) or required to vacate that office pursuant to Subhead (6) solely on the ground that he does not meet the requirements of Subhead (1) provided, in the case of a person to whom paragraphs (a), (b) or (c) of Subhead (1) does not apply, that such person complies with the requirements of paragraph (d) of that Subhead.
- (8) A person who contravenes Subhead (5) or (6) shall be guilty of a category two offence.
- (9) If a person authorised pursuant to (1)(d) becomes qualified for appointment as a liquidator of a company pursuant to paragraphs (1)(a) to (c) such authorisation shall immediately cease.
- (10) The Supervisory Authority may withdraw or suspend (for such period and on such terms as it thinks fit) an authorisation granted pursuant to (1)(d) if it is satisfied that the person so authorised is no longer sufficiently capable of acting as a liquidator or is no longer a fit and proper person to act as a liquidator.
- (11) The Supervising Authority may, to meet the cost of conducting such inquiries as may be necessary for the purposes of Subhead (10), levy, not more frequently than annually, such periodic charge as may be reasonable on any person acting as a liquidator on the basis that they are qualified so to act by virtue of Subhead (1)(d).
- (12) In this head—
  - “qualified insurer” means—
    - (i) a mutual fund for the time being recognised by the Supervisory Authority for the purposes of this head, or
    - (ii) an insurance company or insurance underwriter authorised pursuant to the Insurance Acts, 1909 to 1990 to carry on general insurance business in the State,
    - (iii) an insurance company or insurance underwriter which has either its head office or a branch office within a member state of the European Union other than the State and which is authorised by law to carry on general insurance business within the State;

“Supervisory Authority” means the public company designated by the Minister to perform the functions and exercise the powers of the Supervisory Authority established in accordance with Part A14 Head 17 [equivalent of Section 5(1) of the Companies (Auditing and Accounting) Act, 2003].

**Explanatory note**

*This head is new.*

*It seeks to ensure that, to qualify to act as a liquidator, a person must be appropriately knowledgeable, experienced and, generally, fit and proper. Generally this will be satisfied by membership of a prescribed accountancy body, the law society or other recognised bod, provided the member concerned has not been precluded by their body from acting as a liquidator.*

*However, a mechanism is also provided to allow persons who are not members of such bodies but who have, prior to the commencement of the provision, obtained sufficient knowledge and experience from working in the industry to act as liquidators. They must fulfil requirements as to suitability, and receive authorisation from IAASA within two years of the commencement of the provision.*

*Persons who are not so qualified will still be able to complete any matters that they have on hand when the provision commences. Furthermore, persons who are not qualified and have made an application to the Supervisory Authority will not be prevented from taking on new matters while their application is being determined.*

*The provision also requires persons acting as liquidators to be appropriately insured.*

*It will be an offence to act when unqualified.*

*A person ceasing to be qualified as a liquidator must thereupon vacate office and comply with various notification requirements.*

*IAASA is empowered to monitor the performance of liquidators it authorises and may delegate these powers to persons charged with carrying out such monitoring.*

*Fees may be prescribed for applications to be authorised by IAASA and annual fees by persons so qualified to offset the costs of any monitoring program.*

**Head 69 Disqualification from appointment as liquidator**

- (1) A body corporate shall not be qualified for appointment as liquidator of a company whether in a court ordered winding-up or in a voluntary winding-up and—
  - (a) any appointment made in contravention of this provision shall be void; and
  - (b) any body corporate which acts as liquidator of a company shall be guilty of a category three offence.
- (2) None of the following persons shall be qualified to be appointed or act as liquidator of a company—
  - (a) a person who is, or who has within 12 months of the commencement of the winding-up been, an officer or servant of the company;
  - (b) except with the leave of the court, a parent, spouse, brother, sister or child of an officer of the company;
  - (c) a person who is a partner or in the employment of an officer or servant of the company;
  - (d) a person who is not qualified by virtue of this subhead for appointment as liquidator of any other body corporate which is that company’s subsidiary or holding company or a subsidiary of that company’s holding company, or would be so disqualified if the body corporate were a company.

References in this subhead to an officer or servant of the company include references to an auditor.

- (3) An application for leave under Subhead (2)(b) shall be supported by such evidence as the court may require.
- (4) If a liquidator ceases to be qualified to act as liquidator by virtue of Subhead (2) he shall thereupon vacate his office and give notice in writing within 2 days to the Registrar, the Director of Corporate Enforcement and, if authorised pursuant to Part A11, Subhead(1) (d) of Head 68, to the Supervisory Authority, and within 14 days—

- (a) in the case of a court ordered winding-up or creditors' voluntary winding-up—
  - (i) if a committee of inspection has been appointed, to the members of that committee, or
  - (ii) if no committee of inspection has been appointed, to the creditors of the company;
- (b) in the case of a members' voluntary winding-up, to the members of the company,

that he has vacated his office by reason of ceasing to be qualified.

- (5) Any person who acts as a liquidator when disqualified by this head from so doing or who fails to comply with Subhead (4), if that subhead applies to him, shall be guilty of a category two offence.
- (6) If a liquidator is adjudicated a bankrupt, his office shall be vacated and he shall be deemed to have been removed as of the date of adjudication.
- (7) Subheads (2) to (6) of this head shall not apply to a winding-up commenced before the commencement of this head.

### **Explanatory note**

*This head is new. It is an amended merger of Section 300 of the Companies Act, 1963 as amended by Companies (Amendment) Act, 1982 Section 15 of the Companies (Amendment) Act, 1982 and Section 57 of the Companies (Auditing and Accounting) Act, 2003, and Section 300A of the Companies Act, 1963 as inserted by Section 146 of the Companies Act, 1990.*

*Subhead(1) is an amended reenactment of Section 300 of the Companies Act, 1963. The offence provision has been amended to conform to the standard form of such provision throughout the, Bill. The term "winding-up by the court" has been changed to "court ordered winding-up".*

*Subheads (2), (3), (4), (5) and (7) are a reenactment of Section 300A of the Companies Act, 1963. Subhead (4) introduces new notice requirements.*

*Subhead (6) incorporates the restriction contained on Order 74, rule 42, RSC and applies it to all liquidators.*

---

## **Head 70 Appointment and removal in a Members' Voluntary Winding-Up**

---

- (1) Subsequent to the initial appointment of a liquidator in accordance with Part A11, Head 23 in a members' voluntary winding-up, the company at general meeting may, at a meeting convened for that purpose, remove a liquidator, appoint a liquidator to replace or act with an existing liquidator or appoint a liquidator to fill a vacancy in the office of liquidator.
- (2) A general meeting of the company for the purpose of Subhead (1) may be convened, on ten days' notice to the members, by any member with the written authority of not less than one tenth in number of the members or by an existing liquidator.
- (3) The powers conferred on the company by Subhead (1) shall be subject to any order the court may make.

### **Explanatory note**

*This head is new. In part it supplements the amended reenactment of Section 258 of the Companies Act, 1963 effected by Head 23, and replaces Section 259 of the Companies Act, 1963 .*

*It provides for minimum notice requirements of such meetings and empowers the court to make orders preventing its exercise by members. The requirement for meetings to remove liquidators to be convened for that purpose reflects the law currently in place in UK. In so far as it requires meetings to appoint liquidators to be convened for that purpose the new provision goes beyond the UK position.*

---

## **Head 71 Appointment and removal in a Creditors' Voluntary Winding-Up**

---

- (1) Subsequent to the initial appointment of a liquidator in accordance with Part A11, Head 28 in a creditors' voluntary winding-up, the creditors may, at a meeting convened for that purpose, by resolution of a majority, in value only, of the creditors present personally or by proxy and voting on the resolution, remove a liquidator, appoint a liquidator to replace or act with an existing liquidator or appoint a liquidator to fill a vacancy in the office of liquidator.



- (2) A meeting of the creditors for the purpose of Subhead (1) may be convened, on ten days notice to the creditors, by any creditor with the written authority of not less than one tenth in value of the creditors or by an existing liquidator.
- (3) The powers conferred on the creditors by Subhead (1) shall be subject to any order the court may make.

**Explanatory note**

*This head supplements the amended reenactment of Section 267 of the Companies Act, 1963 (as amended by Section 47 of the Company Law Enforcement Act, 2001) effected by Head 28.*

*It provides for minimum notice requirements for meetings for the purpose and empowers the court to make orders preventing its exercise by creditors. The requirement for meetings to remove liquidators to be convened for that purpose reflects the law currently in place in the UK. In so far as it requires meetings to appoint liquidators to be convened for that purpose the new provision goes beyond the UK position.*

---

## Head 72 Appointment and removal by the Court

---

- (1) The court may upon the application by a member, creditor, liquidator or the Director of Corporate Enforcement or on its own motion appoint a liquidator if from any cause whatever there is no liquidator acting or, on cause shown, remove a liquidator and appoint another liquidator.
- (2) Where the court makes an order under Subhead (1), it may give such consequential directions, including directions as to the delivery and transfer of the seal, books, records and any property of the company, as it thinks fit.

**Explanatory note**

*Amended and expanded re-enactment of Section 277 Companies Act, 1963, which currently applies only to voluntary windings-up.*

*Subhead (1) replaces Section 277(1) of the Companies Act, 1963 and extends that provision to all modes of winding-up.*

*Subhead (2) is new.*

*The new head does not empower the court to require security. See in contrast Section 228(a) of the Companies Act, 1963, which is not reenacted. This subsection states:*

*“(a) the court may determine whether any and what security is to be given by a liquidator on his appointment;”*

*It also replaces Section 228(c) of the Companies Act 1963, in so far as it relates to removal. This subsection states:*

*“(c) a liquidator appointed by the court may resign or, on cause shown, be removed by the court;”*

*It also replaces Section 228(e) of the Companies Act, 1963. This subsection states:*

*“(e) a vacancy in the office of a liquidator appointed by the court shall be filled by the court;”*

---

## Head 73 Consent to act

---

The appointment of a liquidator shall be of no effect unless the person nominated has, prior to his appointment, signified his written consent to the appointment.

**Explanatory note**

*This Subhead replaces Section 276A(1) of the Companies Act, 1963, which currently applies only to voluntary windings-up. It now applies to all types of winding-up.*

---

## Head 74 When there is more than one liquidator

---

If more than one liquidator is appointed, the court or meeting appointing those liquidators, shall declare or resolve whether any act by this Bill required or authorised to be done by the liquidators is to be done by all or any one or more of the persons appointed. In default of such declaration or resolution such acts may be performed by any number not less than two.

**Explanatory note**

*This Section is new. It replaces Section 228(f) of the Companies Act, 1963 and merges that provision with Section 276(3) of the Companies Act, 1963. It expands to appointments by members or creditors the obligation to specify upon appointment how joint liquidators are to perform their duties or exercise their powers. It provides that in default of such determination such acts may be performed by any number of the liquidators not less than two.*

---

## Head 75 Resignation

---

Where a liquidator resigns, he shall give notice in writing within 2 days of resigning, to the Registrar and the Director of Corporate Enforcement and within 14 days—



## Part A11 - Winding-Up

---

- (a) in the case of a court ordered winding up or creditors' voluntary winding-up—
    - (i) if a committee of inspection has been appointed, to the members of that committee, or
    - (ii) if no committee of inspection has been appointed, to the creditors of the company;
  - (b) in the case of a members' voluntary winding-up, to the members of the company that he has resigned his office.
- (3) The chairman of any meeting at which a liquidator is removed shall, immediately following the meeting, deliver to the Registrar notice of the removal in the prescribed form.
  - (4) The liquidator, immediately following receiving notice of his appointment other than by order of the court, shall deliver to the Registrar for registration, notice of his appointment in the prescribed form and the Registrar shall forward a copy of such notice to the Director of Corporate Enforcement.
  - (5) Where an order is made appointing or removing a liquidator the petitioner or applicant, as the case may be, shall, immediately following the making of the order, deliver to the liquidator notice in writing of his appointment or removal, unless the liquidator or his duly authorised representative is present in court when the order was made.
  - (6) Where an order is made appointing or removing a liquidator [such officer of the court as may be prescribed] shall forthwith cause the Registrar to be furnished with such particulars of the order for registration as may be prescribed and the Registrar shall forward a copy of such particulars to the Director of Corporate Enforcement.

### **Explanatory note**

*This head replaces Section 228(c) of the Companies Act, 1963, in so far as it relates to resignation. It extends the express permission to resign to voluntary windings-up. It also introduces a notice requirement for resignation.*

---

## **Head 76 Prohibition on rewards for appointment**

---

Any person who gives or agrees or offers to give to any member or creditor of a company any valuable consideration with a view to securing his own appointment or nomination or to securing or preventing the appointment or nomination of some person other than himself as the company's liquidator shall be guilty of a category two offence.

### **Explanatory note**

*Amended reenactment of Section 301 of the Companies Act, 1963. The provision has been amended to conform to the standard form of offence provisions throughout the Bill. The title has been amended from "Corrupt inducement affecting appointment as liquidator".*

---

## **Head 77 Notifications and filings**

---

- (1) The chairman of any meeting at which a liquidator is appointed or removed shall, immediately following the meeting, deliver to the liquidator notice in writing of his appointment or removal, unless the liquidator or his duly authorised representative is present at the meeting where the resolution was made.
- (2) The chairman (in default of election of a chairman by the meeting) shall be the first signatory on the notice calling the meeting.

- (7)
  - (a) Subject to paragraph (b), any person who fails to comply with a provision of this head shall be guilty of a category three offence;
  - (b) Paragraph (a) shall not apply to a prescribed officer of the court or the Registrar.

### **Explanatory note**

*Subhead (1) replaces Section 276A(2) of the Companies Act, 1963, which currently applies only to appointments in voluntary windings-up. The time period for notification has been reduced from 7 days. Notification is now also required upon removal.*

*Subhead (2) is new and provides for the deemed appointment of the first signatory as chairman where a chairman is not elected by the meeting.*

*Subhead (3) is new. It introduces an obligation to notify the Registrar of a removal.*

*Subhead (4) is new. It is an amended reenactment of Section 278(1) of the Companies Act, 1963 as amended by Section 48 of the Company Law Enforcement Act, 2001. It excludes circumstances covered by the new Subhead(5). It also reduces the time for notification from 14 days. The form of notice may now be prescribed.*

*Subhead (5) is new. It is the equivalent of Subhead (2) for circumstances where the liquidator is appointed by court order, rather than by a meeting of members or creditors.*

*Subhead (6) is new. It replaces Section 227(1) of the Companies Act, 1963, which placed the notice requirement upon the liquidator in such circumstances. The time period for notification has been reduced from 21 days. The particulars of the notice may now be prescribed. A prescribed form is not required as per Subhead (2) and (3).*

*Subhead (7) is new. It replaces a number of offence provisions relating to various filings now subsumed by the new head. These include Section 276A(3) of the Companies Act, 1963 (which applies to notifications of appointments to the liquidator by meetings in voluntary windings-up), Section 227(2) of the Companies Act, 1963 (which relates to filings of appointments by the court in court windings-up) and Section 278(2) of the Companies Act, 1963 (which relates to a breach of the obligation of a liquidator in a voluntary winding-up to notify the CRO of his appointment). The new subhead also makes it an offence to fail to comply with the filing obligations created by the new head. The filing obligations imposed upon an officer of the court under Subhead (5) and the obligation imposed on the Registrar to forward documents or information to the Director of Corporate Enforcement is excluded from the scope of the offence provision.*

shall, where no person remains appointed to act as liquidator of the company, retain custody of the seal, books, records, and any property of the company in his possession or control and of the books and records kept by him as liquidator until—

- (i) a new liquidator is appointed to the company, whereupon the former liquidator shall deliver custody of the seal, books, records, and property of the company and the books and records kept by him as liquidator of the company to the new liquidator; or
  - (ii) directed by the court, upon the application of the former liquidator, a member or creditor of the company, to effect delivery or disposal of the seal, books, records, and property of the company, or the books and records kept by him as liquidator of the company, as the court thinks fit.
- (2) The delivery of any seal, books, records, and property of the company or the books and records of the liquidator pursuant to Subhead (1) shall not prejudice any lien which a liquidator may have over such seal, books, records, and property.
- (3) A person who fails to comply with this head without lawful excuse shall be guilty of a category three offence and liable for continued failure to comply, to a daily default fine.

**Explanatory note**

*This is a new provision. It includes the requirement stipulated by Order 74 rule 43, RSC, and applies it to all liquidators.*

---

**Head 78 Custody of books and property upon vacation of office**

---

- (1) A person who vacates the position of liquidator of a company (“the former liquidator”) having—
- (a) ceased to be qualified to act as a liquidator of a company; or
  - (b) been removed as liquidator; or
  - (c) resigned as liquidator;

---

**Head 79 Liquidator’s remuneration**

---

- (1) A provisional liquidator is entitled to receive such remuneration as is fixed by the Court.
- (2) A liquidator, other than a liquidator appointed provisionally by the court, is entitled to receive remuneration upon the following terms, whether by way of percentage, by reference to time expended in the conduct of the liquidation, or otherwise—
- (a) where there is a committee of inspection, such terms as have been agreed in writing between the liquidator and the committee of inspection; or

## Part A11 - Winding-Up

---

- (b) in a court ordered winding-up or a creditors' voluntary winding-up, where there is no committee of inspection or the liquidator and the committee of inspection fail to agree, such terms as have been approved by resolution of the creditors; or
  - (c) in a members' voluntary winding-up, such terms as have been approved by resolution of the members of the company in general meeting; or
  - (d) where the creditors or members, as the case may be, having been requested to do so by the liquidator fail to pass a resolution in accordance with paragraphs (b) or (c), such terms as have been fixed by the Court.
- (3) Before the terms on which a liquidator is entitled to receive remuneration have been agreed, approved or fixed, as the case may be, in accordance with Subhead (2), a liquidator shall—
- (a) in a case to which paragraphs (2)(a) applies, furnish to the committee of inspection particulars in writing of the terms upon which the liquidator seeks to be entitled to remuneration;
  - (b) in a case to which paragraphs (2)(b) applies, furnish to the creditors particulars in writing of the terms upon which the liquidator seeks to be entitled to remuneration;
  - (c) in a case to which paragraph (2)(c) applies, furnish to the members of the company particulars in writing of the terms upon which the liquidator seeks to be entitled to remuneration;
  - (d) in a case to which paragraph (2)(d) applies, furnish with his application to the court particulars of the terms upon which the liquidator seeks to be entitled to remuneration.
- (4) A liquidator shall, as soon as is practicable after his appointment, seek agreement, approval or the fixing, as the case may be, of the terms upon which he is entitled to be remunerated, in accordance with Subhead (2).
- (5) The terms upon which a liquidator is entitled to be remunerated may be varied by agreement, approval or by being fixed, as the case may be, in accordance with Subhead (2), provided that such variation may not, without the consent of the liquidator, reduce the entitlement of the liquidator to be remunerated for work that has already been performed.
- (6) Subject to Subhead (8), a liquidator shall be entitled to receive payment in respect of his remuneration (whether for the entire or any portion of his services in the winding-up, or by way of a payment on account) provided—
- (a) the terms upon which he is entitled to receive remuneration have been agreed, approved or fixed, as the case may be, in accordance with Subhead (2); and
  - (b) the amount which he is entitled to receive has—
    - (i) where there is a committee of inspection, been approved by the committee of inspection, or
    - (ii) in a court ordered winding-up or a creditors' voluntary winding-up, where there is no committee of inspection or the liquidator and the committee of inspection fail to agree, been approved by resolution of the creditors, or
    - (iii) in a members' voluntary winding-up, been approved by resolution of the members of the company in general meeting, or
    - (iv) where the creditors or members, as the case may be, having been requested to do so by the liquidator, fail to pass a resolution in accordance with paragraphs (ii) or (iii), been fixed by the Court or such person as the Court may designate for that purpose.
- (7) Before the amount of remuneration which a liquidator is entitled to receive has been agreed, approved or fixed, as the case may be, in accordance with paragraph (6)(b) a liquidator shall—
- (a) in a case to which paragraphs (6)(b)(i) applies, furnish to the committee of inspection the prescribed particulars in respect of that amount;

- (b) in a case to which paragraphs (6)(b)(ii) applies, furnish to the creditors the prescribed particulars in respect of that amount;
- (c) in a case to which paragraph (6)(b)(iii) applies, furnish to the members the prescribed particulars in respect of that amount;
- (d) in a case to which paragraph (6)(b)(iv) applies, furnish with his application to the court the prescribed particulars in respect of that amount.
- (8)
- (a) The terms upon which a liquidator is entitled to receive remuneration agreed, approved or fixed in accordance with Subhead (2) may include provision for reference to arbitration of any dispute as to the amount of remuneration to which he is entitled;
- (b) Where no provision has been made in accordance with paragraph (a) the liquidator and—
- (i) in the event of a creditors' voluntary winding-up or a court ordered winding-up, the creditors acting by resolution, or
- (ii) in the event of a members' voluntary winding-up, the members of the company acting by resolution,
- may agree to refer to arbitration any dispute as to the amount of remuneration to which the liquidator is entitled;
- (c) In arbitrating upon a dispute as to the amount of remuneration to which a liquidator is entitled, the matters referred to at paragraphs (a) to (e) of Subhead (14) shall be taken into account.
- (9) No later than 28 days after the agreement or approval, as the case may be, in accordance with Subhead (2) of the terms of entitlement of the liquidator to remuneration, any creditor or member may apply to the court to review the terms so agreed or approved, in which event the court may fix such terms.
- (10) No later than 28 days after the agreement or approval, as the case may be, in accordance with paragraph (b) of Subhead (6) of an amount of remuneration, any creditor or member may apply to the court to review the amount so agreed or approved, in which event the court may fix the amount.
- (11)
- (a) In any case where on an application under Subheads (9) or (10) the court does not reduce the amount of remuneration, the applicant shall bear the costs, fees and expenses of the application;
- (b) In any other case, the court may make such order as it deems fit on such application as to the costs, fees and expenses incurred in respect of the application.
- (12) For the purpose of holding a meeting in accordance with Subheads (2) or (8), the liquidator may convene a meeting of either the creditors of the company, the members of the company or the committee of inspection, as the case may be.
- (13) Where a company is ordered to be wound up by the court upon grounds other than Part A11, Head 10 (d) [that the company is unable to pay its debts] then, upon it being established to the satisfaction of the court that the company is not insolvent, the provisions of this head applicable to a members' voluntary winding-up shall, where the court so directs, apply to that company.
- (14) In the agreeing, approval, fixing or review of—
- (i) the terms of entitlement of a liquidator (including a provisional liquidator) to remuneration, or
- (ii) the amount of remuneration a liquidator is entitled to receive in accordance with this head,
- the following shall be taken into account—
- (a) the time properly required to be given by him as liquidator and by his assistants in attending to the company's affairs;
- (b) the complexity (or otherwise) of the case;
- (c) any respects in which, in connection with the company's affairs, there falls on the liquidator any responsibility of an exceptional kind or degree;

- (d) the effectiveness with which the liquidator appears to be carrying out, or to have carried out, his duties; and
- (e) the value and nature of the property with which he has to deal.
- (15) In this head “remuneration” includes remuneration for services in the winding-up performed by the liquidator personally and by his assistants on his authority.

### **Explanatory note**

*This is a new head. It replaces Sections 228(d) and 258(1) of the Companies Act, 1963, Section 261(5) of the Companies Act, 1963 and that part of Section 269 of the Companies Act, 1963 that deals with remuneration.*

*The principal elements of the new scheme for remuneration are as follows:*

- *the remuneration of provisional liquidators is set by the court;*
- *the remuneration of other liquidators is ordinarily set by creditors or the committee of inspection (for court ordered windings-up or creditors’ voluntary windings-up) or by members (for members voluntary windings-up). There is a residual power for the court to set remuneration, or appoint a person to fix the amount of remuneration, if it is not so set;*
- *Liquidators must seek to have their entitlement to remuneration set as soon as possible after being appointed;*
- *Those who are to approve the terms of entitlement are to be given adequate notice of those terms prior to the meeting/hearing to consider whether to approve the terms;*
- *In addition to having the terms upon which he is entitled to be remunerated set, a liquidator must have any amounts claimed under that entitlement approved prior to taking remuneration;*
- *Review by the court or an arbitrator is available. The criteria upon which remuneration is to be reviewed are provided for in the head. The criteria are in line with those set out in the UK report of Mr. Justice Ferris’s Working Party on the Remuneration of Office-holders and Certain Related Matters (<http://www.dca.gov.uk/civil/ferrisfr.htm>).*

## **Head 80 Disclosure of interest by creditors etc. at creditors’ meeting**

- (1) Where, at a meeting of creditors, a resolution is proposed for the appointment of a liquidator, any creditor who has a connection with the proposed liquidator shall, before the resolution is put, make such connection known to the chairman of the meeting who shall disclose that fact to the meeting, together with details thereof.
- (2) Subhead (1) shall also apply to any person at the meeting, being a representative of a creditor and entitled to vote on the resolution on his behalf.
- (3) Where the chairman of a meeting of creditors has any such connection as is mentioned in Subhead (1), he shall disclose that fact to the meeting, together with details thereof.
- (4) For the purposes of this head, a person has a connection with a proposed liquidator if he is—
- (a) a parent, spouse, brother, sister or child of; or
  - (b) employed by, or a partner of the proposed liquidator.
- (5) A person who fails to comply with this head shall be guilty of a category three offence.
- (6) In exercising its jurisdiction under Part A11, Head 28 (2) or Head 72 [equivalent of Section 267 (2) of the Companies Act, 1963] (which relate to the appointment or removal of a liquidator) the court may have regard to any failure to comply with this head.

### **Explanatory note**

*Amended reenactment of Section 301A of the Companies Act, 1963 as inserted by Section 146 of the Companies Act, 1990.*

*Subsection (5) has been amended to conform to the standard form of offence provisions throughout the Bill.*



---

## Head 81 Duty of liquidators and receivers to include certain information in returns etc

---

- (1) Where a receiver or liquidator of a company is obliged by the Bill to make a periodic account, abstract, statement or return in relation to his activities as receiver or liquidator he shall incorporate in such account, abstract, statement or return a report as to whether, at the date of such account, abstract, statement or return any past or present director or other officer, or any member, of the company is a person—
- (a) in respect of whom a declaration has been made under any provision of the Bill that he should be personally liable for all or any part of the debts of a company;
  - (b) who is, or is deemed to be, subject to a disqualification order under Part A13.
- (2) A receiver or liquidator who contravenes Subhead (1) shall be guilty of a category three offence.

### **Explanatory note**

*Amended reenactment of Section 144 of the Companies Act, 1990.*

*The references to “the Companies Acts” in the head have been amended to “this Act”.*

---

## Head 82 Penalty for default of receiver or liquidator in making certain accounts and returns

---

- (1) Where a receiver or liquidator is in default in relation to the making or filing of a periodic account, abstract, statement or return in pursuance of any provision of this Bill he shall be guilty of a category four offence and liable, for continued contravention, to a daily default fine.
- (2) A person convicted of an offence under any of the following provisions, namely Part A11, Heads 111 and 112, [equivalent of Sections 262, 272 and 306 of the Companies Act, 1963], shall be guilty of a category four offence and liable, for continued contravention, to a daily default fine.

### **Explanatory note**

*Amended reenactment of Section 145 of the Companies Act, 1990*

*The reference to “the Companies Act” has been amended to read “this Act”.*

*The references in Section 145 to Sections 319 (2) or 321, which relate to receiverships, have been removed.*

---

## Head 83 Enforcement of duty of liquidator to make returns

---

- (1) If any liquidator who has made any default in filing, delivering or making any return, account or other document, or in giving any notice which he is by law required to file, deliver, make or give, fails to make good the default within 14 days after the service on him of a notice requiring him to do so, or such greater period of time as may be specified in the notice, the court may, on an application made to the court by any contributory or creditor of the company, the Director of Corporate Enforcement or by the Registrar, make an order directing the liquidator to make good the default within such time as may be specified in the order.
- (2) Any such order may provide that all costs of and incidental to the application shall be borne by the liquidator.
- (3) Nothing in this head shall be taken to prejudice the operation of any enactment imposing penalties on a liquidator in respect of any such default as aforesaid.

### **Explanatory note**

*Amended reenactment of Section 302 of the Companies Act, 1963.*

*This section has been amended to allow a notice issued pursuant to the head to specify a period greater than 14 days within which a liquidator must comply. The Director of Corporate Enforcement has now been given standing to force compliance with such a notice.*

*The reference to the registrar of companies has been amended to refer to the Registrar.*

### Head 84 Director of Corporate Enforcement's power to examine books and records

- (1) In this head the following words shall have the following meanings:-

“ appropriate person” shall mean the liquidator, the company, an officer or auditor of the company or a receiver appointed to the company at any time; and

“the books and records” shall mean the books and records of the company and, where applicable, the books and records of the liquidator, the auditor or the receiver.

- (2) Where a company is wound up or dissolved or a receiver is appointed to a company, the Director of Corporate Enforcement may on his or her own motion or where a complaint is made to the Director of Corporate Enforcement by a member, contributory or creditor of the company, request, specifying the reason why the request is being made, an appropriate person to produce to the Director of Corporate Enforcement the appropriate books and records for examination, and the appropriate person shall comply with the request.
- (3) In the case of a request made to a liquidator or a receiver pursuant to Subhead (2), the request may relate to a particular liquidation or receivership process or to all liquidations or receiverships conducted by the liquidator or receiver.
- (4) The appropriate person shall—
- (i) answer any questions of the Director of Corporate Enforcement concerning the content of the books and records requested to be produced under Subhead (2); and,
  - (ii) if a liquidator or receiver, answer any questions of the Director of Corporate Enforcement concerning the conduct of a particular liquidation or receivership, or all liquidations or receiverships conducted by the appropriate person, as the case may be; and

- (iii) give to the Director of Corporate Enforcement such assistance in the matter as the appropriate person is reasonably able to give.

- (5) The appropriate person shall give to the Director of Corporate Enforcement such access and facilities as are necessary for inspecting and taking copies of books and records requested to be produced under Subhead (2).
- (6) A request under Subhead (2) may not be made in respect of books and records relating to a liquidation or receivership that has concluded more than 6 years prior to the request, provided that a liquidator or receiver shall not for the purposes of this head be obliged to retain the books and records of the company any later than two years after the company has been dissolved.
- (7) An appropriate person who fails to comply with a request or requirement under this head is guilty of a category three offence.
- (8) Nothing in this head shall be taken as excluding or restricting any statutory rights of a Minister of the Government or a person acting under the authority of a Minister of the Government.

#### **Explanatory note**

*This is an amended restatement of Section 57 of the Company Law Enforcement Act, 2001. It effects a significant increase in the powers of the Director of Corporate Enforcement because it extends the requirement to produce the books from the liquidator to the company, an officer, the auditor and the receiver. It also increases the area for potential investigation because the request may cover “all liquidations or receiverships” subject to the 6 year time limit at Subhead (5).*

## Chapter 9

### Contributories

#### Head 85 Liability of contributory

- (1) The liability of a contributory shall create a debt accruing due from him at the time when his liability commenced, but payable at the times when calls are made for enforcing the liability.
- (2) An action to recover a debt created by this head shall not be brought after the expiration of 12 years from the date on which the cause of action accrued.

##### **Explanatory note**

*Reenactment of Section 209 of the Companies Act, 1963.*

#### Head 86 Liability as contributories of past and present members

In the event of a company being wound up, every present and past member shall be liable to contribute to the assets of the company to an amount sufficient for payment of its debts and liabilities, and the costs, charges and expenses of the winding-up, and for the adjustment of the rights of the contributories among themselves, subject to Subhead (2) and the following qualifications—

- (a) a past member shall not be liable to contribute if he has ceased to be a member for one year or more before the commencement of the winding-up;
- (b) a past member shall not be liable to contribute in respect of any debt or liability of the company contracted after he ceased to be a member;
- (c) a past member shall not be liable to contribute unless it appears to the court that the existing members are unable to satisfy the contributions required to be made by them in pursuance of this Bill;
- (d) no contribution shall be required from any member exceeding the amount, if any, unpaid on the shares in respect of which he is liable as a present or past member;

- (e) nothing in this Bill shall invalidate any provision contained in any policy of insurance or other contract whereby the liability of individual members on the policy or contract is restricted, or whereby the funds of the company are alone made liable in respect of the policy or contract;
- (f) a sum due to any member of the company, in his character of a member, by way of dividends, profits or otherwise, shall not be deemed to be a debt of the company, payable to that member in a case of competition between himself and any other creditor not a member of the company, but any such sum may be taken into account for the purpose of the final adjustment of the rights of the contributories among themselves.

##### **Explanatory note**

Amended reenactment of Section 207 of the Companies Act, 1963 .

*The words "in the case of a company limited by shares," has been removed from (1)(d). The application of this Subhead will need to be disapplied for some heads of Pillar B.*

*Former paragraph (1)(e) has been moved to Pillar B: "(e) in the case of a company limited by guarantee, no contribution shall, subject to subsection (3), be required from any member exceeding the amount undertaken to be contributed by him to the assets of the company in the event of its being wound up;"*

*Subsection (2) has been deleted. In its First Report, the CLRG recommended repeal of Section 198 of the Companies Act, 1963- "Power of limited company to make liability of directors unlimited" – on the grounds of obsolescence. At 6.11.1 the Group states:*

*"The rationale for inclusion of this section in the 1963 Act appears to be because it was in the 1908 Act, and due to historical accretion. In addition, it predates the introduction of specific liabilities of directors. As such it can be assumed to be redundant and should be deleted from the Act."*

*Former subsection (3) has been moved to Pillar B. "(3) In the winding-up of a company limited by guarantee which has a share capital, every member of the company shall be liable, in addition to the amount undertaken to be contributed by him to the assets of the company in the event of its being wound up, to contribute to the extent of any sums unpaid on any shares held by him."*

---

### Head 87 Settlement of list of contributories

---

- (1) Subject to Subhead (2), in the event of a company being wound up as soon as is reasonably practicable, the liquidator shall settle a list of contributories, with power to rectify the register of members in all cases where rectification is required in pursuance of this Bill
- (2) Where it appears to the liquidator that it will not be necessary to make calls on or adjust the rights of contributories, the liquidator may dispense with the settlement of a list of contributories.
- (3) In settling the list of contributories, the liquidator shall distinguish between persons who are contributories in their own right and persons who are contributories as being representatives of or liable for the debts of others.

#### **Explanatory note**

*Amended reenactment of the Section 235 Companies Act, 1963.*

*This section has been amended to confer power to settle the list of contributories on the liquidator, rather than the court. Previously only liquidators in voluntary windings-up could exercise this power, by operation of Section 276 of the Companies Act, 1963. The head also now states on its face that it also applies to voluntary windings-up in addition to court ordered windings-up. The term "assets" has been replaced with the defined term "property".*

---

### Head 88 Power to make calls

---

- (1) The liquidator may, either before or after he has ascertained the sufficiency of the assets of the company, make calls on all or any of the contributories for the time being on the list of contributories to the extent of their liability, for payment of any money which the court considers necessary to satisfy the debts and liabilities of the company, and the costs, charges and expenses of winding-up, and for the adjustment of the rights of the contributories among themselves, and make a demand for payment of any calls so made.

- (2) The court, upon the application of the liquidator made on notice to the contributory or contributories concerned, may, either before or after it has ascertained the sufficiency of the assets of the company, make calls on all or any of the contributories for the time being on the list of contributories to the extent of their liability, for payment of any money which the court considers necessary to satisfy the debts and liabilities of the company, and the costs, charges and expenses of winding-up, and for the adjustment of the rights of the contributories among themselves, and make an order for payment of any calls so made.
- (3) In making a call, the court or liquidator may take into consideration that some of the contributories may partly or wholly fail to pay the call.

#### **Explanatory note**

*Amended reenactment of Section 238 of the Companies Act, 1963.*

*A new Subhead (1) has been inserted to enable a liquidator to make calls. Previously, only liquidators in voluntary windings-up could exercise this power, by operation of Section 276 of the Companies Act, 1963.*

*The former (1), being the current Subhead (2), has been amended to provide that court may exercise this power upon the application of the liquidator only.*

*The former (2), being the current Subhead(3), has been amended so that it refers to either the court or liquidator making calls.*

*The net effect of this amendment is to make the function of making calls primarily one of the liquidator, with the court only providing a back up role if the liquidator seeks its assistance.*

---

### Head 89 Adjustment of rights of contributories

---

The liquidator shall adjust the rights of the contributories among themselves and distribute any surplus among the persons entitled thereto.

#### **Explanatory note**

*Amended reenactment of Section 242 of the Companies Act, 1963.*

*The functions of adjudication and distribution under this head has been transferred from the court to the liquidator.*

---

## Head 90 Payment of debts due by contributory to the company and extent to which set-off allowed

---

- (1) The court may make an order to any contributory for the time being on the list of contributories, to pay in a manner directed by the order, any money due from him or from the estate of the person whom he represents to the company, exclusive of any money payable by him or the estate by virtue of any call in pursuance of this Bill.
- (2) When all the creditors are paid in full, any money due on any account whatever to a contributory from the company may be allowed to him by way of set-off against any subsequent call.

### **Explanatory note**

*Amended reenactment of Section 237 of the Companies Act, 1963.*

*Subsection (1) has been altered by the removal of "at any time after making a winding-up order", so as to extend the application of this provision to voluntary windings-up.*

*Former paragraph (2)(a) has been moved to Pillar B. The moved text reads:*

*"(a) in the case of an unlimited company, allow to the contributory by way of set-off any money due to him or to the estate which he represents from the company on any independent dealing or contract with the company, but not any money due to him as a member of the company in respect of any dividend or profit; and".*

*Paragraph (2)(b) has been deleted to reflect the Review Group's recommendation that a company's power to make director's liability unlimited be removed from the Companies Acts.*

*In Subsection (3) the wording "whether limited or unlimited" has been removed, as it is no longer necessary as the section now only deals with private companies limited by shares.*

---

## Head 91 Order on contributory to be conclusive evidence

---

- (1) An order made by the court on a contributory shall, subject to any right of appeal, be conclusive evidence that the money, if any, thereby appearing to be due or ordered to be paid is due.

- (2) All other relevant matters stated in the order shall be taken to be truly stated as against all persons and in all proceedings.

### **Explanatory note**

*Reenactment of Section 240 of the Companies Act, 1963.*

---

## Head 92 Liability in case of death of contributory

---

- (1) If a contributory dies, either before or after he has been placed on the list of contributories, his personal representatives shall be liable in due course of administration to contribute to the assets of the company in discharge of his liability and shall be contributories accordingly.
- (2) If the personal representatives make default in paying any money ordered to be paid by them, proceedings may be taken for the administration of the estate of the deceased contributory or otherwise for compelling payment there out of the money due.

### **Explanatory note**

*Reenactment of Section 210 of the Companies Act, 1963.*

---

## Head 93 Bankruptcy of contributory

---

If a contributory becomes bankrupt, either before or after he has been placed on the list of contributories—

- (a) the Official Assignee or his trustee in bankruptcy, as the case may be, shall represent him for all the purposes of the winding-up, and shall be a contributory accordingly, and may be called on to admit to proof against the estate of the bankrupt or otherwise to allow to be paid out of his assets in due course of law any money due from the bankrupt in respect of his liability to contribute to the assets of the company; and
- (b) there may be proved against the estate of the bankrupt, the estimated value of his liability to future calls as well as calls already made.

### **Explanatory note**

*Amended reenactment of Section 211 of the Companies Act, 1963 .*



## Part A11 - Winding-Up

---

*This provision has been amended so that bankruptcy trustees other than the Official Assignee will now fall within the scope of the head.*

---

### Head 94 Corporate insolvency of contributory

---

If a contributory is a company which is being wound up, either voluntarily or by the court and either before or after it has been placed on the list of contributories,

- (a) the liquidator of that company shall represent it for all the purposes of the winding-up, and shall be a contributory accordingly, and may be called on to admit to proof in the contributory company's winding-up or otherwise to allow to be paid out of his assets in due course of law any money due from the contributory company in respect of its liability to contribute to the assets of the company; and
- (b) there may be proved against the contributory company the estimated value of his liability to future calls as well as calls already made.

#### **Explanatory note**

*This is a new head.*

*This head is based upon Section 211 of the Companies Act, 1963 and supplements Head 93 above. This head covers the insolvency of corporate members, rather than the insolvency of members who are natural persons.*

---

### Head 95 Winding-up of an unlimited company which re-registered as a limited company

---

In the event of the winding-up of an unlimited company which re-registered as a limited company under this Bill, the following provisions shall have effect:

- (a) notwithstanding Part B5 Head 48(1)(a) [equivalent of paragraph (a) of Subsection (1) of Section 207 of the 1963 Act], a past member of the company who was a member thereof at the time of re-registration shall, if the winding-up commences within the period of 3 years beginning with the day on which the company is re-registered, be liable to contribute to the assets of the company in respect of its debts and liabilities contracted before that time;
- (b) where no persons who were members of the company at that time are existing members of the company, a person who, at that time was a present or past member thereof shall, subject to Part B5 Head 48(1)(a) [equivalent of paragraph (a) of the said Section 207(1)] and to paragraph (a) of this subhead, but notwithstanding Part B5 Head 48(1)(c) [equivalent of paragraph (c) of the equivalent of Section 207(1)] be liable to contribute as aforesaid notwithstanding that the existing members have satisfied the contributions required to be made by them in pursuance of this Bill;
- (c) notwithstanding Part B5 Head 48(1) [equivalent of paragraphs (d) and (e) of the said Section 207(1)], there shall be no limit on the amount which a person who, at that time, was a past or present member of the company, is liable to contribute as aforesaid.

#### **Explanatory note**

*Re-enactment of Section 53(7) of the Companies (Amendment) Act, 1983.*

## Chapter 10

### Committee of Inspection

#### Head 96 Appointment of Committee of Inspection in a court ordered winding-up

- (1) When a winding-up order has been made by the court, the liquidator may and, if directed by a creditor or creditors representing not less than one-tenth in value of the creditors of the company shall, summon a meeting of the creditors of the company for the purpose of determining whether or not a committee of inspection is to be appointed and who are to be the members of the committee if so appointed.
- (2) At a meeting summoned in accordance with Subhead (1), the creditors may, if they think fit, appoint a committee of inspection consisting of not more than five persons, and, if such committee is appointed the company may, at any time subsequently in general meeting, appoint three persons to act as members of the committee, provided that the number of members of the committee shall not at any time exceed eight.
- (3) The creditors may resolve that all or any of the persons so appointed by the company ought not to be members of the committee of inspection, and if the creditors so resolve, the persons mentioned in the resolution shall not, unless the court otherwise directs, be qualified to act as members of the committee, and on any application to the court under this subhead the court may appoint other persons to act as such members in place of the persons mentioned in the resolution.

#### **Explanatory note**

*This is a new head.*

*This head replaces Section 232 of the Companies Act, 1963. It is based in part on Section 268 of the Companies Act, 1963. It provides for the committee of inspection in a court winding-up to be established on the initiative of the liquidator or a minimum proportion in value of the creditors, without requiring court sanction.*

*The reference to contributories in Section 232 of the Companies Act, 1963 has been deleted, and the arrangements for composition of the committee will be the same as for creditors' voluntary windings-up.*

#### Head 97 Appointment of committee of inspection in a creditors' voluntary winding-up

- (1) Subject to Subhead (2), the creditors at the meeting to be held in pursuance of Part A11, Head 27 [equivalent of Section 266 of the Companies Act, 1963] or at any subsequent meeting may appoint a committee of inspection consisting of not more than five persons, and, if such committee is appointed the company may, either at the meeting at which the resolution for voluntary winding-up is passed or at any time subsequently in general meeting, appoint three persons to act as members of the committee, provided that the number of members of the committee shall not at any time exceed eight.
- (2) The creditors may resolve that all or any of the persons so appointed by the company ought not to be members of the committee of inspection, and if the creditors so resolve, the persons mentioned in the resolution shall not, unless the court otherwise directs, be qualified to act as members of the committee, and on any application to the court under this subhead the court may appoint other persons to act as such members in place of the persons mentioned in the resolution.

#### **Explanatory note**

*Amended reenactment of Section 268(1) and (2) of the Companies Act, 1963.*

*In subsection (1) the superfluous text "if they think fit" has been removed.*

*Section 268(3) is not reenacted as Head 97 [equivalent of Section 233 of the Companies Act, 1963] now applies directly to committees of inspection generally.*

#### Head 98 Constitution and proceedings of committee of inspection

- (1) A committee of inspection appointed in pursuance of this Bill shall meet at such times as they from time to time appoint, and the liquidator or any member of the committee may also call a meeting of the committee as and when he thinks necessary.
- (2) The committee may act by a majority of their members present at a meeting but shall not act unless a majority of the committee is present.

## Part A11 - Winding-Up

---

- (3) A member of the committee may resign by notice in writing signed by him and delivered to the liquidator.
- (4) If a member of the committee becomes bankrupt or compounds or arranges with his creditors or is absent from 5 consecutive meetings of the committee without the leave of those members who, together with himself, represent the creditors or contributories, as the case may be, his office shall thereupon become vacant.
- (5) A member of the committee may be removed by an ordinary resolution at a meeting of creditors, if he represents creditors, or of contributories, if he represents contributories, of which 7 days' notice has been given, stating the object of the meeting.
- (6) Subject to Subhead (7), on a vacancy occurring in the committee, the liquidator shall forthwith summon a meeting of creditors or of members, as the case may require, to fill the vacancy, and the meeting may, by resolution, reappoint the same or appoint another person, to fill the vacancy.
- (7) If the liquidator, having regard to the position in the winding-up, is of opinion that it is unnecessary for a vacancy occurring in the committee to be filled, he may apply to the court and the court may make an order that the vacancy shall not be filled or shall not be filled except in such circumstances as may be specified in the order.
- (8) The continuing members of the committee, if not less than two, may act notwithstanding any vacancy in the committee.
- (9) A member of the committee of inspection may not purchase any of the property of the company nor may they make a profit from the liquidation, except with the leave of the court or the sanction of—
- (a) in the case of a members' voluntary winding-up, an ordinary resolution of the members of the company; or
  - (b) in the case of a creditors' voluntary winding-up, an ordinary resolution of the creditors of the company.

*Subhead (1) is an amended version of Section 233(2) of the Companies Act, 1963, having been amended so as to clearly state that it is referring to a committee of inspection appointed in pursuance of this Bill.*

*The reference in subsection (6) to qualification for membership of the committee of inspection has been deleted from Subhead (7) of this head.*

*Subheads (2) to (8) are reenactments without amendment of Section 233(3) to (9) of the Companies Act, 1963.*

*Section 233(1) of the Companies Act, 1963 has not been reenacted. Provided that they have been chosen by creditors or members to act on their behalf on the committee, there is no reason to require members of a committee of inspection to be a creditor, member or holder of a general power of attorney for such. A solicitor, accountant, other insolvency specialist, employee or other person may therefore be nominated and elected by creditors or members to a committee without a member or creditor having to take the major step of granting that person a general power of attorney.*

*Subhead (9) is new. This subhead places restrictions upon the ability of members of committees to engage in conduct that may result in a profit from the liquidation.*

### **Explanatory note**

*Subheads (1) to (8) are a reenactment of Sections 233(2) to (9) of the Companies Act, 1963 subject to the modifications made below:*

# Chapter 11

## Court's powers

### Head 99 Power to annul order for winding up or to stay winding-up

- (1) The court may at any time after an order for winding-up, on the application of the liquidator or any creditor or contributory, and on proof to the satisfaction of the court that the order for winding-up ought to be annulled, make an order annulling the order for winding-up on such terms and conditions as the court thinks fit.
- (2) Where the court makes an order under Subhead (1), the applicant shall forthwith provide notice of the making of the order in the prescribed form to the Registrar.
- (3) The court may at any time after an order for winding-up, on the application of the liquidator or any creditor or contributory, and on proof to the satisfaction of the court that all proceedings in relation to the winding-up ought to be stayed, make an order staying the proceedings, either altogether or for a limited time, on such terms and conditions as the court thinks fit.
- (4) Where the court makes an order under Subhead (2), it shall give such directions as to the retention or disposal of the company's seal, books and papers as it thinks fit.
- (5) On any application under this head the court may, before making an order, require the liquidator to furnish to the court a report relating to any facts or matters which are in his opinion relevant to the application.
- (6) An office copy of every order made under this head shall forthwith upon the perfection thereof be forwarded by the company, or by such person as the court may direct, to the Registrar for registration.
- (7) If a company makes default in complying with Subhead (6), the company and every officer of the company who is in default shall be guilty of a category four offence.

#### **Explanatory note**

*Subheads (1), (3), (5), (6) and (7) reenact Sections 234(1)-(5) of the Companies Act, 1963 respectively, as amended by Section 15 of the Companies (Amendment) Act, 1982 and Section 57 of the Companies (Auditing and Accounting) Act, 2003. Section 234(4) of the Companies Act, 1963 has been amended so that the obligation to file an office copy of the order runs from perfection of the order, and not the making of the order.*

*Subhead (2) is new. Its purpose is to ensure that the public register accurately records the change of status of the company following an order for annulment.*

*Subhead (4) is new. The insertion of this provision was recommended in the CRLG Second Report at 4.22.3.*

*References to "registrar of companies" have been amended to "Registrar".*

### Head 100 Attendance of officers of company at meetings

The court shall, on the application of the liquidator or the Director of Corporate Enforcement or on its own motion, have power to require the attendance of any officer of the company at any meeting of creditors or contributories or of a committee of inspection for the purpose of giving information as to the trade, dealings, affairs or property of the company.

#### **Explanatory note**

*Amended reenactment of Section 246 of the Companies Act, 1963.*

*The scope of this head has been extended to include voluntary windings-up.*

*A list of persons who have standing to apply for orders under this section has been introduced.*

### **Head 101 Power of court to summon persons for examination**

---

- (1) The court may, of its own motion or on the application of the Director of Corporate Enforcement or the liquidator, at any time after the appointment of a provisional liquidator, the making of a winding-up order or the passing of a resolution to wind up a company voluntarily, summon before it any officer of the company or person known or suspected to have in his possession any property of the company or supposed to be indebted to the company, or any person whom the court deems capable of giving information relating to the promotion, formation, trade, dealings, affairs or property of the company.
- (2) The court may examine such person on oath concerning the matters aforesaid, either by word of mouth or on written interrogatories, and may reduce his answers to writing and require him to sign them.
- (3) The court may require such person to produce any accounting records, deed, instrument, or other document or paper relating to the company that are in his custody or power.
- (4) The court may, before the examination takes place, require such person to place before it a statement, in such form as the court may direct, of any transactions between him and the company of a type or class which the court may specify.
- (5) If, in the opinion of the court, it is just and equitable to do so, it may direct that the costs of the examination be paid by the person examined.
- (6) A person who is examined under this head shall not be entitled to refuse to answer any question put to him on the ground that his answer might incriminate him and any answer by him to such a question may be used in evidence against him in any proceedings whatsoever (save proceedings for an offence (other than perjury in respect of such an answer)).
- (7) If a person without reasonable excuse fails at any time to attend his examination under this head, he shall be guilty of contempt of court and liable to be punished accordingly.

- (8) In a case where a person without reasonable excuse fails at any time to attend his examination under this head or there are reasonable grounds for believing that a person has absconded, or is about to abscond, with a view to avoiding or delaying his examination under this head, the court may cause that person to be arrested and his books and documents and moveable personal property to be seized and him and them to be detained until such time as the court may order.

#### **Explanatory note**

*Amended reenactment of Section 245 of the Companies Act, 1963 as amended by Section 126 of the Companies Act, 1990 and by Section 44 of the Company Law Enforcement Act, 2001.*

*The amended Section extends to voluntary windings-up. Section 282B of the Companies Act, 1963 is therefore not being reenacted.*

*The new head also provides that the liquidator may make an application thereunder.*

---

### **Head 102 Order for payment or delivery of property against person examined under Part A11, Head 101 [equivalent of Section 245 of the Companies Act, 1963]**

---

- (1) If in the course of an examination under Part A11, Head 101 [equivalent of Section 245 of the Companies Act, 1963] it appears to the court that any person being examined—
  - (a) is indebted to the company; or
  - (b) has in his possession or control any money, property or books and papers of the company, the court may, of its own motion or on the application of the Director of Corporate Enforcement or the liquidator, order such person—
    - (i) to pay to the liquidator the amount of the debt or any part thereof, or



- (ii) to pay, deliver, convey, surrender or transfer to the liquidator such money, property or books and papers or any part thereof, as the case may be, at such time and in such manner and on such terms as the court may direct.

- (2) Where the court has made an order under Subhead (1), it may, on the application of the Director of Corporate Enforcement or the liquidator, make a further order permitting the applicant, accompanied by such persons as the applicant thinks appropriate, to enter at any time or times within one month from the date of issue of the order, any premises (including a dwelling) owned or occupied by the person the subject of the order under Subhead(1) (using such force as is reasonably necessary for the purpose), to search the premises and to seize any money, property or books and papers of the company found on the premises.
- (3) Where the court has made an order under Subhead (2), the applicant shall report to it as soon as may be on the outcome of any action on foot of the court's order and the court shall direct the applicant as to the disposition of anything seized on foot of the order.
- (4) A direction under Subhead (3) shall not be made in favour of the Director of Corporate Enforcement except in respect of the Director's costs and reasonable expenses.
- (5) A person who obstructs the exercise of a right of entry, search and seizure conferred by virtue of an order made under Subhead (2) or who obstructs the exercise of a right so conferred to take possession of anything referred to in that subsection, shall be guilty of a category two offence.
- (6) Proceedings on foot of an offence under Subhead (5) shall not prejudice the power of the court to issue proceedings for contempt of court for failure by a person to comply with an order under this head.

**Explanatory note**

*Amended reenactment of Section 245A of the Companies Act, 1963 as inserted by section 127 of the Companies Act, 1990 and amended by Section 45 of the Company Law Enforcement Act, 2001.*

*Paragraph (1)(b) has been amended to give locus standi to liquidators. It should be noted that liquidators were already mentioned in Subhead (2), which indicates that they may have been intended to have standing already.*

*As the amended re-enactment of Section 245 of the Companies Act, 1963 now covers voluntary windings-up, the former Section 282C of the Companies Act, 1963 is not re-enacted.*

---

**Head 103 Delivery of property of company to liquidator**

---

- (1) Any contributory for the time being on the list of contributories, any trustee, receiver, banker or agent or officer of a company which is being wound up shall, on notice from the liquidator and within such time as the liquidator shall by notice in writing require, pay, deliver, convey, surrender or transfer to or into the hands of the liquidator any money, property, books or papers which happen to be in his hands for the time being and to which the company is prima facie entitled.
- (2) The court may, at any time after the appointment of a provisional liquidator, the making of a winding-up order or the passage of a resolution to wind up the company voluntarily, upon the application of the liquidator or on its own motion require any contributory for the time being on the list of contributories and any trustee, receiver, banker, agent or officer of the company to pay, deliver, convey, surrender or transfer forthwith, or within such time as the court directs, to the liquidator any money, property or books and papers in his hands to which the company is prima facie entitled.
- (3) In discharging the duties imposed by Head 60, the liquidator shall for the purpose of acquiring or retaining possession of the property of the company be in the same position as if he were a receiver of the property appointed by the Court, and the Court may, on his application, enforce such acquisition or retention accordingly.

**Explanatory note**

*Amended reenactment of Section 236 of the Companies Act, 1963, expanded to incorporate provisions of the RSC.*

*The section has been amended so that it now also applies to voluntary windings-up and companies to which a provisional liquidator has been appointed.*

*Subhead (1) incorporates the requirements of Order 74 rule 91, RSC and applies them to all liquidations.*

*Subhead (2) expressly confers on the liquidator locus standi to seek such an order. There is also a power for the court to make such an order on its own motion.*

*Subhead (3) incorporates the provisions of Order 74 rule 90, RSC, and applies it to all liquidations.*

---

### Head 104 Power to exclude creditors not proving in time

---

- (1) The liquidator may fix a time or times within which creditors are to prove their debts or claims or to be excluded from the benefit of any distribution made before those debts are proved.
- (2) The liquidator shall not fix a time or times pursuant to Subhead (1) which is earlier than 28 days after the day on which creditors have been notified of the fixing of such time or times by the liquidator.
- (3) The court may upon the application of a creditor, on notice to the liquidator, extend the time fixed under Subhead (1) within which that creditor may prove his debt or claim.

#### **Explanatory note**

*Amended reenactment of Section 241 of the Companies Act, 1963.*

*The power to fix time for proof on penalty of exclusion from sharing in a distribution has been amended so that it lies with the liquidator and not the court. Currently only liquidators in voluntary windings-up may exercise this power. The power to place a limit on the time for proving a claim is subject to the power of the court to extend any such limit. The liquidator cannot fix a deadline that is earlier than 28 days from the notification to the creditors that a deadline has been fixed.*

*This change has been made as part of the process of standardising the powers between the types of winding-up and transferring the ability to exercise powers in the first instance to liquidators, rather than the court.*

---

### Head 105 Order for arrest and seizure etc

---

The court, at any time after the presenting of a petition to wind up a company pursuant to Part A11, Head 12 or the passing of a resolution to wind up a company voluntarily, on proof of probable cause for believing that a contributory, director, shadow director, secretary or other officer is about to quit the State or otherwise to abscond or to remove or conceal any of his property for the purpose of evading payment of calls or of avoiding examination about the affairs of the company, may, of its own motion or on the application of the Director of Corporate Enforcement, a creditor of the company or any other interested person, cause the contributory, director, shadow director, secretary or other officer to be arrested, and his books and papers and movable personal property to be seized or secured and him and them to be detained until such time as the court may order.

#### **Explanatory note**

*Amended reenactment of Section 247 of the Companies Act, 1963 inserted by Section 46 of the Company Law Enforcement Act, 2001. This head also replaces Section 282D of the Companies Act, 1963 as amended by Section 49 of the Company Law Enforcement Act, 2001.*

*The scope of this section has been extended to all windings-up, in effect resulting in a merger of Sections 247 and 282D of the Companies Act, 1963.*

*This section has been amended so that an order may only be made after the filing of a petition or the passage of a resolution to voluntarily wind up.*

*The court now has the power to make orders to secure any books, papers and movable personal property that falls short of seizing such property.*

---

### Head 106 Provisions as to arrangement binding creditors

---

- (1) Any arrangement entered into between a company about to be, or in the course of being, wound up and its creditors shall, subject to the right of appeal under this head, be binding on the company if sanctioned by a special resolution and on the creditors if acceded to by three-fourths in number and value of the creditors.

- (2) Any creditor or contributory may, within 21 days from the completion of the arrangement, appeal to the court against it, and the court may thereupon, as it thinks just, amend, vary or confirm the arrangement.
- (3) In addition to this head, Part A9, Head 2 [Equivalent of Section 201 of the Companies Act, 1963] shall also apply to a company that is being wound up pursuant to this Part.

**Explanatory note**

*Amended reenactment of Section 279 of the Companies Act, 1963.*

*This Section has been amended so that in addition to voluntary windings-up it also applies to court ordered windings-up.*

*The reference to 3 weeks in Subsection (2) has been amended to be stated in days, in order to ensure consistency in the specification of time limits throughout the Part.*

*Subhead (3) expressly applies the provisions generally applicable as to compromises or arrangements to companies in course of being wound up.*

## Chapter 12

Provisions supplemental to conduct of winding-up

### Head 107 Change of name

Where the winding-up of a company commences within one year after the company has changed its name, the former name as well as the existing name of the company shall appear on all notices and advertisements in relation to the winding-up.

**Explanatory note**

*Reenactment of Section 23(6) of the Companies Act, 1963.*

### Head 108 Effect of winding-up on business and status of company

- (1) From the commencement of the winding-up, the company shall cease to carry on its business, except so far as may be required for the beneficial winding-up thereof, so, however, that the corporate state and corporate powers of the company shall, notwithstanding anything to the contrary in its articles, continue until it is dissolved.
- (2) On the appointment of a liquidator, other than a provisional liquidator, all the powers of the directors shall cease, except so far as—
  - (a) in the event of a court ordered winding-up or a creditors' voluntary winding-up, the committee of inspection or, if there is no such committee, the creditors, sanction the continuance thereof; or
  - (b) in the event of a members' voluntary winding-up, the members sanction the continuance thereof.

**Explanatory note**

*Subhead (1) replaces Section 254 of the Companies Act, 1963.*

*Subhead (2) replaces sections 258(2) and 269(3) of the Companies Act, 1963. It does not apply to the appointment of provisional liquidators.*

*This head extends to court ordered windings-up as well as voluntary windings-up.*

### Head 109 Actions against company stayed on winding-up order

- (1) When a winding-up order has been made, or a provisional liquidator has been appointed or upon the passing of the resolution for voluntary winding-up, no action or proceeding shall be proceeded with or commenced against the company except by leave of the court and subject to such terms as the court may impose.
- (2) Subhead (1) shall not apply to proceedings before the Employment Appeals Tribunal.

**Explanatory note**

*This replaces Section 222 of the Companies Act, 1963 and Section 23 of the Companies (Amendment) Act, 1986.*

*The amendments to Subsection (1) extends Section 222 of the Companies Act, 1963 beyond court windings-up to all modes of winding-up.*

### Head 110 Director of Corporate Enforcement may direct convening of meetings

- (1) Where a meeting is required to be held under this Part and such meeting is not held within the time required or in the manner required, the Director may direct the liquidator to convene such meeting and may specify procedures that are to be followed in convening and holding such meeting, matters that are to be dealt with at such meeting and the time and location of such meeting.
- (2) The Director or his authorised representative may attend at any meeting convened pursuant to Subhead (1).
- (3) A liquidator who fails to comply with a direction pursuant to Subhead (1) shall be guilty of a category three offence.

**Explanatory note**

*This is a new head. It has been introduced to support the process in Head 111 Part A11, which replaces the former Sections 262 and 272 of the Companies Act, 1963. The head also applies to other meetings required to be held under the part.*

---

## Head 111 Duty of Liquidator to call meeting at end of each year

---

- (1) In the event of a members' voluntary winding-up continuing for more than 12 months, the liquidator shall within 14 days of the first anniversary of the commencement of the winding-up and on every anniversary thereafter, summon a general meeting of the company, and shall lay before the meeting an account of his acts and dealings and of the conduct of the winding-up during the preceding year and shall within 7 days after such meeting send a copy of that account to the Registrar.
- (2) In the event of a court ordered winding-up or a creditors' voluntary winding-up continuing for more than 12 months, the liquidator shall, within 14 days of the first anniversary of the commencement of the winding-up and every anniversary thereafter,—
  - (a) if a committee of inspection has been appointed, summon a meeting of the committee of inspection; or
  - (b) if no committee of inspection has been appointed, summon a meeting of the creditors of the company,

and shall lay before the meeting an account of his acts and dealings and of the conduct of the winding-up during the preceding year and shall within 7 days after such meeting send a copy of that account to the Registrar.

- (3) Where a meeting is held pursuant to paragraph (2)(a) the committee of inspection may by resolution direct the liquidator to convene a meeting pursuant to paragraph (2)(b) and such meeting shall be held no later than 21 days after such resolution.
- (4) Where Part A11, Head 24 has effect, Subhead (2) shall apply to the winding-up to the exclusion of Subhead (1), as if the winding-up were a creditors voluntary winding-up and not a members voluntary winding-up.
- (5) If the liquidator fails to comply with this head, he shall be guilty of a category three offence.

### **Explanatory note**

*This is a new head.*

*This head replaces Sections 262, 264 and 272 of the Companies Act, 1963.*

*In voluntary windings-up there is no longer a requirement to hold an annual meeting of creditors or members where there is a committee of inspection. The committee must instead meet. This is now extended to court ordered windings-up. The annual meeting must be held within 14 days (before or after) the anniversary of the commencement of the winding-up (in a voluntary winding-up) or the making of the order to wind up (in a court ordered winding-up). The committee of inspection may cause a meeting of creditors or members to be held to consider the account of the liquidator.*

---

## Head 112 Information about progress of liquidation

---

- (1) If, where a company is being wound up, the winding-up is not concluded within 12 months after its commencement, the liquidator shall unless the court otherwise directs, at such intervals as may be prescribed, until the winding-up is concluded, send to the Registrar a statement in the prescribed form and containing the prescribed particulars about the proceedings in and position of the liquidation.
- (2) If a liquidator fails to comply with this head, he shall be guilty of a category three offence.
- (3) An offence under this head may be prosecuted by the Registrar.

### **Explanatory note**

*Amended reenactment of Section 306 of the Companies Act, 1963.*

*This obligation has now been made subject to a contrary order of the court. References to the registrar of companies have now been amended to Registrar.*

*The period from which the liquidator is required to report has now been reduced from 2 years to 1 year.*

---

## Head 113 Liquidator to report on conduct of directors

---

- (1) In a creditors' voluntary winding-up or a court ordered winding-up, the liquidator shall, within 6 months after his or her appointment or the commencement of this head, whichever is the later, and at intervals as required by the Director of Corporate Enforcement thereafter, provide to the Director of Corporate Enforcement a report in the prescribed form.



## Part A11 - Winding-Up

---

- (2) In a creditors' voluntary winding-up or a court ordered winding-up, the liquidator shall, not earlier than 3 months nor later than 5 months (or such later time as the court may allow and advises the Director) after the date on which he or she has provided to the Director a report under Subhead (1), apply to the court for the restriction under Part A13, Head 32 –[equivalent of Section 150 of the Companies Act, 1990] of each of the directors of the company, unless the Director has relieved the liquidator of the obligation to make such an application.
- (3) A liquidator who fails to comply with Subhead (1) or (2) is guilty of a category three offence.

### **Explanatory note**

*Amended reenactment of Section 56 of the Company Law Enforcement Act, 2001.*

*The use of the term "insolvent company" has been removed from the section and replaced with references to liquidators of creditors' voluntary or court windings-up. This term is not otherwise used in the Acts for a company being wound up. A company subject to a members' voluntary winding-up need not be insolvent. It is possible that a company subject to a creditors' voluntary or court ordered winding-up may during the course of a winding-up become solvent. It is desirable for reporting to continue in relation to these two types of winding-up, even if they become solvent during the administration. The removal of the term insolvent eliminates the requirement for the liquidator to make an assessment of insolvency when determining whether they are required to comply with this head.*

---

### **Head 114 Inspection of books by creditors and members**

---

- (1) The court may, at any time after making a winding-up order or the commencement of a voluntary winding-up, make such order for inspection of the books and papers of the company by creditors or contributories as the court thinks just, and any books and papers in the possession of the company may be inspected by creditors or members accordingly, but not further or otherwise.
- (2) Nothing in this head shall be taken as excluding or restricting any statutory rights of a Minister of the Government or person acting under the authority of a Minister of the Government.

### **Explanatory note**

*Amended reenactment of Section 243(1) and (2) of the Companies Act, 1963.*

*This head has been extended so that it now also applies to voluntary windings-up.*

*Subsection (2) to be moved to Part A13:*

*(2) The court may, on the application of the Director of Corporate Enforcement, make an order for the inspection by the Director of Corporate Enforcement of any books and papers in the possession of a company the subject of a winding-up order and the company, every officer of the company and the liquidator shall give to the Director of Corporate Enforcement such access to and facilities as are necessary for inspecting and taking copies of those books and papers as the Director of Corporate Enforcement may require.*

---

### **Head 115 Resolutions passed at adjourned meetings of creditors and members**

---

Where a resolution is passed at an adjourned meeting of any creditors or contributories of a company, 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.

### **Explanatory note**

*Amended reenactment of Section 308 of the Companies Act, 1963.*

---

### **Head 116 Books of company to be evidence**

---

When a company is being wound up, all books and records of the company and of the liquidator shall, as between the members, officers and contributories of the company and the Liquidator and the Director of Corporate Enforcement, be prima facie evidence of making of the document and of the contents of the document unless the contrary is proved.

### **Explanatory note**

*Amended reenactment of Section 304 of the Companies Act, 1963.*

*Section 304 provides:*

*"When a company is being wound up, all books and papers of the company and of the liquidators shall, as between the contributories of the company, be prima facie evidence of the truth of all matters purporting to be recorded therein."*

*The amendments made under the new head are designed to address problems associated with proving a document pursuant to Section 304. In order to prove a document, generally, the person who prepared the document must give evidence as to the making of that document. Normally, the persons in a company who make the document are the persons most affected by the contents of the document and these tend to be the members or contributories of the company. Consequently, the member or the contributory who made the document would be unwilling to give evidence if it would prejudice the position of that member or that contributory and in such circumstances, a case taken against such member would fail unless there was a method of formally proving the contents of the document.*

*This issue has been recently highlighted in various cases in which receivers and financial institutions have been required to formally prove the contents of documents and where such proof was not available, the proceedings failed.*

*The application of technical rules of evidence may lead to prolonged liquidations and consequently, diminish the already unacceptable chances of obtaining judgments against company directors to the detriment of affected creditors.*

*As a result of the amendments, in actions involving the company against members or officers of the company in the course of a liquidation by the liquidator or the ODCE, the documentary evidence contained in the books and records of the company should be prima facie evidence of the contents thereof and proof of the contents thereof unless proof to the contrary is submitted.*

- (2) The liquidator may convene general meetings of the creditors, or contributories for the purpose of ascertaining their wishes, and he must convene meetings at such times as the creditors or contributories by resolution direct or whenever requested in writing to do so by at least one-tenth in value of the creditors or by at least one-tenth in number of contributories.

**Explanatory note**

*This is a new head. It parallels Section 309 of the Companies Act, 1963, which has also been reenacted. It does not require a liquidator to follow the directions of creditors or contributories, but merely to take such a direction into account when determining what actions to take during the administration. E.g. In a members' voluntary winding-up there may be a question whether a better price would be obtained upon the sale of some real estate if the asset was sold now or in 12 months. If a meeting of contributories resolved to wait 12 months the liquidator would be required to take the wishes of contributories into account, but would not be bound to act in accordance with their directions and could sell the property immediately.*

---

## **Head 117 Liquidator may have regard to wishes of creditors and contributories**

---

- (1) Subject to this Part, the liquidator may, in the administration of the property of the company and in the distribution of the property among its creditors, have regard to any directions given by resolution of the creditors or contributories at any general meeting or by the committee of inspection, and, in case of conflict, any directions so given by the creditors or contributories override any directions given by the committee of inspection.

## Chapter 13

General rules as to meetings of members and creditors of a company in liquidation

### Head 118 Meetings directed by the court

- (1) This head shall apply to meetings in court ordered windings up held or to be held at the direction of the court and shall have effect subject to any directions the court may give.
- (2) If the court so directs, notice of a meeting may be given by advertisement in which case the object of the meeting need not be stated.
- (3) A certified copy of the court order appointing a person as chairman of a meeting shall be sufficient authority for the person so appointed to preside at such meeting
- (4) The chairman of a meeting shall make a report of the result of the meeting in such form (if any) as may be prescribed.
- (5) Where a meeting of the creditors or separate meetings of the creditors and contributories of the company is being summoned under Head 96, the notice of the meeting shall indicate who are proposed to be the members of the committee if appointed.

**Explanatory note**

*This provision is new. Subhead (3) replaces Order 74 rule 55, RSC.*

### Head 119 Provisions as to meetings of members or creditors generally

Save where this Bill otherwise provides the provisions of Heads 120 to 129 shall apply in relation to a meeting of members or creditors held or to be held under this Part.

**Explanatory note**

*This provision is akin to Order 74, rule 56, RSC.. Its purpose is self-evident.*

### Head 120 Entitlement to attend and notice

- (1) Every person appearing by the company's books to be a creditor of the company shall be entitled to attend a meeting of creditors; the liquidator shall give notice to every person appearing by the company's books or otherwise to be a contributory of the company notice of the meeting of contributories and every person appearing by the company's books or otherwise to be a member of the company shall be entitled to attend a meeting of members.
- (2) The liquidator shall give notice in writing to every person entitled to attend a meeting of the time and place appointed for the meeting and of the subject matter of the meeting in such form as may be prescribed not less than seven days before the day appointed for such meeting.
- (3) The notice to each creditor shall be sent to the address given in his proof, or if he has not proved, to the address given in the statement of affairs of the company, if any, or to such other address as may be known to the person summoning the meeting.
- (4) The notice to each contributory shall be sent to the address mentioned in the company's books as the address of such contributory or to such other address as may be known to the Liquidator.
- (5) The notice to each member shall be sent to the address mentioned in the company's books as the address of such member or to such other address as may be known to the Liquidator.
- (6) Where a meeting of creditors, members or contributories is summoned by notice the proceedings and resolutions of the meeting shall unless the court otherwise orders be valid notwithstanding that some creditors, members or contributories may not have received the notice sent to them.

**Explanatory note**

*This head replaces Order 74 rules 57 and 64, RSC.*

---

## Head 121 Location of meeting

---

- (1) In the case of a company having its registered office in the county of Dublin or in the county of Cork every meeting shall be held at such place in the county of Dublin or in the county of Cork, as the case may be, as is in the opinion of the person convening the same most convenient for the majority of the creditors, members or contributories or all as the case may be .
- (2) In any other case every meeting shall be held at such place as is in the opinion of the person convening the same most convenient for the majority of the creditors, members or contributories or all as the case may be .
- (3) Different times or places may be named for the meetings of creditors and for the meetings of contributories.

### **Explanatory note**

*This head replaces Order 74 rule 59, RSC.*

---

## Head 122 Costs of meetings

---

- (1) Any person other than the liquidator who summons a meeting of creditors, members or contributories shall be liable for the costs of summoning the meeting and shall before the meeting is summoned deposit with the Liquidator such sum as may be required by the liquidator as security for the payment of such costs.
- (2) The said costs shall be repaid out of the assets of the company if the Court shall by order or if the creditors or contributories (as the case may be) shall by resolution so direct.
- (3) This subhead shall not apply to meetings under Part A11, Head 27.

### **Explanatory note**

*This head replaces Order 74 rule 60, RSC.*

---

## Head 123 Chairman

---

- (1) At a meeting summoned by the liquidator, the liquidator or, if he is unable to act, someone nominated by him, shall be chairman and at every other meeting of, the chairman shall be such person as the meeting by resolution shall appoint.
- (2) This subhead shall not apply to meetings under Part A11, Head 27.

### **Explanatory note**

*This section replaces Order 74 rule 61, RSC.*

---

## Head 124 Passing resolutions

---

At a meeting of creditors, a resolution shall be deemed to be passed when a majority in value of the creditors present personally or by proxy and voting on the resolution have voted in favour of the resolution, and at a meeting of the contributories a resolution shall be deemed to be passed when a majority in value of the contributories present personally or by proxy and voting on the resolution have voted in favour of the resolution, the value of the contributories being determined according to the number of votes conferred on each contributory by the constitution of the company.

### **Explanatory note**

*This head replaces Order 74 rule 62, RSC.*

---

## Head 125 Filing

---

- (1) The Liquidator shall file with the Registrar a copy certified by him, of every resolution of a meeting of creditors or contributories within 14 days of the date upon which the meetings is held.
- (2) If a liquidator shall not furnish a notice to the Registrar in accordance with paragraph (a) of this Subhead, he shall be guilty of a category four offence.

### **Explanatory note**

*This head replaces Order 74 rule 63, RSC. Subhead (2) is new.*

---

## Head 126 Proceedings at the meeting

---

- (1) The chairman may with the consent of the meeting adjourn it from time to time and from place to place but the adjourned meeting shall be held at the same place as the original meeting unless in the resolution for adjournment another place is specified or unless the court otherwise orders.

## Part A11 - Winding-Up

---

- (2) A meeting may not act for any purpose, except the election of a chairman and the adjournment of the meeting, unless there are present or represented thereat in the case of a creditors' meeting at least three creditors entitled to vote or all the creditors entitled to vote if the number entitled to vote shall not exceed three, or in the case of a meeting of contributories or members at least two contributories or members as the case may be .
- (3) If within fifteen minutes from the time appointed for the meeting a quorum of creditors, members or contributories, as the case may be, is not present or represented the meeting shall be adjourned to the same day in the following week at the same time and place or to such other day or time or place as the chairman may appoint, but so that the day appointed shall be not less than seven nor more than twenty-one days from the day from which the meeting was adjourned.

### **Explanatory note**

*This head replaces Order 74 rule 65 and 66, RSC.*

---

## Head 127 Entitlement to vote

---

- (1)
- (a) In the case of a meeting of creditors held pursuant to Head 96, Part A11 or of an adjournment thereof a person shall not be entitled to vote as a creditor unless he has duly lodged with the Liquidator not later than the time mentioned for that purpose in the notice convening the meeting or adjourned meeting, a proof of the debt which he claims to be due to him from the company. In the case of any other Court meeting of creditors or a Liquidator's meeting of creditors, a person shall not be entitled to vote as a creditor unless he has lodged with the Liquidator a proof of the debt which he claims to be due to him from the company and such proof has been admitted wholly or in part before the date on which the meeting is held;
- (b) This Subhead shall not apply to any creditors or class of creditors who by virtue of the Bill are not required to prove their debts.
- (2) A creditor shall not vote in respect of any unliquidated or contingent debt or any debt the value of which is not ascertained, nor shall a creditor vote in respect of any debt on or secured by a current bill of exchange or promissory note held by him unless he is willing to treat the liability to him thereon of every person who is liable thereon antecedently to the company and against whom an adjudication order in bankruptcy has not been made, as a security in his hands and to estimate the value thereof, and for purposes of voting but not for the purposes of dividend, to deduct it from his proof.
- (3)
- (a) For the purpose of voting, a secured creditor shall, unless he surrenders his security, state in his proof or in a voluntary liquidation in such a statement as is hereinafter mentioned the particulars of his security, the date when it was given and the value at which he assesses it and shall be entitled to vote only in respect of the balance (if any) due to him after deducting the value of his security;
- (b) If he votes in respect of his whole debt he shall be deemed to surrender his security unless the court on application is satisfied that the omission to value the security has arisen from inadvertence.
- (4) The liquidator may, within twenty-eight days after a proof or in a voluntary liquidation a statement estimating the value of a security as aforesaid has been used in voting at a meeting, require the creditor to give up the security for the benefit of the creditors generally on payment of the value so estimated; provided that where a creditor has valued his security he may, at any time before being required to give it up, correct the valuation by a new proof and deduct the new value from his debt.
- (5)
- (a) The chairman shall have power to admit or reject a proof for the purpose of voting, but his decision shall be subject to appeal to the court;
- (b) If he is in doubt whether a proof should be admitted or rejected he shall mark it as objected to and allow the creditor to vote subject to the vote being declared invalid in the event of the objection being sustained.

### **Explanatory note**

*This head replaces Order 74 rules 67 to 72, RSC.*



---

## Head 128 Duties of the chairman

---

- (1) The chairman shall cause
  - (a) minutes of the proceedings at the meeting to be drawn up and entered in a book kept for that purpose and the minutes shall be signed by him or by the chairman of the next ensuing meeting;
  - (b) a list of creditors (or contributories) present at every meeting to be made and kept in such form as may be prescribed and such list shall be signed by him.
- (2) If the chairman fails to comply with the provisions of Subhead (1), he shall be guilty of a category three offence.

### **Explanatory note**

*This head replaces Order 74 rule 73, RSC. Subhead (2) is new.*

---

## Head 129 Proxies

---

- (1)
  - (a) A creditor, a member or a contributory may vote either in person or by proxy;
  - (b) Where a person is duly authorised to represent a corporation at any meeting of creditors or contributories, such person shall produce to the Liquidator or other the chairman of the meeting a copy of the resolution so authorising him and such copy shall either be under the seal of the corporation or be certified to be a true copy by the secretary or a director of the corporation;
  - (c) Every instrument of proxy shall be in the form prescribed by the Minister.
- (2) A creditor or a member may appoint any person a special proxy to vote at any specified meeting or adjournment thereof—
  - (a) for or against the appointment or continuance in office of any specified person as Liquidator or member of the committee of inspection; and
  - (b) on all questions relating to any matter other than those above referred to and arising at the meeting or an adjournment thereof.
- (3) A creditor, a member or a contributory may appoint any person a general proxy.
- (4) A general and a special form of proxy shall be sent to each of the creditors or members with the notice summoning the meeting, and neither the name nor description of the liquidator or any other person shall be printed or inserted in the body of any instrument of proxy before it is so sent.
- (5) A creditor, a member or a contributory in a winding-up may appoint the Liquidator or if there is no liquidator the chairman of a meeting to act as his general or special proxy.
- (6) No person appointed as either a general or a special proxy shall vote in favour of any resolution which would directly or indirectly place himself, his partner or employer in a position to receive any remuneration out of the assets of the company otherwise than as a creditor rateably with the other creditors of the company; provided that where any person holds special proxies to vote for an application to the Court in favour of the appointment of himself as liquidator he may use the said proxies and vote accordingly.
- (7) Every instrument of proxy shall be lodged with the liquidator in a winding-up by the court, with the company at its registered office for a meeting under Head 27, Part A11 and with the liquidator or if there is no liquidator with the person named in the notice convening the meeting to receive the same in a voluntary winding-up, not later than four o'clock in the afternoon of the day before the meeting or adjourned meeting at which it is to be used.
- (8) No person who is an infant shall be appointed a general or special proxy.
- (9) Where a company is a creditor, any person who is duly authorised under the seal of such company to act generally on behalf of such company at meetings of creditors, members and contributories may fill in and sign the instrument of proxy on such company's behalf and appoint himself to be such company's proxy, and the instrument of proxy so filled in and signed by such person shall be received and dealt with as a proxy of such company.

## Part A11 - Winding-Up

---

- (10) The instrument of proxy of a creditor, blind or incapable of writing, may be accepted if such creditor has attached his signature or mark thereto in the presence of a witness, who shall add to his signature his description and residence; provided that all insertions in the instrument of proxy are in the handwriting of the witness, and that such witness shall have certified at the foot of the instrument of proxy that all such insertions have been made by him at the request and in the presence of such creditor before he attached his signature or mark.

**Explanatory note**

*This head replaces Order 74 rules 74 to 83, RSC.*

## Chapter 14

### Completion of winding-up

#### Head 130 Dissolution of company by court

- (1) In a court ordered winding-up the court may on its own motion require the liquidator to make an application pursuant to Subhead (2) at such time as the affairs of the company have been completely wound up, but in the absence of such an order, Part A11, Head 132 shall apply to a court ordered winding-up as if it was a creditors' voluntary winding-up.
- (2) If required to do so pursuant to Subhead (1) the liquidator shall make an application to the court for the dissolution of the company, and if the court is satisfied that the affairs of the company have been completely wound up shall make an order that the company be dissolved from the date of the order, and the company shall be dissolved accordingly.
- (3) An office copy of the order shall within 21 days from the date thereof be forwarded by the liquidator to the Registrar.
- (4) If the liquidator makes default in complying with the requirements of this head, he shall be guilty of a category three offence.

#### **Explanatory note**

*This is a new head. The method of dissolution required in a creditors' voluntary winding-up is required in a court ordered winding-up, unless the court orders the liquidator to return to the court at the end of the winding-up. The new head explicitly states the grounds upon which the court may make an order for dissolution – if it is satisfied that the affairs of the company have been completely wound up. This head replaces Section 249 of the Companies Act, 1963.*

#### Head 131 Final meeting and dissolution in Members' Voluntary Winding-Up

- (1) In a members' voluntary winding-up, as soon as the affairs of the company are completely wound up, the liquidator shall make up an account of the winding-up showing how the winding-up has been conducted and the property of the company has been disposed of, and thereupon shall call a general meeting of the company for the purpose of laying before it the account and giving any explanation thereof.
- (2) Such meeting shall be called by giving at least 28 days' written notice to the members of the company.
- (3) Within 7 days after the meeting, the liquidator shall send to the Registrar a copy of the account, and shall make a return to him of the holding of the meeting and of its date, and if the copy is not sent or the return is not made in accordance with this subhead, the liquidator shall be guilty of a category three offence, so, however, that if a quorum is not present at the meeting, the liquidator shall, in lieu of the return hereinbefore mentioned, make a return that the meeting was duly summoned and that no quorum was present thereat, and upon such a return being made, the provisions of this subhead as to the making of the return shall be deemed to have been complied with.
- (4) Subject to Subhead (5), the Registrar on receiving the account and either of the returns hereinbefore mentioned shall forthwith register them, and on the expiration of 90 days from the registration of the return the company shall be deemed to be dissolved.
- (5) The court may, on the application of the liquidator or of any other person who appears to the court to be interested, make an order deferring the date at which the dissolution of the company is to take effect for such time as the court thinks fit.
- (6) It shall be the duty of the person on whose application an order of the court under this head is made, within 14 days after the making of the order, to deliver to the Registrar an office copy of the order for registration, and if that person fails so to do he shall be guilty of a category three offence.

## Part A11 - Winding-Up

---

- (7) If the liquidator fails to call a general meeting of the company as required by this head, he shall be guilty of a category three offence.
- (8) Where Part A11, Head 24 has effect, Head 132 shall apply to the winding-up to the exclusion of this head as if the winding-up were a creditors' voluntary winding-up and not a members' voluntary winding-up.

### **Explanatory note**

*Amended reenactment of Section 263 of the Companies Act, 1963.*

*Time periods have been amended to be stated in days. The reference to the registrar of companies has been amended to refer to the Registrar.*

*Subhead (2) has been amended to provide that written notice of the meeting must be given to members. This replaces the obligation to advertise the meeting.*

*Subhead (8) replaces Section 264(1) of the Companies Act, 1963.*

*Due to the relocation of the section to a chapter with general application the head now states explicitly that it applies to members' voluntary windings-up.*

---

## Head 132 Final meeting and dissolution in Creditors' Voluntary Winding-Up

---

- (1) In a creditors' voluntary winding-up, as soon as the affairs of the company are completely wound up, the liquidator shall make up an account of the winding-up, showing how the winding-up has been conducted and the property of the company has been disposed of, and thereupon shall call a general meeting of the company and a meeting of the creditors for the purpose of laying the account before the meetings and giving any explanation thereof.
- (2) Each such meeting shall be called by giving at least 28 days' written notice to the members or creditors of the company, as the case may be.
- (3) Within 7 days after the date of the meetings, or if the meetings are not held on the same date, after the date of the later meeting, the liquidator shall send to the Registrar a copy of the account, and shall make a return to him of the holding of the meetings and of their dates, and if the copy is not sent or the return is not made in accordance with this subhead, the liquidator shall be guilty of a category three offence, so, however, that if a quorum is not present at either such meeting, the liquidator shall, in lieu of the return hereinbefore mentioned, make a return that the meeting was duly summoned and that no quorum was present thereat, and upon such a return being made, the provisions of this subhead as to the making of the return shall, in respect of that meeting, be deemed to have been complied with.
- (4) Subject to Subhead (5), the Registrar on receiving the account and, in respect of each such meeting, either of the returns hereinbefore mentioned, shall forthwith register them, and on the expiration of 90 days from the registration thereof the company shall be deemed to be dissolved.
- (5) The court may, on the application of the liquidator or of any other person who appears to the court to be interested, make an order deferring the date at which the dissolution of the company is to take effect for such time as the court thinks fit.
- (6) It shall be the duty of the person on whose application an order of the court under this head is made, within 14 days after the making of the order, to deliver to the Registrar an office copy of the order for registration, and if that person fails so to do, he shall be guilty of a category three offence.
- (7) If the liquidator fails to call a general meeting of the company or a meeting of the creditors as required by this head, he shall be guilty of a category three offence.

### **Explanatory note**

*Amended reenactment of Section 273 of the Companies Act, 1963 as amended by Section 15 of the Companies (Amendment) Act, 1982, together with Schedule 1 of the Companies (Amendment) Act 1982.*

*Subhead (2) has been amended to provide that written notice of the meeting must be given to creditors and members. This replaces the obligation to advertise the meeting.*

*Time periods have been amended to be stated in days. The reference to the registrar of companies has been amended to refer to the Registrar. Due to the relocation of the head to a chapter with general application the head now states explicitly that it applies to creditors voluntary windings-up.*

### Head 133 Disposal of books and papers of company in winding-up

- (1) When a company has been wound up and is about to be dissolved, the seal or seals, books and papers of the company and of the liquidator may be disposed of as follows—
- (a) in the case of a members' voluntary winding-up, in such way as the company by special resolution directs; and
  - (b) in the case of a court ordered winding up or a creditors' voluntary winding-up, in such way as the committee of inspection or, if there is no such committee, as the creditors of the company, may direct,

so, however, that such seal or seals, books and papers shall be retained by the liquidator for a minimum period of 3 years from the date of the dissolution of the company and, in the absence of any direction as to their disposal, he may then dispose of them as he thinks fit.

- (2) If a liquidator fails to comply with the requirements of this head he shall be guilty of a category four offence.
- (3) The winding-up of a company shall for the purposes of this head be deemed to be concluded—
- (a) in the case of a company wound up by order of the court, on the date on which a copy of the order dissolving the company has been forwarded by the liquidator to the Registrar in accordance with Head 130 (3);

- (b) in the case of a company wound up voluntarily, on the date on which the company is deemed to be dissolved, unless on such date any funds or assets of the company remain unclaimed or undistributed in the hands or under the control of the liquidator or any person who has acted as liquidator, in which case the winding-up shall not be deemed to be concluded until such funds or assets have either been distributed or paid into The Companies Liquidation Account, referred to in Head 59.

#### **Explanatory note**

*Amended reenactment of Section 305 of the Companies Act, 1963.*

*The text "seal or seals" has been inserted into subhead (1).*

*Disposal in a court ordered winding-up is to occur in the same manner as a creditors' voluntary winding-up.*

*Subhead (3) incorporates the provisions of Order 74 rule 129, RSC.*

### Head 134 Power of court to declare dissolution of company void

- (1) Where a company has been dissolved, the court may at any time within 2 years of the date of the dissolution, on an application being made for the purpose by the liquidator of the company or by any other person who appears to the court to be interested, make an order, upon such terms as the court thinks fit, declaring the dissolution to have been void, and thereupon such proceedings may be taken as might have been taken if the company had not been dissolved.
- (2) It shall be the duty of the person on whose application the order was made, within 14 days after the making of the order, or such further time as the court may allow, to deliver to the Registrar for registration an office copy of the order, and if that person fails to do so, he shall be guilty of a category four offence.

#### **Explanatory note**

*Amended reenactment of Section 310 of the Companies Act, 1963. The reference to the registrar of companies has been amended to refer to the Registrar. The limitation in Section 310(2) on the fine that may be imposed has been removed.*



### **Head 135 Disposal of documents filed with Registrar**

---

The Registrar shall, after the expiration of 20 years from the dissolution of a company, send all the documents filed in connection with such company to the Public Record Office.

***Explanatory note***

*Amended reenactment of Section 313 of the Companies Act, 1963. The reference to the registrar of companies has been amended to refer to the Registrar.*

## Chapter 15

### Insolvency proceedings outside the State

#### Head 136 Preliminary

- (1) This Part is subject to Council Regulation (EC) No. 1346/2000 of 29 May 2000 1 on insolvency proceedings.
- (2) The application of this Chapter is not restricted to windings-up but also applies to insolvency proceedings dealt with in Parts A8, A9 and A10 ,[Receivers, reconstructions and examinerships].

'insolvency proceedings' means insolvency proceedings opened under Article 3 of the Insolvency Regulation in a Member State of the European Communities other than the State and Denmark where the proceedings relate to a body corporate;

'Insolvency Regulation' means Council Regulation (EC) No. 1346/2000 of 29 May 2000 on insolvency proceedings;

'property'

- (a) in relation to proceedings opened in the State under Article 3(1) of the Insolvency Regulation, includes property situated outside the State; and
  - (b) in relation to proceedings so opened under Article 3(2) of the Regulation, does not include property so situated.
- (3) Save as provided in Part A11, Head 143 [equivalent of Regulation 6 European Communities (Corporate Insolvency) Regulations 2002; S.I. No. 333 of 2002] and except where the context otherwise requires, references to numbered Articles are references to Articles so numbered of the Insolvency Regulation.

#### **Explanatory note**

*Amended reenactment of Regulation 3 European Communities (Corporate Insolvency) Regulations 2002 and Section 1A of the Companies (Amendment) Act, 1990 as inserted by Regulation 4 European Communities (Corporate Insolvency) Regulations 2002; S.I. No. 333 of 2002.*

#### Head 137 Recognition of winding-up orders of non-European Union states and Denmark.

- (1) Any order made by a court of any country recognised for the purposes of this head and made for or in the course of winding-up a company may be enforced by the High Court in the same manner in all respects as if the order had been made by the High Court.
- (2) When an application is made to the High Court under this head, an office copy of any order sought to be enforced shall be sufficient evidence of the order.
- (3) In this head "company" means a body corporate incorporated outside the State, and "recognised" means recognised by order made by the Minister.
- (4) This head does not apply in relation to an order made by a court of a Member State of the European Communities other than the State and Denmark.

#### **Explanatory note**

*Re-enactment of Section 250 of the Companies Act, 1963 as amended by Regulation 3(d) European Communities (Corporate Insolvency) Regulations 2002; S.I. No. 333 of 2002.*

*The heading for this section has been amended from "Enforcement of orders made in winding-up by courts outside the State" in order to recognise that it only applies to winding-up orders of Non-European Communities states and Denmark.*

#### Head 138 Registration of judgments given in insolvency proceedings.

- (1) Without prejudice to Article 16(1) of the Insolvency Regulation, a liquidator appointed in insolvency proceedings who intends—
  - (a) to request under Article 21 of the Insolvency Regulation that notice of the judgment opening the proceedings and, where appropriate, the decision appointing him or her be published in the State; or

- (b) to take any other action in the State under the Insolvency Regulation, shall deliver to the Registrar for registration a duly certified copy of the judgment and, where appropriate, of the decision appointing the liquidator.
- (2) Registration under Subhead (1) may also be effected by the Registrar on application by a liquidator who does not intend to take any action in the State under the Insolvency Regulation.
- (3) The certified copy or copies mentioned in Subhead (1) shall be accompanied by—
- (a) if the judgment or decision is not expressed in Irish or English, a translation, certified to be correct by a person competent to do so, into either of those languages;
  - (b) the prescribed form; and
  - (c) the fee payable under [equivalent of the Eighth Schedule, as altered by order of the Minister under Section 395(2) of the Companies Act, 1963].
- (4) The Registrar shall issue a certificate of the registration to the liquidator.
- (5) In any proceedings a document purporting to be—
- (a) a duly certified copy of a judgment opening insolvency proceedings or a decision appointing a liquidator in such proceedings; or
  - (b) a translation of such a document, which is certified as correct by a person competent to do so, shall, without further proof, be admissible as evidence of the judgment, the liquidator's appointment or the translation, unless the contrary is shown.

### **Explanatory note**

*Amended re-enactment of Section 227A of the Companies Act, 1963 as inserted by Regulation 3(c) European Communities (Corporate Insolvency) Regulations 2002; S.I. No. 333 of 2002.*

*The text of this section has been amended so that that references to "Regulation" where appropriate has been corrected to "Insolvency Regulation", being the term defined at the commencement of the chapter.*

*References to Registrar of Companies have been amended to Registrar.*

## **Head 139 Publication in relation to insolvency proceedings**

- (1) In this head 'publication' means publication of—
- (a) notice of the judgment opening the insolvency proceedings concerned;
  - (b) where appropriate, the decision appointing the liquidator in those proceedings;
  - (c) the name and business address of the liquidator; and
  - (d) the provision (either paragraph 1 or paragraph 2) of Article 3 of the Insolvency Regulation giving jurisdiction to open the proceedings,
- in the Companies Registration Office Gazette and once at least in two daily morning newspapers circulating in the State.
- (2) Without prejudice to Part A11, Head 138 (1) [equivalent of Section 227A(1) of the Companies Act, 1963], publication shall be effected by the liquidator concerned.
- (3) Where the debtor company has an establishment (within the meaning of Article 2(h) of the Insolvency Regulation) in the State, the liquidator or any authority mentioned in Article 21(2) of the Insolvency Regulation shall ensure that publication takes place as soon as practicable after the opening of the insolvency proceedings.

### **Explanatory note**

*Subheads (1) to (3) are an amended re-enactment of Section 227B of the Companies Act, 1963 as inserted by Regulation 3(c) European Communities (Corporate Insolvency) Regulations 2002; S.I. No. 333 of 2002.*

*The text of this head has been amended so that that references to "Regulation" where appropriate has been corrected to "Insolvency Regulation", being the term defined at the commencement of the chapter. The reference to Iris Oifigiúil has been changed to the CRO Gazette.*

---

## Head 140 Confirmation of creditors' voluntary winding-up.

---

Where—

- (a) a liquidator is appointed in a creditors' voluntary winding-up of a company in pursuance of Part A11, Head 28 [equivalent of Section 267 of the Companies Act, 1963]; and
- (b) the centre of the company's main interests is situated in the State, the Master of the High Court may, on application by the liquidator in the prescribed form and payment of the prescribed fee, confirm the creditors' voluntary winding up for the purposes of the Insolvency Regulation and shall so certify."

### **Explanatory note**

*Re-enactment of Section 267A of the Companies Act, 1963 as inserted by Regulation 3(e) of the European Communities (Corporate Insolvency) Regulations 2002; S.I. No. 333 of 2002.*

---

## Head 141 Provision of certain documents to liquidator or examiner

---

On—

- (a) the making of—
  - (i) a winding-up order, or
  - (ii) an order under Part A10, Head 2 [equivalent of Section 2 of the Companies (Amendment) Act, 1990] appointing an examiner to a company; or

- (b) the issue of a certificate by the Master of the High Court under Head 140 [equivalent of Section 267A of the Companies Act, 1963 (inserted by the European Communities (Corporate Insolvency) Regulations 2002 (S.I. No. 333 of 2002)) of this Act] in relation to the confirmation by the Master of a creditors' voluntary winding-up, the proper officer of the Central Office of the High Court shall, on request and payment of the prescribed fee and subject to any conditions that may be specified in rules of court, give to the liquidator or examiner concerned—

- (i) a copy of the order or certificate, certified by the officer to be a true copy, and

- (ii) any other prescribed particulars.

### **Explanatory note**

*Re-enactment of 313A of the Companies Act, 1963 as inserted by Regulation 3(f) European Communities (Corporate Insolvency) Regulations 2002; S.I. No. 333 of 2002.*

---

## Head 142 Registration of insolvency judgments

---

A request by a liquidator under Article 22 of the Insolvency Regulation that the judgment opening the insolvency proceedings be registered in a public register shall be made to the person or authority responsible for keeping the register concerned.

### **Explanatory note**

*Re-enactment of Regulation 5 European Communities (Corporate Insolvency) Regulations 2002; S.I. No. 333 of 2002.*

---

## Head 143 Enforcement in State of insolvency judgments

---

- (1) In this head—

"Brussels 1 Regulation" means Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters;

“insolvency judgment” means a judgment referred to in Article 25 of the Insolvency Regulation;

and,

except where the context otherwise requires, references to numbered Articles are references to Articles so numbered of the Brussels 1 Regulation.

- (2) Having regard to Article 68 of the Brussels 1 Regulation, references in Article 25 of the Insolvency Regulation to enforcement of insolvency judgments in accordance with certain Articles of the Brussels Convention are to be read as references to enforcement of those judgments in accordance with Articles 38 to 58 of the Brussels 1 Regulation.
- (3) An application under the Brussels 1 Regulation for the enforcement in the State of an insolvency judgment shall be made to the Master of the High Court.
- (4) The Master shall determine the application by order in accordance with the Brussels 1 Regulation.
- (5) The Master shall declare the insolvency judgment enforceable immediately on completion of the formalities provided for in Article 53 without any review under Articles 34 and 35 and shall make an enforcement order in relation to the judgment.
- (6) An order under paragraph (5) of this head may provide for the enforcement of only part of the insolvency judgment concerned.
- (7) An application to the Master under Article 39 for an enforcement order in respect of an insolvency judgment may include an application for any preservation measures the High Court has power to grant in proceedings that, apart from these Regulations, are within its jurisdiction.
- (8) Where an enforcement order is made, the Master shall grant any such preservation measures so applied for.
- (9) For the purposes of this Chapter references in Articles 42, 43, 45, 47, 48, 52, 53 and 57 to a declaration of enforceability are to be treated as references to an enforcement order under this Regulation.
- (10) Subject to the restrictions on enforcement contained in Article 47(3), if an enforcement order has been made respecting an insolvency judgment, the judgment—

- (a) shall, to the extent to which its enforcement is authorised by the enforcement order, be of the same force and effect as a judgment of the High Court; and
- (b) may be enforced by the High Court, and proceedings taken on it, as if it were a judgment of that Court.

### **Explanatory note**

*Amended re-enactment of Regulation 6 European Communities (Corporate Insolvency) Regulations 2002; S.I. No. 333 of 2002.*

*This section has been amended by alteration of “regulation” to “section” and “these Regulations” to “this Chapter”, where appropriate.*

---

## **Head 144 Interest on insolvency judgments and payment of costs**

---

- (1) Where, on application for an enforcement order respecting an insolvency judgment, it is shown—
  - (a) that the judgment provides for the payment of a sum of money; and
  - (b) that, in accordance with the law of the Member State in which the judgment was given, interest on the sum is recoverable under the judgment at a particular rate or rates and from a particular date or time, the enforcement order, if made, shall provide that the person liable to pay the sum shall also be liable to pay the interest, apart from any interest on costs recoverable under paragraph (2), in accordance with the particulars noted in the order, and the interest shall be recoverable by the applicant as though it were part of the sum.
- (2) An enforcement order may provide for the payment to the applicant by the respondent of the reasonable costs of or incidental to the application for the enforcement order.
- (3) A person required by an enforcement order to pay costs shall be liable to pay interest on the costs as if they were the subject of an order for the payment of costs made by the High Court on the date on which the enforcement order was made.



- (4) Interest shall be payable on a sum referred to in paragraph (1)(a) only as provided for in this head.

**Explanatory note**

*Re-enactment of Regulation 7 European Communities (Corporate Insolvency) Regulations 2002; S.I. No. 333 of 2002*

*This section has been amended by alteration of "regulation" to "section", where appropriate.*

---

## Head 145 Currency of payments under enforceable insolvency judgments

---

- (1) An amount payable in the State under an insolvency judgment by virtue of an enforcement order shall be payable in the currency of the State.
- (2) If the amount is stated in the insolvency judgment in any currency except the euro, payment shall be made on the basis of the exchange rate prevailing, on the date the enforcement order is made, between the currency of the State and any such currency.
- (3) For the purposes of this head a certificate purporting to be signed by an officer of an authorised institution and to state the exchange rate prevailing on a specified date between a specified currency and the currency of the State shall be admissible as evidence of the facts stated in the certificate.
- (4) In this head, "authorised institution" means any of the following—
- (a) a body licensed by the Irish Financial Services Regulatory Authority to carry on banking business;
  - (b) a building society within the meaning of the Building Societies Act, 1989 (No. 17 of 1989);
  - (c) a trustee savings bank within the meaning of the Trustee Savings Banks Acts, 1989 and 2001;
  - (d) An Post.

**Explanatory note**

*Amendment of Regulation 8 European Communities (Corporate Insolvency) Regulations 2002; S.I. No. 333 of 2002.*

*This section has been amended by alteration of "regulation" to "section", where appropriate. Paragraph (4)(a) has been amended. This paragraph formerly read:*

*"(a) a body licensed to carry on banking business under the [Central Bank Acts, 1942 to 1998, or authorised to carry on such business under the ACC Bank Acts, 1978 to 2001, or regulations under the European Communities Acts, 1972 to 1998,]"*

---

## Head 146 Preservation measures

---

- (1) A request under Article 38 for measures to secure and preserve any of the debtor's assets in the State shall be made to the High Court.
- (2) On such a request the High Court—
- (a) may grant any such measures that the Court has power to grant in proceedings that, apart from this Chapter, are within its jurisdiction; and
  - (b) may refuse to grant the measures sought if, in its opinion, the fact that, apart from this head, the Court does not have jurisdiction in relation to the subject matter of the proceedings makes it inexpedient for it to grant the measures.

**Explanatory note**

*Re-enactment of Regulation 9 European Communities (Corporate Insolvency) Regulations 2002; S.I. No. 333 of 2002.*

---

## Head 147 Venue

---

The jurisdiction of the Circuit Court or District Court in proceedings that may be instituted in the State by a liquidator in exercise of his or her powers under Article 18 may be exercised by the judge for the time being assigned—

- (a) in the case of the Circuit Court, to the circuit; and
- (b) in the case of the District Court, to the district court district,

in which the defendant ordinarily resides or carries on any profession, business or occupation.

**Explanatory note**

*Re-enactment of Regulation 10 European Communities (Corporate Insolvency) Regulations 2002; S.I. No. 333 of 2002.*

---

### Head 148 Language of claims

---

A claim lodged with a liquidator (within the meaning of the Companies Acts, 1963 to 2001) by a creditor referred to in Article 42(2) may, if not in Irish or English, be required by the liquidator to be translated, in whole or in part, into either of these languages.

**Explanatory note**

*Re-enactment of Regulation 11 European Communities (Corporate Insolvency) Regulations 2002; S.I. No. 333 of 2002.*

---

### Head 149 Non-recognition or non-enforcement of judgments

---

It shall be for the High Court to determine whether judgments referred to in Article 25(1), or insolvency proceedings or judgments referred to in Article 26, should not be recognised or enforced on grounds mentioned in those provisions.

**Explanatory note**

*Re-enactment of Regulation 12 European Communities (Corporate Insolvency) Regulations 2002; S.I. No. 333 of 2002.*

---

### Head 150 Revocation

---

Paragraph 2 of the Companies (Recognition of Countries) Order 1964 (S.I. No. 42 of 1964) is amended by the substitution of "section 367" for "Sections 250 and 367".]

**Explanatory note**

*Re-enactment of Regulation 13 European Communities (Corporate Insolvency) Regulations 2002; S.I. No. 333 of 2002.*

# Chapter 16

## Offences

### Head 151 Offences by officers of companies in liquidation

- (1) Subject to Subhead (2), if any person, being a past or present officer of a company which at the time of the commission of the alleged offence is being wound up, whether by the court or voluntarily, or is subsequently ordered to be wound up by the court or subsequently passes a resolution for voluntary winding-up—
- (a) does not to the best of his knowledge and belief fully and truly disclose to the liquidator when he requests such disclosure all the property, real and personal, of the company and how and to whom and for what consideration and when the company disposed of any part thereof, except such part as has been disposed of in the ordinary way of the business of the company; or
  - (b) does not deliver up to the liquidator, or as he directs, all such part of the real and personal property of the company as is in his custody or under his control, and which he is required by law to deliver up; or
  - (c) does not deliver up to the liquidator, or as he directs, all books and papers in his custody or under his control belonging to the company and which he is required by law to deliver up; or
  - (d) within 12 months next before the commencement of the winding-up or at any time thereafter conceals any part of the property of the company to the value of [€13] or upwards, or conceals any debt due to or from the company; or
  - (e) within 12 months next before the commencement of the winding-up or at any time thereafter fraudulently removes any part of the property of the company to the value of [€13] or upwards; or
  - (f) makes any material omission in any statement relating to the affairs of the company; or
  - (g) knowing or believing that a false debt has been proved by any person under the winding-up, fails for the period of a month to inform the liquidator thereof; or
  - (h) after the commencement of the winding-up prevents the production of any book or paper affecting or relating to the property or affairs of the company; or
  - (i) within 12 months next before the commencement of the winding-up or at any time thereafter conceals, destroys, mutilates or falsifies or is privy to the concealment, destruction, mutilation or falsification of any book or paper affecting or relating to the property or affairs of the company; or
  - (j) within 12 months next before the commencement of the winding-up or at any time thereafter makes or is privy to the making of any false entry in any book or paper affecting or relating to the property or affairs of the company; or
  - (k) within 12 months next before the commencement of the winding-up or at any time thereafter fraudulently parts with, alters or makes any omission in, or is privy to the fraudulent parting with, altering or making any omission in, any document affecting or relating to the property or affairs of the company; or
  - (l) after the commencement of the winding-up or at any meeting of the creditors of the company within 12 months next before the commencement of the winding-up attempts to account for any part of the property of the company by fictitious losses or expenses; or
  - (m) has within 12 months next before the commencement of the winding-up or at any time thereafter, by any false representation or other fraud, obtained any property for or on behalf of the company on credit which the company does not subsequently pay for; or
  - (n) within 12 months next before the commencement of the winding-up or at any time thereafter, under the false pretence that the company is carrying on its business, obtains on credit for or on behalf of the company, any property which the company does not subsequently pay for; or

- (o) within 12 months next before the commencement of the winding-up or at any time thereafter pawns, pledges or disposes of any property of the company which has been obtained on credit and has not been paid for, unless such pawning, pledging or disposing is in the ordinary way of business of the company; or
- (p) is guilty of any false representation or other fraud for the purpose of obtaining the consent of the creditors of the company or any of them to an agreement with reference to the affairs of the company or to the winding-up;

he shall be guilty of a category two offence.

- (2) It shall be a good defence to a charge under any of paragraphs (a), (b), (c), (d), (f), (n) and (o) of Subhead (1), if the accused proves that he had no intent to defraud and to a charge under any of paragraphs (h), (i) and (j) of Subhead (1), if he proves that he had no intent to conceal the state of affairs of the company or to defeat the law.
- (3) Where any person pawns, pledges or disposes of any property in circumstances which amount to an offence under paragraph (o) of Subhead (1), every person who takes in pawn or pledge or otherwise receives the property knowing it to be pawned, pledged or disposed of in such circumstances as aforesaid shall also be guilty of a category two offence.
- (4) For the purposes of this head, "officer" shall include any person in accordance with whose directions or instructions the directors of a company have been accustomed to act.

### **Explanatory note**

*Amended reenactment of Section 293 of the Companies Act, 1963.*

*The amounts specified in Subhead (1) have been rounded up and are to be reviewed.*

---

## **Head 152 Criminal liability for fraudulent or reckless trading of company**

---

If any person is knowingly a party to the carrying on of the business of a company with intent to defraud creditors of the company or creditors of any other person or for any fraudulent purpose, that person shall be guilty of a category one offence.

### **Explanatory note**

Reenactment of Section 297 of the Companies Act, 1963.

---

## **Head 153 Prosecution of criminal offences committed by officers and members of company**

---

- (1) If it appears to the court in the course of a winding-up by the court that any past or present officer, or any member, of the company has been guilty of an offence in relation to the company for which he is criminally liable, the court may either on the application of any person interested in the winding-up or of its own motion direct the liquidator to refer the matter to the Director of Public Prosecutions and in such a case the liquidator shall furnish to the Director of Public Prosecutions such information and give to him such access to and facilities for inspecting and taking any copies of any documents, being information or documents in the possession or under the control of the liquidator and relating to the matter in question, as the Director of Public Prosecutions may require.
- (2) Where the court directs a liquidator, in accordance with Subhead (1), to refer a matter to the Director of Public Prosecutions, it shall also direct the liquidator to refer the matter to the Director of Corporate Enforcement and, in such a case, the liquidator shall furnish to the Director of Corporate Enforcement such information, and give to the Director of Corporate Enforcement such access to and facilities for inspecting and taking copies of any documents, being information or documents in the possession or under the control of the liquidator and relating to the matter in question, as the Director of Corporate Enforcement may require.
- (3) If it appears to the liquidator in the course of a voluntary winding-up that any past or present officer, or any member, of the company has been guilty of any offence in relation to the company for which he is criminally liable, he shall forthwith report the matter to the Director of Public Prosecutions and shall furnish to the Director of Public Prosecutions such information and give to him such access to and facilities for inspecting and taking copies of any documents, being information or documents in the possession or under the control of the liquidator and relating to the matter in question, as the Director of Public Prosecutions may require.

- (4) Where a liquidator, in accordance with subhead (3), reports a matter to the Director of Public Prosecutions, the liquidator shall also refer the matter to the Director of Corporate Enforcement and, in such a case, the liquidator shall furnish to the Director of Corporate Enforcement such information and give to the Director of Corporate Enforcement such access to and facilities for inspecting and taking copies of any documents, being information or documents in the possession or under the control of the liquidator and relating to the matter in question, as the Director of Corporate Enforcement may require.
- (5) If it appears to the court in the course of a winding-up that any past or present officer, or any member, of the company has been guilty as aforesaid, and that no report relating to the matter has been made by the liquidator to the Director of Public Prosecutions under Subhead (3), or to the Director of Corporate Enforcement under Subhead (4), the court may, on the application of any person interested in the winding up or of its own motion, direct the liquidator to make such a report, and on a report being made accordingly, this head shall have effect as though the report had been made in pursuance of Subhead (3) or Subhead (4), as the case may be.
- (6) If, where any matter is reported or referred to the Director of Public Prosecutions and the Director under this head, either the Director of Public Prosecutions or the Director considers that the case is one in which a prosecution ought to be instituted and institutes proceedings accordingly, it shall be the duty of the liquidator and of every officer and agent of the company past and present (other than the defendant in the proceedings) to give all assistance in connection with the prosecution which he is reasonably able to give. For the purposes of this subhead, "agent" in relation to a company shall be deemed to include any banker or solicitor of the company and any person employed by the company as auditor, whether that person is or is not an officer of the company.
- (7) If any person fails or neglects to give assistance in the manner required by Subhead (6), the court may, on the application of the Director of Public Prosecutions or of the Director of Corporate Enforcement, direct that person to comply with the requirements of that Subhead, and where any such application is made in relation to a liquidator the court may, unless it appears that the failure or neglect to comply was due to the liquidator not having in his hands sufficient assets of the company to enable him so to do, direct that the costs of the application shall be borne by the liquidator personally.

**Explanatory note**

*Amended reenactment of Section 299 of the Companies Act, 1963 as amended by Section 143 of the Companies Act, 1990 and Section 51 Company (Law Enforcement) Act, 2001. Subsections have been renumbered and the Director of Corporate enforcement is referred to by the full title of that office.*

---

**Head 154 Frauds by officers of companies which have gone into liquidation**

---

If any person, being at the time of the commission of the alleged offence an officer of a company which is subsequently ordered to be wound up by the court or subsequently passes a resolution for voluntary winding-up—

- (a) has by false pretences or by means of any other fraud induced any person to give credit to the company;
- (b) with intent to defraud creditors of the company, has made or caused to be made any gift or transfer of or charge on, or has caused or connived at the levying of any execution against, the property of the company;
- (c) with intent to defraud creditors of the company, has concealed or removed any part of the property of the company since or within 2 months before the date of any unsatisfied judgment or order for payment of money obtained against the company,

he shall be guilty of a category two offence.

**Explanatory note**

*Reenactment of Section 295 of the Companies Act, 1963.*



### **Head 155 Liability of officers of company to penalty where proper books of account not kept**

---

- (1) If—
- (a) a company that is being wound up and that is unable to pay all of its debts, has contravened Part A6, Heads 3, 4, 5 or 6 [equivalent of Section 202 of the Companies Act, 1990]; and
  - (b) the court considers that such contravention has contributed to the company's inability to pay all of its debts or has resulted in substantial uncertainty as to the assets and liabilities of the company or has substantially impeded the orderly winding-up thereof, every officer of the company who is in default shall be guilty of a category two offence.
- (2) In a prosecution for an offence under this head it shall be a defence for the person charged with the offence to show that—
- (a) he took all reasonable steps to secure compliance by the company with Part A6, Heads 5, 6, 7 or 8 [equivalent of Section 202 of the Companies Act, 1990]; or
  - (b) he had reasonable grounds for believing and did believe that a competent and reliable person, acting under the supervision or control of a director of the company who has been formally allocated such responsibility, was charged with the duty of ensuring that that head was complied with and was in a position to discharge that duty.

**Explanatory note**

*Reenactment of Section 203 of the Companies Act, 1990. Amounts in Subhead (1) have been rounded up.*

---

# Part A12 – Strike-Off and Restoration

---

## Contents of Part A12

---

### **Chapter 1 – Preliminary and Interpretation**

1. Interpretation of Part A12
2. Instances of dissolution generally

### **Chapter 2 – Strike Off and Its Consequences**

3. Instances of strike-off
4. Initial notification of commencement of strike-off process
5. Continuation of the strike-off process and further notifications
6. The act of strike-off and its consequences
7. Voluntary strike-off
8. Post dissolution capacity

### **Chapter 3 – Restoration of Companies to the Register**

9. Administrative restoration
10. Restoration by the court
11. Application of this Part to companies struck off under former strike off provisions
12. Disclosure of information
13. Devolution of property of struck-off company; determination of claims by the State to such property; waiver of rights of the State to such property

---

## Part A12 – Strike-Off and Restoration

---

### Chapter 1

#### Interpretation

---

##### Head 1 Interpretation of Part A12

---

In this Part, unless the context otherwise requires—

“appropriate response” has the meaning assigned to it by Part A12, Head 4 (2);

“date of dissolution” means the date of publication in the CRO Gazette of the notice referred to in Part A12, Head 6 (1) [equivalent of section 12(3) of Companies (Amendment)(No.2) Act 1999], or where the company was struck off under the former strike-off provisions, the date of publication in Iris Oifigiúil of notice of dissolution of the company;

“deadline date”, in relation to a process of strike-off has the meaning assigned to it by Part A12, Head 4 (3) (c);

“former strike-off provisions” means those provisions of the Companies Acts, 1963 to 2005 under which a company could be struck off the register and dissolved;

“incomplete liquidation induced strike-off” means a process of strike-off commenced in the circumstances specified in Part A12, Head 3 (1) (d);

“non-residency induced strike-off” means a process of strike-off commenced in the circumstances specified in Part A12, Head 3 (c) [equivalent of section 43 (15) of Companies (Amendment) (No.2) Act 1999];

“no returns induced strike-off” means a process of strike-off commenced in the circumstances specified in Part A12, Head 3 (a) [equivalent of section 12 (1) of Companies (Amendment) Act 1982];

“Revenue induced strike-off” means a process of strike-off commenced in the circumstances specified in Part A12, Head 3 (b) [equivalent of section 12A(1) of Companies (Amendment) Act 1982, as inserted by section 46 of Companies (Amendment) (No.2) Act 1999];

“no directors induced strike-off” means a process of strike-off commenced in the circumstances specified in Part A12, Head 3 (e) [equivalent of section 48 of Companies (Amendment) (No.2) Act 1999];

“strike-off” means the process provided for in Part A12, Head 3 [new], Part A12, Head 4 [new], Part A12, Head 5 [new] and Part A12, Head 6 [new] and cognate words or phrases shall be construed accordingly;

“voluntary strike-off” means a process of strike-off pursuant to Part A12, Head 7 [new].

#### **Explanatory note**

*This head is a new head. The definitions are all new definitions which have been compiled in this section in order to create a comprehensive list of the defined terms for the purposes of the Part.*

---

##### Head 2 Instances of dissolution generally

---

Without prejudice to other provisions which provide for the dissolution of companies, a company may be dissolved following a process of strike-off initiated by the Registrar under this Part.

#### **Explanatory note**

*This head is a new head. It is intended to put the process of strike-off in context and to act as a sign-post for dissolution provisions in the context of winding-up.*

## Chapter 2

### Strike-off and Its Consequences

#### Head 3 Instances of strike-off

A process of strike-off may be commenced in relation to a company in circumstances where—

- (a) the company does not, in respect of one or more years, make an annual return required by Part A6, Head 52 [equivalent of section 125 of Companies Act 1963]; or,
- (b) the Revenue Commissioners give a notice under subsection (3) of section 882 (inserted by the Finance Act, 1999) of the Taxes Consolidation Act, 1997, to the Registrar stating that the company has failed to deliver a statement which it is required to deliver under that head; or,
- (c) the Registrar has reasonable cause to believe that Part A4, Head 11(1) [equivalent of section 43(1) of Companies (Amendment) (No.2) Act 1999], is not being complied with in relation to the company; or
- (d) the company is being wound up and the Registrar has reasonable cause to believe either that no liquidator is acting, or that the affairs of the company are fully wound-up and the returns required to be made by the liquidator have not been made for a period of 6 consecutive months; or
- (e) there are no persons recorded in the office of the Registrar as being directors of the company; or
- (f) an application for voluntary strike-off has been received by the Registrar which satisfies the requirements of Part A12, Head 7.

#### **Explanatory note**

*This head is a new head. It is a consolidated interpretation of several different strike-off provisions included in the Companies Acts 1963-2003. Some provisions have been newly inserted in accordance with the recommendations of the Company Law Review Group.*

*The initial notification procedure whereby the Registrar is required to send notice of the commencement of the strike-off process to the company has not been restated for each of the circumstances of strike-off envisaged here. Instead it is provided for, generally, in the next provision.*

*All references to the registrar of companies have been replaced by references to the "Registrar" and cross-references have been updated in accordance with the structure of the Bill.*

*Paragraph (a) is taken, in substance, from section 12(1) of the Companies (Amendment) Act, 1982.*

*Paragraph (b) is taken, in substance, from section 12A(1) of the Companies (Amendment) Act, 1982, as inserted by section 46 of the Companies (Amendment) (No.2) Act 1999.*

*Paragraph (c) is taken, in substance, from section 43(15) of the Companies (Amendment) (No.2) Act, 1999. The reference to section 43(2) has been removed since that subsection has not been re-enacted as it is obsolete.*

*Paragraph (d) is taken, in substance, from section 311(3) of the Companies Act, 1963.*

*Paragraph (e) is taken, in substance, from section 48 of the Companies (Amendment) (No.2) Act, 1999. The Review Group was of the opinion that it was not necessary to continue to restrict the scope of the provision to situation arising in consequence of sections 195(11A) or 195(11B) of the Companies Act, 1963, as is the case in section 48 of the Companies (Amendment) (No.2) Act, 1999. Such a situation arises where the company fails to send notification to the Registrar of the fact that a person has ceased to be a director or secretary, for whatever reason, despite that person's request to the company to send notification of his resignation to the Registrar. Section 48 artificially deemed such circumstances to be sufficient evidence that the company had ceased to trade and could therefore be struck off the register under section 311 of the Companies Act, 1963. The new provision instead elevates such a situation to be an independent ground for strike-off in itself.*

*Paragraph (f) is new. It has been inserted in accordance with the recommendation of the Review Group to give the current system of voluntary strike-off a statutory basis.*

### Head 4 Initial notification of commencement of strike-off process

- (1) Subject to Subhead (5), except in the case of voluntary strike-off, on the commencement of a strike-off process the Registrar shall send a notice by registered post:
  - (a) to the company at its registered office; or
  - (b) in the case of an incomplete-liquidation induced strike-off, to the individual recorded at the CRO as liquidator of the company, save that where no liquidator is recorded in relation to the company, the notice shall be sent to the company at its registered office.
- (2) Without prejudice to the validity of the notice in Subhead (1), the Registrar shall send a copy of the notice to such persons, if any, as are recorded in the office of the Registrar as being current directors of the company.
- (3) The notice for the purpose of Subhead (1) shall contain—
  - (a) a statement by the Registrar that he or she has commenced a process of strike-off in relation to the company which has the potential to lead to its name being struck off the register and the company being thereby dissolved; and
  - (b) a statement of the circumstance which has led to the commencement of the process of strike-off; and
  - (d) a stipulation of a deadline-date (which shall be at least 1 month subsequent to the date of the warning letter) and a statement that the next phase of the strike-off process may be commenced on or after that date and will consist of the publication of a notice in the CRO Gazette with a view to striking the name of the company off the register; and
  - (e) an invitation to the company to avert the continuance of the strike-off process by means of an appropriate response being—
    - (i) in the case of a no-returns induced strike-off, the delivery to the Registrar on or before the deadline-date of all annual returns which are outstanding in relation to the company as required by Part A6, Head 52 [equivalent of section 125 of Companies Act, 1963];
    - (ii) in the case of a Revenue induced strike-off, the delivery to the Revenue Commissioners on or before the deadline-date of the statement which the company is required to deliver under subsection (3) of Section 882 (inserted by the Finance Act, 1999) of the Taxes Consolidation Act, 1997;
    - (iii) in the case of a non-residency induced strike-off, the furnishing to the Registrar on or before the deadline-date of evidence that Part A4, Head 11 (1) [equivalent of section 43(1) of Companies (Amendment) (No.2) Act, 1999] is being complied with in relation to the company;
    - (iv) in the case of an incomplete-liquidation induced strike-off, the furnishing to the Registrar, on or before the deadline-date, of details of the identity of the liquidator together with up-to-date liquidation accounts; and
    - (v) in the case of a no-directors induced strike-off, the notification to the Registrar pursuant to Part A4, Head 19 (6) [equivalent of section 195(6) of Companies Act, 1963] of the appointment of a person as director of the company
- (4) Except in the case of an incomplete-liquidation induced strike-off, the notice for the purpose of Subhead (1) shall, in addition, contain a warning that in the event that the name of the company is so struck off the register, each person who was a director of the company at the time the notice is sent may be at risk of having a disqualification order made against him or her pursuant to Part A13, Head 40 [equivalent of section 160(2)(h) of Companies Act, 1990].
- (5) Where —
  - (a) a company does not, for 20 or more consecutive years, make an annual return required by Part A6, Head 52 [equivalent of section 125 of Companies Act 1963]; and



- (b) no notice of the situation of the registered office of the company has been given to the Registrar as required by Part A2, Head 33 [equivalent of section 113 of Companies Act, 1963],

the Registrar may, instead of sending in accordance with Subhead (1) a notice to the company at its registered office, publish a notice in the CRO Gazette containing the information that would otherwise be contained in the notice.

### **Explanatory note**

*This head is new. It provides the structure of the initial notification procedure whereby the Registrar is required to send notice of the commencement of the strike-off process to the company. It has not been restated for each of the circumstances of strike-off envisaged in the preceding section. Instead a general procedure has been provided for here.*

*The head is taken, in substance, from the procedure for notification as provided for in section 311 of the Companies Act, 1963, section 12 of the Companies (Amendment) Act 1982, section 12A of the Companies (Amendment) Act 1982, as inserted by section 46 of the Companies (Amendment) (No.2) Act 1999, and section 43(15) of the Companies (Amendment) (No.2) Act 1999. Some provisions have been inserted in accordance with the recommendations of the Company Law Review Group in its First Report.*

*All references to the registrar of companies have been replaced by references to the "Registrar" and cross-references have been updated in accordance with the structure of the Bill.*

*Subhead (1)(b) has been newly inserted in accordance with the recommendation of the Review Group that, at the commencement of the strike-off process, the Registrar should write to the directors of the company at their home address (as per CRO records) enclosing a copy of the strike-off notice which is being sent to the company at its registered office.*

*Subhead (2)(b) has been newly inserted in accordance with the recommendation of Review Group. This subhead requires the initial warning letter to highlight the circumstances which led to the commencement of the strike-off process.*

*Subhead (2)(e)(v) has also been newly inserted in accordance with the recommendation of the Review Group. This subhead provides that, in the situation of a no-directors induced strike-off provided for in the preceding head, the initial notification shall invite the company to avert the strike-off process by means of the appointment of a director.*

*Subhead (5) is an amended restatement of section 65 of the Investment Funds, Companies and Miscellaneous Provisions Act, 2005. Under the 1963 Act, (311(9)), where a company had not notified a registered office to the CRO it was necessary to issue strike-off notices to the last known officers of the company or to the subscribers. For companies that had not filed an annual return for many years that was a fruitless and time consuming exercise. At the time of drafting there were still a number of companies that had not notified a registered office and had not filed an annual return for more than 20 years. The CRO proposed to clear as many of these as possible in advance of this Bill being enacted. There may be a few anomalous cases left that had not filed a registered office but had filed an annual return within the 20 years preceding the enactment of this Bill, in which case a provision of this type is necessary.*

**BEFORE ENACTMENT IT WILL BE NECESSARY TO CONFIRM WHETHER THIS PROVISION REMAINS NECESSARY**

---

## **Head 5 Continuation of the strike-off process and further notifications**

---

- (1) On or after the deadline-date the Registrar may publish in the CRO Gazette a notice—
- (a) indicating the circumstances which form the basis for a process of strike-off having been commenced in relation to the company; and
  - (b) stating that at the expiration of one month from the date of that notice, the name of the company will be struck off the register and the company thereby dissolved, unless within the said period of one month an appropriate response has been made, and describing said appropriate response.
- (2) In the case of a voluntary strike off—
- (a) the notice provided for in Subhead (1)
    - (i) shall be published forthwith upon delivery of the application pursuant to Head 7 (c); and
    - (ii) shall invite any person to show cause as to why the Registrar should not strike the name of the company off the register;

## Part A12 - Strike-Off and Restoration

- (b) the period of one month in paragraph (b) shall be replaced by a period of three months; and
  - (c) the appropriate response shall be the delivery to the Registrar on or before the expiry of the period provided for in paragraph (b) of a notice from the company in the prescribed form requesting the cancellation of the strike-off process.
- (4) Except in the case of an incomplete-liquidation induced strike-off or a voluntary strike-off, the Registrar shall, upon striking the name of a company off the register pursuant to Subhead (1), forthwith inform the Director of Corporate Enforcement of the name of the company.
  - (5) The Director of Corporate Enforcement may require the directors of a company to which Subhead (4) applies, to produce by a specified date a statement to the affairs of the company as at the date of dissolution, in such form as may be prescribed, verified by affidavit, and showing the particulars of its assets, debts and liabilities, the names and residences of its creditors, the securities held by them respectively, the dates when the securities were respectively given, and such further or other information as may be prescribed or as the Director of Corporate Enforcement may reasonably require.

### **Explanatory note**

*This head is new. It is taken, in substance, from section 311 of the Companies Act, 1963, section 12 of the Companies (Amendment) Act, 1982, section 12A of the Companies (Amendment) Act, 1982, as inserted by section 46 of the Companies (Amendment) (No.2) Act, 1999, and section 43(15) of the Companies (Amendment) (No.2) Act 1999.*

*All references to the registrar of companies have been replaced by references to the "Registrar" and cross-references have been updated in accordance with the structure of the Bill. Furthermore, publication will occur in the CRO Gazette as opposed to Iris Oifigiúil.*

*It provides for the continuation of the strike-off process by means of the publication of the notice period by the Registrar in the CRO Gazette. Following the expiration of this period, the company is struck off unless an appropriate response has been made.*

- (6) The court may, on the application of the Director of Corporate Enforcement, require a director of a company who has made a statement under Subhead (5) to appear before it and answer on oath any question pertaining to the content of the statement.
- (7) A person who fails to comply with a requirement under Subhead (5) shall be guilty of a category three offence.

### **Explanatory note**

*This head is new and it states when the company is struck-off and elaborates on the consequences thereof. The head is comprised of amended re-enactments of various provisions of the Companies Acts 1963-2003 and new provisions inserted in accordance with the recommendations of the Company Law Review Group in its First Report.*

*All references to the registrar of companies have been replaced by references to the "Registrar" and cross-references have been updated in accordance with the structure of the Bill. Furthermore, publication will occur in the CRO Gazette as opposed to Iris Oifigiúil.*

*Subhead (1) is an amended re-enactment of section 311(5) of the Companies Act, 1963.*

*Subhead (2) is a re-enactment of section 311(6) of the Companies Act, 1963.*

*Subhead (3) is an amended re-enactment of section 311(7) of the Companies Act, 1963.*

*Subhead (4) is a new provision inserted in accordance with the recommendation of the Review Group in its First Report.*

*[The text deleted from this subhead gave effect to the*

## **Head 6 The act-of strike-off and its consequences**

- (1) Subject to Subheads (2) and (3), at the expiration of the time mentioned in the notice, the Registrar may, unless there has been an appropriate response by the company, strike its name off the register, and shall publish notice thereof in the CRO Gazette and on the publication in the CRO Gazette of this notice, the company shall be dissolved.
- (2) The liability, if any, of every director, officer and member of the company shall continue and may be enforced as if the company had not been dissolved.
- (3) Nothing Subheads (1) or (2) shall affect the power of the court to wind up a company, the name of which has been struck off the register or dissolved.

recommendation of the CLRG that in circumstances of strike-off (excluding incomplete-liquidation strike-off), the Registrar should be required to notify the Director of Corporate Enforcement of the names of the persons who were recorded in the CRO as being the directors of the company as at the date of initiation of the strike-off process. The purpose of this is to facilitate the discretion of the Director of Corporate Enforcement to apply to the court for the restriction or disqualification of directors, or take an action against them for fraudulent or reckless trading, in relevant circumstances.].

*Subheads (5), (6) and (7) are newly inserted in accordance with the recommendations of the Review Group in its First Report. The Review Group gave consideration as to what extent and in what circumstances the principle of limited liability should be deemed to be superceded by the personal liability of directors in the event of strike-off. This would be achieved under the fraudulent and reckless trading provisions, where necessary.*

*The Review Group therefore recommended that it would be important to give the Director of Corporate Enforcement powers such that, in the event of a strike-off, he could require a director of a company to produce a statement of affairs as at a date preceding the commencement of the strike-off of the company. Upon examination of such statement the Director of Corporate Enforcement would then decide whether an investigation and subsequent application to court for disqualification or loss of limited liability was warranted.*

*The requirement to produce a statement of affairs of the company is analogous to the examination as to the solvency status of a company under section 183A of the Companies Act, 1963, as inserted by section 40 of the Company Law Enforcement Act, 2001, and the requirement to file a statement of the affairs of the company under section 224 of the Companies Act, 1963 where the company is being wound up.*

---

### Head 7 Voluntary Strike-off

---

A company may apply to the Registrar to have its name struck off the register where it satisfies the following conditions:

- (a) The company has, within the preceding period of three months, resolved by special resolution that—
  - (i) by reason of never having carried on business or having ceased to carry on business, as applicable, it should seek to be dissolved by means of a voluntary strike-off;

- (ii) pending the determination or withdrawal of its application for voluntary strike-off, the company will not carry on any business or incur any liabilities;
- (b) All outstanding annual returns required by Part A6, Head 52 [equivalent of section 125 of the Companies Act, 1963 and section 126 of the Companies Act, 1963] as at the date of application for voluntary strike off have been delivered by the company;
- (c) A document in the prescribed form has been delivered to the Registrar, signed by each of the company's directors to certify that, as at the date of application to the Registrar, the company has no assets or liabilities that are in aggregate greater than €100 (including any contingent or prospective liabilities) and that there is no litigation ongoing or pending involving the company;
- (d) The company has caused the Registrar to be furnished with confirmation from the Revenue Commissioners dated not more than one month prior to the date on which the application for voluntary strike-off is received by the Registrar, that they have no objection to the company being the subject of a voluntary strike-off;
- (e) The company has satisfied the Registrar that, within the preceding period of one month, it has caused an advertisement in the prescribed form to be published in at least one daily newspaper circulating in the State.

#### **Explanatory note**

*This head is new and governs the process for voluntary strike-off of companies. Voluntary strike-off is available to companies under section 311(1) of the Companies, Act 1963. This involves the company taking the initiative to be struck off by approaching the Registrar to exercise his powers under section 311(1) by being tendered "reasonable cause to believe that the company is not carrying on business".*

*In practice, the Registrar has made it clear that this is a discretionary power which he/she is prepared to use only if a director of a company furnishes a statement to the effect that the company has ceased trading or has never traded, that it has no assets or liabilities and that it wishes that its name be struck off the register.*

## Part A12 - Strike-Off and Restoration

---

*In addition, such a statement must be accompanied by all outstanding annual returns (including accounts, filing fees and late filing fees where applicable), a letter of no objection from the Revenue Commissioners and a copy of an advertisement in the prescribed form, published in one daily newspaper indicating the intention to have the company struck off the register.*

*The Company Law Review Group took note of such procedure and recommended that it be put on a statutory basis, albeit with some amendments.*

*Subhead (1) sets out the conditions to be satisfied before a company may apply to the Registrar to have the company struck off. It is now required that the company pass a special resolution to such effect within the 3 months preceding the application. All the other conditions prescribed in Subhead (1) are those used in practice, set out previously.*

*The Review Group accepts that it is implicit that the company has a “shadow existence” for the purpose of achieving restoration. It recommended, however, that such an implicit position be made explicit in the restoration process. Accordingly, all actions necessary for the restoration process may be taken on the basis that, for this purpose only, as if the company has, in fact, an existence.*

*NB – subhead (2) may not be necessary.*

---

### Head 8 Post-Dissolution Capacity

---

- (1) Notwithstanding Part A12, Head 6 (1) [equivalent of section 311(5) of the Companies Act, 1963] but subject to subhead (2), a company, the name of which has been struck off the register and dissolved, shall be deemed not to have been dissolved solely in the context of such actions, steps or processes which are required to be taken, and are stated to be being so taken, for the purpose of enabling or facilitating an intended application under Part A12, Head 9 [equivalent of section 311A of the Companies Act, 1963, as inserted by section 246 of the Companies Act, 1990] and Part A12, Head 10 [equivalent of section 311 of the Companies Act, 1963].
- (2) Subhead (1) shall not be construed to authorise the dealing with, or exercise of control over, any property which has become the property of the State, pursuant to Part III of the State Property Act, 1954.

#### **Explanatory note**

*This head is a new head which implements the recommendations of the Company Law Review Group in its First Report. The Review Group noted that where a company has been struck off the register and purports to be re-instated, one of the difficulties facing the directors and auditors of the company is that, although an application may be successful and the company will be deemed to have never been struck off, at the time of the purported re-instatement the company will not, in fact, exist.*



## Chapter 3

### Restoration of Companies to the Register

#### Head 9 Administrative Restoration

- (1) Without prejudice to the provisions of Part A12, Head 10 [equivalent of section 311(8) of the Companies Act, 1963 and section 12B of the Companies (Amendment) Act, 1982, as inserted by section 46 of the Companies (Amendment) (No.2) Act, 1999], if a member or officer of a company feels disadvantaged by the company having been struck off the register, the Registrar, on an application made in the prescribed form before the expiration of twelve months after the date of dissolution, may restore the name of the company to the register where, before the expiration of fifteen months from the date of dissolution, the Registrar—
- (a) has received all annual returns outstanding, if any, from the company;
  - (b) has received confirmation from the Minister for Finance and the Revenue Commissioners that they have no objection to the name of the company being restored to the register pursuant to this head;
  - (c) is satisfied that Part A4, Head 11 (1) [section 43(1) of the Companies (Amendment)(No.2) Act, 1999] is being complied with in relation to the company (that the company has a resident director); and
  - (d) is satisfied that no notification required by Part A4 Head 19 (6) [equivalent of section 195(6) of the Companies Act, 1963] (notice of change of directors/secretary) remains outstanding in relation to the company.
- (2) Upon the registration of an application under Subhead (1) the company shall be deemed to have continued in existence as if its name had not been struck off.
- (3) Subject to any order made by the court in the matter, the restoration of the name of a company to the register under this head shall not affect the rights and liabilities of the company in respect of any debt or obligation incurred, or any contract entered into by, to, with or on behalf of, the company between the date of such restoration.

#### Explanatory note

*This head is an amended re-enactment of section 311A of the Companies Act, 1963, as inserted by section 246 of the Companies Act, 1990 and amended by section 50 of the Companies (Amendment) (No.2) Act, 1999.*

*All references to the registrar of companies have been replaced by references to the “Registrar” and cross-references have been updated in accordance with the structure of the Bill. Furthermore, publication will occur in the CRO Gazette as opposed to Iris Oifigiúil.*

*Subhead (1) is an amended re-enactment of section 311A(1) of the Companies Act, 1963. A lacuna exists under section 311A(1) of the Companies Act, 1963 whereby administrative restoration is only possible following the delivery of outstanding annual returns to the Registrar, even where the strike-off occurred for reasons other than the failure to make annual returns to the Registrar, i.e one of those grounds now listed in Head 3 of this Part.*

*For this reason the requirements are now stated cumulatively, including those which were not the basis of the original strike-off. Further, the word “aggrieved” has been replaced by the word “disadvantaged”. This is to make the position more certain where the person making the application for the restoration caused the dissolution in the first instance.*

*The application for restoration may no longer be made by “a company” that feels aggrieved by the strike-off, as is the case under section 311A(1) of the Companies Act, 1963. It is now to be made by a member or officer of the company who feels disadvantaged by the company having been struck off the register.*

*Subhead (1)(c) has been newly inserted to deal with the anomaly whereby at present the Minister for Finance becomes unknowingly divested of property which was earlier vested in him by virtue of the State Property Act, 1954. It has been drafted in terms such that the restoration will be effected unless there is some objection by the Minister for Finance. In the event of such objection by the Minister for Finance, the issue should be dealt with by the court under Head 9 of this Part.*

*Subheads (2) and (3) are re-enactments of Sections 311A(2) and (3) of the Companies Act 1963 respectively.*



### Head 10 Restoration by the Court

- (1) If any person who, but for the dissolution of the company, would have been a member, officer or creditor of the company is disadvantaged by the company having been struck off the register of companies, the court, on an application made by the member, officer or creditor before the expiration of 20 years from the date of dissolution of the company may, if satisfied that it is just that the company be restored to the register, order that the name of the company be restored to the register, and, subject to subhead (3) of this head, upon an office copy of the order being received by the Registrar for registration within 28 days of its perfection, the company shall be deemed to have continued in existence as if its name had not been struck off and the court may by the order:
- (a) give such directions and make such provisions as seem just for placing the company and all other persons in the same position as nearly as may be as if the name of the company had not been struck-off;
  - (b) direct the company to change its name if it is too similar to the name of a company already on the register; and/or
  - (c) make such other order as seems just (and such other order is referred to in subhead (3) of this head as an "alternative order").
- (2)
- (a) An application under subhead (1) shall be made on notice to the Registrar, the Revenue Commissioners and the Minister for Finance;
  - (b) In the case of an application by a creditor, the application shall additionally be made on notice—
    - (i) to such officers of the company whose identities are known, or ought reasonably to be known, to the creditor; and
    - (ii) to such other members or officers of the company as the Registrar, the Revenue Commissioners and/or the Minister for Finance, upon being notified of the application, may seek to have joined as notice parties.
- (3) An alternative order may, if the court considers it appropriate that it should do so, include a provision that, as respects a debt or liability incurred by, or on behalf of, the company during the period when it stood struck off the register, the officers of the company or such one or more of them as is or are specified in the order shall be liable for the whole or a part (as the court thinks just) of the debt or liability.
- (4) The court shall, unless cause is shown to the contrary, include in an order under subhead (1) of this head, being an order made on the application of a member or officer of the company, a provision that the order shall not have effect unless, within a specified period—
- (a) if the order relates to a no-returns induced strike-off, all outstanding annual returns required by Part A6, Head 52 [equivalent of section 125 of the Companies Act, 1963] are delivered to the Registrar;
  - (b) if the order relates to a Revenue induced strike-off, all outstanding statements required by Section 882 of the Taxes Consolidation Act, 1997 in relation to the company are delivered to the Revenue Commissioners;
  - (d) if the order relates to a no-directors induced strike-off, deliver to the Registrar any notification required by Part A4, Head 19 [equivalent of section 195(6) of the Companies Act, 1963];
  - (e) if the order relates to a non-residency induced strike-off, an Irish residency director is appointed or a bond is furnished to the Registrar by the company.
- (5) In making an order under Subhead (1) of this head, being an order that is made on the application of a creditor of the company, the Court shall—
- (a) direct that one or more specified members or officers of the company shall, within a specified period—
    - (i) if the order relates to a no-returns induced strike-off, deliver all outstanding annual returns required by Part A6, Head 52 [equivalent of section 125 of the Companies Act, 1963] to the Registrar; and

- (ii) if the order relates to a Revenue induced strike off, deliver all outstanding statements or returns required by Section 882 of the Taxes Consolidation Act, 1997 in relation to the company to the Revenue Commissioners;
- (iii) if the order relates to a no-directors induced strike-off, deliver to the Registrar any notifications required by Part A4, Head 19 [equivalent of section 195(6) of the Companies Act, 1963];
- (iv) if the order relates to a non-residency induced strike-off, deliver notification of appointment of an Irish director or a bond to the Registrar;
- (b) award the applicant the costs of the application against the company, unless to do so would conflict with the constitutional rights of any person (in which case the court shall make such order as to costs as it would have made if this sub-paragraph had not been enacted).
- (6) The court, on an application by the Registrar (on notice to each person who, to his knowledge, but for the dissolution would be an officer of the company) before the expiration of 20 years from the date of dissolution, may, if satisfied that it is just that the company be restored to the register, order that the name of the company which has been struck off the register be restored to the register and, upon the making of the order by the court, the company shall be deemed to have continued in existence as if its name had not been struck-off and the court may by the order—
- (a) give such directions and make such provisions as seem just for placing the company and all other persons in the same position as nearly as may be as if the name of the company had not been struck off;
- (b) direct the company to change its name if it is too similar to the name of a company already on the register; and/or
- (c) make such other order as seems just (and such other order may, if the court considers it appropriate that it should do so, include a provision of the kind referred to in Subhead (3) of this head).
- (7)
- (a) Notwithstanding Part A1, Head 2 [equivalent of section 2(1) of the Companies Act, 1963], in the case of an application under this head that is made by a creditor of the company or by the Registrar, “the court”, for the purposes of this head, means either the High Court or the Circuit Court;
- (b) An application under this head to the Circuit Court by a creditor of the company concerned shall be made to the judge of the Circuit Court for the circuit in which the registered office of the company was, immediately before it was struck-off the register, situated, or, if no office was registered at that time, for the circuit in which the creditor resides, or, in case the creditors reside outside the State, for the Dublin Circuit.
- (c) An application under this head to the Circuit Court by the Registrar shall be made to the judge of the Circuit Court for the Dublin Circuit

### **Explanatory note**

*This head is new. It is comprised of various provisions of the Companies Acts, 1963-2003. Some provisions have been newly inserted in accordance with the recommendations of the Company Law Review Group in its First Report.*

*All references to the registrar of companies have been replaced by references to the “Registrar” and cross-references have been updated in accordance with the structure of the Bill. Furthermore, publication will occur in the CRO Gazette as opposed to Iris Oifigiúil.*

*Subhead (1) is taken in substance from section 311(8) of the Companies Act, 1963 and section 12B(3) of the Companies (Amendment) Act, 1982, as inserted by section 46 of the Companies (Amendment) (No.2) Act, 1999. As in Head 98 above, the word “aggrieved” has been replaced by the word “disadvantaged”. This is to make the position more certain where the person making the application for the restoration caused the dissolution in the first instance. An application is now allowed to be brought by “any member, officer or creditor who is disadvantaged by the company having been dissolved”. This accords with section 12B of the Companies (Amendment) Act, 1982 as opposed to section 311A(8) of the Companies Act, 1963 which provided that an application may be brought by “the company, or any member or creditor thereof, who feels aggrieved by the company having been struck-off the register”.*

## Part A12 - Strike-Off and Restoration

---

*Under section 311(8) of the Companies Act, 1963 application for restoration was made on notice only to the Registrar and in practice, to the Minister for Finance. Section 12B of the Companies (Amendment) Act, 1982 also required that notice be given to the Revenue Commissioners. It is provided for all three to be statutory notice parties in all instances in a later subsection.*

*[Restoration under section 311(8) of the Companies Act, 1963 is contingent on proof that the company was actually trading at the time of strike-off or otherwise that it is just that the company be restored to the register. However section 12B of the Companies (Amendment) Act, 1982 requires simply that it be just that the company be restored to the register. The option for the "just ground" simpliciter has been preferred here.*

*Suhead (2) is new. Subhead (2)(a) provides for the Registrar, the Minister for Finance and the Revenue Commissioners to be statutory notice to parties in all instances of court restoration. The requirement to give notice to the Registrar was provided for in section 311(8) of the Companies Act, 1963 and to notify the Revenue Commissioners was in section 12B of the Companies (Amendment) Act, 1982. The process of notifying the Minister for Finance had no statutory basis previously - it had merely developed in practice.*

*Subhead (2)(b) is new and is designed to ensure that, in a creditor's application, the parties who ought to be subject to the restoration order are notified of the application.*

*Subhead (3) is a re-enactment of section 311(8A) of the Companies Act, 1963 and subsection 12B(4) of the Companies (Amendment) Act, 1982. It is presumed that persons potentially entitled to benefit under such order (creditors) would be afforded an opportunity to be before the court and the Rules of Court (e.g. advertisement of a petition) would adequately deal with such a scenario.*

*Subhead (4) is an amended re-enactment of section 12B(5) of the Companies (Amendment) Act, 1982. It is now provided that there must be compliance with all the circumstances that can justify strike-off and not merely the circumstances that led to the company being struck off the register. Furthermore, the "one-month period" is replaced with a "specified period".*

*Subhead (5)(a) is an amended re-enactment of section 12(b)(6) of the Companies (Amendment) Act, 1982. It has been amended in light of the fact that that there must be compliance with all the circumstances that can justify strike off and not merely the circumstances that led to the company being struck-off the register. Accordingly, paragraph (iii) has been newly inserted.*

*Subhead (5)(b) has been newly inserted in accordance with the recommendations of the Review Group in its First Report concerning the award of costs to the applicant against the company.*

*Subhead (6) is a slightly amended re-enactment of section 12B(7) of the Companies (Amendment) Act, 1982.*

*Subhead (7) is an amended re-enactment of subsection 12B(9) of the Companies (Amendment) Act, 1982. It has been amended to clarify the uncertainty which arose following the Supreme Court decision in *Re Deauville Communication Worldwide Ltd.* (15th March 2002, unreported). It was held by the Supreme Court in that case that although the language used in section 12B(9) of the Companies (Amendment) Act, 1982 was capable of being construed so as to make it obligatory that an application for restoration be brought in the Circuit Court as opposed to the High Court, a creditor was still permitted to bring an application for restoration was in the High Court.*

---

### **Head 11 Application of this Part to companies struck-off under former strike-off provisions**

---

*Part A12, Heads 9 and 10 shall apply to a company struck off under the former strike off provisions as if such company had been struck off under this Part.*

---

### **Head 12 Disclosure of information**

---

If the question of whether a statement, which a company has failed to deliver to the Revenue Commissioners in accordance with section 882(3) of the Taxes Consolidation Act, 1997, has or has not been subsequently delivered to them falls to be determined for the purpose of the exercise by the Registrar of any of the powers under this Part, the Revenue Commissioners may, notwithstanding any obligations as to secrecy or other restriction upon disclosure of information imposed by or under statute or otherwise, disclose to the Registrar any information in their possession required by the Registrar for the purpose of that determination.

### **Explanatory note**

*This head is an amended re-enactment of section 12D of the Companies (Amendment) Act, 1982, as inserted by section 46 of the Companies (Amendment) (No.2) Act, 1999. References to the registrar of companies have been replaced by references to the "Registrar" and cross-references have been updated in accordance with the structure of the Bill*

### **Head 13 Devolution of property of struck-off company; determination of claims by the State to such property; waiver of rights of the State to such property**

- (1) Where the name of a company is struck off the register pursuant to this Part, all property which was vested in or held in trust for such company immediately before its dissolution (other than property held by such company upon trust for another person) shall, immediately upon such dissolution, become and be the property of the State, subject however to any encumbrances or charges affecting the property immediately before such dissolution.
- (2) Subhead(1) of this head shall have effect subject to and without prejudice to any restoration by the Registrar under Part A12, Head 9 [equivalent of section 311A of the Companies Act, 1963] or any order made by a court under Part A12, Head 10 [equivalent of section 311 of the Companies Act, 1963].
- (3)
  - (a) Whenever the Minister for Finance claims that any property (including land) has become the property of the State by virtue of Subhead (1), the Minister may, if he so thinks fit, apply to the High Court for an order declaring that such property has so become the property of the State.
  - (b) Every application to the High Court under paragraph (a) of this Subhead shall in the first instance be made ex parte and the High Court shall thereupon give such directions as it thinks proper in regard to service or publication of notice of such application and shall not finally determine such application unless or until the directions so given have been complied with and such time as the Court shall consider reasonable in the circumstances has elapsed since such compliance.

- (c) An order made by the High Court on an application under paragraph (a) of this subhead declaring that any property has become the property of the State by virtue of subhead (1) shall (subject to appeal to the Supreme Court) be conclusive evidence binding on all persons whatsoever (whether they had or had not notice of such an application) that the said property has so become the property of the State in accordance with such declaration.
- (d) Whenever any property of whatsoever nature or kind has becomes the property of the State by virtue of subhead (1), the Minister for Finance may, if he thinks proper so to do, waive, in whole or in part and in favour of such person and upon such terms (whether including or not including the payment of money) as he thinks proper having regard to all the circumstances of the case, the right of the State to such property.

### **Explanatory note**

*This head is new. These provisions have been imported from the State Property Act, 1954 for the purpose of clarity and completeness in accordance with the view of the Company Law Review Group.*

*Subhead (1) is taken, in substance, from sections 28(1) and (2) of the State Property Act, 1954.*

*Subhead (2) is taken, in substance, from section 28(3) of the State Property Act, 1954. It has been amended to include references to administrative restoration.*

*Subhead (3)(a)-(c) is taken, in substance, from section 30 of the State Property Act, 1954.*

*Subhead (3)(d) is taken, in substance from section 31 of the State Property Act, 1954.*

*N.B – it is probably necessary to repeal the relevant provisions of the State Property Act, in an appropriate fashion, as a result.*





---

# Part A13 – Investigations, Compliance and Enforcement

---

## Contents of Part A13

---

### Chapter 1 – Preliminary and Definitions

1. Interpretation

### Chapter 2 – Investigations

2. Investigation of company's affairs by court appointed inspectors on application of company, its members, directors or creditors
3. Investigation of company's affairs by court appointed inspectors on application of Director of Corporate Enforcement
4. Miscellaneous provisions in relation to either form of application
5. Power of inspectors to extend investigation into affairs of related companies
6. Investigation of share dealing
7. Production of documents and evidence on investigation
8. Inspectors' report
9. Proceedings on inspectors' report
10. Expenses of investigation of company's affairs
11. Appointment and powers of inspectors to investigate ownership of company
12. Power to require information as to persons interested in shares or debentures
13. Power to impose restrictions on shares or debentures
14. Power of Director of Corporate Enforcement to require production of documents
15. Entry and search of premises
16. Provisions for security of information
17. Concealing facts disclosed by documents
18. Production and inspection of books when offence suspected
19. Saving for privileged information
20. Assistance to overseas company law authorities
21. Power to make supplementary regulations

### Chapter 3 – Compliance and Protective Orders

22. General powers of court in relation to non-compliance with provisions of this Act
23. Order to restrain directors and others from moving assets

### Chapter 4 – Disclosure Orders

24. Disclosure order
25. Procedure on application for disclosure order
26. Scope of disclosure order
27. Powers of court
28. Notice of disclosure order
29. Information disclosed under order
30. Civil consequences of contravention of disclosure order

### Chapter 5 – Disqualification and Restriction of Directors and Other Officers

31. Application of Part A13, Heads 31 to 40 [equivalent of Part VII, Chapter 1 of the Companies Act, 1990]
32. Restriction
33. Duty of liquidator under Part A13, Heads 31 to 40 [equivalent of Part VII, Chapter 1 of the Companies Act, 1990]
34. Relief
35. Register of restricted persons
36. Application of Part A13, Heads 31 to 40 [equivalent of Part VII, Chapter 1 of the Companies Act, 1990] to receivers
37. Restrictions on company to which Part A13, Head 32 (3) [equivalent of section 150(3) of the Companies Act, 1990] applies

## Part A13 - Investigations, Compliance and Enforcement

---

38. Requirements as to share allotted by a company to which Part A13, Head 37 [equivalent of section 155 of the Companies Act, 1990] applies
39. Relief for a company in respect of prohibited transactions
40. Power to vary amounts mentioned in Part A13, Head 32 (3) [equivalent of section 150(3) of the Companies Act, 1990]
41. Interpretation of Part A13, Heads 41 and 42 [equivalent of Part VII, Chapter 2 of the Companies Act, 1990] and Part A13, Heads 43 to 51 [equivalent of Part VII, Chapter 3 of the Companies Act, 1990]
42. Disqualification of certain persons from acting as directors or auditors of or managing companies
43. Penalty for acting contrary to the provisions of Part A13, Heads 31 to 40 [equivalent of Part VII, Chapter 1 of the Companies Act, 1990] or Part A13, Heads 41 to 42 [equivalent of Part VII, Chapter 2 of the Companies Act, 1990]
44. Period of disqualification order to which person is deemed to be subjected
45. Civil consequences of acting contrary to the provisions of Part A13, Heads 31 to 40 [equivalent of Part VII, Chapter 1 of the Companies Act, 1990] or Part A13, Heads 41 to 42 [equivalent of Part VII, Chapter 2 of the Companies Act, 1990]
46. Penalties for acting under the directions of disqualified person
47. Civil consequences for acting under the directions of disqualified person
48. Information to be given by directions to the court
49. Information to be supplied to the Registrar
50. Register of persons subject to disqualification orders
51. Disqualification and restriction undertakings

### Chapter 6 – Provisions Relating to Offences Generally

52. Summary prosecutions
53. District Court area within which summary proceedings may be bought
54. Period within which summary proceedings may be commenced
55. Prosecution of companies on indictment
56. Offences by certain bodies
57. Limits which apply generally. Penalties for Categories 1 to 4 Offences
58. Daily Default Fines
59. Notice by Director of intention to prosecute
60. Special provisions applying where default in delivery of documents to registrar of companies

### Chapter 7 – Additional General Offences

61. Improper use of “limited” or “teoranta”
62. Furnishing false information
63. Penalisation of destruction, mutilation or falsification of documents.

### Chapter 8 – Evidential Matters

64. Proof of certificates as to incorporation
65. Admissibility in evidence of certain matters
66. Provision of information to juries.
67. Certificate of evidence and other matters.
68. Saving for privileged communications.
69. Statutory declarations made outside the State

# Part A13 – Investigations, Compliance and Enforcement

---

## Chapter 1

### Preliminary and Definitions

---

#### Head 1 Interpretation

---

- (1) Any reference in this Part to share capital or relevant share capital shall, in relation to a company, be deemed to be a reference to the share capital of a class carrying rights to vote in all circumstances at general meetings of the company, and references to share shall be construed accordingly.
- (2) Any reference in Chapter 2 or Chapter 4 of this Part to shares, share capital, shareholding or any interests in shares shall unless the context otherwise requires, include membership and rights or obligations attaching

#### **Explanatory note**

*This head is new. The definition of share capital or relevant share capital is a new definition particular to this Part.*

*Subhead (2) is new. This was inserted in accordance with the view of the Company Law Review Group. The effect of this provision is to extend Chapter 4 to permit the court to require disclosure of details of shares in, and membership or debentures of, a company. Previously, disclosure orders only related to shares in and debentures of a company. Similarly, it extends the scope of an investigation under Chapter 2 by permitting an inspector to enquire as to the details of shares in and membership or debentures of a company.*

# Chapter 2

## Investigations

### Head 2 Investigation of company's affairs by court appointed inspectors on application of company, its members, directors or creditors

- (1) The court may appoint one or more competent inspectors to investigate the affairs of a company in order to enquire into matters specified by the court and to report thereon in such manner as the court directs—
  - (a) on the application either of not less than 100 members or of a member or members holding not less than one-tenth of the paid up share capital of the company;
  - (b) in any case, on the application of the company;
  - (c) in any case, on the application of a director of the company;
  - (d) in any case, on the application of a creditor of the company.
- (2) The application shall be supported by such evidence as the court may require, including such evidence as may be prescribed.
- (3) Where an application is made under this head, the court may require the applicant or applicants to give security, to an amount not less than €10,000 and not exceeding €500,000 for payment of the costs of the investigation.

#### **Explanatory note**

*This head is a slightly amended re-enactment of Section 7 of the Companies Act, 1990, as amended by Section 20 of the Company Law Enforcement Act, 2001. The maximum amount of security for costs which the court may require from an applicant in Subhead (3) has been increased.*

*Subsection 7(1)(a) has been amended in so far as the phrase "In the case of a company having a share capital..." has been deleted for the reason that private companies are the only company type of concern here.*

*Subsection 7(1)(b), which provided for companies without a share capital, has been deleted for the same reason.*

*Subsection 7(4) of the Companies Act, 1990 has not been included here, instead it has been migrated to a later provision.*

### Head 3 Investigation of company's affairs by court appointed inspectors on application of Director of Corporate Enforcement

- (1) Without prejudice to its powers under Part A13, Head 2 [equivalent of Section 7 of the Companies Act, 1990], the court may, on the application of the Director of Corporate Enforcement, appoint one or more competent inspectors (who may be or include an officer or officers of the Director of Corporate Enforcement) to investigate the affairs of a company and to report thereon in such manner as the court shall direct, if the court is satisfied that there are circumstances suggesting—
  - (a) that its affairs are being or have been conducted with intent to defraud its creditors or the creditors of any other person or otherwise for a fraudulent or unlawful purpose or in an unlawful manner or in a manner which is unfairly prejudicial to some part of its members or some or all of its creditors, or that any actual or proposed act or omission of the company (including an act or omission on its behalf) was, is or would be so prejudicial, or that it was formed for any fraudulent or unlawful purpose; or
  - (b) that persons connected with its formation or the management of its affairs have, in connection therewith, been guilty of fraud, misfeasance or other misconduct towards it or towards its members; or
  - (c) that its members have not been given all the information relating to its affairs which they might reasonably expect.
- (2) The reference in Subhead (1) (a) to the members of a company shall have effect as if it included a reference to any person who is not a member but to whom shares in the company have been transferred or transmitted by operation of law.

- (3) The court may, on the application of the Director, make an order for the inspection by the Director of any books and papers in the possession of a company which is in voluntary liquidation or which is the subject of a winding-up order and the company, every officer of the company and the liquidator shall give to the Director such access to and facilities as are necessary for inspecting and taking copies of those books and papers as the Director may require.
- (4) Nothing in this head shall be taken as excluding or restricting any statutory rights of a Minister of the Government or a person acting under the authority of a Minister of the Government.

### **Explanatory note**

*This head is an amended re-enactment of Section 8 of the Companies Act, 1990, as amended by Section 21 of the Company Law Enforcement Act, 2001. References to the Director have been replaced by references to the "Director of Corporate Enforcement" Subhead (1)(a) has been expanded to align it with the amendments to Section 19 of the Companies Act, 1990 effected by Section 67 of the Investment Funds, Companies and Miscellaneous Provisions Act, 2005.*

*Subsection 8(2)(a) of the Companies Act, 1990, has not been included here, instead it has been migrated to Head 4(2).*

*Subhead (3) is based on Sections 243 (1A) and 282A (1) of the Companies Act, 1963.*

*Subhead (4) is based on Section 282A (2) of the Companies Act, 1963.*

---

## **Head 4      Miscellaneous provisions in relation to either form of application**

---

- (1) Where the court appoints an inspector under Part A13, Head 2 [equivalent of Section 7 of the Companies Act, 1990] or Part A13, Head 3 [equivalent of Section 8 of Companies Act, 1990], it may, from time to time, give such directions as it thinks fit, whether to the inspector or otherwise, with a view to ensuring that the investigation is carried out as quickly and as inexpensively as possible.

- (2) The power conferred by Part A13, Head 2 [equivalent of Section 7 of the Companies Act, 1990] or Part A13, Head 3 [equivalent of Section 8 of the Companies Act, 1990] shall be exercisable with respect to a body corporate not withstanding that it is in course of being wound up.

### **Explanatory note**

*This head is new. The head is a slightly amended re-enactment of Section 7(4) and Section 8(2)(a) of the Companies Act, 1990. All cross-references have been updated in accordance with the structure of the Bill.*

---

## **Head 5      Power of inspectors to extend investigation into affairs of related companies**

---

- (1) If an inspector appointed under Part A13, Head 2 [equivalent of Section 7 of the Companies Act, 1990] or Part A13, Head 3 [equivalent of Section 8 of the Companies Act, 1990] to investigate the affairs of a company, thinks it necessary for the purposes of his investigation to investigate also the affairs of any other body corporate which is related to such company, he shall, with the approval of the court, have power so to do, and shall report on the affairs of the other body corporate so far as he thinks the results of his investigation thereof are relevant to the investigation of the affairs of the first-mentioned company.
- (2) For the purposes of this head, a body corporate which is related to a company includes a body corporate with which the company has a commercial relationship, and a commercial relationship exists where goods or services are sold or given by one party to another.

### **Explanatory note**

*This head is a slightly amended re-enactment of Section 9 of the Companies Act, 1990, as amended by Section 22 of the Company Law Enforcement Act, 2001. All cross-references have been updated in accordance with the structure of the Bill.*



---

### Head 6 Investigation of share dealing

---

- (1) If it appears to the Director of Corporate Enforcement that there are circumstances suggesting that contraventions may have occurred, in relation to shares in or debentures of, a company of Head 34 of Part A5 [equivalent of Sections 53 and 64 (3) to (5) of the Companies Act, 1990 – Section 30 is omitted in the General Scheme] he may appoint one or more competent inspectors to carry out such investigations as are requisite to establish whether or not contraventions have occurred as aforesaid and to report the result of their investigations to the Director of Corporate Enforcement.
- (2) The appointment, under this head, of an inspector may limit the period to which his investigation is to extend or confine it to shares or debentures of a particular class or both.
- (3) For the purposes of any investigation under this head, Head 7 [equivalent of Section 10 of the Companies Act, 1990] shall apply—
  - (a) with the substitution, for references to any other body corporate whose affairs are investigated by virtue of Head 5 [equivalent of Section 9 of the Companies Act, 1990], of a reference to any other body corporate which is, or has at any relevant time been, the company's subsidiary or holding company; and
  - (b) with the necessary modification of the reference, in Head 7 (5) [equivalent of Section 10 (5) of the Companies Act, 1990], to the affairs of the company or other body corporate, so, however, that it shall apply to members of a recognised stock exchange who are individuals and to officers (past as well as present) of members of such an exchange who are bodies corporate as it applies to officers of the company or of the other body corporate.
- (4) The inspectors may, and if so directed by the Director of Corporate Enforcement, shall make interim reports to the Director of Corporate Enforcement, and on the conclusion of the investigation, shall make a final report to the Director of Corporate Enforcement.

- (5) Any such report shall be written or printed, as the Director of Corporate Enforcement may direct, and the Director of Corporate Enforcement may cause it to be published.
- (6) Heads 5, 13, 65, 19 (1) and 19 (2) [equivalents of Sections 9, 16 to 18, 22, 23 (1) and 23 (3) – Section 7 omitted in General Scheme] shall, with any necessary modifications, apply for the purposes of this head.
- (7) The expenses of an investigation under this head shall be defrayed by the Minister.
- (8) Where a person is convicted of an offence on a prosecution instituted as a result of the investigation, the Court may, on the application of the Director of Corporate Enforcement, order that person to pay the said expenses to such extent as the Court may direct.

#### **Explanatory note**

*This head re-enacts Section 66 of the Companies Act, 1990.*

---

### Head 7 Production of documents and evidence on investigation

---

- (1) It shall be the duty of all officers and agents of the company and of all officers and agents of any other body corporate whose affairs are investigated by virtue of Part A13, Head 5 [equivalent of Section 9 of the Companies Act, 1990] to produce to the inspectors all books and documents of or relating to the company, or, as the case may be, the other body corporate which are in their custody or power, to attend before the inspectors when required so to do and otherwise to give to the inspectors all assistance in connection with the investigation which they are reasonably able to give, but where any such person claims a lien on books or documents produced by the person, the production shall be without prejudice to the lien.

## Part A13 - Investigations, Compliance and Enforcement

---

- (2) If the inspectors consider that a person other than an officer or agent of the company or other body corporate is or may be in possession of any information concerning its affairs, they may require that person to produce to them any books or documents in his custody or within his power relating to the company or other body corporate, to attend before them, and otherwise to give them all assistance in connection with the investigation which he is reasonably able to give, and it shall be the duty of that person to comply with the requirement, but where any such person claims a lien on books or documents produced by the person, the production shall be without prejudice to the lien.
- (3) If an inspector has reasonable grounds for believing that a director of the company or other body corporate whose affairs the inspector is investigating, maintains or has maintained a bank account of any description, whether alone or jointly with another person and whether in the State or elsewhere, into or out of which there has been paid—
- (a) any money which has resulted from or been used in the financing of any transaction, arrangement or agreement—
    - (i) particulars of which have not been disclosed in a note to the accounts of any company for any financial year, as required by Part A6, Heads 25 and 26 [equivalent of Section 41 of the Companies Act, 1990], or
    - (ii) in respect of which any amount outstanding was not included in the aggregate amounts outstanding in respect of certain transactions, arrangements or agreements [equivalent of Section 43 of the Companies Act, 1990 - repealed] to be disclosed in a note to the accounts of any company for any financial year; or
  - (b) any money which has been in any way connected with any act or omission or series of acts or omissions, which on the part of that director, constituted misconduct (whether fraudulent or not) towards that company or body corporate or its members,
- the inspector may require the director to produce to him all documents in the director's possession, or under his control, relating to that bank account, and in this subhead "bank account includes an account with any person, exempt by virtue of Section 7 (4) of the Central Bank Act, 1971, from the requirement of holding a licence under Section 9 of that Act, and "director" includes any present or past director or any person connected, within the meaning of Part A5, Head 2 [equivalent of Section 26 of the Companies Act, 1990], with such director, and any present or past shadow director.
- (4) An inspector may examine on oath, either by word of mouth or on written interrogatories, the officers and agents of the company or other body corporate and such person as is mentioned in Subhead (2) in relation to its affairs and may—
- (a) administer an oath accordingly;
  - (b) reduce the answers of such person to writing and require him to sign them.
- (5) If an officer or agent of the company or other body corporate, or any such person as is mentioned in Subhead (2), refuses or fails within a reasonable time to—
- (a) produce to the inspectors any book or document which it is his duty under this head so to produce;
  - (b) attend before the inspectors when required so to do; or
  - (c) answer a question put to him by the inspectors with respect to the affairs of the company or other body corporate as the case may be,
- the inspectors may certify the refusal or failure under their hand to the court and the court may thereupon enquire into the case and after hearing any witnesses who may be produced against or on behalf of the person alleged to have so refused or failed and any statement which may be offered in defence, make any order or direction it thinks fit.
- (6) Without prejudice to the generality of Subhead (5), the court may, after a hearing under that subhead, direct—
- (a) the person concerned to attend or re-attend before the inspectors or produce particular books or documents or answer particular questions put to him by the inspectors; or

## Part A13 - Investigations, Compliance and Enforcement

- (b) that the person concerned need not produce a particular book or document or answer a particular question put to him by the inspectors.
- (7) In this head, any reference to officers or to agents shall include past, as well as present, officers or agents, as the case may be and "agents", in relation to a company or other body corporate, shall include the shall include the bankers and solicitors of the company or other body corporate and any persons employed by the company or other body corporate as auditors, accountants, book-keepers or taxation advisers, whether those persons are or are not officers of the company or other body corporate.

### **Explanatory note**

*This head is a slightly amended re-enactment of Section 10 of the Companies Act, 1990, as amended by Section 23 of the Company Law Enforcement Act, 2001. All cross-references have been updated in accordance with the structure of the Bill.*

## **Head 8 Inspectors' report**

- (1) Inspectors appointed under Part A13, Head 2 [equivalent of Section 7 of the Companies Act, 1990] or Part A13, Head 3 [equivalent of Section 8 of the Companies Act, 1990] may, and if so directed by the court, shall make interim reports to the court and on the conclusion of the investigation, shall make a final report to the court.
- (2) Notwithstanding anything contained in Subhead (1), an inspector appointed under Part A13, Head 2 [equivalent of Section 7 of the Companies Act, 1990] or Part A13, Head 3 [equivalent of Section 8 of the Companies Act, 1990] may at any time in the course of his investigation, without the necessity of making an interim report, inform the court of matters coming to his knowledge as a result of the investigation tending to show that an offence has been committed.
- (3) Where inspectors were appointed under Part A13, Head 2 [equivalent of Section 7 of the Companies Act, 1990] or Part A13, Head 3 [equivalent of Section 8 of the Companies Act, 1990], the court shall furnish a copy of every report of theirs to the Director of Corporate Enforcement and the court may, if it thinks fit—
- (a) forward a copy of any report, made by the inspectors, to the company's registered office;
- (b) furnish a copy on request and payment of the prescribed fee to—
- (i) any member of the company or other body corporate which is the subject of the report,
- (ii) any person whose conduct is referred to in the report,
- (iii) the auditors of that company or body corporate,
- (iv) the applicants for the investigation,
- (v) any other person (including an employee) whose financial interests appear to the court to be affected by the matters dealt with in the report, whether as a creditor of the company or body corporate or otherwise,
- (vi) the Central Bank, in any case in which the report of the inspectors relates, wholly or partly, to the affairs of the holder of a licence under Section 9 of the Central Bank Act, 1971; and
- (c) furnish a copy to—
- (i) an appropriate authority in relation to any of the matters referred to in Part A13, Head 16 (1) (a) to (f) [equivalent of Section 21(1)(a) to (f) of the Companies Act, 1990], or
- (ii) a competent authority as defined in Part A13, Head 16 (a) to (i) [equivalent of Section 21(3)(a) to (i) of the Companies Act, 1990];
- (d) cause any such report to be printed and published.
- (4) Where the court so thinks proper it may direct that a particular part of a report made by virtue of this section be omitted from a copy forwarded or furnished under Subhead (3) (a), (b) or (c), or from the report as printed and published under Subhead (3) (d).

### **Explanatory note**

*This head is a slightly amended re-enactment of Section 11 of the Companies Act, 1990, as amended by Section 24 of the Company Law Enforcement Act, 2001. The numbering of the Subheads has been revised and all cross-references have been updated in accordance with the structure of the Bill.*

---

### Head 9 Proceedings on inspectors' report

---

- (1) Having considered a report made under Part A13, Head 8 [equivalent of Section 11 of the Companies Act, 1990], the court may make such order as it deems fit in relation to matters arising from that report including—
- (a) an order of its own motion for the winding up of a body corporate; or
  - (b) an order for the purpose of remedying any disability suffered by any person whose interests were adversely affected by the conduct of the affairs of the company, provided that in making any such order, the court shall have regard to the interests of any other person who may be adversely affected by the order.
- (2) If, in the case of any body corporate liable to be wound up under the Companies Acts, it appears to the Director of Corporate Enforcement from—
- (a) any report made under Part A13, Head 8 [equivalent of Section 11 of the Companies Act, 1990] as a result of an application by the Director of Corporate Enforcement under Part A13, Head 3 [equivalent of Section 8 of the Companies Act, 1990]; or
  - (b) any report made by inspectors appointed by the Director of Corporate Enforcement under this Bill; or
  - (c) any information or document obtained by the Director of Corporate Enforcement under this Chapter,

that a petition should be presented for the winding-up of the body, the Director may, unless the body is already being wound up by the court, present a petition for it to be so wound up if the court thinks it just and equitable for it to be so wound up.

#### **Explanatory note**

*This head is a slightly amended re-enactment of Section 12 of the Companies Act, 1990, as amended by Section 14 of the Company Law Enforcement Act, 2001. References to the Director have been replaced by references to the "Director of Corporate Enforcement" and all cross-references have been updated in accordance with the structure of the Bill.*

---

### Head 10 Expenses of investigation of company's affairs

---

- (1) The expenses of and incidental to an investigation by an inspector appointed by the court under the foregoing provisions of this Bill shall be defrayed in the first instance by the relevant Minister but the court may direct that any person being—
- (a) a body corporate dealt with in the report; or
  - (b) the applicant or applicants for the investigation,

shall be liable, to such extent as the court may direct, to repay the relevant Minister, provided that no such liability on the part of the applicant or applicants shall exceed, in the aggregate, €500,000.

- (2) Without prejudice to Subhead (1), any person who is—
- (a) convicted on indictment of an offence on a prosecution instituted as a result of an investigation;
  - (b) ordered to pay damages or restore any property in proceedings brought as a result of an investigation; or
  - (c) awarded damages or to whom property is restored in proceedings brought as a result of an investigation,

may, in the same proceedings, be ordered to repay all or part of the expenses referred to in Subhead (1) to the relevant Minister or to any person on whom liability has been imposed by the court under that Subhead, provided that, in the case of a person to whom paragraph (c) relates, the court shall not order payment in excess of one-tenth of the amount of the damages awarded or of the value of the property restored, as the case may be, and any such order shall not be executed until the person concerned has received his damages or the property has been restored, as the case may be.

- (3) The report of an inspector may, if he thinks fit, and shall, if the court so directs, include a recommendation as to the directions (if any) which he thinks appropriate, in the light of his investigation, to be given under Subhead (1).

## Part A13 - Investigations, Compliance and Enforcement

---

- (4) In this head “relevant Minister” means—
- (a) in case the inspector or inspectors concerned was or were appointed under Part A13, Head 2 [equivalent of Section 7 of the Companies Act, 1990], the Minister for Justice, Equality and Law Reform; and
  - (b) in case the inspector or inspectors concerned was or were appointed under Part A13, Head 3 [equivalent of Section 8 of the Companies Act, 1990], the Minister.
- (3) The appointment of an inspector under this head may define the scope of his investigation, whether as respects the matters or the period to which it is to extend or otherwise, and in particular may limit the investigation to matters connected with particular shares or debentures.
- (4) Subject to the terms of an inspector’s appointment, his powers shall extend to the investigation of any circumstances suggesting the existence of an arrangement or understanding which, though not legally binding, is or was observed or likely to be observed in practice and which is relevant to the purposes of his investigation.

### **Explanatory note**

*This head is a slightly amended re-enactment of Section 13 of the Companies Act, 1990, as amended by Section 25 of the Company Law Enforcement Act, 2001. The numbering of the subheads has been revised and all cross-references have been updated in accordance with the structure of the Bill.*

*Section 13(1)(b) of the Companies Act, 1990 has been amended insofar as the maximum liability of an applicant has been increased.*

- (5) For the purposes of any investigation under this head, Part A13, Head 5 [equivalent of Section 9 of the Companies Act, 1990] to Part A13, Head 8 [equivalent of Section 11 of the Companies Act, 1990], except Part A13, Head 7 (3) [equivalent of Section 10(3) of the Companies Act, 1990], shall apply with the necessary modifications of references to the affairs of the company or to those of any other body corporate, so, however, that—

---

### **Head 11 Appointment and powers of inspectors to investigate ownership of company.**

---

- (1) The Director of Corporate Enforcement may, subject to Subhead (2), appoint one or more competent inspectors to investigate and report on the membership of any company and otherwise with respect to the company for the purpose of determining the true persons who are or have been financially interested in the success or failure (real or apparent) of the company or able to control or materially to influence the policy of the company.
- (2) An appointment may be made by the Director of Corporate Enforcement if he is of the opinion that there are circumstances suggesting that it is necessary—
- (a) for the effective administration of the law relating to companies;
  - (b) for the effective discharge by the Director of Corporate Enforcement of his functions under any enactment; or
  - (c) in the public interest.
- (a) the said heads shall apply in relation to all persons who are or have been, or whom the inspector has reasonable cause to believe to be or have been, financially interested in the success or failure or the apparent success or failure of the company or any other body corporate whose membership is investigated with that of the company, or able to control or materially to influence the policy thereof, including persons concerned only on behalf of others and to any other person whom the inspector has reasonable cause to believe possesses information relevant to the investigation, as they apply in relation to officers and agents of the company or of the other body corporate, as the case may be;
- (b) if the Director of Corporate Enforcement is of opinion that there is good reason for not divulging any part of a report made by virtue of this head he may disclose the report with the omission of that part, and may cause to be kept by the Registrar a copy of the report with that part omitted or, in the case of any other such report, a copy of the whole report; and



- (c) for references to the court (except in Part A13, Head 7 (5) and (6) [equivalent of Section 10(5) and (6) of the Companies Act, 1990], there shall be substituted references to the Director of Corporate Enforcement.
- (6) The court may, on the application of the Director of Corporate Enforcement, direct that a company, the subject of an investigation under this head shall be liable to such extent as the court may direct, to repay the Director of Corporate Enforcement the expenses of and incidental to the investigation.
- (7) Without prejudice to Subhead (6) but subject to Subhead (8), a person—
- (a) convicted on indictment of an offence on a prosecution instituted;
  - (b) ordered to pay damages or restore any property in proceedings brought; or
  - (c) awarded damages or to whom property is restored in proceedings brought, as a result of an investigation under this head,
- may, in the same proceedings, be ordered to repay the Director of Corporate Enforcement all or part of the expenses referred to in Subhead (6).
- (8) The court shall not order a person to whom Subhead (7)(c) relates to make payment in excess of one-tenth of the amount of the damages awarded or of the value of the property restored, as the case may be, and any such order shall not be executed until the person concerned has received his damages or the property has been restored

### **Explanatory note**

*This head is a slightly amended re-enactment of Section 14 of the Companies Act, 1990, as amended by Section 14 and Section 26 of the Company Law Enforcement Act, 2001. References to the Director have been replaced by references to the “Director of Corporate Enforcement” and all cross-references have been updated in accordance with the structure of the Bill.*

---

## **Head 12 Power to require information as to persons interested in shares or debentures**

---

Where it appears to the Director of Corporate Enforcement that it is necessary—

- (a) for the effective administration of the law relating to companies;
- (b) for the effective discharge by the Director of Corporate Enforcement of his functions under any enactment; or
- (c) in the public interest,

to investigate the ownership of any shares in or debentures of a company and that it is unnecessary to appoint an inspector for the purpose, he may require any person whom he has reasonable cause to believe to have or to be able to obtain any information as to the present and past interests in those shares or debentures and the names and addresses of the persons interested and of any persons who act or have acted on their behalf in relation to the shares or debentures to give any such information to the Director of Corporate Enforcement.

- (2) For the purposes of this head a person shall be deemed to have an interest in a share or debenture if he has any right to acquire or dispose of the share or debenture or any interest therein or to vote in respect thereof or if his consent is necessary for the exercise of any of the rights of other persons interested therein or if the other persons interested therein can be required or are accustomed to exercise their rights in accordance with his instructions.
- (3) Any person who fails to give any information required of him under this head or who, in giving any such information, makes any statement which he knows to be false in a material particular, or recklessly makes any statement which is false in a material particular, shall be guilty of a category two offence.

### **Explanatory note**

*This head is a slightly amended re-enactment of Section 15 of the Companies Act, 1990, as amended by Section 14 of the Company Law Enforcement Act, 2001. References to the Director have been replaced by references to the “Director of Corporate Enforcement”.*

### Head 13 Power to impose restrictions on shares or debentures

---

- (1) Where in connection with an investigation or enquiry under Part A13, Head 11 [equivalent of Section 14 of the Companies Act, 1990] or Part A13, Head 12 [equivalent of Section 15 of the Companies Act, 1990] it appears to the Director of Corporate Enforcement that there is difficulty in finding out the relevant facts about any shares (whether issued or to be issued), the Director of Corporate Enforcement may by notice in writing direct that the shares shall, until further notice, be subject to the restrictions imposed by this head.
- (2) So long as a direction under Subhead (1) in respect of any shares is in force—
  - (a) any transfer of those shares, or in the case of unissued shares, any transfer of the right to be issued therewith and any issue thereof, shall be void;
  - (b) no voting rights shall be exercisable in respect of those shares;
  - (c) no further shares shall be issued in right of those shares or in pursuance of any offer made to the holder thereof; and
  - (d) no payment shall be made of any sums due from the company on those shares, whether in respect of capital or otherwise.
- (3) Where shares are subject to the restrictions imposed by Subhead (2)(a) any agreement to transfer the shares or in the case of unissued shares the right to be issued with the shares shall be void except an agreement to sell the shares pursuant to Subhead (6)(b).
- (4) Where shares are subject to the restrictions imposed by Subhead (2)(c) or (2)(d) any agreement to transfer any right to be issued with other shares in right of those shares or to receive any payment on those shares shall be void except an agreement to transfer any such right on the sale of the shares pursuant to Subhead (6)(b).
- (5) Where the Director of Corporate Enforcement directs that shares shall be subject to the said restrictions, or refuses to direct that shares shall cease to be subject thereto, any person aggrieved thereby may apply to the court for an order that the shares shall cease to be subject thereto.
- (6) Subject to Subheads (7) and (13), an order of the court or a direction of the Director of Corporate Enforcement that shares shall cease to be subject to the restrictions imposed by this head may be made only if—
  - (a) in the case of an order by the court or, the court is satisfied that the relevant facts about the shares have been disclosed to the company, or as the case requires, to the Director of Corporate Enforcement, or that it is otherwise equitable to lift the restrictions;
  - (b) in the case of a direction of the Director of Corporate Enforcement, the Director of Corporate Enforcement is satisfied that the relevant facts about the shares have been disclosed to him; or
  - (c) the shares are to be sold and the court or the Director of Corporate Enforcement approves the sale.
- (7) Where any shares in a company are subject to the restrictions imposed by this head, the court may, on the application of the Director of Corporate Enforcement or the company, having given notice to the Director of Corporate Enforcement, order the shares to be sold, subject to the approval of the court as to the sale, and may also direct that the shares shall cease to be subject to those restrictions.
- (8) Where an order has been made under Subhead (7) then, on application of the Director of Corporate Enforcement, the company, the person appointed by or in pursuance of the order to effect the sale or any person interested in the shares, the court may make such further order relating to the sale or to the transfer of the shares as it thinks fit.
- (9) Where any shares are sold in pursuance of an order made under Subhead (7), the proceeds of sale, less the costs of the sale, shall be paid into court for the benefit of the persons who are beneficially interested in the shares; and any such person may apply to the court for the whole or part of those proceeds to be paid to him.

## Part A13 - Investigations, Compliance and Enforcement

- (10) On an application under Subhead (9) the court shall, subject to Subhead (11), order the payment to the applicant of the whole of the proceeds of sale together with any interest thereon or, if any other person had a beneficial interest in the shares at the time of their sale, such proportion of those proceeds and interest as is equal to the proportion which the value of the applicant's interest in the shares bears to the total value of the shares.
- (11) On granting an application for an order under Subhead (7) or (8), the court may order that the costs of the applicant shall be paid out of the proceeds of sale; and, where an order under this subhead is made, the applicant shall be entitled to payment of his costs out of the proceeds of sale before any person interested in the shares in question receives any part of those proceeds.
- (12) Any order or direction that shares shall cease to be subject to the said restrictions which is expressed to be made or given with a view to permitting a transfer of those shares or which is made under Subhead (7) may continue the restrictions mentioned in Subhead (2) (c) and (2) (d) in whole or in part, so far as they relate to any right acquired or offer made before the transfer.
- (13) Subhead (6) shall not apply in relation to any order of the court or of the Director of Corporate Enforcement directing that shares shall cease to be subject to any restrictions which have been continued in force in relation to those shares by virtue of Subhead (12).
- (14) Any person who—
- (a) exercises or purports to exercise any right to dispose of any shares which, to his knowledge, are for the time being subject to the said restrictions or of any right to be issued with any such shares; or
  - (b) votes in respect of any such shares, whether as holder or proxy, or appoints a proxy to vote in respect thereof; or
  - (c) being the holder of any such shares, fails to notify of their being subject to the said restrictions, any person whom he does not know to be aware of that fact but does know to be entitled, apart from the said restrictions, to vote in respect of those shares whether as holder or proxy; or
- (d) being the holder of any such shares, or being entitled to any such right as is mentioned in Subhead (4) enters into an agreement which is void by virtue of Subhead (3) or (4),
- shall be guilty of a category three offence.
- (15) Where shares in any company are issued in contravention of the said restrictions, the company and every officer of the company who is in default shall be guilty of a category three offence.
- (16) Summary proceedings shall not be instituted under this head except by or with the consent of the Director of Corporate Enforcement.
- (17) This head shall apply in relation to debentures as it applies in relation to shares.
- (18) The Director of Corporate Enforcement shall cause notice of any direction given by him under this head—
- (a) to be sent to the company concerned at its registered office; and
  - (b) to be delivered to the Registrar;
  - (c) to be published in the CRO Gazette,
- as soon as may be after the direction is given.

### **Explanatory note**

*This head is an amended re-enactment of Section 16 of the Companies Act, 1990, as amended by Section 14 and Section 27 of the Company Law Enforcement Act, 2001. References to the Director and registrar of companies have been replaced by references to the "Director of Corporate Enforcement" and "Registrar" respectively. Furthermore, all cross-references have been updated in accordance with the structure of the Bill and references to "Iris Oifigiúil" have been replaced by CRO Gazette.*

*Section 16(16) of the Companies Act, 1990 required the consent of the Director of Corporate Enforcement for the institution of summary proceedings. This has now been repealed.*

*Section 16(18) has been amended in accordance with the view of the Company Law Review Group. The requirement to publish a notice "...in at least two daily newspapers" has been deleted and a requirement to simply publish the notice in the CRO Gazette now exists. The reasons for this are the cost of publication, the inefficiency of the notice reaching the intended recipients, and the fact that the CRO Gazette will now be freely available on-line.*

### **Head 14 Powers of Director of Corporate Enforcement to require production of documents**

---

- (1) The Director may, subject to Subhead (2), give directions to any company requiring it, at such time and place as may be specified in the directions, to produce such books or documents as may be so specified.
  - (2) Directions may be given by the Director of Corporate Enforcement if he is of the opinion that there are circumstances suggesting that—
    - (a) it is necessary to examine the books and documents of the company with a view to determining whether an inspector should be appointed to conduct an investigation of the company under this Bill;
    - (b) the affairs of the company are being or have been conducted with intent to defraud—
      - (i) its creditors,
      - (ii) the creditors of any other person, or
      - (iii) its members;
    - (c) the affairs of the company are being or have been conducted for a fraudulent purpose other than described in paragraph (b);
    - (d) the affairs of the company are being or have been conducted in a manner which is unfairly prejudicial to some part of its members;
    - (e) the affairs of the company are being or have been conducted in a manner which is unfairly prejudicial to some or all of its creditors;
    - (f) any actual or proposed act or omission or series of acts or omissions of the company or on behalf of the company have been, are or would be unfairly prejudicial to some part of its members;
    - (g) any actual or proposed act or omission or series of acts or omissions of the company or on behalf of the company or by an officer of the company acting in his capacity as such officer have been, are or are likely to be unlawful;
  - (h) the company was formed for any fraudulent purpose;
  - (i) the company was formed for any unlawful purpose; or
  - (j) the company may be in possession of books or documents containing information relating to the books or documents of a body which comes within the terms of one or more of paragraphs (a) to (i).
- (3) Where by virtue of Subhead (1) the Director of Corporate Enforcement has power to require the production of any books or documents from any company, the Director of Corporate Enforcement shall have the like power to require production of those books or documents from any person who appears to the Director of Corporate Enforcement to be in possession of them or to be in possession of—
    - (a) other books or documents which may constitute copies of any books or documents of the company;
    - (b) subject to Subhead (4), other books or documents which may relate to any books or documents of the company, but where any such person claims a lien on books or documents produced by him, the production shall be without prejudice to the lien.
  - (4) The power under Subhead (3)(b) shall not be exercised unless—
    - (a) in the opinion of the Director of Corporate Enforcement, there are reasonable grounds for believing the first and second mentioned books or documents in Subhead (3)(b) are related to one another (and those grounds may include grounds related to the relationship between the company and the person of whom the requirement under Subhead (3)(b) is proposed to be made, a common origin of some or all of the information contained in the said books or documents or similar considerations); and

## Part A13 - Investigations, Compliance and Enforcement

---

- (b) save where the Director of Corporate Enforcement is of the opinion that compliance with this paragraph could result in the concealment, falsification, destruction or the disposal otherwise of the books or documents concerned, the Director of Corporate Enforcement notifies the person of whom the requirement under Subhead (3)(b) is proposed to be made ('the third party') that the Director of Corporate Enforcement proposes to make that requirement and states in that notification the grounds for his opinion under paragraph (a) and that the third party may (if such is his contention) make submissions to the Director of Corporate Enforcement, within 21 days from the date of the making of the notification, as to why he believes the said opinion of the Director of Corporate Enforcement to be erroneous (and the Director of Corporate Enforcement shall have regard to any such submissions so made before finally deciding whether to make the said requirement or not), but in no case shall the third party be obliged to comply with such a requirement in relation to a particular book or document concerned if he would be entitled, by virtue of any rule of law or enactment, to refuse to produce, in any proceedings, the book or document on the ground of any privilege (whether the privilege to which Part A13, Head 19 [equivalent of Section 23 of the Companies Act, 1990] applies or not).
- (5)
- (a) If a person having made default in complying with a requirement made of him under Subhead (3)(b), fails to make good the default within 14 days after the service of a notice on him requiring him to do so, the court may, on an application made to the court by the Director of Corporate Enforcement, make an order directing the person to make good the default within such time as may be specified in the order;
- (b) Any such order may provide that all costs of and incidental to the application shall be borne by the person who has made the default concerned;
- (c) Nothing in this head shall be taken to prejudice the operation of Subhead (7).
- (6) Any power conferred by or by virtue of this head to require a company or other person to produce books or documents shall include power—
- (a) if the books or documents are produced—
- (i) to take copies of them or extracts from them, and
- (ii) to require that person, or any other person who is a present or past officer of, or is or was at any time employed (including in a professional, consultancy or similar capacity) by, the company in question, to provide, insofar as the person may be reasonably able so to do, an explanation of any of them, including an explanation of any apparent omissions from them or any omission of any book or document; and
- (b) if the books or documents are not produced, to require the person who was required to produce them to state, to the best of his knowledge and belief, where they are,
- and in either event to give all assistance to the Director of Corporate Enforcement as the company or person is reasonably able to give in connection with an examination or proposed examination of books or documents under this head.
- (7) If a requirement to produce books or documents or provide an explanation or make a statement which is imposed by virtue of this head is not complied with, the body or other person on whom the requirement was so imposed shall be guilty of a category two offence; but where a person is charged with an offence under this subhead in respect of a requirement to produce any books or documents, it shall be a defence to prove that they were not in his possession or under his control and that it was not reasonably practicable for him to comply with the requirement.
- (8) A statement made or an explanation provided by an individual in compliance with a requirement imposed by virtue of this head may be used in evidence against him in any proceedings whatsoever (save proceedings for an offence (other than an offence under subhead (7) or (9)).



## Part A13 - Investigations, Compliance and Enforcement

---

- (9) A person who provides an explanation or makes a statement required under this head which is false or misleading in a material respect, knowing it to be so false or misleading, shall be guilty of a category two offence.
- (10) Notwithstanding Part A6, Head 8 [equivalent of Section 202(9) of the Companies Act, 1990], it shall be a category two offence for a person or company with notice of a direction under Subhead (1) (whether given or coming to the notice of the person or body before or after 28th November 2001) to destroy, mutilate, falsify or conceal any book or document the subject of a direction.
- (11) The court may, on the application of the Director of Corporate Enforcement, direct that a company the subject of a direction under Subhead (1) shall be liable, to such extent as the court may direct, to repay the Director of Corporate Enforcement the expenses of and incidental to the examination.
- (12) Without prejudice to Subhead (11) but subject to Subhead (13), a person-
- (a) convicted on indictment of an offence on a prosecution instituted;
  - (b) ordered to pay damages or restore any property in proceedings brought; or
  - (c) awarded damages or to whom property is restored in proceedings brought, as a result of a direction under Subhead (1) may, in the same proceedings, be ordered to repay the Director of Corporate Enforcement all or part of the expenses referred to in Subhead (11).
- (13) The court shall not order a person to whom Subhead (12)(c) relates to make payment in excess of one-tenth of the amount of the damages awarded or of the value of the property restored, as the case may be, and any such order shall not be executed until the person concerned has received his damages or the property been restored.

### **Explanatory note**

*This head is an amended re-enactment of Section 19 of the Companies Act, 1990, as replaced by Section 29 of the Company Law Enforcement Act, 2001 and amended by Section 67 of the Investment Funds, Companies and Miscellaneous Provisions Act, 2005. All cross-references have been updated in accordance with the structure of the Bill and references to the "Director" have been replaced with references to the "Director of Corporate Enforcement".*

*Subhead (1) is an amended re-enactment of Section 19(1) of the Companies Act, 1990. Sections 19(1)(b)-(1)(g) have not been included here as only private companies are of concern in this Group of Parts. They will be re-inserted in Pillar B for other corporate entities. For this same reason the term "body" which was used in Section 19 to denote the several forms of entities which could be the subject of Section 19 directions, has been replaced here with the simpler term "company".*

*Subheads (2) - (4) are slightly amended re-enactments of Sections 19(2) - (4) of the Companies Act, 1990.*

*Subhead (5) is a slightly amended re-enactment of Section 371A of the Companies Act, 1963.*

*Subheads (6) - (12) are amended re-enactments of Section 19(5) - (11) of the Companies Act, 1990. The reference to the commencement date of the Company Law Enforcement Act, 2001 has been replaced by that specific date.*

---

## **Head 15 Entry and search of premises**

---

- (1) If a judge of the District Court is satisfied by information on oath laid by a designated officer that there are reasonable grounds for suspecting that any material information is to be found on any premises (including a dwelling), the judge may issue a search warrant under this head.
- (2) A search warrant issued under this head shall be expressed and operate to authorise a named designated officer ('the officer'), accompanied by such other persons as the officer thinks necessary, at any time or times within 1 month from the date of issue of the warrant, on production if so requested of the warrant, to-
- (a) enter the premises named in the warrant, if necessary by force;
  - (b) search the premises;
  - (c) require any person found on the premises-
    - (i) to give to the officer his name, home address and occupation, and
    - (ii) to produce to the officer any material information which is in the custody or possession of that person;

## Part A13 - Investigations, Compliance and Enforcement

---

- (d) seize and retain any material information found on the premises or in the custody or possession of any person found on the premises; and
- (e) take any other steps which appear to the officer to be necessary for preserving or preventing interference with material information.
- (3) The officer may-
- (a) operate any computer at the place which is being searched or cause any such computer to be operated by a person accompanying the officer; and
- (b) require any person at that place who appears to the officer to be in a position to facilitate access to the information held in any such computer or which can be accessed by the use of that computer—
- (i) to give to the officer any password necessary to operate it,
- (ii) otherwise to enable the officer to examine the information accessible by the computer in a form in which the information is visible and legible, or
- (iii) to produce the information in a form in which it can be removed and in which it is, or can be made, visible and legible.
- (4) The power to issue a warrant under this head is in addition to and not in substitution for any other power to issue a warrant for the search of any place or person.
- (5) A person who—
- (a) obstructs the exercise of a right of entry or search conferred by virtue of a search warrant issued under this head;
- (b) obstructs the exercise of a right so conferred to seize and retain material information;
- (c) fails to comply with a requirement under Subhead (2)(c) or gives a name, address or occupation which is false or misleading; or
- (d) fails to comply with a requirement under Subhead (3)(b),
- (6) In this head-
- 'computer'* includes a personal organiser or any other electronic means of information storage or retrieval;
- 'computer at the place which is being searched'* includes any other computer, whether at that place or at any other place, which is lawfully accessible by means of that computer;
- 'designated officer'* means the Director of Corporate Enforcement or an officer of the Director of Corporate Enforcement authorised in that behalf by the Director of Corporate Enforcement; and
- 'material information'* means-
- (a) any books or documents of which production has been required under or by virtue of Part A13, Head 11 [equivalent of Section 14 of the Companies Act, 1990], Part A13, Head 12 [equivalent of Section 15 of the Companies Act, 1990] or Part A13, Head 14 [equivalent of Section 19 of the Companies Act, 1990] and which have not been produced in compliance with that requirement; or
- (b) any books or documents or other things (including a computer) which the officer has reasonable grounds for believing may provide evidence of or relating to the commission of an offence under this Bill.
- (7) Notwithstanding the repeal of the Companies Act, 1990 by this Bill, Section 20 (3) of the Companies Act, 1990 shall continue to apply to material information (within the meaning of that Section 20) seized under that section before the commencement of this Bill.

### **Explanatory note**

*This head is a slightly amended re-enactment of Section 20 of the Companies Act, 1990, as replaced by Section 30 of the Company Law Enforcement Act, 2001 and amended by Section 68 of the Investment Funds, Companies and Miscellaneous Provisions Act, 2005. The cross-references have been updated in accordance with the structure of the Bill and all references to the "Director" have been replaced by references to the "Director of Corporate Enforcement".*

*Subhead (7) re-enacts Section 68(2) of the Investment Funds, Companies and Miscellaneous Provisions Act, 2005.*

shall be guilty of a category two offence.

---

### Head 16 Provisions for security of information

- (1) No information, book or document relating to a company which has been obtained under Part A13, Head 14 [equivalent of Section 19 of the Companies Act, 1990] or Part A13, Head 15 [equivalent of Section 20 of the Companies Act, 1990] shall, without the previous consent in writing of that company, be published or disclosed, except to a competent authority, unless the publication or disclosure is, in the opinion of the Director of Corporate Enforcement, required—
- (a) with a view to the investigation or prosecution of any offence, being an offence—
    - (i) under—
      - (I) the Companies Acts,
      - (II) the Central Bank Acts, 1942 to 1998,
      - (III) the Exchange Control Acts, 1954 to 1986,
      - (IV) the Insurance Acts, 1909 to 1990,
      - (V) the Taxes Consolidation Act, 1997 or an offence under an enactment referred to in Section 1078(1) of that Act,
      - (VI) regulations relating to insurance made under the European Communities Act, 1972, or
    - (ii) entailing misconduct in connection with the management of the company's affairs or misapplication or wrongful retainer of its property;
  - (b) for the purpose of assessing the liability of a person in respect of a tax or duty or other payment owed or payable to the State, a local authority (within the meaning of the Local Government Act, 1941) or a health board or for the purpose of collecting an amount due in respect of such tax or duty or other payment;
  - (c) for the purpose by the performance by a tribunal (to which the Tribunals of Inquiry (Evidence) Acts, 1921 to 1998 apply) of any of its functions;
  - (d) for the purpose of assisting or facilitating the performance by any Minister of the Government of any of his functions;
  - (e) for the purpose of assisting or facilitating any accountancy or other professional organisation in the performance of its disciplinary functions with respect to any of its members;
  - (f) for the purpose of the performance by the Irish Takeover Panel or any stock exchange established in the State of any of its functions in relation to the company or any other person who, in its opinion, is connected with the company;
  - (g) for the purpose of the performance by the Competition Authority of any of its functions;
  - (h) for the purpose of the performance by a committee (being a committee within the meaning of the Committee of the Houses of the Oireachtas (Compellability, Privileges and Immunities of Witnesses) Act 1997, to which Sections 3 to 14 and 16 of that Act apply) of any of its functions;
  - (i) for the purpose of the complying with the requirements of procedural fairness, to be made to—
    - (I) any company in relation to which an inspector has been appointed under Part A13, Head 11 [equivalent of Section 14 of the Companies Act, 1990] or any person required by the Director of Corporate Enforcement to give any information under Part A13, Head 12 [equivalent of Section 15 of the Companies Act, 1990] , or
    - (II) any company to which the Director of Corporate Enforcement has given a direction under Part A13, Head 12 [equivalent of Section 15 of the Companies Act, 1990] or any person named in a report relating to an examination under that head;
  - (j) for the purpose of complying with any requirement, or exercising any power, imposed or conferred by this Chapter with respect to reports made by inspectors appointed thereunder by the court or the Director of Corporate Enforcement;

## Part A13 - Investigations, Compliance and Enforcement

---

- (k) with a view to the institution by the Director of Corporate Enforcement of proceedings for the winding up under this Bill of the company or otherwise for the purposes of proceedings instituted by him for that purpose;
- (l) for the purpose of proceedings under Part A13, Head 15 [equivalent of Section 20 of the Companies Act, 1990] or Part A13, Head 42 [equivalent of Section 160 of the Companies Act, 1990].
- (2) A person who publishes or discloses any information, book or document in contravention of this head shall be guilty of a category two offence.
- (3) For the purposes of this head “competent authority” includes—
- (a) the Minister;
  - (b) a person authorised by the Minister;
  - (b) an inspector appointed under this Bill;
  - (c) the Registrar;
  - (d) the Minister for Finance;
  - (e) an officer authorised by the Minister for Finance;
  - (f) any court of competent jurisdiction;
  - (g) a supervisory authority within the meaning of regulations relating to insurance made under the European Communities Act, 1972;
  - (h) the Central Bank; and
  - (i) any authority established outside the State in which there are vested—
    - (i) functions of investigating or prosecuting an offence similar to an offence referred to in paragraph (a) of Subhead (1), or
    - (ii) functions of assessing the liability of a person in respect of a tax or duty or other payment owed or payable to the state in which it is established or any other authority established in that state or of collecting an amount due in respect of such a tax or duty or other payment, or
- (iii) functions which are similar to the functions referred to in paragraph (b), (c), (c), (e) or (f) of Subhead (1).

### **Explanatory note**

*This head is a slightly amended re-enactment of Section 21 of the Companies Act, 1990, as amended by Section 53 of the Companies (Amendment) (No.2) Act, 1999 and Section 31 of the Company Law Enforcement Act, 2001. The cross-references have been updated in accordance with the structure of the Bill and all references to the “Director” have been replaced by references to the “Director of Corporate Enforcement”. For the sake of clarity, the list of “competent authorities” in Subsection (3)(c) has been extended to include the Registrar.*

---

## **Head 17 Concealing facts disclosed by documents**

---

- (1) A person who-
- (a) knows or suspects that an investigation by the Director of Corporate Enforcement into an offence under this Bill is being or is likely to be carried out; and
  - (b) falsifies, conceals, destroys or otherwise disposes of a document or record which he knows or suspects is or would be relevant to the investigation or causes or permits its falsification, concealment, destruction or disposal,
- shall be guilty of a category two offence.
- (2) Where a person-
- (a) falsifies, conceals, destroys or otherwise disposes of a document or record; or
  - (b) causes or permits its falsification, concealment, destruction or disposal,
- in such circumstances that it is reasonable to conclude that the person knew or suspected-
- (i) that an investigation by the Director of Corporate Enforcement into an offence under this Bill was being or was likely to be carried out, and
  - (ii) that the document or record was or would be relevant to the investigation,

the person shall be taken for the purposes of this head to have so known or suspected, unless the court or the jury, as the case may be, is satisfied, having regard to all the evidence, that there is reasonable doubt as to whether the person so knew or suspected.

### **Explanatory note**

*This head is a slightly amended re-enactment of Section 19A of the Companies Act, 1990, as inserted by Section 29 of the Company Law Enforcement Act, 2001. All references to the “Director” have been replaced by references to the “Director of Corporate Enforcement”.*

---

## **Head 18 Production and inspection of books when offence suspected**

---

- (1) If on an application to a Judge of the High Court by the Director of Public Prosecutions, the Director of Corporate Enforcement or a Superintendent of the Garda Síochána, there is shown to be reasonable cause to believe that any person has, while an officer of a company, committed an offence in connection with the management of the company’s affairs and that evidence of the commission of the offence is to be found in any books or papers of or under the control of the company, an order may be made—
  - (a) authorising any person named therein to inspect the said books or papers or any of them for the purpose of investigating and obtaining evidence of the offence; or
  - (b) requiring the secretary of the company or such other officer thereof as may be named in the order to produce the said books or any of them to a person named in the order at a place so named.
- (2) Subhead (1) shall apply also in relation to any books or papers of a person carrying on the business of banking so far as they relate to the company’s affairs, as it applies to any books or papers of or under the control of the company, except that no such order as is referred to in paragraph (b) thereof shall be made by virtue of this subhead.
- (3) The decision of a Judge of the High Court on an application under this head shall be final subject to an appeal to the Supreme Court on a question of law.
- (4) In this head, “company” includes a company incorporated outside the State which has an established place of business in the State.

### **Explanatory note**

*This head is a slightly amended re-enactment of Section 384 of the Companies Act, 1963, as amended by Section 14 of the Company Law Enforcement Act, 2001. All references to the “Director” have been replaced by references to the “Director of Corporate Enforcement”.*

---

## **Head 19 Saving for privileged information**

---

- (1) Nothing in this Chapter shall compel the disclosure by any person of any information which he would, in the opinion of the court, be entitled to refuse to produce on the grounds of legal professional privilege or authorise the taking of possession of any document containing such information which is in his possession.
- (2) The Director of Corporate Enforcement shall not, under Part A13, Head 14 [equivalent of Section 19 of the Companies Act, 1990], require the production, by a person carrying on the business of banking, of a document relating to the affairs of a customer, or relating to the affairs of any other person, unless either it appears to the Director of Corporate Enforcement that it is necessary to do so for the purposes of investigating the affairs of the person carrying on the business of banking, or the customer or other person is a person on whom a requirement has been imposed by virtue of that head.
- (3) The publication, in pursuance of any provision of this Chapter, of any report, information, book or document shall be privileged.
- (4) In this head, ‘customer’, in relation to a person carrying on the business of banking, includes a person who has in the past availed of one or more services of the person, as defined in Section 149(12) of the Consumer Credit Act, 1995.

### **Explanatory note**

*This head is a slightly amended re-enactment of Section 23 of the Companies Act, 1990, as amended by Section 32 of the Company Law Enforcement Act, 2001. The cross-references have been updated in accordance with the structure of the Bill and all references to the “Director” have been replaced by references to the “Director of Corporate Enforcement”.*



---

### Head 20 Assistance to overseas company law authorities

---

- (1) The powers conferred on the Director of Corporate Enforcement by this Chapter are also exercisable by the Director of Corporate Enforcement on foot of a request from a company law authority for assistance in connection with inquiries being carried out by it or on its behalf where the Director of Corporate Enforcement is satisfied that such assistance is for the purpose of the discharge by the authority of its supervisory or regulatory functions.
- (2) The Director of Corporate Enforcement may decline to accede to a request referred to in Subhead (1) if, in the opinion of the Director, it is not appropriate to so accede or where the company law authority making the request does not undertake to make such contribution to the costs attendant on the request as the Director of Corporate Enforcement considers appropriate.
- (3) In this head, 'company law authority' means an authority outside the State which performs functions of a supervisory or regulatory nature in relation to bodies corporate or undertakings or their officers, or a person acting on behalf of such an authority.

#### **Explanatory note**

*This head is a slightly amended re-enactment of Section 23A of the Companies Act, 1990, as inserted by Section 33 of the Company Law Enforcement Act, 2001. All references to the "Director" have been replaced by references to the "Director of Corporate Enforcement".*

---

### Head 21 Power to make supplementary regulations

---

- (1) If, in any respect, any difficulty arises in bringing any provision of this Chapter into operation or in relation to the operation of any such provision, the Minister may, by regulations, do anything which appears to him to be necessary or expedient for removing that difficulty, for bringing the provision into operation, or for securing or facilitating its operation, and any such regulations may modify any provision of this Part so far as may be necessary or expedient for carrying such provision into effect for the purposes aforesaid.

- (2) Every regulation made by the Minister under this head shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the regulation is passed by either House within the next 21 days on which that House has sat after the regulation is laid before it, the regulation shall be annulled accordingly, but without prejudice to the validity of anything previously done thereunder.

#### **Explanatory note**

*This head is a re-enactment of Section 24 of the Companies Act, 1990.*

## Chapter 3

### Compliance and Protective Orders

#### Head 22 General Powers of Court in relation to non-compliance with provisions of this Bill

- (1) If a company or any officer of a company having made default in complying with any provision of this Bill fails to make good the default within 14 days after the service of a notice on the company or officer requiring it or him to do so, or such greater period as may be specified in the notice, the court may, on an application made to the court by any member or creditor of the company, by the Director of Corporate Enforcement or by the Registrar, make an order directing the company and any officer thereof to make good the default within such time as may be specified in the order.
- (2) Any such order may provide that all costs of and incidental to the application shall be borne by the company or by any officers of the company responsible for the default.
- (3) Nothing in this head shall be taken to prejudice the operation of any enactment imposing penalties (including restriction under Part A13, Head 32 [equivalent of Section 150 of the Companies Act, 1990]), or disqualification (under Part A13, Head 42 [equivalent of Section 160 of the Companies Act, 1990]) on a company or its officers in respect of any such default as aforesaid.
- (4) In this head, “officer of a company” and cognate words include a director, a shadow director, an officer, a promoter, a receiver, a liquidator or an auditor of the company.

#### **Explanatory note**

*This head is a slightly amended re-enactment of Section 371 of the Companies Act, 1963, as amended by Section 96 of the Company Law Enforcement Act, 2001 and Section 64 of the Investment Funds, Companies and Miscellaneous Provisions Act, 2005. References to the Director and registrar of companies have been replaced by references to the “Director of Corporate Enforcement” and “Registrar” respectively. Furthermore, all cross-references have been updated in accordance with the structure of the Bill.*

#### Head 23 Order to restrain directors and others from moving assets

- (1) The court may, on the application of a company, director, member, liquidator, receiver, creditor or the Director of Corporate Enforcement, order a director or other officer of a company not to remove his or her assets from the State or to reduce his or her assets within or outside the State below an amount to be specified by the court, where the court is satisfied that—
  - (a) the applicant has a substantive civil cause of action or right to seek a declaration of personal liability or claim for damages being causes or rights arising under this Bill against the director, other officer or the company; and
  - (b) there are grounds for believing that the respondent may remove or dispose of his, her or the company’s assets with a view to evading his, her or the company’s obligations and frustrating an order of the court.
- (2) The court shall not make an order under Subhead (1) in the case of a cause of action, right to seek a declaration of personal liability or claim for damages save to the extent that it arises—
  - (a) from the holding of an office of that company; or
  - (b) under this Bill; or
  - (c) under the constitution of the company.

#### **Explanatory note**

*This is a new head.*

*Subhead (1) is an amended reenactment of Section 55 of the Company Law Enforcement Act, 2001. The reference to Director has been modified to Director of Corporate Enforcement.*

*Paragraph (1)(a) has been amended to delimit the circumstances in which a statutory *mareva* injunction can be granted under the Companies Acts to where the primary cause of action also arises under the Companies Acts.*

## Part A13 - Investigations, Compliance and Enforcement

---

*Subhead (2) is new. It requires the claim against the director or officer to have an appropriate nexus with the company. Causes of action that a creditor, member etc may have against a director or officer that do not either relate to their role as such or arise due to the rights and obligations arising from the company or company law are not covered by the head.*

## Chapter 4

### Disclosure Orders

#### Head 24 Disclosure Order

- (1) For the purposes of this Chapter, “disclosure order” means an order of the court which obliges—
- (a) Any person whom the court believes to have or to be able to obtain any information as to—
    - (i) persons interested at present, or at any time during a period specified in the order, in the shares or debentures of a company,
    - (ii) the names and addresses of any of those persons,
    - (iii) the name and address of any person who acts or has acted on behalf of any of those persons in relation to the shares or debentures,to give such information to the court; or
  - (b) any person whom the court believes to be, or at any time during a period specified in the order to have been, interested in shares or debentures of a company to confirm that fact or (as the case may be) to indicate whether or not it is the case and, where he holds or has during that period held any interest in such shares or debentures, to give such further information as the court may require; or
  - (c) any person interested in shares or debentures of a company specified in the order to disclose to the court the information required under subparagraphs (i) and (ii) and (iii) of paragraph (a) and such further information as the court may require.
- (2) Any person who has a financial interest in a company may apply to the court for a disclosure order in respect of all or any of the shares of or debentures in the company.
- (3) An application under Subhead (2) shall be supported by such evidence as the court may require.

- (4) The court may, before hearing an application under Subhead (2), require the applicant to give security for payment of the costs of hearing the application or any consequential proceedings.
- (5) The court may make a disclosure order only if—
- (a) it deems it just and equitable to do so; and
  - (b) it is of the opinion that the financial interest of the applicant is or will be prejudiced by the non-disclosure of any interest in the shares or debentures of the company.
- (6) For the purposes of Subhead (2) “financial interest” includes any interest as member, contributory, creditor, employee, co-adventurer, examiner, lessor, lessee, licensor, licensee, liquidator or receiver either in relation to the company in respect of whose shares or debentures a disclosure order is sought or a related company.
- (7) Where a person authorises any other person (“the agent”) to acquire or dispose of, on his behalf, interests in shares comprised in relevant share capital of a company or in debentures of the company in respect of which a disclosure order is made, he shall, for the duration of that order, ensure that the agent notifies him immediately of acquisitions or disposals of interests in shares or debentures so comprised effected by the agent which will or may give rise to any obligation on his part to provide information in accordance with the terms of the order with respect to his interest in that share capital or those debentures.

#### **Explanatory note**

*This head is a re-enactment of Section 98 of the Companies Act, 1990.*

#### Head 25 Procedure on application for disclosure order

- (1) A person intending to apply for the making of a disclosure application for disclosure order shall give not less than 10 days’ notice of his intention to the company in respect of whose shares or debentures the order is sought and to the person to whom the order is intended to be directed.
- (2) The applicant shall also serve on any person specified by the court such notice of the application as the court may direct.

- (3) On the hearing of the application every person notified under Subhead (1) or (2) may appear and adduce evidence.

**Explanatory note**

*This head is a re-enactment of Section 99 of the Companies Act, 1990.*

---

### Head 26 Scope of disclosure order

---

- (1) A disclosure order may require the person to whom it is addressed—
- (a) to give particulars of his own past or present interest in shares comprised in relevant share capital of the company or in debentures of the company held by him at any time during the period mentioned in the order;
  - (b) where the interest is a present interest and any other interest in the shares or debentures subsists or in any case where another interest in the shares or debentures subsisted during that period at any time when his own interest subsisted, to give so far as lies within his knowledge, such particulars with respect to that other interest as may be required by the order;
  - (c) where his interest is a past interest, to give so far as lies within his knowledge, particulars of the identity of the person who held that interest immediately upon his ceasing to hold it.
- (2) A disclosure order shall specify the information to be supplied to the court under the order in respect of any person, shares or debentures to which it refers and any such information shall be given in writing.
- (3) Part B2 Head 33 (1) and (2), Head 36(1), (2), (4), Head 37(1) to (4) and (7), Head 38(1) to (5) and Head 39 (1) to (8) [equivalent of Sections 68 to 79 of the Companies Act, 1990] shall apply as appropriate for the purposes of construing references in this Chapter to persons interested in shares and debentures and to interests in shares and debentures respectively as they apply in relation to [equivalent of Section 67 of the Companies Act, 1990] (disregarding [equivalent of Section 78 of the Companies Act, 1990]) and any reference in those sections to a “percentage level” shall be disregarded.

- (4) For the purposes of this head any reference in [equivalent of Sections 67 of the Companies Act, 1990] to Part B2, Head 37 [equivalent of Section 79 of the Companies Act, 1990] to “shares” shall, where appropriate and unless the contrary is stated, be deemed to include a reference to debentures.

- (5) This head shall apply in relation to a person who has or previously had or is or was entitled to acquire a right to subscribe for shares in or debentures of a company which would on issue be comprised in relevant share capital of that company as it applies in relation to a person who is or was interested in shares so comprised or in debentures of the company; and references in the preceding provisions of this head to an interest in shares so comprised or an interest in debentures and to shares so comprised or debentures shall be read accordingly in any such case as including references respectively to any such right and to shares which would on issue be so comprised.

**Explanatory note**

*This head is a slightly amended re-enactment of Section 100 of the Companies Act, 1990. All cross-references have been updated in accordance with the structure of the Bill.*

---

### Head 27 Powers of Court

---

- (1) The court may, on cause shown, rescind or vary a disclosure order.
- (2) A disclosure order may specify a person, group or class of persons to which the order applies.
- (3) The court may, if it considers—
- (a) that it would be just and equitable to do so; and
  - (b) that the financial interest of the applicant would not be prejudiced thereby,
- exempt in whole or in part from the requirements of a disclosure order—
- (i) any person or class of persons,
  - (ii) any interest or class of interest in shares or debentures,
  - (iii) any share, group or class of shares,
  - (iv) any debenture, group or class of debentures.



## Part A13 - Investigations, Compliance and Enforcement

---

- (4) When the court makes a disclosure order it may impose, for a specific period of time, such conditions or restrictions on the rights or obligations attaching to the shares or debentures in respect of which the order is made as it deems fit.
- (5) Any person whose interests are affected by any conditions or restrictions imposed on shares or debentures under Subhead (4) may apply to the court for relief from all or any of those conditions and the court may, if it considers it just and equitable to do so, grant such relief in whole or in part and on such terms and conditions as it sees fit.

### **Explanatory note**

*This head is a re-enactment of Section 101 of the Companies Act, 1990.*

---

## **Head 28 Notice of Disclosure Order**

---

- (1) The applicant shall cause notice in the prescribed form of the making of a disclosure order together with a copy of the order to be sent by registered post within 7 days of the making of the order to—
- (a) the company (at its registered office) in respect of whose shares or debentures the order has been made;
  - (b) the Registrar;
  - (c) the registered holder of any shares or debentures in respect of which the disclosure order has been made where it appears to the court that—
    - (i) such holder is not at the date of the making of the order resident in the State, and
    - (ii) such holder should be notified;
  - (d) such other person as the court sees fit.
- (2) The applicant shall cause notice of the making of a disclosure order to be published, within 7 days of the making of the order, in the CRO Gazette.
- (3) For the purposes of Subhead (1) (a)—

- (a) the address of the registered office of the company at the date of the making of the disclosure order shall be deemed to be the address of that office which was last delivered to the Registrar or otherwise published, as such case may be (in accordance with and in the manner required by the law relating to the company) prior to the date of making the order; and
- (b) if no address of the registered office has ever been duly delivered to the Registrar or if the location of the last delivered address has been destroyed, the requirements of Subhead (1)(a) shall be deemed to have been complied with by sending the required notice of the order, together with a copy thereof to the Registrar.

- (4) For the purposes of Subhead (1)(c)—

- (a) the address of a non-resident registered holder of shares or debentures shall be deemed to be the address of that holder which was last delivered to the Registrar or otherwise published, as the case may be (in accordance with and in the manner required by the law relating to the company) prior to the date of making of the order; and
- (b) if no address of the non-resident registered holder has ever been duly delivered to the Registrar the requirements of Subhead (1) (c) shall be deemed to have been complied with by sending the required notice of this order, together with a copy thereof to the Registrar.

### **Explanatory note**

*This head is an amended re-enactment of Section 102 of the Companies Act, 1990. All references to the registrar of companies have been replaced by references to the “Registrar”.*

*Subhead (2) has been amended in accordance with the view of the Company Law Review Group. The requirement to publish a notice “...in at least 2 daily newspapers which circulate in the district in which the registered office of the company, in respect of whose shares or debentures the order has been made, is located” has been replaced by a requirement to simply publish the notice in the CRO Gazette. The reasons for this are the cost of publication, the inefficiency of the notice reaching the intended recipients, and the fact that the CRO Gazette will now be freely available on-line.*

*Subsection (5) has not been included here as it concerns companies not registered under the Companies Acts, that is unregistered companies and foreign companies. These will be dealt with in Pillar B later.*

### Head 29 Information disclosed under order

- (1) An obligation to provide any information imposed on any person by a disclosure order shall be treated as not being fulfilled unless the notice, by means of which it purports to be fulfilled, identifies him and gives his current address.
- (2) Where information is given to the court in compliance with the terms of a disclosure order, a prescribed officer of the court shall, unless the court otherwise directs, cause such information to be furnished (in whole or in part as the court may direct) to the applicant and to the company in respect of whose shares or debentures the order was made.
- (3) In reaching its decision under Subhead (2), the court shall have regard to whether the requirements of Part A13, Head 28 [equivalent of Section 102 of the Companies Act, 1990] have been complied with.
- (4) Where any information is furnished to the applicant or the company in pursuance of Subhead (2), the court may impose such restrictions as it sees fit as to the publication of the information by the person to whom it has been furnished.

#### **Explanatory note**

*This head is an amended re-enactment of Section 103 of the Companies Act, 1990. All references to the registrar of companies have been replaced by references to the "Registrar".*

### Head 30 Civil consequences of contravention of disclosure order

- (1) Where a person—
  - (a) fails to fulfil, within the proper period, an obligation to provide information required by a disclosure order, or
  - (b) in purported fulfilment of any such obligation, makes to the court a statement which he knows to be false, or recklessly makes to the court a statement which is false,

no right or interest of any kind whatsoever in respect of any shares in or debentures of the company concerned held by him shall be enforceable by him whether directly or indirectly, by action or legal proceeding.

- (2) Where any right or interest is restricted under Subhead (1), any person in default under that subhead or any other person affected by such restriction may apply to the court for relief against a disability imposed by or arising out of Subhead (1) and the court, on being satisfied that the default was accidental or due to inadvertence or some other sufficient cause or that on other grounds it is just and equitable to grant relief, may grant such relief either generally or as respects any particular right or interest, on such terms and conditions as it sees fit.
- (3) Where an applicant for relief under Subhead (2) is a person referred to in Subhead (1), the court may not grant such relief if it appears that the default has arisen as a result of any deliberate act or omission on the part of the applicant.
- (4) The acquisition by any person of an interest in shares or debentures of a company registered in the State shall be deemed to be a consent by that person to the disclosure by him, his agents or intermediaries, of any information required to be disclosed in relation to shares or debentures by this Bill.

#### **Explanatory note**

*This head is a re-enactment of Section 104 of the Companies Act, 1990.*

# Chapter 5

## Disqualification and Restriction of Directors and Other Officers

### Head 31 Application of Part A13, Heads 31 to 41 [equivalent of Part VII, Chapter 1 of the Companies Act, 1990]

- (1) Part A13, Heads 31 to 40 [equivalent of Part VII, Chapter 1 of the Companies Act, 1990] applies to any company if—
- (a) at the date of the commencement of its winding-up it is proved to the court; or
  - (b) at any time during the course of its winding-up the liquidator of the company certifies, or it is otherwise proved, to the court,

that it is unable to pay its debts (within the meaning of Part A11, Head 11 [equivalent of Section 214 of the Companies Act, 1963]).

- (2) Part A13, Heads 31 to 40 [equivalent of Part VII, Chapter 1 of the Companies Act, 1990] applies to any person who was a director of a company to which this head applies at the date of, or within 12 months prior to, the commencement of its winding-up.
- (3) Part A13, Heads 31 to 40 [equivalent of Part VII, Chapter 1 of the Companies Act, 1990] shall not apply to a company which commences to be wound up before 1st August 1991.
- (4) For the purposes of this Chapter—

“disqualification order” shall have the same meaning and effect as in Part A13, Head 41 [equivalent of Section 159 of the Companies Act, 1990];

“disqualification undertaking” means an undertaking by any person (given and accepted under Head 51 (1) (a)) that, for a period specified in the undertaking, that person shall not be appointed or act as an auditor, director or other officer, receiver, liquidator or examiner or be in any way, whether directly or indirectly, concerned or take part in the promotion, formation or management of any company or any society registered under the Industrial and Provident Societies Acts, 1893 to 1978;

“restriction undertaking” means an undertaking by any person (given and accepted under Head 50 (1) (b) or (2)) that, for a period of 5 years from the date of the undertaking that person shall not be appointed or act in any way, whether directly or indirectly, as a director or secretary or be concerned or take part in the promotion or formation of any company unless it meets the requirements set out in Part A13, Head 32 [equivalent of Section 150(3) of the Companies Act, 1990];

“a person to whom Part A13, Head 32 [equivalent of Section 150 of the Companies Act, 1990] applies” means—

- (a) a person in respect of whom a declaration has been made under Head 32 (1); and
  - (b) a person who has given a restriction undertaking which has been accepted by the Director of Corporate Enforcement.
- (5) This Chapter applies to shadow directors as it applies to directors.

#### Explanatory note

*This head is an amended re-enactment of Section 149 of the Companies Act, 1990. All cross-references have been updated in accordance with the structure of the Bill.*

*Section 149(4) of the Companies Act, 1990 provided has not been included. The reason for this is that Pillar A only applies to private companies and overseas companies formed outside the State (registered under Part XI of the Companies Act 1963) will now be dealt with in Pillar B.*

*A new Subhead (4) has been inserted. These defined terms are made necessary by the introduction of a means by which a person may give a voluntary undertaking to be restricted or disqualified. This process was introduced in accordance with the view of the Company Law Review Group following consideration of similar UK provisions (i.e. the Company Directors Disqualification Act, 1986 (UK) as amended by the Insolvency Act, 2000 (UK)).*

## Part A13 - Investigations, Compliance and Enforcement

*The introduction of this process is aimed primarily at reducing unnecessary use of resources in the making of court applications (both resources of the parties to the action and of the Courts Service). Such voluntary undertakings also had the potential to restrict or disqualify unfit directors in a more expeditious manner. Following consideration of the UK process, the Review Group observed that approximately 80% of disqualifications were made by way of this procedure. Furthermore, there was no obvious increase in the numbers being disqualified and the costs involved in disqualifying directors by undertaking were substantially less following the introduction of this procedure.*

### Head 32 Restriction

- (1) The court shall, unless it is satisfied as to any of the matters specified in Subhead (3), declare that a person to whom Part A13, Heads 31 to 40 [equivalent of Part VII, Chapter 1 of the Companies Act, 1990] applies shall not, for a period of five years, be appointed or act in any way, whether directly or indirectly, as a director or secretary or be concerned or take part in the promotion or formation of any company unless it meets the requirements set out in Subhead (4).
- (2) In Subheads (1) and (4) “company” means—
- (a) a private company;
  - (b) a designated activity company;
  - (c) a public limited company;
  - (d) a guarantee company;
  - (e) an unlimited company;
  - (f) an unregistered company;
  - (g) an investment company;
  - (h) [an external company.]
- (3) The matters referred to in Subhead (1) are—
- (a) that the person concerned has acted honestly and responsibly in relation to the conduct of the affairs of the company; and
  - (b) that he has, when requested to do so by the liquidator, cooperated with the liquidator insofar as he may reasonably be expected to do so in connection with the conduct of the winding up; and
- (c) there is no other reason why it would be just and equitable that he should be subject to the restrictions imposed by this head.
- (4) The requirements specified in Subhead (1) are that—
- (a) the company shall have an allotted share capital, the par value of which shall be—
    - (i) not less than €350,000 in the case of a public limited company or a public unlimited company,
    - (ii) not less than €70,000 in the case of any other company;
  - (b) each allotted share to an aggregate amount not less than the amount referred to in paragraph (a) shall be fully paid up, including the whole of any premium thereon; and
  - (c) each such allotted share and the whole of any premium thereon shall be paid for in cash.
- (5) Where a court makes a declaration under Subhead (1), a prescribed officer of the court shall cause the Registrar to be furnished with prescribed particulars of the declaration in such form and manner as may be prescribed.
- (6) An application for a declaration under Subhead (1) may be made to the court by the Director of Corporate Enforcement, a liquidator or a receiver.
- (7) The court, on the hearing of an application for a declaration under Subhead (1) by the Director of Corporate Enforcement, a liquidator or a receiver (in this subhead referred to as the “applicant”), may order that the directors against whom the declaration is made shall bear—
- (a) the costs of the application; and
  - (b) the whole (or such portion of them as the court specifies) of the costs and expenses incurred by the applicant—
    - (i) in investigating the matters the subject of the application, and
    - (ii) in so far as they do not fall within paragraph (a), in collecting evidence in respect of those matters, including so much of the remuneration and expenses of the applicant as are attributable to such investigation and collection.



### **Explanatory note**

*This head is an amended re-enactment of Section 150 of the Companies Act, 1990, as amended by Section 41 of the Company Law Enforcement Act, 2001. All cross-references have been updated in accordance with the structure of the Bill. References to the registrar of companies have been replaced by references to the Registrar and references to the Director have been replaced by references to the Director of Corporate Enforcement.*

*Subhead (2) is new and is intended to ensure that a person restricted arising from his involvement in a CLS, is restricted also as regards other companies in general: not simply other CLSs.*

*Subhead (3) has been amended insofar as a new sub-paragraph has been inserted in accordance with the view of the Company Law Review Group. The additional requirement is that "... the person concerned... has, when requested to do so by the liquidator, cooperated with the liquidator insofar as he may reasonably be expected to do so in connection with the conduct of the winding-up...". The reason for the insertion of this provision is to promote greater co-operation by the directors and other officers with the liquidator in the event of the company being wound up.*

*Subsection (3) has also been amended by the deletion of the provisions in sub-paragraphs (b) and (c) of Section 150(2) of the Companies Act, 1990. Because both of these sub-paragraphs were stated to be "subject to paragraph (a)", the "defences" therein were considered to have little operative potential.*

*Subsection (4) has been amended by replacing nominal value with par value. The required par value of the allotted share capital of the company has been converted into euro and rounded upwards to €70,000 and €350,000, as appropriate. The language of Subsection (4)(a) has also been amended to clarify the fact that a company may not escape this capitalisation requirement by reason of not having a share capital.*

---

### **Head 33 Duty of liquidator under Part A13, Heads 31 to 40 [equivalent of Part VII, Chapter 1 of the Companies Act, 1990]**

---

- (1) Where it appears to the liquidator of a company to which Part A13, Heads 31 to 40 [equivalent of Part VII, Chapter 1 of the Companies Act, 1990] apply that the interests of any other company or its creditors may be placed in jeopardy by the relevant matters referred to in Subhead (2), the liquidator shall inform the court of his opinion forthwith and the court may, on receipt of such report, make whatever order it sees fit.
- (2) The relevant matters are that a person to whom Part A13, Head 32 [equivalent of Section 150 of the Companies Act, 1990] applies is appointed or is acting in any way, whether directly or indirectly, as a director or is concerned or is taking part in the promotion or formation of such other company as is referred to in Subhead (1).

### **Explanatory note**

*This head is a slightly amended re-enactment of Section 151 of the Companies Act, 1990. All cross-references have been updated in accordance with the structure of the Bill and the particulars of the fine in Subhead (3) have not been included as they will be provided for later in the Bill.*

---

### **Head 34 Relief**

---

- (1) A person to whom Part A13, Head 32 [equivalent of Section 150 of the Companies Act, 1990] applies may apply to the court for relief, either in whole or in part, from the restrictions referred to in that head or from any order made in relation to him under Part A13, Head 33 [equivalent of Section 151 of the Companies Act, 1990] and the court may, if it deems it just and equitable to do so, grant such relief on whatever terms and conditions it sees fit.
- (2) Where it is intended to make an application for relief under Subhead (1) the applicant shall give not less than 14 days' notice of his intention to the liquidator (if any) of the company, the insolvency of which caused him to be subject to Part A13, Heads 31 to 40 and to the Director of Corporate Enforcement.



## Part A13 - Investigations, Compliance and Enforcement

---

- (3) On receipt of a notice under Subhead (2), the liquidator shall forthwith notify such creditors and contributories of the company as have been notified to him or become known to him, that he has received such notice.
- (4) On the hearing of an application under this head the Director of Corporate Enforcement, the liquidator or any creditor or contributory of the company, the insolvency of which caused the applicant to be subject to Part A13, Head 31 to 40 may appear and give evidence.
- (4) The Registrar shall also remove from the register any particulars in relation to a person on the expiry of five years from the date of the declaration to which the original notification under Part A13, Head 32 [equivalent of Section 150 of the Companies Act, 1990] relates.
- (5) Nothing in this head shall prevent the Registrar from keeping the register required by this head as part of any other system of classification, whether pursuant to Part A11, Head 105 [equivalent of Section 247 of the Companies Act, 1963] or otherwise.

### **Explanatory note**

*This head is a slightly amended re-enactment of Section 152 of the Companies Act, 1990. All cross-references have been updated in accordance with the structure of the Bill. In addition, the limitation whereby relief applications had to be brought within the first year (after a restriction declaration has been made) has been removed. In addition, it has been provided that the Director of Corporate Enforcement should routinely be a notice-party in relation to such application: see *Re CMC (Ireland) Limited* [2005] IEHC 340.*

---

### **Head 35 Register of restricted persons**

---

- (1) The Registrar shall, subject to the provisions of this head, keep a register of the particulars which have been notified to him under Part A13, Head 32 [equivalent of Section 150 of the Companies Act, 1990], and the following provisions of this head shall apply to the keeping of such a register.
- (2) Where the court grants partial relief to a person under Part A13, Head 34 [equivalent of Section 152 of the Companies Act, 1990] a prescribed officer of the court shall cause the Registrar to be furnished with prescribed particulars of the relief, and the Registrar shall, as soon as may be, enter the particulars on the register referred to in Subhead (1).
- (3) Where the court grants full relief to a person under Part A13, Head 34 [equivalent of Section 152 of the Companies Act, 1990] a prescribed officer of the court shall cause the Registrar to be so notified, and the Registrar shall, as soon as may be, remove the particulars of any such person from the register referred to in Subhead (1).

### **Explanatory note**

*This head is an amended re-enactment of Section 153 of the Companies Act, 1990. All cross-references have been updated in accordance with the structure of the Bill.*

---

### **Head 36 Application of Part A13, Heads 31 to 40 [equivalent of Part VII, Chapter 1 of the Companies Act, 1990] to receivers**

---

Where a receiver of the property of a company is appointed, the provisions of Part A13, Heads 31 to 40 [equivalent of Part VII, Chapter 1 of the Companies Act, 1990] shall, with the necessary modifications, apply as if the references therein to the liquidator and to winding-up were construed as references to the receiver and to receivership.

### **Explanatory note**

*This head is a slightly amended re-enactment of Section 154 of the Companies Act, 1990. All cross-references have been updated in accordance with the structure of the Bill.*

---

### **Head 37 Restrictions on company to which Part A13, Head 31 (3) [equivalent of Section 150(3) of the Companies Act, 1990] applies**

---

- (1) This head applies to any company in relation to which a person who is the subject of a declaration under Part A13, Head 32 [equivalent of Section 150 of the Companies Act, 1990] is appointed or acts in any way, whether directly or indirectly, as a director or secretary or is concerned in or takes part in the promotion or formation of that company.
- (2) Part A4, Head 71 [equivalent of Subsections (2) to (11) of Section 60 of the Companies Act, 1963] shall not apply to any company to which this head applies.
- (3) Part B2, Heads 23 to 26 [equivalent of Sections 32 to 36 of the Companies (Amendment) Act, 1983], shall, with the necessary modifications, apply to any company to which this head applies as if the company were a PLC so, however, that for the purposes of this subhead those heads shall apply as if—
  - (a) in Part B2, Head 23(1) [equivalent of Section 32(1) of the Companies (Amendment) Act, 1983] the words “during the initial period” were deleted;
  - (b) any other reference in any of those heads to “initial period” were deleted; and
  - (c) in Part B2, Head 23(3) [equivalent of Section 32(2) of the Companies (Amendment) Act, 1983] the words “relevant person” were defined to mean “any subscriber to the memorandum, any director or any person involved in the promotion or formation of the company”.
- (4) Without prejudice to Part A5, Head 25 [equivalent of Section 39 of the Companies Act, 1990], Part A5, Head 18 [equivalent of Section 32 of the Companies Act, 1990] and Part A5, Head 23 [equivalent of Section 37 of the Companies Act, 1990] shall not apply to any company to which Subhead (1) applies.

- (5) From the date of a declaration under Part A13, Head 32 [equivalent of Section 150 of the Companies Act, 1990] a person in respect of whom the declaration was made shall not accept appointment to a position or act in any manner mentioned in Subhead (1) of this head in relation to a company unless he has, within the 14 days immediately preceding such appointment or so acting, sent to the registered office of the company a notification that he is a person to whom Part A13, Head 32 [equivalent of Section 150 of the Companies Act, 1990] applies.

#### **Explanatory note**

*This head is a slightly amended re-enactment of Section 155 of the Companies Act, 1990. All cross-references have been updated in accordance with the structure of the Bill.*

---

### **Head 38 Requirements as to share allotted by a company to which Part A13, Head 37 [equivalent of Section 155 of the Companies Act, 1990] applies**

---

- (1) Where a company to which Part A13, Head 37 [equivalent of Section 155 of the Companies Act, 1990] applies allots a share which is not fully paid up as required by Part A13, Head 32 (4) (b) [equivalent of Section 150(3)(b) of the Companies Act, 1990] the share shall be treated as if its par value together with the whole of any premium had been received, but the allottee shall be liable to pay the company in cash the full amount which should have been received in respect of the share under that subhead less the value of any consideration actually applied in payment up (to any extent) of the share and any premium on it, and interest at the appropriate rate on the amount payable under this subhead.
- (2) Where a company to which Part A13, Head 37 [equivalent of Section 155 of the Companies Act, 1990] applies allots a share which is not fully paid for in cash as required by Part A13, Head 32 (4) (c) [equivalent of Section 150(3)(c) of the Companies Act, 1990] the allottee of the share shall be liable to pay the company in cash an amount equal to its par value, together with the whole of any premium and shall be liable to pay interest at the appropriate rate on the amount payable under this subhead.

- (3) Subhead(1) shall not apply in relation to the allotment of a bonus share which is not fully paid up as required by Part A13, Head 32 (4) (b) [equivalent of Section 150(3)(b) of the Companies Act, 1990] unless the allottee knew or ought to have known that the share was so allotted.
- (4) Subhead (1) does not apply to shares allotted in pursuance of an employees' share scheme within the meaning of Part A3, Head 1 [equivalent of Section 2 of the Companies (Amendment) Act, 1983].
- (5) In this head, "appropriate rate" has the meaning assigned to it by Part A3, Head 1 [equivalent of Section 2 of the Companies (Amendment) Act, 1983].
- (6) Part B2, Head 17(3) [equivalent of Section 26(4) of the Companies (Amendment) Act, 1983], shall apply for the purposes of this head, as it applies for the purposes of that head.

### **Explanatory note**

*This head is a slightly amended re-enactment of Section 156 of the Companies Act, 1990. All cross-references have been updated in accordance with the structure of the Bill and references to the nominal value of shares have been replaced by references to the par value of shares.*

---

## **Head 39 Relief for a company in respect of prohibited transactions**

---

- (1) The court may, if it deems it just and equitable to do so, grant relief to a company to which Part A13, Head 37 [equivalent of Section 155 of the Companies Act, 1990] applies in respect of any act or omission which, by virtue of that head, contravened a provision of this Bill or to any person adversely affected thereby, on whatever terms and conditions the court sees fit, including exemption from any such provision.
- (2) Relief shall not be granted to the company where the person referred to in Part A13, Head 37 (1) [equivalent of Section 155(1) of the Companies Act, 1990] complied with Part A13, Head 37 (5) [equivalent of Section 155(5) of the Companies Act, 1990].

### **Explanatory note**

*This head is a slightly amended re-enactment of Section 157 of the Companies Act, 1990. All cross-references have been updated in accordance with the structure of the Bill.*

---

## **Head 40 Power to vary amounts mentioned in Part A13, Head 32 (3) [equivalent of section 150(3) of the Companies Act, 1990]**

---

The Minister may from time to time, by order, increase the amounts mentioned in Part A13, Head 32 (4) (a) [equivalent of Section 150(3)(a) of the Companies Act, 1990] provided however that any such increase shall not have effect in relation to a declaration under Part A13, Head 32 (1) [equivalent of Section 150(1)(a) of the Companies Act, 1990] made before the commencement of the order and, accordingly, the requirements of Subhead (4) of that Head 32 that shall apply in respect of a person who is the subject of such a declaration made before that commencement shall be those that applied immediately before that commencement.

### **Explanatory note**

*This head is an amended version of Section 158 of the Companies Act, 1990 modified to accord with the principles which underlay Section 41(2) of the Company Law Enforcement Act, 2001. Section 158 provided that the Minister could vary the threshold amounts for allotted share capital in the case of companies with which a restricted person was involved, and could require any company to which Section 150(3)(a) applies to increase its allotted share capital accordingly. No such order was ever made. Instead, under Section 41 of the Company Law Enforcement Act, 2001, the limits were increased but Section 41(2) in effect provided that such increases should not operate retrospectively. This new head seeks to preserve the powers of the Minister to increase the limits, but on the same non-retrospective basis as was thought appropriate when the 2001 Act was enacted.*

---

## **Head 41 Interpretation of Part A13, Heads 42 [equivalent of Part VII, Chapter 2 of the Companies Act, 1990] to 51 [equivalent of Part VII, Chapter 3 of the Companies Act, 1990]**

---

In Part A13, Heads 41 and 50 [equivalent of Part VII, Chapters 2 and 3 of the Companies Act, 1990], except where the context otherwise requires—

“*company*” includes every company and every body, whether corporate or unincorporated, which may be wound up under Pillar A, Part 11 [equivalent of Part X of the Companies Act, 1963] and, without prejudice to the generality of the foregoing, includes a friendly society within the meaning of the Friendly Societies Acts, 1896 to 1977;

“*the court*” means the High Court except in relation to a disqualification order made by a court of its own motion under Part A13, Head 42 (4), paragraph (a), (b), (c), (d) or (f) [equivalent of Section 160(2)(a), (b), (c), (d) or (f) of the Companies Act, 1990], in which case it includes any court;

“*default order*” means an order made against any person under Head 22 [equivalent of Section 371 of the Companies Act, 1963] by virtue of any contravention of or failure to comply with any relevant requirement (whether on his own part or on the part of any company);

“*disqualification order*” means an order under this Chapter [equivalent of Part VII of the Companies Act, 1990] that the person against whom the order is made shall not be appointed or act as an auditor, director or other officer, receiver, liquidator or examiner or be in any way, whether directly or indirectly, concerned or take part in the promotion, formation or management of any company, or any society registered under the Industrial and Provident Societies Acts, 1893 to 1978,

“*officer*” in relation to any company, includes any director, shadow director or secretary of the company;

“*relevant requirement*” means any provision of this Bill which requires or required any return, account or other document to be filed with, delivered or sent to, or notice of any matter to be given to, the Registrar.

### **Explanatory note**

*This head is a slightly amended re-enactment of Section 159 of the Companies Act, 1990. All cross-references have been updated in accordance with the structure of the Bill and references to the registrar of companies have been replaced by references to the Registrar.*

*Paragraph (b) of the interpretation of disqualification order has been deleted given that Section 184 of the Companies Act, 1963 has been repealed by Section 6(1) of the Companies Act, 1990.*

## **Head 42 Disqualification of certain persons from acting as directors or auditors of or managing companies**

- (1) Where a person is convicted on indictment of any indictable offence in relation to a company, or involving fraud or dishonesty, then during the period of five years from the date of conviction or such other period as the court, on the application of the prosecutor and having regard to all the circumstances of the case, may order—
  - (a) he shall not be appointed or act as an auditor, director or other officer, receiver, liquidator or examiner or be in any way, whether directly or indirectly, concerned or take part in the promotion, formation or management of any company or any society registered under the Industrial and Provident Societies Acts, 1893 to 1978;
  - (b) he shall be deemed, for the purposes of this Bill, to be subject to a disqualification order for that period.
- (2) Without prejudice to Subhead (1), a person who –
  - (a) fails to comply with Part A2, Head 6 (3) [equivalent of Section 3A(1) of the Companies (Amendment) Act, 1982], or Part A4, Head 19 (8) [equivalent of Section 195(8) of the Companies Act, 1963]; or
  - (b) in purported compliance with the said Part A2, Head 6 (3) [equivalent of Section 3A(1) of the Companies (Amendment) Act, 1982], or Part A4, Head 19 (8) [equivalent of Section 195(8) of the Companies Act, 1963], permits the first-mentioned statement in the said Part A2, Head 6 (3) [equivalent of Section 3A(1) of the Companies (Amendment) Act, 1982], or, as the case may be, the first-mentioned notification in the said Part A4, Head 19 (8) [equivalent of Section 195(8) of the Companies Act, 1963], to be accompanied by a statement signed by him which is false or misleading in a material respect,



## Part A13 - Investigations, Compliance and Enforcement

---

shall, upon the delivery to the Registrar of the said statement or notification or, as the case may be, the said statement or notification accompanied by a statement as aforesaid, be deemed, for the purposes of this Bill, to be subject to a disqualification order for the period referred to in Subhead (3).

(3) The period mentioned in Subhead (2) is –

- (a) so much as remains unexpired, at the date of the delivery mentioned in that subhead, of the period for which the person concerned is disqualified under the law of the other state referred to in Part A2, Head 6 (3) [equivalent of Section 3A(1) of the Companies (Amendment) Act, 1982], or Part A4, Head 19 (8) [equivalent of Section 195(8) of the Companies Act, 1963] from being appointed or acting in the manner described therein; or
- (b) if the person is so disqualified under the law of more than one other such state and the portions of the respective periods for which he is so disqualified that remain unexpired at the date of that delivery are not equal, whichever of those unexpired portions is the greatest.

(4) Where the court is satisfied in any proceedings or as a result of an application under this head that—

- (a) a person has been guilty, while a promoter, officer, auditor, receiver, liquidator or examiner of a company, of any fraud in relation to the company, its members or creditors; or
- (b) a person has been guilty, while a promoter, officer, auditor, receiver, liquidator or examiner of a company, of any breach of his duty as such promoter, officer, auditor, receiver, liquidator or examiner; or
- (c) a declaration has been granted under Part A11, Head 152 [equivalent of Section 297A of the Companies Act, 1963] in respect of a person; or
- (d) the conduct of any person as promoter, officer, auditor, receiver, liquidator or examiner of a company, makes him unfit to be concerned in the management of a company; or

(e) in consequence of a report of inspectors appointed by the court or the Director under this Bill, the conduct of any person makes him unfit to be concerned in the management of a company; or

(f) a person has been persistently in default in relation to the relevant requirements; or

(g) a person has been guilty of two or more offences under Part A6 Head 9 [equivalent of Section 202(10) of the Companies Act, 1990]; or

(h) a person was a director of a company at the time of the sending, after the 1<sup>st</sup> day of March 2002, of a letter under Part A12, Head 4 [equivalent of Section 12(1) of the Companies (Amendment) Act, 1982], to the company and the name of which, following the taking of the other steps under that head consequent on the sending of that letter, was struck off the register under Part A12, Head 6 [equivalent of Section 12(3) of the Companies (Amendment) Act, 1982]; or

(i) a person 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 and the court is satisfied that, if the conduct of the person or the circumstances otherwise affecting him that gave rise to the said order being made against him had occurred or arisen in the State, it would have been proper to make a disqualification order otherwise under this subsection against him,

the court may, of its own motion, or as a result of the application, make a disqualification order against such person for such period as it sees fit.

(5)

(a) For the purposes of Subhead (4)(f) the fact that a person has been persistently in default in relation to the relevant requirements may (without prejudice to its proof in any other manner) be conclusively proved by showing that in the five years ending with the date of the application he has been adjudged guilty (whether or not on the same occasion) of three or more defaults in relation to those requirements;



## Part A13 - Investigations, Compliance and Enforcement

---

- (b) A person shall be treated as being adjudged guilty of a default in relation to a relevant requirement for the purposes of this subhead if he is convicted of any offence consisting of a contravention of a relevant requirement or a default order is made against him.
- (6) The court shall not make a disqualification order under paragraph (h) of Subhead (4), against a person who shows to the court that the company referred to in that paragraph had no liabilities (whether actual, contingent or prospective) at the time its name was struck off the register or that any such liabilities that existed at that time were discharged before the date of the making of the application for the disqualification order.
- (7) A disqualification order under paragraph (i) of Subhead (4) may be made against a person notwithstanding that, at the time of the making of the order, the person is deemed, by virtue of Subhead (2), to be subject to a disqualification order for the purposes of this Bill, and where a disqualification order under the said paragraph (i) is made, the period of disqualification specified in it shall be expressed to begin on the expiry of the period of disqualification referred to in Subhead (3) to which the person, by virtue of Subhead (2), is subject or the said period of disqualification as varied, if such by the case, under Subhead (13).
- (8) An application under paragraph (a), (b), (c) or (d) of Subhead (4) may be made by—
- (a) the Director of Public Prosecutions; or
  - (b) any member, contributory, officer, employee, receiver, liquidator, examiner or creditor of any company in relation to which the person who is the subject of the application—
    - (i) has been or is acting or is proposing to or being proposed to act as officer, auditor, receiver, liquidator or examiner, or
    - (ii) has been or is concerned or taking part, or is proposing to be concerned or take part, in the promotion, formation or management of any company, and where the application is made by a member, contributory, employee or creditor of the company, the court may require security for all or some of the costs of the application.
- (9) An application under paragraph (e) or (g) of Subhead (4) may be made by the Director of Public Prosecutions.
- (10) An application under paragraph (f) of Subhead (4) may be made by—
- (a) the Director of Public Prosecutions; or
  - (b) the Registrar.
- (11) In addition to the persons who in pursuance of Subheads (8), (9) and (10) may make such an application, an application under Subhead (4)(a), (b), (c), (d), (e), (f), (g), (h) or (i) may be made by the Director of Corporate Enforcement.
- (12) Where it is intended to make an application under Subhead (2) in respect of any person, the applicant shall give not less than ten days' notice of his intention to that person.
- (13) Any person who is subject or deemed subject to a disqualification order by virtue of this Part may apply to the court for relief, either in whole or in part, from that disqualification and the court may, if it deems it just and equitable to do so, grant such relief on whatever terms and conditions it sees fit. Such an application shall be served on the applicant for the original disqualification order and (if he was not such applicant) on the Director of Corporate Enforcement.
- (14) A disqualification order may be made on grounds which are or include matters other than criminal convictions notwithstanding that the person in respect of whom the order is to be made may be criminally liable in respect of those matters.
- (15) In considering the penalty to be imposed under this head, the court may as an alternative, where it adjudges that disqualification is not justified, make a declaration under Part A13, Head 32 [equivalent of Section 150 of the Companies Act, 1990].
- (16) The court, on the hearing of an application for a disqualification order under Subhead (2), may order that the persons disqualified or against whom a declaration under Part A13, Head 32 [equivalent of Section 150 of the Companies Act, 1990] is made as a result of the application shall bear—
- (a) the costs of the application; and

- (b) in the case of an application by the Director of Corporate Enforcement, the Director of Public Prosecutions, a liquidator, a receiver or an examiner (in this paragraph referred to as the “applicant”), in addition to the costs referred to in paragraph (a), the whole (or such portion of them as the court specifies) of the costs and expenses incurred by the applicant—
- (i) in investigating the matters the subject of the application, and
- (ii) in so far as they do not fall within paragraph (a), in collecting evidence in respect of those matters, including so much of the remuneration and expenses of the applicant as are attributable to such investigation and collection.

- (17) A reference in any other enactment to Section 184 of the Companies Act, 1963 shall be construed as including a reference to this head.

### **Explanatory note**

*This head is an amended re-enactment of Section 160 of the Companies Act, 1990 as amended by Section 14 and Section 42 of the Company Law Enforcement Act, 2001.*

*All cross-references have been updated in accordance with the structure of the Bill. References to the registrar of companies have been replaced by references to the Registrar and references to the Director have been replaced by references to the Director of Corporate Enforcement.*

*Subsection (13) has been amended to provide that notice of all relief applications must be served on the Director of Corporate Enforcement.*

*Subsection (16) has been amended in line with Section 11(2) of the Investment Funds, Companies and Miscellaneous Provisions Act, 2006.*

---

## **Head 43 Penalty for acting contrary to the provisions of Part A13, Heads 31 to 42 [equivalent of Part VII, Chapter 1 or Chapter 2 of the Companies Act, 1990]**

---

- (1) Any person who, in relation to any company, acts in a manner or capacity which, by virtue of being a person to whom Part A13, Head 32 [equivalent of Section 150 of the Companies Act, 1990] applies or being subject or deemed to be subject to a disqualification order, he is prohibited from doing shall be guilty of a category two offence.
- (2) Where a person is convicted of an offence under Subhead (1) he shall be deemed to be subject to a disqualification order from the date of such conviction if he was not, or was not deemed to be, subject to such an order on that date.
- (3) Where a person convicted of an offence under Subhead (1) was subject, or deemed to be subject, to a disqualification order immediately prior to the date of such conviction, the period for which he was disqualified shall be extended for a further period of ten years from such date, or such other further period as the court, on the application of the prosecutor and having regard to all the circumstances of the case, may order.
- (4) Part A13, Head 42 (13) [equivalent of Section 160(8) of the Companies Act, 1990] shall not apply to a person convicted of an offence under Subhead (1) of this head.
- (5) Where—
- (a) a person who is a person to whom Part A13, Head 32 [equivalent of Section 150 of the Companies Act, 1990] applies is or becomes a director of a company which commences to be wound up within the period of 5 years after the date of commencement of the winding-up of the company whose insolvency caused that head to apply to him; and

- (b) it appears to the liquidator of the first-mentioned company that that company is, at the date of commencement of its winding-up or at any time during the course of its winding-up, unable to pay its debts,

the liquidator shall report those matters to the court and the court, on receiving the report and if it considers it proper to do so, may make a disqualification order against that person for such period as it thinks fit.

- (6) If the liquidator fails to comply with Subhead (5) he shall be guilty of a category three offence and liable to a fine.

### **Explanatory note**

*This head is a slightly amended re-enactment of Section 161 of the Companies Act, 1990. All cross-references have been updated in accordance with the structure of the Bill.*

---

## **Head 44 Period of disqualification order to which person is deemed to be subjected**

---

Where a person is, as a consequence of his conviction of an offence under Part A13, Heads 43 to 50 [equivalent of Part VII, Chapter 3 of the Companies Act, 1990] or Part A4, Head 6 (1) [equivalent of Section 183 of the Companies Act, 1963], deemed to be subject to a disqualification order, he shall be deemed to be so subject for a period of five years from the date of such conviction or such other period as the court, on the application of the prosecutor and having regard to all the circumstances of the case, may order.

### **Explanatory note**

*This head is a slightly amended re-enactment of Section 162 of the Companies Act, 1990. All cross-references have been updated in accordance with the structure of the Bill.*

---

## **Head 45 Civil consequences of acting contrary to the provisions of Part A13, Heads 31 to 42 [equivalent of Part VII, Chapter 1 or Chapter 2 of the Companies Act, 1990]**

---

- (1) Subheads (2) and (3) apply to any person who acts, in relation to a company, in a manner or capacity which, by virtue of being a person to whom Part A13, Head 32 [equivalent of Section 150 of the Companies Act, 1990] applies or being subject or deemed to be subject to a disqualification order, he is prohibited from doing.
- (2) Where any consideration is given by or on behalf of a company for an act done or service performed by a person referred to in Subhead (1) while he was acting in a manner or capacity described in that subhead, the company shall be entitled to recover from him, as a simple contract debt in any court of competent jurisdiction, the consideration or an amount representing its value.
- (3) Where—
- (a) a person referred to in Subhead (1) acts, in relation to a company, in a manner or capacity described in that Subhead, and
- (b) the company concerned commences to be wound up—
- (i) while he is acting in such a manner or capacity, or
- (ii) within 12 months of his so acting; and
- (c) the company is unable to pay its debts, within the meaning of Part A11, Head 11 [equivalent of Section 214 of the Companies Act, 1963], the court may, on the application of the liquidator or any creditor of the company, declare that such person shall be personally liable, without any limitation of liability, for all or any part of the debts or other liabilities of the company incurred in the period during which he was acting in such a manner or capacity.

(4) Where a company which has received a notification under Part A13, Head 32 (5) [equivalent of Section 155(5) of the Companies Act, 1990] and which carries on business following such notification without the requirements of Part A13, Head 32 (4) [equivalent of Section 155(3) of the Companies Act, 1990] being fulfilled within a reasonable period—

- (a) is subsequently wound up; and
- (b) is at the time of the commencement of the winding-up unable to pay its debts (taking into account the contingent and prospective liabilities),

the court may, on the application of the liquidator or any creditor or contributory of the company, declare that any person who was an officer of the company while the company so carried on business and who knew or ought to have known that the company had been so notified shall be personally responsible, without any limitation of liability, for all or any part of the debts or other liabilities of the company as the court may direct.

(5) In any proceedings brought against a person by virtue of this head the court may if, having regard to the circumstances of the case, it considers it just and equitable to do so, grant relief in whole or in part from the liability to which he would otherwise be subject thereunder and the court may attach to its order such conditions as it sees fit.

### **Explanatory note**

*This head is a slightly amended re-enactment of Section 163 of the Companies Act, 1990. All cross-references have been updated in accordance with the structure of the Bill.*

---

## **Head 46 Penalties for acting under directions of disqualified person**

---

(1) If any person, while a director or other officer or a member of a committee of management or trustee of any company, acts in accordance with the directions or instructions of another person knowing that such other person is disqualified or that, in giving the directions or instructions, he is acting in contravention of any provision of Heads 42 to 50 he shall be guilty of a category two offence.

(2) Where a person is convicted of an offence under Subhead (1) he shall be deemed to be subject to a disqualification order from the date of such conviction if he was not, or was not deemed to be, subject to such an order on that date.

### **Explanatory note**

*This head is a re-enactment of Section 164 of the Companies Act, 1990.*

---

## **Head 47 Civil consequences of acting under directions of disqualified person**

---

(1) A person who is convicted of an offence under Part A13, Head 46 [equivalent of Section 164 of the Companies Act, 1990] for acting in accordance with the directions or instructions of a disqualified person shall, subject to Subhead (2), be personally liable for the debts of the company concerned, incurred in the period during which he was so acting.

(2) In any proceedings brought against a person for the recovery of any such debt the court may if, having regard to the circumstances of the case, it considers it just and equitable to do so, grant relief in whole or in part from the liability to which he would otherwise be subject under Subhead (1) and the court may attach to its order such conditions as it sees fit.

### **Explanatory note**

*This head is a slightly amended re-enactment of Section 165 of the Companies Act, 1990. All cross-references have been updated in accordance with the structure of the Bill.*

---

## **Head 48 Information to be given by directions to the court**

---

- (1) Where—
- (a) a director of a company is charged with an offence or civil proceedings are instituted against such a director; and
  - (b) the charge or proceedings relate to the company or involve alleged fraud or dishonesty,

the court before which the proceedings consequent on that charge or those civil proceedings are pending may (either of its own motion or at the request of any of the parties to the proceedings), if satisfied that it is appropriate to do so, require the director to lodge with the office of the court a notice in writing—

- (i) giving the names of all companies of which he is a director at the date of the notice,
  - (ii) giving the names of all companies of which he was a director within a period commencing not earlier than 12 months prior to his being charged with the offence or the commencement of the civil proceedings and ending at the date of the notice,
  - (iii) stating whether he is at the date of the notice or ever was subject or deemed to be subject to a disqualification order, and
  - (iv) giving the dates and duration of each period in respect of which he is or was disqualified.
- (2) This head applies to shadow directors as it applies to directors.

### **Explanatory note**

*This head is a re-enactment of Section 166 of the Companies Act, 1990 as amended by Section 70 of the Investment Funds, Companies and Miscellaneous Provisions Act, 2005.*

---

## **Head 49 Information to be supplied to Registrar**

---

Where a court—

- (a) makes a disqualification order;
- (b) grants or varies relief under Part A13, Head 42 (13) [equivalent of Section 160(8) of the Companies Act, 1990]; or
- (c) convicts a person of an offence
  - (i) which has the effect of his being deemed to be subject to a disqualification order, or

- (ii) under Part A13, Head 43 (1) [equivalent of Section 161(1) of the Companies Act, 1990] or Part A13, Head 46 [equivalent of Section 164 of the Companies Act, 1990],

a prescribed officer of the court shall cause the Registrar to be furnished with prescribed particulars of the order, relief or conviction at such time and in such form and manner as may be prescribed.

### **Explanatory note**

*This head is a slightly amended re-enactment of Section 167 of the Companies Act, 1990. All cross-references have been updated in accordance with the structure of the Bill and references to the registrar of companies have been replaced by references to the Registrar.*

---

## **Head 50 Register of persons subject to disqualification orders**

---

- (1) The Registrar shall, subject to the provisions of this head, keep a register of the particulars which have been notified to him under Part A13, Head 49 [equivalent of Section 167 of the Companies Act, 1990], and the following provisions of this head shall apply to the keeping of such a register.
- (2) Where the particulars referred to in Part A13, Head 49 (b) [equivalent of Section 167(b) of the Companies Act, 1990] comprise the grant of full relief under Part A13, Head 42 (13) [equivalent of Section 160(8) of the Companies Act, 1990], the Registrar shall not enter such particulars on the register referred to in Subhead (1), but shall, as soon as may be, remove any existing particulars in respect of the person concerned from the register.
- (3) The Registrar shall also remove from the register any particulars in relation to a person on the expiry of five years from the date of the original notification under Part A13, Head 49 [equivalent of Section 167 of the Companies Act, 1990], or such other period in respect of which the person concerned is deemed to be subject to a disqualification order, unless the Registrar has received a further notification in respect of that person under this head.



- (4) Nothing in this head shall prevent the Registrar from keeping the register required by this head as part of any other system of classification, whether pursuant to Part A14, Head 11 [equivalent of Section 247 of the Companies Act, 1990] or otherwise.
- (2) The minimum period which may be specified in a disqualification undertaking is one year.
- (3) A person requesting that the Director accept a restriction undertaking or a disqualification undertaking or both a restriction and disqualification undertaking may include the person making the undertaking or a person (other than the Director) who is permitted to make an application for restriction or disqualification, and the person making the request shall furnish to the Director an application in a prescribed form.

### **Explanatory note**

*This section is a slightly amended re-enactment of Section 168 of the Companies Act, 1990. All cross-references have been updated in accordance with the structure of the Bill and references to the registrar of companies have been replaced by references to the Registrar.*

---

## **Head 51 Disqualification and Restriction undertakings**

---

- (1) Where it appears to the Director of Corporate Enforcement that—
- (a) one or more of the circumstances specified in Head 42 (2) [equivalent of Section 160(2) of the Companies Act, 1990] applies to a person; or
- (b) a person is a person to whom Heads 31 to 40 [equivalent of Chapter 1 of Part VII of the Companies Act, 1990] (including in applications made pursuant to Part A11 Head 8 [equivalent of Section 251 of the Companies Act, 1990]) applies, the Director may in his discretion accept:
- (i) a disqualification undertaking from the person, in which event that person shall be deemed, for the purposes of this Bill, to be subject to a disqualification order for the period specified in the undertaking, or
- (ii) a restriction undertaking from the person, in which event that person shall be deemed to be a person in relation to whom the Court has made a declaration pursuant to Head 32 (1), or
- (iii) both a disqualification undertaking and a restriction undertaking from the person, in which event that person shall be deemed, for the purposes of this Bill, to be subject to a disqualification order for the period specified in the disqualification undertaking, and he or she shall also be deemed to be a person in relation to whom the Court has made a declaration pursuant to Head 32 (1).
- (4) In determining whether or not to accept an undertaking from any person to whom Subhead (1) applies, the Director may take account of all matters including—
- (a) the conduct of the person (whether in connection with a company or otherwise);
- (b) the conduct of companies of which he or she was or is an officer or in any way associated (including the indebtedness of such company or companies);
- (c) the representations of parties affected by or interested in the aforementioned company or companies (including creditors and members of the company or companies and liquidators, examiners and receivers appointed to the said company or companies); and
- (d) the public interest.
- (5) The Director may make amendments to, and may impose conditions on, an undertaking in agreement with the person making the undertaking and, where applicable, the applicant to the Director for the acceptance of the undertaking.
- (6) Where a liquidator is obliged by Part A11, Head 113 (2) [equivalent of Section 56(2) of the Company Law Enforcement Act, 2001] to make an application for the restriction of a director pursuant to Head 32 [equivalent of Section 150 of the Companies Act, 1990], the acceptance by the Director of an undertaking from that director shall be treated for the purposes of the said Head 113 [equivalent of Section 56 of the Company Law Enforcement Act, 2001] as if an application was made by the liquidator pursuant to Head 32.

## Part A13 - Investigations, Compliance and Enforcement

---

- (7) Where an undertaking, or any amended undertaking, is accepted by the Director, he or she shall cause the Registrar to be furnished with prescribed particulars of the undertaking at such time and in such form and manner as may be prescribed, and the Registrar shall enter the prescribed particulars in the register of restricted persons or the register of disqualified persons as the case may be, which are kept pursuant to Head 35 and 50 [equivalent of Sections 153 and 168 of the Companies Act, 1990] respectively.
- (8) Where a disqualification undertaking is accepted by the Director and the person making the undertaking is already disqualified by virtue of an earlier disqualification undertaking or disqualification order, the period specified in the former undertaking shall run concurrently with any remaining period for which the person is already subject to disqualification.
- (9) Where a restriction undertaking is accepted by the Director and the person making the undertaking is already restricted by virtue of an earlier restriction undertaking or restriction declaration, the period specified in the former undertaking shall run concurrently with any remaining period for which the person is already subject to restriction.
- (10) The person making an undertaking shall agree to pay, in whole or in part, the costs of investigating the matters upon which the undertaking is based, and such agreement may specify terms for the payment of these costs.
- (11) The costs agreed under Subhead (10) shall be treated as a simple contract debt between the person making the undertaking and the applicant to the Director for the acceptance of the undertaking or between the person making the undertaking and the Director as the case may be.
- (12) An undertaking shall be effective from the date of acceptance of the undertaking by the Director unless the undertaking contains a condition to the contrary.
- (13) The Minister may make regulations in respect of any matter that is referred to in this head or that is necessary or advisable to give effect to this head, including regulations—
- (a) prescribing the forms for a restriction undertaking and/or a disqualification undertaking; and
- (b) prescribing the forms to be used by the Director in registering a restriction undertaking and/or a disqualification undertaking.
- (14) In this head—
- 'restriction'* means the requirements specified in Head 32 (4) [equivalent of Section 150(3) of the Companies Act, 1990] to which a restricted person is subject;
- 'restriction declaration'* means the declaration made by the court in Head 32 (1) [equivalent of Section 150(1) of the Companies Act, 1990];
- 'undertaking'* shall mean a restriction undertaking or a disqualification undertaking or both a restriction and disqualification undertaking.

### **Explanatory note**

*This head is new. It introduces a regime by which a person may give a voluntary undertaking to be restricted or disqualified. This process was introduced in accordance with the view of the Company Law Review Group following consideration of similar UK provisions (i.e. the Company Directors Disqualification Act, 1986 (UK) as amended by the Insolvency Act, 2000 (UK).*

*The introduction of this process is aimed primarily at reducing unnecessary use of resources in the making of court applications (both resources of the parties to the action and of the Courts Service). Such voluntary undertakings also had the potential to restrict or disqualify unfit directors in a more expeditious manner. Following consideration of the UK process, the Review Group observed that approximately 80% of disqualifications were made by way of this procedure. Furthermore, there was no obvious increase in the numbers being disqualified and the costs involved in disqualifying directors by undertaking were substantially less following the introduction of this procedure.*

## Chapter 6

### Provisions Relating to Offences Generally

#### Head 52 Summary prosecutions

- (1) Summary proceedings in relation to an offence under the Companies Acts may be brought and prosecuted by the Director of Public Prosecutions or the Director of Corporate Enforcement.
- (2) Without prejudice to the generality of Subhead (1), summary proceedings in relation to the offences under each of the following provisions may be brought and prosecuted by the Registrar—
  - (a) Part A2, Head 13 (2) [equivalent of Section 23(2) of the Companies Act, 1963];
  - (b) Part A4, Head 11 (12) [equivalent of Section 43(13) of the Companies (Amendment) (No.2) Act, 1999];
  - (c) Part A6, Head 52 [equivalent of Section 125(2) of the Companies Act, 1963];
  - (d) Part A8, Head 14 (2) [equivalent of Section 321(2) of the Companies Act, 1963 and Section 16 of the Companies (Amendment) Act, 1982];
  - (e) Part A10, Head 19 (6) [equivalent of Section 11(6) of the Companies (Amendment) Act, 1990];
  - (f) Part A10, Head 20 (5) [equivalent of Section 12 of the Companies (Amendment) Act, 1990];
  - (g) Part A10, Head 36 (2) [equivalent of Section 30 of the Companies (Amendment) Act, 1990];
  - (h) Part A11, Head 66 (5) [equivalent of Section 280(4) of the Companies Act, 1963 and Section 16 of the Companies (Amendment) Act, 1982];
  - (i) Part A11, Head 32 (2) [partial equivalent of Sections 276(A)(3) of the Companies Act, 1963, Section 278(2) of the Companies Act, 1963];
  - (j) Part A11, Head 82 (1) [equivalent of Section 145 of the Companies Act, 1990];

- (k) Part A11, Head 99 (7) [equivalent of Section 234(4) of the Companies Act, 1963 and Section 16 of the Companies (Amendment) Act, 1982];
- (l) Part A11, Head 110 (3);
- (m) Part A11, Head 111 (5) [replacement for Sections 262, 264 and 272 of the Companies Act, 1963];
- (n) Part A11, Head 112 (2) [equivalent of Section 306(2) of the Companies Act, 1963];
- (o) Part A11, Head 130 (4).

#### **Explanatory note**

*Subhead (1) is a slightly amended re-enactment of Section 240(4) of the Companies Act, 1990. The reference to the "Director" has been replaced by a reference to the "Director of Corporate Enforcement".*

*Subhead (2) is new. Its function is to gather into one single provision the prosecutory entitlements of the Registrar. Under the Companies Act, 1963 to 2005 these powers were spread over a number of different sections. In addition, the number of offences which can be prosecuted by the Registrar has been reduced so as to include only those which can be prosecuted on the basis of evidence obtained directly from internal CRO records, or on the production of a court order. The CRO does not have an investigative function and, accordingly, it is not considered worthwhile continuing to vest the Registrar with a capacity to prosecute offences which require that evidence be adduced which can be obtained only following a more comprehensive investigation. Such offences will, however, remain prosecutable by the Director of Corporate Enforcement.*

#### **Head 53 District Court area within which summary proceedings may be brought**

- (1) Summary proceedings against a company may be brought, heard and determined either—
  - (a) in the court area in which the offence charged or, if more than one offence is stated to have been committed, any one of the offences charged, is stated to have been committed;

- (b) in the court area specified by order made pursuant to Section 15 of the Courts Act, 1971; or
  - (c) in the court area in which the registered office of the company is situated.
- (2) Summary proceedings against an officer of a company acting in his or her capacity as such officer (or purporting so to act) may be brought, heard and determined either—
- (a) in the court area in which the offence charged or, if more than one offence is stated to have been committed, any one of the offences charged, is stated to have been committed;
  - (b) in the court area in which the accused has been arrested;
  - (c) in the court area in which the accused resides;
  - (d) in the court area specified by order made pursuant to Section 15 of the Courts Act, 1971; or
  - (e) in the court area in which the registered office of the company is situated.
- (3) In this head, “officer of a company” includes a director, shadow director, officer, promoter, receiver, liquidator or an auditor of a company.
- (4) For the purposes of this head, the place for the time being recorded by the Registrar as the situation of the registered office of a company shall be deemed to be the registered office of the company notwithstanding that the situation of its registered office may have been changed.

### **Explanatory note**

*This head is a re-enactment of [the proposed replacement of Section 240A of the Companies Act, 1990] (as inserted by Section 105 of the Company Law Enforcement Act, 2001) intended to be replaced by the Investment Funds, Companies and Miscellaneous Provisions Bill, 2006)*

---

## **Head 54 Period within which summary proceedings may be commenced**

---

- (1) Notwithstanding Section 10(4) of the Petty Sessions (Ireland) Act, 1851, summary proceedings in relation to an offence under this Bill may be commenced—

- (a) at any time within 3 years from the date on which the offence was committed; or
  - (b) if, at the expiry of that period, the person against whom the proceedings are to be brought is outside the State, within 6 months from the date on which he next enters the State; or
  - (c) at any time within 3 years from the date on which evidence that, in the opinion of the person by whom the proceedings are brought, is sufficient to justify the bringing of the proceedings comes to that person’s knowledge,
- whichever is the later.

- (2) For the purposes of Subhead (1)(c), a certificate signed by or on behalf of the person bringing the proceedings as to the date on which the evidence referred to in that provision relating to the offence concerned came to his knowledge shall be prima facie evidence thereof and in any legal proceedings a document purporting to be a certificate issued for the purpose of this subhead and to be so signed shall be deemed to be so signed and shall be admitted as evidence without further proof of the signature or the person purporting to sign the certificate.

### **Explanatory note**

*This head is a re-enactment of Sections 240(5) and 240(5A) of the Companies Act, 1990.*

---

## **Head 55 Prosecution of companies on indictment**

---

- (1) Where a company is charged, either alone or jointly with some other person, with an indictable offence, the subsequent provisions of this head shall have effect.
- (2) The company may appear, at all stages of the proceedings, by a representative and the answer to any question to be put to a person charged with an indictable offence may be made on behalf of the company by that representative but if the company does not so appear it shall not be necessary to put the questions and the District Court may, notwithstanding its absence, send forward the company for trial and exercise any of its other powers and functions under Part 1A of the Criminal Procedure Act, 1967, including the power to take depositions.



- (3) Any right of objection or election conferred upon the accused person by any enactment may be exercised on behalf of the company by its representative.
- (4) Any plea which may be entered or signed by an accused person, whether before the District Court or before the trial judge, may be entered in writing on behalf of the company by its representative, and if the company does not appear by its representative or, though it does so appear, fails to enter any such plea, the trial shall proceed as though the company had duly entered a plea of not guilty.
- (5) In this head, “representative” in relation to a company means a person duly appointed by the company to represent it for the purpose of doing any act or thing which the representative of a company is by this head authorised to do, but a person so appointed shall not, by virtue only of being so appointed, be qualified to act on behalf of the company before any court for any other purpose.
- (6) A representative for the purpose of this head need not be appointed under the seal of the company and a statement in writing purporting to be signed by a managing director of the company or by some other person (by whatever name called) having, or being one of the persons having, the management of the affairs of the company, to the effect that the person named in the statement has been appointed as the representative of the company for the purposes of this head shall be admissible without further proof as evidence that that person has been so appointed.

### **Explanatory note**

*This head is an amended re-enactment of Section 382 of the Companies Act, 1963. Section 382(7) has not been included as it refers to companies incorporated outside the State with an established place of business within the State. This Section will instead be inserted in Pillar B. Subsection (2) has been amended slightly to reflect the fact that, under amendments to the Criminal Procedure Act, 1967, introduced by Part III of the Criminal Justice Act 1999, the taking of depositions in the District Court now occurs (if at all) after the District Court has sent the accused forward for trial.*

---

## **Head 56 Offences by certain bodies.**

---

- (1) Where an offence under Part A13, Head 14 [equivalent of Section 19 of the Companies Act, 1990], Part A13, Head 16 [equivalent of Section 21 of the Companies Act, 1990], or Part A13, Head 62 [equivalent of Section 242 of the Companies Act, 1990] which is committed by a body to which any such head applies is proved to have been committed with the consent or connivance of or to be attributable to any neglect on the part of any person being a director, manager, secretary or other officer of the body, or any person who was purporting to act in any such capacity, that person shall also be guilty of an offence under that head.
- (2) Where the affairs of a body are managed by its members, Subhead(1) shall apply in relation to the acts and defaults of a member in connection with his functions of management as if he were a director or manager.

### **Explanatory note**

*This head is a slightly amended re-enactment of Section 241 of the Companies Act, 1990. All cross-references have been updated in accordance with the new structure of the Bill.*

---

## **Head 57 Penalties for Categories 1 to 4 Offences**

---

- (1) A person guilty under any provision of this Bill of an offence for which no punishment is specifically provided shall be liable—
  - (a) where the offence is a Category 1 offence—
    - (i) on summary conviction, to a fine not exceeding €5,000 or, at the discretion of the court, to imprisonment for a term not exceeding 12 months or to both, or
    - (ii) on conviction on indictment, to a fine not exceeding €500,000 or, at the discretion of the court, to imprisonment for a term not exceeding 10 years or to both;
  - (b) Where the offence is a Category 2 offence—



- (i) on summary conviction, to a fine not exceeding €5,000 or, at the discretion of the court, to imprisonment for a term not exceeding 12 months or to both, or
  - (ii) on conviction on indictment, to a fine not exceeding €50,000 or, at the discretion of the court, to imprisonment for a term not exceeding 5 years or to both;
  - (c) Where the offence is a Category 3 offence, on summary conviction, to a fine not exceeding €5,000 or, at the discretion of the court, to imprisonment for a term not exceeding 6 months or to both; or
  - (d) Where the offence is a Category 4 offence, on summary conviction, to a fine not exceeding €5,000.
- (2) The only indictable offences under the Companies Acts are—
- (a) offences that are expressed to be category 1 offences;
  - (b) offences that are expressed to be category 2 offences;
  - (c) the offence under [Market Abuse Regulations];
  - (d) the offence under [Prospectus Regulations].
- (3) Following a conviction for a category 1 offence, or category 2 offence or category 3 offence or category 4 offence, the Court in which that conviction has been recorded or affirmed may order that the convicted person should remedy the breach of the Companies Acts in respect of which they were convicted.

### **Explanatory note**

*This head is new and is in substitution for much of what is currently contained in Section 240(1), (2), (7) and (8) of the Companies Act, 1990. For ease of comprehension it is proposed to classify almost all offences under the Companies Acts as being one or other of four categories. Category 4 offences will be prosecutable only summarily and—on conviction—will give rise to no more than a fine (of no greater amount than the District Court can impose for any other criminal offence). Category 3 offences will likewise be prosecutable only summarily but—on conviction—may give rise to a prison sentence (of up to 12 months duration) in addition to (or instead of) a similar fine. Both Category 2 and 1 offences will attract those same consequences, when prosecuted summarily, but will also be capable of being prosecuted on indictment – ie, in the Circuit Court before a Judge and Jury. Following such a trial on indictment, the judge will be able to penalise any person convicted of a Category 2 offence by a fine of up to €50,000 and/or imprisonment for up to 5 years. Such a person convicted in those circumstances of a Category 1 offence may be penalised by a fine of up to €500,000 and/or imprisonment for up to 10 years.*

---

## **Head 58 Daily Default Fines**

---

Where, in relation to a contravention of any provision of this Bill, it is provided that for continued contravention a person shall be liable to a daily default fine, he shall be guilty of contravening the provision on every day on which the contravention continues after conviction of the original contravention and for each such offence he shall be liable as follows—

- (i) on conviction on indictment, to a fine not exceeding €1,000 where the original contravention was of a Category 2 offence which was prosecuted on indictment,
- (ii) on summary conviction to a fine not exceeding €100 where the original contravention was of a Category 2 offence (whether prosecuted summarily or on indictment),
- (iii) on summary conviction, to a fine not exceeding €50 where the original contravention was of a Category 3 or a Category 4 offence.

### **Explanatory note**

*This head is a slightly amended re-enactment of Section 240(6) of the Companies Act, 1990. This head is a replacement for Section 240(6) of the Companies Act, 1990. Here again it is proposed that rather than specifying the level of "daily default fines" in numerous provisions throughout the Companies Acts, a single section should specify the levels generally, by reference to the four-fold general classification of offences (already provided for in Head 57).*

## **Head 59 Notice by Director of intention to prosecute**

(1) Where the Director of Corporate Enforcement has reasonable grounds for believing that a person has committed an offence under this Bill which is subject to summary prosecution, the Director of Corporate Enforcement may deliver to the person or, where the person believed to have committed the offence is a company, to an officer of the company, a notice in the prescribed form stating-

- (a) that the person or company is alleged to have committed that offence;
- (b) that the person to whom the notice is delivered may during a period of 21 days beginning on the date of the notice-
  - (i) remedy as far as practicable to the satisfaction of the Director of Corporate Enforcement any default that constitutes the offence, and
  - (ii) make to the Director of Corporate Enforcement a payment of a prescribed amount which shall be accompanied by the notice; and
- (c) that a prosecution of the person to whom the notice is delivered in respect of the alleged offence will not be instituted during the period specified in the notice or, if the default is remedied to the satisfaction of the Director of Corporate Enforcement and the payment specified in the notice is made during that period, at all.

(2) Where a notice is given under Subhead (1)-

- (a) a person to whom it applies may, during the period specified in the notice, make to the Director of Corporate Enforcement the payment specified in the notice, accompanied by the notice;

(b) the Director of Corporate Enforcement may receive the payment and issue a receipt for it and no payment so received shall in any circumstances be recoverable by the person who made it; and

(c) a prosecution in respect of the alleged offence shall not be instituted in the period specified in the notice and if the default is remedied to the satisfaction of the Director of Corporate Enforcement and the payment specified in the notice is made during that period, no prosecution in respect of the alleged offence shall be instituted at all.

(3) In a prosecution for an offence to which this head applies, the onus of showing that a payment pursuant to a notice under this head has been made shall lie on the defendant.

(4) All payments made to the Director in pursuance of this head shall be paid into or disposed of for the benefit of the Exchequer in such manner as the Minister for Finance may direct.

### **Explanatory note**

*This head is a slightly amended re-enactment of Section 109 of the Company Law Enforcement Act, 2001. All references to the "Director" has been replaced by a reference to the "Director of Corporate Enforcement".*

## **Head 60 Special provisions applying where default in delivery of documents to Registrar**

(1) Where the Registrar has reasonable grounds for believing that a person is in default in the delivery, filing or making to the Registrar of a return or similar document required under this Bill, the Registrar may deliver to the person or, where the person believed to be in default is a company, to an officer of the company, a notice in the prescribed form stating-

(a) that the person or company has failed to deliver, file or make a specified return or similar document to the Registrar under a specified head of this Bill;

(b) that the person to whom the notice is delivered may, during a period of 21 days beginning on the date of the notice-

- (i) remedy the default, and

## Part A13 - Investigations, Compliance and Enforcement

---

- (ii) make, to the Registrar, a payment of a prescribed amount which shall be accompanied by the notice; and
  - (c) that a prosecution of the person to whom the notice is delivered will not be instituted during the period specified in the notice, or if the default is remedied and the payment specified in the notice is made during that period, at all.
- (2) Where a notice is delivered under Subhead (1)—
  - (a) a person to whom it applies may, during the period specified in the notice, make to the Registrar the payment specified in the notice, accompanied by the notice;
  - (b) the Registrar may receive the payment and issue a receipt for it, and no payment so received shall in any circumstances be recoverable by the person who made it; and
  - (c) a prosecution in respect of the alleged default shall not be instituted in the period specified in the notice, and if the default is remedied and the payment specified in the notice is made during that period, no prosecution in respect of the alleged default shall be instituted at all.
- (3) In a prosecution for an offence to which this head applies, the onus of showing that a payment pursuant to a notice under this head has been made shall lie on the defendant or accused.
- (4) All payments made to the Registrar under this head shall be paid into or disposed of for the benefit of the Exchequer in such manner as the Minister for Finance may direct.

### **Explanatory note**

*This head is a slightly amended re-enactment of Section 66 of the Company Law Enforcement Act, 2001. All references to the "Registrar of companies" have been replaced with references to the "Registrar".*

## Chapter 7

### Additional General Offences

#### Head 61 Improper use of “limited” or “teoranta”

- (1) If any person or persons trade or carry on business under a name or title of which ‘limited’ or ‘teoranta’, or any contraction or imitation of either word, is the last word, that person or those persons shall be, unless duly incorporated with limited liability, guilty of a category three offence.
- (2) If any person or persons, having committed an offence under Subhead (1), fails within 14 days after the service of a notice on him or them to do so, to cease to so trade or carry on business, in breach of that subhead, the court may, on the application of the Registrar or the Director of Corporate Enforcement, make an order directing the person or persons to so cease within such time as may be specified in the order and the person or persons shall comply with the order.
- (3) An order under Subhead (2) may provide that all costs of and incidental to the application shall be borne by the person or persons against whom it is made.

##### **Explanatory note**

*This head is a slightly amended re-enactment of Section 381 of the Companies Act, 1963, as replaced by Section 98 of the Company Law Enforcement Act, 2001. All references to the “registrar of companies” have been replaced with references to the “Registrar” and references to the “Director” have been replaced by references to the “Director of Corporate Enforcement”.*

#### Head 62 Furnishing false information

- (1) A person who, in purported compliance with any provision of this Bill—
  - (a) answers a question, provides an explanation, makes a statement or produces, lodges or delivers any return, report, certificate, balance sheet or other document false in a material particular, knowing it to be false; or
  - (b) recklessly answers a question, provides an explanation, makes a statement or produces, lodges or delivers any such document, false in a material particular shall be guilty of a category two offence.

- (2) A person who knowingly or recklessly furnishes false information to an electronic filing agent that is subsequently transmitted in a return made, on the person’s behalf, to the Registrar shall be guilty of a category two offence.

##### **Explanatory note**

*This head is a slightly amended re-enactment of Section 242(1) of the Companies Act, 1990, as amended by Section 106 of the Company Law Enforcement Act, 2001 and Section 242(1A) as inserted by Section 71 of the Investment Funds, Companies and Miscellaneous Provisions Act, 2005. Section 242(2) is not being re-enacted.*

#### Head 63 Penalisation of destruction, mutilation or falsification of documents

- (1) A person, being an officer of any such body as is mentioned in Part A13, Head 14 (1) (a) to (e) [equivalent of Section 19(1)(a) to (e) of the Companies Act, 1990] who destroys, mutilates or falsifies, or is privy to the destruction, mutilation or falsification of any book or document affecting or relating to the property or affairs of the body, or makes or is privy to the making of a false entry therein, shall, unless he proves that he had no intention to defeat the law, be guilty of a category two offence.
- (2) Any such person who fraudulently either parts with, alters or makes an omission in any such book or document, or who is privy to fraudulent parting with, fraudulent altering or fraudulent making of an omission in any such book or document, shall be guilty of a category two offence.

##### **Explanatory note**

*This head is a slightly amended re-enactment of Section 243 of the Companies Act, 1990. All cross-references have been updated in accordance with the new structure of the Bill.*

# Chapter 8

## Evidential Matters

### Head 64 Proof of certificates as to incorporation

A certificate signed by any person purporting to hold the office of Registrar or assistant registrar or any office similar thereto in any country prescribed by the Minister for the purposes of this head, certifying that a company named in such certificate has been incorporated in that country, shall be prima facie evidence of such incorporation without proof of the signature of the person signing such certificate and without proof that the person signing such certificate holds that office.

#### **Explanatory notes**

*This head is a slightly amended re-enactment of Section 389 of the Companies Act, 1963. References to the “registrar of companies” have been replaced by references to the “Registrar”.*

### Head 65 Admissibility in evidence of certain matters

- (1) An answer given by a person to a question put to him in exercise of powers conferred by—
  - (a) Part A13, Head 7 [equivalent of Section 10 of the Companies Act, 1990];
  - (b) Part A13, Head 7 [equivalent of Section 10 of the Companies Act, 1990] as applied by Part A13, Head 17 [equivalent of Section 14 of the Companies Act, 1990] and Part B10, Head 11 [equivalent of Section 17 of the Companies Act, 1990]; or
  - (c) rules made in respect of the winding-up of companies (whether by the court or voluntarily) under Section 68 of the Courts of Justice Act, 1936, or under Part A11, Head 5 may be used in evidence against him in any proceedings whatsoever (save proceedings for an offence) (other than perjury in respect of such an answer).

- (2) A statement required by Part A11, Head 33 [equivalent of Section 224 of the Companies Act, 1963] may, in any proceedings whatsoever (save proceedings for an offence (other than perjury in respect of any matter contained in the statement)), be used in evidence against any individual making or concurring in making it.
- (3) A document purporting to be a copy of a report of an inspector appointed under the provisions of Chapter 4 of this Part shall be admissible in any civil proceedings as evidence—
  - (a) of the facts set out therein without further proof unless the contrary is shown; and
  - (b) of the opinion of the inspector in relation to any matter contained in the report.

#### **Explanatory note**

*This head is a slightly amended re-enactment of Sections 18 and 22 of the Companies Act, 1990, as amended by Section 28 of the Company Law Enforcement Act, 2001. All cross-references have been updated in accordance with the structure of the Bill. The scope of the head has been extended to have regard also to rules made by the Minister under Head 5 of Part A11.*

### Head 66 Provision of information to juries

- (1) In a trial on indictment of an offence under this Bill, the trial judge may order that copies of any or all of the following documents be given to the jury in any form that the judge considers appropriate—
  - (a) any document admitted in evidence at the trial;
  - (b) the transcript of the opening speeches of counsel;
  - (c) any charts, diagrams, graphics, schedules or summaries of evidence produced at the trial;
  - (d) the transcript of the whole or any part of the evidence given at the trial;
  - (e) the transcript of the trial judge’s charge to the jury;



- (f) any other document that in the opinion of the trial judge would be of assistance to the jury in its deliberations including, where appropriate, an affidavit by an accountant summarising, in a form which is likely to be comprehended by the jury, any transactions by the accused or other persons relevant to the offence.
- (2) If the prosecutor proposes to apply to the trial judge for an order that a document mentioned in Subhead (1)(f) shall be given to the jury, the prosecutor shall give a copy of the document to the accused in advance of the trial and, on the hearing of the application, the trial judge shall take into account any representations made by or on behalf of the accused in relation to it.
- (3) Where the trial judge has made an order that an affidavit mentioned in Subhead (1)(f) shall be given to the jury, he or she may in an appropriate case, with a view to further assisting the jury in its deliberations, require the accountant who prepared the affidavit to explain to the jury any relevant accounting procedures or principles.
- (d) in respect of functions that, under this Bill, are to be performed by the Registrar, a registrar, an assistant registrar or any other person authorised in that behalf by the Minister under Part A14, Head 15 (2) [equivalent of Section 52(2) of the Companies (Amendment) (No. 2) Act, 1999];
- 'item'* includes a document and any other thing;
- 'notice'* includes—
- (a) any request, notice, letter, demand, pleading or other document; and
- (b) any form of obligation that an individual may have under this Bill by reason of a demand or request made by an appropriate officer, whether communicated in writing, orally or by other means.
- (2) In any legal proceedings, (including proceedings relating to an offence) a certificate signed by an appropriate officer in the course of performing his or her functions is, in the absence of evidence to the contrary, proof of the following—

### **Explanatory note**

*This head is a re-enactment of Section 110 of the Company Law Enforcement Act, 2001.*

---

## **Head 67 Certificate evidence and other matters**

---

- (1) In this head
- 'appropriate officer'* means—
- (a) in respect of functions that, under this Bill, are to be performed by the Minister, the Minister or an officer of the Minister;
- (b) in respect of functions that, under this Bill, are to be performed by the Director, the Director or an officer of the Director;
- (c) in respect of functions that, under this Bill, are to be performed by the inspector or inspectors appointed pursuant to Part A13, Chapter 2 [equivalent of Part II of the Companies Act, 1990], an inspector or, where more than one inspector is appointed, any inspector; and
- (a) if it certifies that the officer has examined the relevant records and that it appears from them that during a stated period an item was not received from a stated person, proof that the person did not during that period furnish that item and that the item was not received;
- (b) if it certifies that the officer has examined the relevant records and that it appears from them that a stated notice was not issued to a stated person, proof that the person did not receive the notice;
- (c) if it certifies that the officer has examined the relevant records and that it appears from them that a stated notice was duly given to a stated person on a stated date, proof that the person received the notice on that date;
- (d) if it certifies that the officer has examined the relevant records and that it appears from them that a stated notice was posted to a stated person at a stated address on a stated date, proof that the notice was received by that person at that address on a date 3 days after the date on which the document was posted;

## Part A13 - Investigations, Compliance and Enforcement

---

- (e) if it certifies that the officer has examined the relevant records and that it appears from them that a document was filed or registered with or delivered at a stated place, on a stated date or at a stated time is, proof that the document was filed or registered with or delivered at that place, on that date or at that time.
- (3) A certificate referred to in Subhead (2) that purports to be signed by an appropriate officer is admissible in evidence in any legal proceedings without proof of the officer's signature or that the officer was the proper person to sign the certificate.
- (4) A document prepared pursuant to any provision of this Bill and purporting to be signed by any person is deemed, in the absence of evidence to the contrary, to have been signed by that person.
- (5) A document submitted under this Bill on behalf of a person is deemed to have been submitted by the person unless that person proves that it was submitted without that person's consent or knowledge.
- (6) A document that purports to be a copy of, or extract from, any document kept by or on behalf of the Director of Corporate Enforcement and that purports to be certified by—
- (a) the Director of Corporate Enforcement;
  - (b) an officer of the Director of Corporate Enforcement; or
  - (c) any person authorised by the Director of Corporate Enforcement,

to be a true copy of or extract from the document so kept is, without proof of the official position of the person purporting to so certify, admissible in evidence in all legal proceedings as of equal validity with the original document.

- (7) A document that purports to be a copy of, or extract from, any document kept by the Minister and that purports to be certified by—
- (a) the Minister;
  - (b) an officer of the Minister; or
  - (c) any person authorised by the Minister,

to be a true copy of, or extract from, the document so kept is, without proof of the official position of the person purporting to so certify, admissible in evidence in all legal proceedings as of equal validity with the original document.

- (8) A document that purports to be a copy of, or extract from, any document kept by an inspector and that is certified by—

- (a) the inspector; or
- (b) any person authorised by the inspector,

to be a true copy of, or extract from, the document so kept is, without proof of the official position of the person purporting to so certify, admissible in evidence in all legal proceedings as of equal validity with the original document.

- (9) A document that purports to have been created by a person is presumed, in the absence of evidence to the contrary, to have been created by that person, and any statement contained in the document is presumed to have been made by the person unless the document expressly attributes its making to some other person.

### **Explanatory note**

*This head is a reenactment of Section 110A Company Law Enforcement Act, 2001 as inserted by Section 52 of the Companies (Auditing and Accounting) Act, 2003. All cross-references have been updated in accordance with the structure of the Bill and all references to the "Director" has been replaced by a reference to the "Director of Corporate Enforcement".*

*Note that Section 110A was amended by Section 74 of the Investment Funds, Companies and Miscellaneous Provisions Act, 2005 to allow for the evidential treatment of certain records of the Irish Financial Services Regulatory Authority of Ireland. These provisions have not been re-enacted here in Pillar A and consideration will have to be given as to where they ought to be re-enacted.*

---

## **Head 68 Saving for privileged communications**

---

Where proceedings are instituted under this Bill against any person, nothing in Part A11, Head 153 [equivalent of Section 299 of the Companies Act, 1963] shall be taken to require any person who has acted as solicitor for the company to disclose any privileged communication made to him otherwise than as such.

### **Explanatory note**

*This head is an amended re-enactment of Section 387 of the Companies Act, 1963. All cross-references have been updated in accordance with the structure of the Bill. For this reason the reference to Section 170 of the Companies Act, 1963 has been excluded as Section 170 of the Companies Act, was repealed and replaced by the investigation provisions in Part II of the Companies Act, 1990.*

*Drafting note: now that this provision is limited to Section 299 only, perhaps it should be moved to that area of the new Bill, rather than being enacted within this Part.*

## **Head 69 Statutory declarations made outside the State**

- (1) A statutory declaration made in a place outside the State (in pursuance of or for the purposes of this Bill) shall be regarded as having been validly made (in pursuance of this Bill or for the purposes of it) if it is made in such a place before—
  - (a) a person entitled under the Solicitors Act, 1954 to practice as a solicitor in the State; or
  - (b) a person authorised, under the law of that place, to administer oaths in that place and Subhead (3), (4) or (5), as the case may be, is complied with.
- (2) Subhead (1) is—
  - (a) without prejudice to the circumstances set out in the Statutory Declarations Act, 1938 in which a statutory declaration may be made; and
  - (b) in addition to, and not in substitution for, the circumstances provided under the Diplomatic and Consular Officers (Provision of Services) Act, 1993 or any other enactment in which a statutory declaration made by a person in a place outside the State is regarded as a statutory declaration validly made (whether for purposes generally or any specific purpose).
- (3) In cases falling within Subhead (1) (b) and unless Subhead (4) or (5) applies, the signature of the person making the declaration (the “declarer”) and, to the extent that that law requires either or both of the following to be authenticated—
  - (a) the capacity in which the declarer has acted in making that declaration;
  - (b) the seal or stamp of the person who has administered the oath to the declarer, shall be authenticated in accordance with the law of the place referred to in Subhead (1) (b).
- (4) If the place referred to in Subhead (1) (b) is situate in a state that is a contracting party to the EC Convention, then (unless that Convention does not extend to that particular place) the provisions of that Convention with regard to authentication shall apply in relation to the statutory declaration concerned, including the procedures for verification of any matter in circumstances where serious doubts, with good reason, arise in respect of that matter.
- (5) If the place referred to in Subhead (1) (b) is situate in a state that is a contracting party to the Hague Convention but is not a contracting party to the EC Convention, then (unless the Hague Convention does not extend to that particular place) the provisions of the Hague Convention with regard to authentication shall apply in relation to the statutory declaration concerned, including the procedures for verification of any matter in circumstances where serious doubts, with good reason, arise in respect of that matter.
- (6) The Registrar may, before receiving any statutory declaration purporting to be made in pursuance of, or for the purposes of, this Bill, being a declaration—
  - (a) falling within Subhead (1) (b); and
  - (b) to which neither the provisions of the EC Convention nor the Hague Convention apply as regards the authentication of it, require such proof, as he or she considers appropriate, of any particular requirements of the law referred to in Subhead (3).
- (7) A statutory declaration made before the passing of this Bill—
  - (a) in a place outside the State;
  - (b) before—
    - (i) if the place is not a place in England and Wales, Northern Ireland or Scotland, a person authorised, under the law of that place, to administer oaths or a person entitled under the Solicitors Act, 1954 to practice as a solicitor in the State, or

- (ii) if the place is a place in England and Wales, Northern Ireland or Scotland—
  - (I) a person entitled under the law of England and Wales, Northern Ireland or Scotland, as the case may be, to practise as a solicitor in England and Wales, Northern Ireland or Scotland, as the case may be, or to administer oaths there, or
  - (II) a person entitled under the Solicitors Act, 1954 to practise as a solicitor in the State;
- (c) purporting to be made in pursuance of or for the purposes of the Companies Acts, shall, if the declaration was delivered to the Registrar before that passing, be valid and deemed always to have been valid notwithstanding anything in the Diplomatic and Consular Officers (Provision of Services) Act, 1993 or any other enactment and anything done on foot of that declaration's delivery to the Registrar, including any subsequent registration of that declaration by the Registrar, shall be valid and be deemed always to have been valid notwithstanding anything in that Act or any other enactment.
- (8) Nothing in Subhead (7) affects any proceedings commenced before the passing of this Bill.

- (9) In this head—

*"EC Convention"* means the Convention Abolishing the Legalisation of Documents in the Member States of the European Communities of 25 May 1987;

*"Hague Convention"* means the Convention Abolishing the Requirement of Legalisation for Foreign Public Documents done at the Hague on 5 October 1961;

*"statutory declaration"*, in addition to the meaning assigned to it by the Interpretation Act, 2005, means a declaration that conforms with the requirements of the Statutory Declarations Act, 1938, save for any requirements contained in Section 1 of that Act, or any other provision of it, expressly or impliedly limiting the class of persons who may take and receive a declaration or the places in which a declaration may be received or taken.

**Explanatory note**

*This head re-enacts Section 6 of the Investment Funds, Companies and Miscellaneous Provisions Act, 2006.*

---

# Part A14 - Powers and Duties of Minister and of Regulatory and Advisory Bodies

---

## Contents of Part A14

---

### Chapter 1 – Powers and Duties of the Minister for Enterprise, Trade and Employment

1. Annual report by Minister
2. Expenses
3. Authentication of documents issued by the Minister
4. Laying of orders before Houses of Oireachtas and power to revoke or amend orders and to prescribe forms.
5. Electronic communications
6. Power to alter Tables and Forms

### Chapter 2 – Registrar of Companies

7. Registration office
8. Fees
9. Production, inspection and evidence of documents kept by Registrar
10. Disposal of documents filed with Registrar
11. System of classification of information
12. Delivery to the registrar of documents in legible form
13. Delivery to the registrar of documents otherwise than in legible form
14. Power to reject documents sent for registration and amendments consequential on that section's insertion
15. Performance of duties of registrar of companies

### Chapter 3 – Irish Auditing and Accounting Supervisory Authority

16. Interpretation of this Chapter
17. Establishment of Supervisory Authority
18. Membership
19. Alterations in memorandum and articles of association
20. Objects
21. Functions
22. General powers
23. Board of directors
24. Chief executive officer
25. Work programme
26. Funding
27. Reserve fund and levy
28. Excess revenue
29. Staff
30. Disclosure of interests by directors
31. Disclosure of interests by staff
32. Superannuation
33. Account and audit
34. Accountability mechanisms
35. Intervention in disciplinary process of prescribed accountancy bodies
36. Investigation of possible breaches of standards of prescribed accountancy bodies.
37. Review of members of recognised accountancy bodies
38. Review of whether accounts comply with [the Companies Act/this Act]
39. Delegation of Supervisory Authority's functions and powers.
40. Hearings, privileges and procedural rules
41. Supervisory Authority's seal and instruments
42. Confidentiality of information
43. Appeals to and orders of High Court, including orders confirming decisions of Supervisory Authority
44. Liability of Supervisory Authority for acts, omissions, etc
45. Minister's power to make regulations
46. Prior approval by Oireachtas required for certain regulations
47. Laying of other regulations before Oireachtas



---

**Chapter 4 – Director of Corporate Enforcement**

- 48. Director of Corporate Enforcement
- 49. Terms and conditions of appointment of Director
- 50. Superannuation
- 51. Removal, disqualification or cessation of Director
- 52. Acting Director of Corporate Enforcement
- 53. Functions of Director
- 54. Delegation
- 55. Director or officer of Director indemnified against losses
- 56. Reporting by Director
- 57. Disclosure of information
- 58. Information relating to offences under [Companies Acts/this Act] may be disclosed to Director or officer of the Director
- 59. Transfer of functions

**Chapter 5 – Company Law Review Group**

- 60. Establishment of Company Law Review Group
- 61. Functions of Review Group
- 62. Membership of Review Group
- 63. Meetings and business of Review Group
- 64. Annual report and provision of information to the Minister

# Part A14 – Powers and Duties of Minister and of Regulatory and Advisory Bodies

## Chapter 1

Powers and Duties of the Minister for Enterprise, Trade and Employment

### Head 1 Annual report by the Minister

The Minister shall cause a general annual report of matters within this Bill to be prepared and laid before both Houses of the Oireachtas not later than 7 months after the end of the calendar year to which the report relates.

**Explanatory note**

*Re-statement of Section 392 of the Companies Act, 1963.*

### Head 2 Expenses

The expenses incurred by the Minister in the administration of this Bill shall, to such extent as may be sanctioned by the Minister for Finance, be paid out of moneys provided by the Oireachtas.

**Explanatory note**

*Re-statement of Section 393 of the Companies Act, 1963.*

### Head 3 Authentication of documents issued by the Minister

Any approval, sanction, direction or licence or revocation of licence which, under this Bill may be given or made by the Minister, may be under the hand of any person authorised in that behalf by the Minister.

**Explanatory note**

*Re-statement of Section 394 of the Companies Act, 1963.*

### Head 4 Laying of orders before Houses of Oireachtas and power to revoke or amend orders and to prescribe forms.

- (1) Every order made under this Bill shall be laid before each House of the Oireachtas as soon as may be after it is made and if a resolution annulling the order is passed by either House within the next 21 days on which that House has sat after the order is laid before it, the order shall be annulled accordingly but without prejudice to the validity of anything previously done thereunder.
- (2) The Minister may, by order, revoke or amend an order (other than an order made under [the power to commence the Bill]) made under this Bill.
- (3) The Minister may, by order, prescribe forms to be used in connection with any of the provisions of this Bill.

**Explanatory note**

*Re-statement of Section 396 of the Companies Act, 1963.*

### Head 5 Electronic Communications

- (1) The Minister may make such regulations as he thinks fit to give effect to the provisions of the Electronic Communications Act, 2000 as they apply to companies.
- (2) Where, under this Bill, records retained or produced by a company may be accessed by a class of persons, any reasonable form or retention or production may be used by the company and, where any regulations have been made by the Minister, provided such form complies with such regulations.
- (3) The Minister may prescribe regulations which limit or remove the obligation of a company to produce any written extracts from registers.

- (4) Subject to regulations prescribed under subhead 3, in the case of the production of extracts or copies of records or documents, such records or documents may be delivered by electronic means subject to the conditions of Section 12 of the Electronic Communications Act, 2000.
- (5) Where records are retained by a company on a generally accessible website, the company shall notify the Registrar of the relevant address of the website in the prescribed manner.

**Explanatory note**

*This head gives effect to the recommendations of the CLRG in its First Report [at 7.8.] regarding the use of electronic communications.*

---

### **Head 6      Power to alter Tables and Forms**

---

The Minister shall have power, by order, to alter or add to the requirements of this Bill as to the matters to be stated in a company's balance sheet, profit and loss account and group accounts and in particular, of those of the First and Second Schedules to Part A6 and any reference in this Bill to the foregoing matters shall be construed as including any alterations or additions made by orders for the time being in force under this subhead.

**Explanatory note**

*This head is based on Section 395(1) of the Companies Act, 1963.*

## Chapter 2

### The Registrar of Companies

#### Head 7 Registration office

- (1) For the purposes of the registration of companies under this Bill, the Minister shall maintain and administer an office or offices in the State at such places as the Minister thinks fit.
- (2) The Minister may appoint such registrars and assistant registrars as he thinks necessary for the registration of companies under this Bill, and may make regulations with respect to their duties and may remove any persons so appointed.
- (3) The Minister may direct a seal or seals to be prepared for the authentication of documents required for or connected with the registration of companies.

**Explanatory note**

*Re-statement of Section 368 of the Companies Act, 1963 as amended by Section 52(3) of the Companies (Amendment) (No.2) Act, 1999.*

#### Head 8 Fees

- (1) There shall be paid to the Registrar such fees as are from time to time specified in regulations prescribed by the Minister.
- (2) All fees paid to the Registrar in pursuance of this Bill shall be paid into or disposed of for the benefit of the Exchequer in such manner as the Minister for Finance may direct.

**Explanatory note**

*Re-statement of Section 369 of the Companies Act, 1963.*

*Subsections (1) and (2) of the 1963 Act have been discarded – and their references to the fees originally fixed by Schedules to the 1963 Act.*

#### Head 9 Inspection, production and evidence of documents kept by Registrar

- (1) Any person may—
  - (a) inspect the documents kept by the Registrar, on payment of such fee as may be fixed by the Minister;

- (b) require a certificate of the incorporation of any company, or a copy or extract of any other document or any part of any other document, to be certified by the Registrar, on payment for the certificate, certified copy or extract of such fees as the Minister may fix.

- (2) No process for compelling the production of any document kept by the Registrar shall issue from any court except with the leave of that court, and any such process if issued shall bear thereon a statement that it is issued with the leave of the court.

- (3) A copy of or extract from, any document kept and registered at the office for the registration of companies, certified to be a true copy under the hand of the Registrar, assistant registrar or other officer authorised by the Minister (whose official position it shall not be necessary to prove), shall, in all legal proceedings, be admissible in evidence as of equal validity with the original document.

- (4) A certificate in writing made by the Registrar as to-

- (a) the contents of a register kept by the Registrar;
- (b) the date on which a document was filed or registered with or delivered to the Registrar;
- (c) the date on which a document was received by the Registrar; or
- (d) the most recent date (if any) on which a requirement under the Companies Acts was complied with, by or in relation to a company, shall in all legal proceedings be admissible without further proof until the contrary is shown, as evidence of the facts stated in the certificate.

**Explanatory note**

*Restatement of Section 370 of the Companies Act, 1963, as amended by Section 62 of the Company Law Enforcement Act, 2001.*

#### Head 10 Disposal of documents filed with Registrar

The Registrar shall, after the expiration of 20 years from the dissolution of a company, send all the documents filed in connection with such company to the Public Records Office.

**Explanatory note**

*Restatement of Section 313 of the Companies Act, 1963.*

---

**Head 11 System of classification of information**

---

- (1) Where, under this Bill, any information relating to any person is required to be delivered to the Registrar and is so received by him, the Registrar may apply such system of classification as he considers appropriate to such information and may assign symbols of identification to persons or classes of persons to whom any such information relates.
- (2) The Minister may make regulations requiring that the symbol assigned under subhead(1) to any person or persons of any class shall be entered on all documents which, under any provision of this Bill, are required to contain the name of that person.
- (3) Regulations under subhead (2) may, in particular, specify particular persons whose duty it shall be to comply or ensure compliance with the regulations.
- (4) A person who makes default in complying with regulations under subhead (2) shall be guilty of a category three offence.

**Explanatory note**

*Restatement of Section 247 of the Companies Act, 1990.*

---

**Head 12 Delivery to the registrar of documents in legible form**

---

- (1) This head applies to the delivery to the Registrar, under any provision of this Bill of documents in legible form.
- (2) The document must—
  - (a) state in a prominent position the registered number of the company to which it relates;
  - (b) satisfy any requirements prescribed for the purposes of this head as to the form and content of the document; and

(c) conform to such requirements as may be prescribed for the purpose of enabling the Registrar to copy the document.

- (3) Regulations made for the purposes of this head may make different provision as to the form and content of the document with respect to different descriptions of document.
- (4) Every regulation made under this head shall be laid before each House of the Oireachtas as soon as may be after it is made and if a resolution annulling the regulation is passed by either such House within the next twenty-one days on which that House has sat after the regulation is laid before it, the regulation shall be annulled accordingly, but without prejudice to the validity of anything previously done thereunder.
- (5) In this head, “document” includes any periodic account, abstract, statement or return required to be delivered to the Registrar.

**Explanatory note**

*Restatement of Section 248 of the Companies Act, 1990.*

---

**Head 13 Delivery to the Registrar of documents otherwise than in legible form**

---

- (1) This head applies to the delivery to the Registrar under any provision of this Bill of documents otherwise than in legible form (whether by electronic means or otherwise).
- (2) Any requirement to deliver a document to the Registrar, or to deliver a document in the prescribed form, shall be satisfied by the communication to the Registrar of the requisite information in any non-legible form prescribed for the purposes of this head.
- (3) Where any document is required to be signed or sealed, it shall instead be authenticated in such manner as may be prescribed for the purposes of this head.
- (4) The document must—
  - (a) contain in a prominent position the registered number of the company to which it relates;
  - (b) satisfy any requirements prescribed for the purposes of this head; and



- (c) be furnished in such manner and conform to such requirements as may be prescribed for the purposes of enabling the Registrar to read and copy the document.
- (5) The Minister may, by regulations, make further provision with respect to the application of this head in relation to instantaneous forms of communication.
- (6) Regulations made for the purpose of this head may make different provision with respect to different descriptions of documents and different forms of communication.
- (7) Every regulation made under this head shall be laid before each House of the Oireachtas as soon as may be after it is made and if a resolution annulling the regulation is passed by either such House within the next twenty-one days on which that House has sat after the regulation is laid before it, the regulation shall be annulled accordingly, but without prejudice to the validity of anything previously done thereunder.
- (8) In this head, “document” includes any periodic account, abstract, statement or return required to be delivered to the Registrar.
- (c) any requirements imposed by or under any other enactment relating to the completion of a document and its delivery to the Registrar,
- the Registrar may serve on the person by whom the document was delivered (or, if there are two or more such persons, on any of them) a notice indicating the respect in which the document does not comply.
- (2) Where the Registrar serves such a notice, then, unless a replacement document—
- (a) is delivered to him within 14 days after the service of the notice; and
- (b) complies with the requirements referred to in subhead(1) or is not rejected by him for failure to comply with those requirements,
- the original document shall be deemed not to have been delivered to him.
- (3) For the purposes of any provision which—
- (a) imposes a penalty for failure to deliver a document, so far as it imposes a penalty for continued contravention; or
- (b) provides for the payment of a fee in respect of the registration of a document being a fee of a greater amount than the amount provided under the provision in respect of the registration of such a document that has been delivered to the Registrar within the period specified for its delivery to him,

**Explanatory note**

*Restatement of Section 249 of the Companies Act, 1990.*

---

**Head 14 Power to reject documents sent for registration and amendments consequential on that Head’s insertion**

---

- (1) If a document is delivered to the Registrar which does not comply with—
- (a) the requirements of Heads 12 and 13 [equivalents of Sections 248 and 249 of the Companies Act, 1990];
- (b) any other requirement of this Bill (and in particular the provisions of any head under which a requirement to deliver the document concerned to the Registrar arises); or
- (4) Nothing in this head shall have the effect of making valid any matter which a provision of this Bill or of any other enactment provides is to be void or of no effect in circumstances where a document in relation to it is not delivered to the Registrar within the period specified for the document’s delivery to him or her.

**Explanatory note**

*Restatement of Section 249A of the Companies Act, 1990.*

---

## Head 15 Performance of duties of Registrar

---

- (1) Wherever any act is by this Bill or by any statute directed to be done to or by the Registrar which, before the commencement of this heard, was done to or by—
- (a) an assistant Registrar appointed under subhead (2) of that head; or
  - (b) any other person employed in the Office of the Registrar to perform generally, duties under any enactment referred to in that subhead,

shall be valid and be deemed always to have been valid as if the Minister had directed under that such an act was to be done to or by such an assistant Registrar or other such person (including in cases where the existing registrar of joint stock companies (or his or her successor) was not absent).

- (2) On and from the commencement of this Bill, any act required or authorised by the Registration of Business Names Act, 1963 or the Limited Partnerships Act, 1907, to be done to or by the Registrar of companies, the registrar of joint stock companies or, as the case may be, a person referred to in the enactment concerned as "the registrar" may be done to or by a Registrar or assistant Registrar appointed under Head 7 (2) of this Part [equivalent of Section 368(2) of the Companies Act, 1963] or any other person authorised in that behalf by the Minister.

### **Explanatory note**

*Re-statement of Section 52 of the Companies (Amendment) (No. 2) Act, 1999.*

## Chapter 3

### Irish Auditing and Accounting Supervisory Authority

#### Head 16 Interpretation of this Chapter

(1) In this Part, except where the context otherwise requires—

“amount of turnover” and “balance sheet total” have the same meanings as in Part A6 Head 58 [equivalent of Section 8 of the Companies Act, 1986];

“board” means the board of directors of the Supervisory Authority;

“chief executive officer” means the Chief Executive Officer of the Supervisory Authority;

“designated body” means a body that, under Part A14, Head 18(2) [equivalent of Section 6(2) of Companies (Auditing and Accounting) Act, 2003], is a designated body at the relevant time;

“disciplinary committee” means any disciplinary committee or tribunal (however called) of a prescribed accountancy body;

“enactment” means a statute or an instrument made under a power conferred by a statute;

“functions” includes duties and responsibilities;

“member”, in relation to a prescribed accountancy body, means—

- (a) a person; or
- (b) a firm,

that is, or was at the relevant time, subject to the investigation and disciplinary procedures approved under Part A14, Head 21 [equivalent Section 9(2)(c) of the Companies (Auditing and Accounting) Act, 2003] for that body;

“Minister” means the Minister for Enterprise, Trade and Employment;

“parent undertaking” has the same meaning as in Part A1, Head 6 [the equivalent of the European Communities (Companies: Group Accounts) Regulations 1992 (S.I. No. 201 of 1992)];

“prescribed accountancy body” means—

- (a) a recognised accountancy body; or

- (b) any other body of accountants that is prescribed under Part A14, Head 45 (1)(a) [equivalent to Section 48(1)(a) of the Companies (Auditing and Accounting) Act 2003] for the purposes of this Act;

“recognised accountancy body” means a body of accountants recognised for the purposes of Part A6 Head 102 [the equivalent of Section 187 of the Companies Act, 1990];

“reserve fund” means the fund established under Part A14, Head 27 [equivalent of Section 15 of the Companies (Auditing and Accounting) Act, 2003];

“standards”, in relation to a prescribed accountancy body, means the rules, regulations and standards that body applies to its members and to which, by virtue of their membership, they are obliged to adhere;

“subsidiary undertaking” has the same meaning as in Part A1, Head 6 [European Communities (Companies: Group Accounts) Regulations 1992 (S.I. No. 201 of 1992)];

“superannuation benefits” means pensions, gratuities and other allowances payable on resignation, retirement or death;

“Supervisory Authority” means the company designated by the Minister under Part A14, Head 17 [section 5(1) of the Companies (Auditing and Accounting) Act, 2003];

“the 1992 Regulations” means the European Communities (Companies: Group Accounts) Regulations 1992 (S.I. No. 201 of 1992);

“the 1993 Regulations” means the European Communities (Accounts) Regulations 1993 (S.I. No. 396 of 1993).

- (2) In this Part, “material interest” is to be construed in accordance with Section 2(3) of the Ethics in Public Office Act, 1995.

#### **Explanatory note**

*Reenactment of Section 4 of the Companies (Auditing and Accounting) Act, 2003.*

#### Head 17 Establishment of Supervisory Authority

- (1) The Minister may designate a public company to perform the functions and exercise the powers of the Supervisory Authority under this Bill, if the following requirements are satisfied—

- (a) the company is formed and registered under the Companies Acts after the commencement of this head;
  - (b) the company is a company limited by guarantee;
  - (c) the name of the company is the Irish Auditing and Accounting Supervisory Authority or in the Irish language Údarás Maoirseachta Iniúchta agus Cuntasaíochta na hÉireann;
  - (d) the memorandum of association and articles of association of the company are consistent with this Bill.
- (2) Part A2, Head 9 (1) [equivalent of Section 6(1)(b) of the Companies Act, 1963] does not apply to a company where the Minister informs the Registrar in writing that the Minister proposes to designate the company under Subhead (1).

**Explanatory note**

*Reenactment of Section 5 of the Companies (Auditing and Accounting) Act, 2003.*

---

## Head 18 Membership

---

- (1) The Supervisory Authority is to consist of the following members—
- (a) each prescribed accountancy body that is a body corporate;
  - (b) if a prescribed accountancy body is not a body corporate, an individual or body corporate nominated by that prescribed accountancy body to be a member;
  - (c) each designated body that is a body corporate;
  - (d) if a designated body is not a body corporate, an individual or body corporate nominated by that designated body to be a member.
- (2) Unless a regulation under Part A14, Head 45 (1) (b) [equivalent of Section 48(1)(b) of the Companies (Auditing and Accounting) Act, 2003] provides otherwise, each of the following is a designated body for the purposes of this head and Part A14, Head 23 [equivalent of Section 11 of the Companies (Auditing and Accounting) Act, 2003]:
- (a) the Irish Business and Employers Confederation;

- (b) the Irish Congress of Trade Unions;
- (c) the Irish Association of Investment Managers;
- (d) the Irish Stock Exchange;
- (e) the Pensions Board;
- (f) the Irish Financial Services Regulatory Authority;
- (g) the Revenue Commissioners;
- (h) the Director of Corporate Enforcement;
- (i) the Law Society of Ireland;
- (j) any body prescribed under Part A14, Head 45 (1) (b) [equivalent of section 48(1)(b) of Companies (Auditing and Accounting) Act 2003] as a designated body.

**Explanatory note**

*Re-enactment of Section 6 of the Companies (Auditing and Accounting) Act, 2003.*

---

## Head 19 Alterations in memorandum and articles of association

---

Any alteration that is made in the memorandum of association or articles of association of the Supervisory Authority takes effect only if the alteration is made with the Minister's prior approval.

**Explanatory note**

*Re-enactment of Section 7 of the Companies (Auditing and Accounting) Act, 2003.*

---

## Head 20 Objects

---

- (1) The principal objects of the Supervisory Authority, which are to be included in its memorandum of association, are
- (a) to supervise how the prescribed accountancy bodies regulate and monitor their members;
  - (b) to promote adherence to high professional standards in the auditing and accountancy profession;

- (c) to monitor whether the accounts of certain classes of companies and other undertakings comply with the Companies Acts; and
  - (d) to act as a specialist source of advice to the Minister on auditing and accounting matters.
- (2) This head does not prevent or restrict the inclusion in the memorandum of association of all objects and powers, consistent with this Bill, that are reasonable, necessary or proper for, or incidental or ancillary to, the due attainment of the principal objects of the Supervisory Authority.

**Explanatory note**

*Reenactment of Section 8 of the Companies (Auditing and Accounting) Act, 2003.*

---

**Head 21 Functions**

---

- (1) The Supervisory Authority shall do all things necessary and reasonable to further its objects.
  - (2) Without limiting its responsibilities under subhead (1), the functions of the Supervisory Authority are as follows:
    - (a) to grant recognition to bodies of accountants for the purposes of Part A6 Head 102 [equivalent of Section 187 of the Companies Act, 1990];
    - (b) to attach under Part A6 Head 109 [equivalent of Section 192 of the Companies Act, 1990] terms and conditions to the recognition of bodies of accountants, including terms and conditions—
      - (i) requiring changes to and the approval by the Supervisory Authority of their regulatory plans, and
      - (ii) requiring their annual reports to the Supervisory Authority on their regulatory plans to be prepared in the manner and form directed by the Supervisory Authority;
    - (c) to require changes to and to approve—
      - (i) the constitution and bye laws of each prescribed accountancy body, including its investigation and disciplinary procedures and its standards, and
      - (ii) any amendments to the approved constitution or bye laws of each prescribed accountancy body, including amendments to its investigation and disciplinary procedures and to its standards;
- (d) to conduct under Part A14 Head 35 [equivalent of Section 23 of the Companies (Auditing and Accounting) Act, 2003] enquiries into whether a prescribed accountancy body has complied with the investigation and disciplinary procedures approved for that body under paragraph (c);
  - (e) to impose under Part A14 Head 35 [equivalent of Section 23 of the Companies (Auditing and Accounting) Act, 2003] sanctions on prescribed accountancy bodies;
  - (f) to undertake under Part A14, Head 36 [equivalent of Section 24 of the Companies (Auditing and Accounting) Act, 2003] investigations into possible breaches of the standards of a prescribed accountancy body;
  - (g) to supervise how each recognised accountancy body monitors its members and to undertake under Part A14, Head 37 [equivalent of Section 25 of the Companies (Auditing and Accounting) Act, 2003] reviews of those members;
  - (h) to co operate with the recognised accountancy bodies and other interested parties in developing standards relating to the independence of auditors and to monitor the effectiveness of those standards;
  - (i) to monitor the effectiveness of provisions of [the Companies Acts/this Act] relating to the independence of auditors;
  - (j) to supervise the investigation and disciplinary procedures of each prescribed accountancy body, including by requiring access to its records and by requiring explanations about the performance of its regulatory and monitoring duties;
  - (k) to co operate with the prescribed accountancy bodies and other interested parties in developing auditing and accounting standards and practice notes;



- (l) to review under Part A14, Head 38 [equivalent of Section 26 of the Companies (Auditing and Accounting) Act, 2003] whether the accounts of companies and undertakings referred to in that head comply with the Companies Acts and to make applications to the High Court to ensure compliance;
  - (m) to arrange for the regulation and supervision of individually authorised auditors by recognised accountancy bodies;
  - (n) to perform the functions conferred on it by transparency (regulated markets) law (within the meaning of Chapter 14 of Part B2 [equivalent of Part 3 of the Investment Funds, Companies and Miscellaneous Provisions Act, 2006]) in respect of the matters referred to in Article 24(4)(h) of the Transparency (Regulated Markets) Directive (within the meaning of that Chapter);
  - (o) to perform any other duties or discharge any other responsibilities imposed on it by this Bill.
- (a) a prescribed accountancy body to comply with a rule adopted or guideline issued under subhead (3) of this head;
  - (b) a recognised accountancy body to comply with a term or condition attached under Part A6, Head 109 [equivalent of Section 192 of the Companies Act, 1990 (before or after the amendment of that Act by Section 32 of the Companies (Auditing and Accounting) Act, 2003) to the recognition of that body, or if in the Authority's opinion, the body or other person concerned may fail or has failed to comply with the rule, guideline, term or condition or obligation or obligations, as the case may be; or
  - (c) a person on whom a relevant obligation or obligations is or are imposed to comply with that obligation or those obligations.
- (5) In subhead (4), the reference to a relevant obligation or obligations that is or are imposed on a person is a reference to an obligation or obligations that is or are imposed on the person by—

**Explanatory note**

*Reenactment of Section 9 of the Companies (Auditing and Accounting) Act, 2003.*

---

## Head 22 General powers

---

- (1) The Supervisory Authority has the power to do anything that appears to it to be requisite, advantageous or incidental to, or to facilitate, the performance of its functions and that is not inconsistent with any enactment.
  - (2) A power conferred by subhead (1) is not to be considered to be limited merely by implication from another provision, whether of this or any other Act, that confers a power on the Supervisory Authority.
  - (3) The Supervisory Authority may adopt rules and issue guidelines concerning any matter that relates to its functions or powers.
  - (4) The Supervisory Authority may apply to the High Court for an order under Part A14, Head 43(7) [equivalent of Section 29(7) of Companies (Auditing and Accounting) Act, 2003] compelling—
- (a) provisions of transparency (regulated markets) law (within the meaning of Chapter 14 of Part B2 [equivalent of Part 3 of the Investment Funds, Companies and Miscellaneous Provisions Act, 2006]) that implement Article 10 24 (4) (h) of the Transparency (Regulated Markets) Directive (within the meaning of that Chapter); or
  - (b) rules adopted by the Supervisory Authority under Subhead (3) concerning the matters that relate to its functions under Part A14, Head 21 (2) (n) [equivalent of Section 9(2)(ma) of the Companies (Auditing and Accounting) Act 2003].

**Explanatory note**

*Reenactment of Section of 10 of the Companies (Auditing and Accounting) Act, 2003.*

---

## Head 23 Board of directors

---

- (1) Subject to a regulation under Part A14, Head 54 (1) (d) [equivalent of Section 48(1)(d) of Companies (Auditing and Accounting) Act, 2003], the board of directors of the Supervisory Authority is to consist of—

- (a) not more than 14 directors (including the chairperson and the deputy chairperson) appointed by the Minister under subhead (2); and
  - (b) the person holding the office of chief executive officer who, by virtue of that office, is a director.
- (2) Subject to a regulation under Part A14, Head 45 (1) (d) [equivalent of Section 48(1)(d) of the Companies (Auditing and Accounting) Act, 2003], the directors appointed by the Minister shall include—
- (a) 3 persons nominated jointly by agreement among the prescribed accountancy bodies;
  - (b) 2 persons nominated by the Minister, one of whom—
    - (i) is neither an officer or employee of the Minister nor a member, officer or employee of a prescribed accountancy body, and
    - (ii) is appointed as chairperson by the Minister; and
  - (c) for each designated body, one person nominated by that body.
- (3) Subject to a regulation under Part A14, Head 45 (1) (d) [equivalent of Section 48(1)(d) of Companies (Auditing and Accounting) Act, 2003], the board shall not include at any one time more than 4 directors appointed under subhead (2) who are members of prescribed accountancy bodies, and of those 4 directors—
- (a) 3 may be nominees of the prescribed accountancy bodies; and
  - (b) one may be a nominee of a designated body.
- (4) If, at any time, more than one designated body proposes to nominate a member of a prescribed accountancy body for appointment to the board, the designated bodies proposing to do so shall decide among themselves which one of them is to nominate such a member.
- (5) The directors may select the deputy chairperson from among those directors who are not members of a prescribed accountancy body.
- (6) The term of office of a director appointed under subhead (2) shall be specified by the Minister when appointing the director and, subject to subhead (12), may not be less than 3 or more than 5 years.
  - (7) The members of the Supervisory Authority may not instruct the directors, at any meeting of those members or by any other means, regarding the carrying out of their duties as directors of the Supervisory Authority.
  - (8) Part A4, Head 17 [equivalent of Section 182 of the Companies Act, 1963] does not apply to the Supervisory Authority.
  - (9) A director may resign by letter addressed to the Minister and copied to the Supervisory Authority and the resignation takes effect on the date the Minister receives the letter.
  - (10) At any time, the Minister may remove for stated reasons, any director appointed under subhead (2), including a director nominated under subhead (2)(b).
  - (11) The Minister shall fill any vacancy that arises on the board as a consequence of the resignation or removal of a director by appointing a replacement nominated in the same manner as the replaced director.
  - (12) A director appointed under subhead (11) to replace another holds office for the remainder of the replaced director's term of office and the same terms and conditions apply to the new appointee.
  - (13) The directors may act despite one or more vacancies in their numbers.
- Explanatory note**  
*Reenactment of Section 11 of the Companies (Auditing and Accounting) Act, 2003.*
- 
- ## Head 24 Chief executive officer
- 
- (1) The directors appointed under Part A14, Head 23 (2) [equivalent of Section 11(2) of the Companies (Auditing and Accounting) Act, 2003] shall appoint a chief executive officer to—
- (a) carry on, manage and control generally the administration and business of the Supervisory Authority; and
  - (b) perform any other functions that may be determined by the board.

- (2) The chief executive officer holds office on and subject to the terms and conditions (including terms and conditions relating to remuneration and allowances) that the directors appointed under Part A14, Head 23 (2) [equivalent of Section 11(2) of the Companies (Auditing and Accounting) Act, 2003] may, with the approval of the Minister given with the consent of the Minister for Finance, determine.
- (3) The directors appointed under Part A14, Head 23 [equivalent of Section 11(2) Companies (Auditing and Accounting) Act, 2003] may remove the chief executive officer from office at any time.
- (3) In addition to capital and other expenditures, the annual programme of expenditure must include the amount of revenue to be received under Part A14, Head 32 (1) and (2) [equivalent of Section 14(1) and (2) Companies (Auditing and Accounting) Act, 2003] that is to be paid into the reserve fund.
- (4) With the consent of the Minister for Finance and after considering the views of the prescribed accountancy bodies, the Minister may approve, with or without amendment, the annual programme of expenditure.
- (5) If the annual programme of expenditure is amended under subhead (4), the Supervisory Authority—

### **Explanatory note**

*Re-enactment of Section 12 of the Companies (Auditing and Accounting) Act, 2003.*

---

## **Head 25 Work programme**

---

- (1) The Supervisory Authority shall prepare and submit to the Minister a work programme for—
  - (a) in the case of the initial work programme, the period specified by the Minister; and
  - (b) in the case of each subsequent work programme, the period of 3 years beginning on the day after the last day of the period covered by the preceding work programme.
- (2) In preparing the work programme, the Supervisory Authority shall have regard to the need to ensure the most beneficial, effective and efficient use of its resources and shall include the following information—
  - (a) the key strategies and activities the Supervisory Authority will pursue to further its objects and perform its functions;
  - (b) the outputs the Supervisory Authority aims to achieve and against which its performance will be assessed;
  - (c) the staff, resources and expenditures (including an annual programme of expenditure) necessary to pursue the strategies and activities mentioned in paragraph (a).
- (6) The Supervisory Authority may—
  - (a) if it considers it necessary to do so, undertake an interim review of a work programme; and
  - (b) submit to the Minister, within the period covered by that programme, an amended or supplementary work programme, including an amended or supplementary annual programme of expenditure.
- (7) Subheads (4) and (5) apply with any necessary changes if an amended or a supplementary annual programme of expenditure is submitted to the Minister.
- (8) Subject to subhead (9), the Minister shall ensure that a copy of each work programme (including each revised, amended or supplementary work programme) is laid before each House of the Oireachtas not later than 60 days after the date on which it was submitted to the Minister.
- (9) If a revised work programme (including a revised amended or supplementary work programme) is submitted to the Minister before the unrevised work programme is laid before the Houses of the Oireachtas as required by subhead (8), only the revised work programme need be laid before the Houses.

- (10) The Minister may not give directions to the Supervisory Authority concerning the discharge of a work programme, including an amended or a supplementary work programme.

**Explanatory note**

*Reenactment of Section 13 of the Companies (Auditing and Accounting) Act, 2003.*

---

## Head 26 Funding

---

- (1) For the purposes specified in subhead (3), in each financial year, a grant not exceeding 40 per cent of the programme of expenditure approved for that year under head 13, shall, subject to the conditions, if any, that the Minister thinks proper, be paid to the Supervisory Authority out of money provided by the Oireachtas.

- (2) For the purposes specified in subhead (3), the Supervisory Authority may impose, with the Minister's consent and subject to subheads (4) to (6), one or more levies in each financial year of the Supervisory Authority, on each prescribed accountancy body.

- (3) Money received by the Supervisory Authority under this head may be used only for the purposes of meeting expenses properly incurred by it in performing its functions and exercising its powers under—

(a) Part A14, Heads 36 and 38 [equivalent of Sections 24 and 26 of the Companies (Auditing and Accounting) Act, 2003], in the case of money set aside for, or paid into, the reserve fund in accordance with Part A14, Head 27 [equivalent of Section 15 of the Companies (Auditing and Accounting) Act, 2003]; or

(b) any provision of this Bill, other than Part A14, Heads 36 and 38 [equivalent of Sections 24 and 26 of the Companies (Auditing and Accounting) Act 2003], in the case of money not so set aside for, or paid into, that fund.

- (4) The total amount levied in any financial year of the Supervisory Authority on all prescribed accountancy bodies—

(a) may not exceed 60 per cent of the programme of expenditure approved for that year under Part A14, Head 25 [equivalent of Section 13 of the Companies (Auditing and Accounting) Act, 2003]; and

(b) requires the Minister's approval before consent is given to the imposition of any levy in that year.

- (5) The Supervisory Authority shall—

(a) establish criteria for apportioning a levy among the classes of prescribed accountancy bodies;

(b) submit the criteria to the Minister for approval before imposing the levy; and

(c) specify the date on which the levy is due to be paid by those bodies.

- (6) As a consequence of the apportionment of a levy under subhead (5), different classes of prescribed accountancy bodies may be required to pay different amounts of the levy.

- (7) Before consenting to the imposition of a levy under this head, the Minister shall consult with the prescribed accountancy bodies and may consult with any other persons who, in the Minister's opinion, are interested in the matter.

- (8) The Supervisory Authority may recover, as a simple contract debt in any court of competent jurisdiction, from a prescribed accountancy body from which the levy is due, a levy imposed under this head.

- (9) For the purpose of providing for activities specified in its work programme, the Supervisory Authority may, from time to time, borrow money subject to the consent of the Minister and the Minister for Finance and to such conditions as they may specify.

**Explanatory note**

*Reenactment of Section 14 of the Companies (Auditing and Accounting) Act, 2003.*

---

## Head 27 Reserve fund and levy

---

- (1) The Supervisory Authority shall—

(a) subject to any limit that the Minister may specify, establish and maintain a reserve fund to be used only for the purposes of performing its functions and exercising its powers under Part A14, Head 36 and 38 [equivalent of Sections 24 and 26 of the Companies (Auditing and Accounting) Act, 2003];

## Part A14 - Powers and Duties of Minister and of Regulatory and Advisory Bodies

- (b) set aside in each financial year for the reserve fund, a portion of the revenue received under Part A14, Head 26 (1) and (2) [equivalent of Section 14(1) and (2) of the Companies (Auditing and Accounting) Act, 2003];
- (c) pay into the reserve fund in each financial year—
- (i) the amount set aside under paragraph (b) for the fund or, if that amount is amended under Part A14, Head 25 (4) [equivalent of section 13(4) Companies (Auditing and Accounting) Act, 2003], the amended amount,
- (ii) the proceeds of any levy imposed under subhead (2) of this head, and
- (iii) any amounts paid to the Supervisory Authority under Head 35 or Part A14, Head 36 (7) [equivalent of Section 23(5)(c) or 24(7) of the Companies (Auditing and Accounting) Act, 2003] and any costs recovered under Part A14, Head 38 (5) or (8) [equivalent of Section 26(5) or (8) of the Companies (Auditing and Accounting) Act, 2003]; and
- (d) promptly inform the Minister if, in any financial year, the total amount in the reserve fund is likely to exceed any limit specified by the Minister for the purposes of this head.
- (2) With the Minister's consent and after consulting with any persons who are interested in the matter, the Supervisory Authority may, subject to subheads (3) to (7), impose in each financial year of the Supervisory Authority one or more levies on the following:
- (a) each public limited company (whether listed or unlisted);
- (b) each private company limited by shares that, in both the most recent financial year and the immediately preceding financial year of the company, meets the following criteria—
- (i) its balance sheet total for the year exceeds—
- (A) €25,000,000, or
- (B) if an amount is prescribed under Part A14, Head 45 (1) (e) [equivalent of Section 48(1)(e) of the Companies (Auditing and Accounting) Act, 2003] for the purpose of this provision, the prescribed amount,
- (ii) the amount of its turnover for the year exceeds—
- (A) €50,000,000, or
- (B) if an amount is prescribed under Part A14, Head 45 (1) (e) [equivalent of Section 48(1)(e) of the Companies (Auditing and Accounting) Act, 2003] for the purpose of this provision, the prescribed amount;
- (c) each private company limited by shares that is a parent undertaking, if the parent undertaking and all of its subsidiary undertakings together, in both the most recent financial year and the immediately preceding financial year of the parent undertaking, meet the criteria in paragraph (b);
- (d) each undertaking referred to in Regulation 6 of the 1993 Regulations that, in both the most recent financial year and the immediately preceding financial year of the undertaking, meets the criteria in paragraph (b);
- (e) each undertaking referred to in Regulation 6 of the 1993 Regulations that is a parent undertaking, if the parent undertaking and all of its subsidiary undertakings together, in both the most recent financial year and the immediately preceding financial year of the parent undertaking, meet the criteria in paragraph (b).
- (3) The total amount levied under subhead (2) in any financial year of the Supervisory Authority on all companies and undertakings—
- (a) may not exceed the total amount paid into the reserve fund for that year under subhead (1)(c)(i); and
- (b) requires the Minister's approval before consent is given to the imposition of any levy in that year.
- (4) In determining whether to approve the total amount referred to in subhead (3), the Minister may—



- (a) have regard to the Supervisory Authority's work programme; and
  - (b) give due consideration to the use to which the reserve fund was put in the previous financial year.
- (5) The Supervisory Authority shall—
- (a) establish criteria for apportioning a levy among the classes of companies and undertakings liable to pay the levy under subhead (2);
  - (b) submit the criteria to the Minister for approval before imposing the levy; and
  - (c) specify the date on which the levy is due to be paid by those companies and undertakings.
- (6) As a consequence of the apportionment of a levy under subhead (5), different classes of companies or undertakings may be required to pay different amounts of the levy.
- (7) Subhead (2) does not apply in respect of a company or an undertaking of a class exempted under Part A14, Head 45 (1) (j) [equivalent of Section 48(1)(j) of the Companies (Auditing and Accounting) Act, 2003] from this head.
- (8) Where both a parent undertaking and one or more of its subsidiary undertakings would otherwise be liable to pay a levy imposed under this head, only the parent undertaking is required to pay the levy.
- (9) Subhead (8) applies whether the parent undertaking is a public limited company, a private limited company or an undertaking referred to in Regulation 6 of the 1993 Regulations.
- (10) The Supervisory Authority may recover, as a simple contract debt in any court of competent jurisdiction, from a company or undertaking from which the levy is due, a levy imposed under this head.

**Explanatory note**

*Reenactment of Section 15 of the Companies (Auditing and Accounting) Act, 2003.*

---

## Head 28 Excess revenue

---

- (1) The Supervisory Authority shall apply any excess of its revenue over its expenditure in any year to meet its programme of expenditure approved for the subsequent year under Head 13, and the amounts payable under Part A14, Head 26 (1) and (2) [equivalent of Section 14(1) and (2) of the Companies (Auditing and Accounting) Act, 2003] for the subsequent year shall be appropriately reduced.
- (2) Money in or set aside for, the reserve fund is not considered to be revenue for the purposes of this head.

**Explanatory note**

*Reenactment of Section 16 of the Companies (Auditing and Accounting) Act, 2003.*

---

## Head 29 Staff

---

- (1) Subject to Subhead (2) and to the limits of the staffing numbers specified under section 13 in its work programme, the Supervisory Authority may, from time to time, appoint persons to be members of its staff.
- (2) The numbers, grades and terms or conditions of its staff shall be determined by the Supervisory Authority with the approval of the Minister given with the consent of the Minister for Finance.
- (3) The Supervisory Authority may from time to time engage the services of professional and other advisers.

**Explanatory note**

*Reenactment of section 17 of the Companies (Auditing and Accounting) Act, 2003.*

---

## Head 30 Disclosure of interests by directors

---

- (1) In this head—

“meeting” means a meeting of the board of the Supervisory Authority or of a committee of its directors;

“specified matter” means—

- (a) an arrangement to which the Supervisory Authority is a party or a proposed such arrangement; or

- (b) a contract or other agreement with the Supervisory Authority or a proposed such contract or other agreement.
- (2) Any director of the Supervisory Authority who is present at a meeting where a specified matter arises and who, otherwise than in his or her capacity as such a director, has a material interest in that matter shall—
  - (a) at the meeting, disclose to the Authority the fact of the interest and its nature;
  - (b) absent himself or herself from the meeting or the part of the meeting during which the matter is discussed;
  - (c) take no part in any deliberations of the directors relating to the matter, and;
  - (d) refrain from voting on any decision relating to the matter;
- (3) Where a director discloses a material interest under this head—
  - (a) the disclosure shall be recorded in the minutes of the meeting concerned; and
  - (b) for as long as the matter to which the disclosure relates is being dealt with by the meeting, the director shall not be counted in the quorum for the meeting.
- (4) Where at a meeting a question arises as to whether or not a course of conduct, if pursued by a director, would constitute a failure by him or her to comply with subhead (2) (c)—
  - (a) the chairperson of the meeting may, subject to subhead (5), determine the question;
  - (b) the chairperson's determination is final; and
  - (c) the particulars of the determination shall be recorded in the minutes of the meeting.
- (5) If the chairperson is the director in respect of whom the question arises, the other directors present at the meeting shall choose one of their number to be the chairperson of the meeting for the purposes of subhead (4).
- (6) A director of the Supervisory Authority who, otherwise than in his or her capacity as such a director, has a material interest in a specified matter, shall neither influence nor seek to influence any decision to be made by the Authority in relation to that matter.
- (7) On being satisfied that a director of the Supervisory Authority has contravened subhead (2) or (6), the Minister may—
  - (a) if he or she thinks fit, remove that director from office; or
  - (b) if the director concerned is the chief executive officer, recommend to the board that he or she be removed from that office.
- (8) A director removed from office under this head is disqualified for appointment under Part A14, Heads 23 or 24 [equivalent of Section 11 or 12 of the Companies (Auditing and Accounting) Act, 2003].
- (9) Part A5 Head 12 [Equivalent of Section 194 of the Companies Act, 1963] does not apply to a director of the Supervisory Authority.
- (10) Nothing in this head prejudices the operation of any rule of law restricting directors of a company from having any interest in contracts with the company.

**Explanatory note**

*Reenactment of Section 18 of the Companies (Auditing and Accounting) Act, 2003.*

---

**Head 31 Disclosure of interests by staff**

---

- (1) A member of the staff of the Supervisory Authority who, otherwise than in his or her capacity as such a member, has a material interest in a specified matter, as defined in Part A14, Head 30(1) [equivalent of Section 18(1) of Companies (Auditing and Accounting) Act, 2003], shall—
  - (a) disclose to the Authority the fact of the interest and its nature;
  - (b) take no part in the negotiation of the arrangement, contract or other agreement concerned or in any deliberation by the Authority or members of its staff relating to that matter;

- (c) refrain from making any recommendation relating to the matter; and
  - (d) neither influence nor seek to influence a decision to be made in relation to the matter.
- (2) Subhead (1) does not apply to contracts or proposed contracts of employment of members of the staff of the Supervisory Authority with the Authority.
  - (3) Where a person contravenes this head, the Supervisory Authority may make such alterations to the person's terms and conditions of employment as it considers appropriate or terminate the person's contract of employment.

**Explanatory note**

*Reenactment of Section 19 of the Companies (Auditing and Accounting) Act, 2003.*

---

## Head 32 Superannuation

---

- (1) The Supervisory Authority may, if it considers it appropriate to do so, prepare and submit to the Minister a scheme or schemes for granting superannuation benefits to or in respect of one or more of the following:
  - (a) the chief executive officer;
  - (b) any staff of the Authority.
- (2) Each superannuation scheme shall fix the time and conditions of retirement for all persons to or in respect of whom superannuation benefits are payable under the scheme, and different times and conditions may be fixed in respect of different classes of persons.
- (3) A superannuation scheme submitted to the Minister under this head shall, if approved by the Minister with the consent of the Minister for Finance, be carried out in accordance with its terms.
- (4) A superannuation scheme may be amended or revoked by a subsequent scheme prepared, submitted and approved under this head.
- (5) The Supervisory Authority may not grant, or enter any arrangement for the provision of, any superannuation benefit to or in respect of a person referred to in Subhead (1) except in accordance with a superannuation scheme approved under this head or approved by the Minister with the consent of the Minister for Finance.

- (6) If any dispute arises as to the claim of any person to, or the amount of, a superannuation benefit payable in pursuance of a superannuation scheme approved under this head, the dispute shall be submitted to the Minister who shall refer it to the Minister for Finance whose decision shall be final.
- (7) The Minister shall ensure that a superannuation scheme approved under this head is laid before each House of the Oireachtas as soon as practicable after it is approved.
- (8) Either House of the Oireachtas may, by a resolution passed within 21 sitting days after the day on which the superannuation scheme is laid before it, annul the scheme.
- (9) The annulment of a superannuation scheme under subhead (8) takes effect immediately on the passing of the resolution concerned, but does not affect the validity of anything done under the scheme before the passing of the resolution.

**Explanatory note**

*Re-enactment of Section 20 of the Companies (Auditing and Accounting) Act, 2003.*

---

## Head 33 Accounts and audit

---

- (1) The Supervisory Authority shall keep records of, and prepare all proper and usual accounts of—
  - (a) all income received by it, including the sources;
  - (b) all expenditure incurred by it and
  - (c) its assets and liabilities.
- (2) Not later than 3 months after the end of the financial year to which the accounts relate, the Supervisory Authority shall submit the accounts prepared under this head to the Comptroller and Auditor General for audit.
- (3) After the audit, the Comptroller and Auditor General shall present to the Minister the audited accounts together with the Comptroller and Auditor General's report.
- (4) The Minister shall ensure that, as soon as possible after the audited accounts and the report are presented to the Minister, copies of them are—

- (a) laid before each House of the Oireachtas; and
  - (b) supplied to the prescribed accountancy bodies.
- (5) The Supervisory Authority shall—
- (a) at the Minister's request, permit any person appointed by the Minister to examine its accounts in respect of any financial year or other period;
  - (b) facilitate the examination of the accounts by the appointed person; and
  - (c) pay the fee that may be set by the Minister for the examination.
- (c) systems, procedures and practices used by the Supervisory Authority for evaluating the effectiveness of its operations;
  - (d) any matter affecting the Supervisory Authority that is referred to in a special report under Part A14, Head 22 [equivalent of Section 11(2) of the Companies (Auditing and Accounting) Act, 2003] of the Comptroller and Auditor General (Amendment) Act, 1993 or in any other report of the Comptroller and Auditor General that is laid before Dáil Éireann, in so far as the other report relates to a matter specified in any of paragraphs (a) to (c).

**Explanatory note**

*Reenactment of Section 21 of the Companies (Auditing and Accounting) Act, 2003.*

---

**Head 34 Accountability mechanisms**

---

- (1) As soon as practicable but not later than 4 months after the end of each financial year, the Supervisory Authority shall make a written report to the Minister of its activities during that year.
  - (2) The annual report must be prepared in such manner and form as the Minister may direct.
  - (3) The Minister shall ensure that a copy of the annual report is laid before each House of the Oireachtas not later than 6 months after the end of the financial year to which the report relates.
  - (4) Whenever required to do so by the Committee of Dáil Éireann established under the Standing Orders of Dáil Éireann to examine and report to Dáil Éireann on the appropriation accounts and reports of the Comptroller and Auditor General, the chief executive officer and the chairperson of the board shall give evidence to that Committee on the following—
    - (a) the regularity and propriety of the transactions recorded or to be recorded in any account subject to audit by the Comptroller and Auditor General that the Supervisory Authority is required by law to prepare;
    - (b) the Supervisory Authority's economy and efficiency in using its resources;
- (5) Whenever requested by any other committee appointed by either House of the Oireachtas or appointed jointly by both Houses, the chief executive officer and the chairperson of the board shall account to the committee for the performance of the functions and the exercise of the powers of the Supervisory Authority.
  - (6) The Supervisory Authority shall have regard to any recommendations relating to its functions or powers that are made by a committee in response to an account given under subhead (5).
  - (7) In performing duties under subhead (4) or (5), neither the chief executive officer nor the chairperson of the board shall question or express an opinion on the merits of any policy of the Government or a Minister of the Government or on the merits of the objectives of such a policy.

**Explanatory note**

*Reenactment of Section 22 of the Companies (Auditing and Accounting) Act, 2003.*

---

**Head 35 Intervention in disciplinary process of prescribed accountancy bodies**

---

- (1) In this head, "approved investigation and disciplinary procedures" means—
  - (a) in relation to a prescribed accountancy body that is a recognised accountancy body, the investigation and disciplinary procedures approved under Head 21 (2) (c) of this Part [equivalent of Section 9(2)(c) of the Companies (Auditing and Accounting) Act, 2003]; and

- (b) in relation to any other prescribed accountancy body, the investigation and disciplinary procedures approved under Head 21 (2) (c) of this Part [equivalent of Section 9(2)(c) of the Companies (Auditing and Accounting) Act, 2003].
- (2) Following a complaint or on its own initiative, the Supervisory Authority may, for the purpose of determining whether a prescribed accountancy body has complied with the approved investigation and disciplinary procedures, enquire into—
- (a) a decision by that body not to undertake an investigation into a possible breach of its standards by a member;
- (b) the conduct of an investigation by that body into a possible breach of its standards by a member; or
- (c) any other decision of that body relating to a possible breach of its standards by a member, unless the matter is or has been the subject of an investigation under Head 36 (2) of this Part, [equivalent of Section 24(2) of the Companies (Auditing and Accounting) Act, 2003] relating to that member.
- (3) For the purposes of an enquiry under this head, the Supervisory Authority may—
- (a) inspect and make copies of all relevant documents in the possession or control of the prescribed accountancy body; and
- (b) require the prescribed accountancy body to explain why it reached a decision referred to in subhead (2) (a) or (c) or to explain how it conducted its investigation.
- (4) If at any time before completing an enquiry under this head into a matter relating to a member of a prescribed accountancy body, the Supervisory Authority forms the opinion that it is appropriate or in the public interest that the matter be investigated under Head 36 of this Part [equivalent of Section 24 of the Companies (Auditing and Accounting) Act, 2003], the Authority may apply to the Court for permission to investigate the matter under that head.
- (5) If not satisfied after completing the enquiry that the prescribed accountancy body complied with the approved investigation and disciplinary procedures, the Supervisory Authority may advise or admonish the prescribed accountancy body or may censure it by doing one or more of the following—
- (a) annulling all or part of a decision of that body relating to the matter that was the subject of the enquiry;
- (b) directing that body to conduct an investigation or a fresh investigation into the matter;
- (c) requiring that body to pay to the Supervisory Authority an amount not exceeding the greater of the following:
- (i) €125,000,
- (ii) the amount prescribed under Head 45 (1) (f) of this Part [equivalent of Section 48(1)(f) of the Companies (Auditing and Accounting) Act, 2003].
- (6) Where the Supervisory Authority applies under this head to the Court for permission to investigate, under Head 36 of this Part [equivalent of Section 24 of the Companies (Auditing and Accounting) Act, 2003] any matter relating to a member of a prescribed accountancy body or decides to direct a prescribed accountancy body to conduct an investigation or a fresh investigation under this head into any matter, the following rules apply—
- (a) in the case of an application to the Court for permission to investigate a matter, any decision of that body relating to the matter is suspended if and as soon as the body is notified by the Supervisory Authority that permission has been granted under Head 43 (3) of this Part [equivalent of Section 29(3) of the Companies (Auditing and Accounting) Act, 2003];
- (b) in the case of a direction to conduct an investigation, any decision of that body relating to the matter is suspended as soon as the body is notified by the Supervisory Authority of the direction;



- (c) in the case of a direction to conduct a fresh investigation, any decision of that body relating to the matter is suspended if and as soon as the body is notified by the Supervisory Authority that the direction has been confirmed under Head 43 (6) of this Part [equivalent of Section 29(6) of the Companies (Auditing and Accounting) Act, 2003].
- (7) The Supervisory Authority may publish each decision made under subhead (5) and the reasons for the decision after giving the prescribed accountancy body and the member concerned not less than 3 months notice in writing of its intention to do so.
- (8) The prescribed accountancy body or the member concerned may appeal to the Court against a decision made by the Supervisory Authority under subhead (5).
- (9) An appeal under subhead (8) must be brought before the expiry of the notice given under subhead (7) to the prescribed accountancy body and the member concerned.
- (10) If not satisfied that a prescribed accountancy body has, when undertaking an investigation or a fresh investigation into the matter under subhead (5) (b), complied with the approved investigation and disciplinary procedures, the Supervisory Authority may appeal to the Court against any decision of the prescribed accountancy body relating to the matter.
- (11) An appeal under subhead (10) must be brought within 3 months after the Supervisory Authority was notified by the prescribed accountancy body of its decision.
- (12) For the purposes of this head, any decision made or any investigation conducted by the disciplinary committee of a prescribed accountancy body is considered to have been made or conducted by the prescribed accountancy body.

**Explanatory note**

*Re-enactment of Section 23 of the Companies (Auditing and Accounting) Act, 2003.*

---

**Head 36 Investigation of possible breaches of standards of prescribed accountancy bodies**

---

- (1) In this head—
- “client” includes an individual, a body corporate, an unincorporated body of persons and a partnership;
- “refusal” includes failure and “refuses” includes fails;
- “relevant person”, in relation to an investigation of a member of a prescribed accountancy body, means—
- (a) a member of the prescribed accountancy body;
  - (b) a client or former client of such member;
  - (c) if the client or former client is a body corporate, a person who is or was an officer, employee or agent of the client or former client;
  - (d) the prescribed accountancy body or a person who is or was an officer, employee or agent of that body; or
  - (e) any person whom the Supervisory Authority reasonably believes has information or documents relating to the investigation other than information or documents the disclosure of which is prohibited or restricted by law.
- (2) If, in the Supervisory Authority's opinion, it is appropriate or in the public interest to undertake an investigation into a possible breach of a prescribed accountancy body's standards by a member, the Authority may do so—
- (a) following a complaint; or
  - (b) on its own initiative,

- but no investigation may be undertaken into a matter that is or has been the subject of an enquiry under Head 35 of this Part [equivalent Section 23 of Companies (Auditing and Accounting) Act, 2003] relating to that member except with the permission of the High Court granted on application under Head 35 (4) of this Part [equivalent of Section 23(4) of the Companies (Auditing and Accounting) Act, 2003].
- (3) For the purposes of an investigation under this head, the Supervisory Authority may require a relevant person to do one or more of the following—
- (a) produce to the Supervisory Authority all books or documents relating to the investigation that are in the relevant person's possession or control;
  - (b) attend before the Supervisory Authority;
  - (c) give the Supervisory Authority any other assistance in connection with the investigation that the relevant person is reasonably able to give.
- (4) For the purposes of an investigation under this head, the Supervisory Authority may—
- (a) examine on oath, either by word of mouth or on written interrogatories, a relevant person;
  - (b) administer oaths for the purposes of the examination; and
  - (c) record, in writing, the answers of a person so examined and require that person to sign them.
- (5) The Supervisory Authority may certify the refusal to the High Court if a relevant person refuses to do one or more of the following—
- (a) produce to the Supervisory Authority any book or document that it is the person's duty under this head to produce;
  - (b) attend before the Supervisory Authority when required to do so under this head;
  - (c) answer a question put to the person by the Supervisory Authority with respect to the matter under investigation.
- (6) On receiving a certificate of refusal concerning a relevant person, the Court may enquire into the case and after hearing any evidence that may be adduced, may do one or more of the following—
- (a) direct that the relevant person attend or re-attend before the Supervisory Authority or produce particular books or documents or answer particular questions put to him or her by the Supervisory Authority;
  - (b) direct that the relevant person need not produce particular books or documents or answer particular questions put to him or her by the Supervisory Authority;
  - (c) make any other ancillary or consequential order or give any other direction that the Court thinks fit.
- (7) If the Supervisory Authority finds that the member committed a breach of the prescribed accountancy body's standards—
- (a) the Supervisory Authority may impose on the member any sanction to which the member is liable under the approved constitution and bye laws of the prescribed accountancy body (including a monetary sanction); and
  - (b) in addition, the member is liable to pay the amount specified by the Supervisory Authority towards its costs in investigating and determining the case, excluding any costs of or incidental to an enquiry by the Court under subhead (6).
- (8) The member who is the subject of a decision made by the Supervisory Authority under subhead (7) may appeal to the High Court against the decision.
- (9) An appeal under subhead (8) must be brought within 3 months after the member concerned was notified by the Supervisory Authority of its decision.
- (10) The production of any books or documents under this head by a person who claims a lien on them does not prejudice the lien.
- (11) Any information produced or answer given by a member of a prescribed accountancy body in compliance with a requirement under this head may be used in evidence against the member in any proceedings whatsoever, save proceedings for an offence (other than perjury in respect of such an answer).

- (12) A finding or decision of the Supervisory Authority under this head is not a bar to any civil or criminal proceedings against the member who is the subject of the finding or decision.

**Explanatory note**

*Re-enactment of Section 24 of the Companies (Auditing and Accounting) Act, 2003.*

---

**Head 37 Review of members of recognised accountancy bodies**

---

- (1) The Supervisory Authority may, if in its opinion it is appropriate to do so, undertake a review of a member of a recognised accountancy body to determine whether that body has been or is regulating its members in the manner approved under Part A14, Head 21 (2) (b) [equivalent of Section 9(2)(b) of the Companies (Auditing and Accounting) Act, 2003] or approved under [equivalent of the Companies Act, 1990 before or after the amendment of that Act by Section 32 of Companies (Auditing and Accounting) Act, 2003].
- (2) For the purposes of a review under this head—
- (a) the Supervisory Authority may inspect and make copies of all relevant documents in the possession or control of the recognised accountancy body whose practices are under review;
  - (b) the member of the recognised accountancy body shall co operate with the Supervisory Authority as if the recognised accountancy body were undertaking the review; and
  - (c) if the member fails to co operate in accordance with paragraph (b) of this subhead, Part A14, Head 36 (3) to (7) [equivalent of Section 24(3) to (7) of the Companies (Auditing and Accounting) Act, 2003] applies, with any necessary modifications, in relation to the member as if the review were an investigation under Part A14, Head 36 [equivalent of Section 24 of the Companies (Auditing and Accounting) Act, 2003].

**Explanatory note**

*Re-enactment of Section 25 of the Companies (Auditing and Accounting) Act, 2003.*

---

**Head 38 Review of whether accounts comply with [Companies Acts/this Act]**

---

- (1) In this head—

“relevant undertaking” means—

- (a) a public limited company (whether unlisted or listed);
- (b) a subsidiary undertaking of a public limited company referred to in paragraph (a) (whether the subsidiary undertaking is a company or is an undertaking referred to in Regulation 6 of the 1993 Regulations);
- (c) a private company limited by shares that, in both the relevant financial year and the immediately preceding financial year of the company, meets the following criteria:
  - (i) its balance sheet total for the year exceeds,
    - (A) €25,000,000, or
    - (B) if an amount is prescribed under Part A14, Head 45 (1) (h) [equivalent of Section 48(1)(h) of the Companies (Auditing and Accounting) Act, 2003] for the purpose of this provision, the prescribed amount;
  - (ii) the amount of its turnover for the year exceeds,
    - (A) €50,000,000, or
    - (B) if an amount is prescribed under Part A14, Head 45 (1) (h) [equivalent of Section 48(1)(h) of the Companies (Auditing and Accounting) Act, 2003] for the purpose of this provision, the prescribed amount;

- (d) a private company limited by shares that is a parent undertaking, if the parent undertaking and all of its subsidiary undertakings together, in both the relevant financial year and the immediately preceding financial year of the parent undertaking, meet the criteria in paragraph (c);
- (e) each subsidiary undertaking of a parent undertaking that comes within paragraph (d);
- (f) an undertaking referred to in Regulation 6 of the 1993 Regulations that, in both the relevant financial year and the immediately preceding financial year of the undertaking, meets the criteria in paragraph (c);
- (g) an undertaking referred to in Regulation 6 of the 1993 Regulations that is a parent undertaking, if the parent undertaking and all of its subsidiary undertakings together, in both the relevant financial year and the immediately preceding financial year of the parent undertaking, meet the criteria in paragraph (c); or
- (h) each subsidiary undertaking of a parent undertaking that comes within paragraph (g).

but does not include a company or an undertaking of a class exempted under Part A14, Head 45 (1) (j) [equivalent of Section 48(1)(j) of the Companies (Auditing and Accounting) Act, 2003] from thishead.

- (2) A reference in this head to the directors of a relevant undertaking is to be construed in the case of an undertaking that does not have a board of directors as a reference to the corresponding persons appropriate to that undertaking.
- (3) Subject to subhead (12), the Supervisory Authority may give notice to the directors, of a relevant undertaking concerning its annual accounts where—
  - (a) a copy of the annual accounts has been sent out under Part A6 Head 48 [equivalent of Section 159 of the Companies Act, 1963] or laid before the undertaking at its annual general meeting or delivered to the Registrar, and
  - (b) it appears to the Supervisory Authority that there is, or may be, a question whether the annual accounts comply with this Bill.
- (4) The notice to the directors of the relevant undertaking must specify—
  - (a) the matters in respect of which it appears to the Supervisory Authority that the question of compliance with this Bill arises or may arise; and
  - (b) a period of not less than 30 days within which those directors are required to give the Supervisory Authority an explanation of the annual accounts or to prepare revised annual accounts that comply with this Bill.
- (5) If before the end of the specified period, or such longer period as the Supervisory Authority may allow, the directors of the relevant undertaking prepare revised annual accounts, the Supervisory Authority may, taking account of the circumstances of the case and the degree of co operation by the directors with the Supervisory Authority, require that undertaking to pay some or all of the costs the Supervisory Authority incurred under this head in relation to that undertaking.
- (6) If at the end of the specified period or such longer period as the Supervisory Authority may allow, the directors of the relevant undertaking have, in the Supervisory Authority's opinion, neither given a satisfactory explanation of the annual accounts nor revised them to comply with the Companies Acts, the Supervisory Authority may apply to the High Court for a declaration of non compliance and an order under subhead (8).
- (7) If an application is made to the Court under subhead (6), the Supervisory Authority shall give to the Registrar for registration—
  - (a) notice of the application; and
  - (b) a general statement of the matters at issue in the proceedings.
- (8) If satisfied after hearing the application that the relevant undertaking's annual accounts referred to in subhead (3) do not comply with the Companies Acts, the Court may make a declaration to that effect and may, by order, do one or more of the following—
  - (a) require the directors to revise the annual accounts so that they comply with those Acts,
  - (b) give directions respecting one or more of the following,

- (i) the auditing of the revised annual accounts,
  - (ii) the revision of any directors' report,
  - (iii) the steps to be taken by the directors to bring the court order to the notice of persons likely to rely on the annual accounts that were the subject of the declaration,
  - (iv) such other matters as the Court thinks fit;
- (c) require the directors of the relevant undertaking to pay,
- (i) the costs incurred by the Supervisory Authority under Subheads (3) and (4) in relation to that undertaking, and
  - (ii) any reasonable expenses incurred by the relevant undertaking in connection with or in consequence of the reparation of revised annual accounts.
- (9) For the purpose of Part A14, Head 20 (1) (c) [equivalent of Section 8(1)(c) of the Companies (Auditing and Accounting) Act, 2003], every director of the relevant undertaking at the time the annual accounts were approved is considered to have been a party to their approval unless the director shows that he or she took all reasonable steps to prevent their being approved.
- (10) In making an order under Part A14, Head 20 (1) (c) [equivalent of Section 8(1)(c) of the Companies (Auditing and Accounting) Act, 2003], the Court—
- (a) shall have regard to whether any or all of the directors who approved the annual accounts that were the subject of the declaration knew, or ought to have known, that they did not comply with this Bill, and
  - (b) may exempt one or more directors from the order or may order the payment of different amounts by different directors.
- (11) On the conclusion of the proceedings, the Supervisory Authority shall give to the Registrar of companies for registration, —
- (a) a copy of the court order; or
  - (b) notice that the application has failed or been withdrawn.
- (12) The Supervisory Authority shall consult with the Irish Financial Services Regulatory Authority before making any decisions under this head with respect to a company regulated by the latter Authority, including a decision to give notice under subhead(3).
- (13) This head applies equally to revised annual accounts, in which case references to revised annual accounts are to be construed as references to further revised annual accounts.
- (14) For the purpose of applying this head to a partnership that is referred to in Regulation 6 of the 1993 Regulations and that is a relevant undertaking, —
- (a) the partnership is to be treated as though it were a company formed and registered under this Bill, and
  - (b) the head applies with any modifications necessary for that purpose.
- (15) Where revised annual accounts are prepared under this head then, subject to a direction given under Part A14, Head 20 (1) (b) [equivalent of Section 8(1)(b) of the Companies (Auditing and Accounting) Act, 2003], any provision of this Bill respecting the preparation, auditing, circulation and disclosure of annual accounts, applies with the necessary changes to the revised annual accounts.

### **Explanatory note**

*Re-enactment of Section 26 of the Companies (Auditing and Accounting) Act, 2003.*

---

## **Head 39 Delegation of Supervisory Authority's functions and powers**

---

- (1) The Supervisory Authority may delegate some or all of its functions and powers under Part A14, Heads 35 to 38 [equivalent of Sections 23 to 26 of the Companies (Auditing and Accounting) Act, 2003] to a committee established for that purpose and constituted as follows—



- (a) in the case of functions and powers under Part A14, Heads 35 to 37 [equivalent of Sections 23 to 25 of the Companies (Auditing and Accounting) Act, 2003], a committee consisting of directors of the Authority and such professional and other advisers as the Authority considers necessary;
- (b) in the case of functions and powers under Part A14, Head 38 [equivalent of Section 26 of the Companies (Auditing and Accounting) Act, 2003], a committee constituted in the manner described in paragraph (a) of this head or consisting of only such professional and other advisers as the Authority considers necessary.
- (2) Where functions or powers under a provision referred to in subhead (1) are delegated to a committee, any references in that provision to the Supervisory Authority are to be construed as references to that committee.
- (3) Subject to the regulations made under Part A14, Head 40 [equivalent of Section 28(4) of the Companies (Auditing and Accounting) Act, 2003], a committee may regulate its own procedure.
- (4) The Supervisory Authority may, if it reasonably considers it appropriate to do so, perform any of its other functions or exercise any of its other powers through or by any of its officers or employees or any other person duly authorised by it in that behalf.
- (3) Nothing in Part A14, Heads 35, 36 or 37 [equivalent of Section 23, 24 or 25 of the Companies (Auditing and Accounting) Act, 2003] compels the disclosure by any person of any information that the person would be entitled to refuse to produce on the grounds of legal professional privilege or authorises the inspection or copying of any document containing such information that is in the person's possession.
- (4) The Supervisory Authority shall make regulations respecting the procedures to be followed in conducting enquiries under Part A14 Head 35 [equivalent of Section 23 of the Companies (Auditing and Accounting) Act, 2003], investigations under Part A14, Head 36 [equivalent of Section 24 of the Companies (Auditing and Accounting) Act, 2003] and reviews under Part A14, Head 37 [equivalent of Section 25 of the Companies (Auditing and Accounting) Act, 2003].

**Explanatory note**

*Re-enactment of Section 28 of the Companies (Auditing and Accounting) Act, 2003.*

---

## Head 41 Supervisory Authority's seal and instruments

---

- (1) Judicial notice shall be taken of the Supervisory Authority's seal.
- (2) Every document that appears to be an instrument made by the Supervisory Authority and to be sealed with its seal apparently authenticated in accordance with its articles of association, shall be received in evidence and be deemed to be such instrument without proof, unless the contrary is shown.

**Explanatory note**

*Re-enactment of Section 30 of the Companies (Auditing and Accounting) Act, 2003.*

**Explanatory note**

*Re-enactment of Section 27 of the Companies (Auditing and Accounting) Act, 2003.*

---

## Head 40 Hearings, privileges and procedural rules

---

- (1) The Supervisory Authority may for the purposes of exercising its functions under Part A14, Heads 35 or 36 [equivalent of Section 23 or 24 of the Companies (Auditing and Accounting) Act, 2003] conduct an oral hearing in accordance with regulations made under subhead (4) of this head.
- (2) A witness before the Supervisory Authority is entitled to the same immunities and privileges as a witness before the High Court.

---

## Head 42 Confidentiality of information

---

- (1) No person shall disclose, except in accordance with law, information that—
- (a) is obtained in performing the functions or exercising the powers of the Supervisory Authority; and
- (b) has not otherwise come to the notice of members of the public.

- (2) Without limiting subhead (1), the persons to whom that subhead applies include the following—
- (a) a member or director or former member or director of the Supervisory Authority;
  - (b) an employee or former employee of the Supervisory Authority;
  - (c) a professional or other adviser to the Supervisory Authority, including a former adviser.
- (3) Subhead (1) does not prohibit the Supervisory Authority from disclosing information referred to in that subhead—
- (a) if the disclosure is, in its opinion, necessary to enable it to state the grounds on which it made a decision under Part A14, Heads 35, 36 or 37 [equivalent of Sections 23, 24 or 26 of the Companies (Auditing and Accounting) Act, 2003]; or
  - (b) if the information is, in its opinion, connected with the functions of, and if the disclosure is made to, any of the following—
    - (i) the Minister;
    - (ii) the Minister for Finance;
    - (iii) the Garda Síochána;
    - (iv) the Director of Public Prosecutions;
    - (v) the Director of Corporate Enforcement;
    - (vi) the Revenue Commissioners;
    - (vii) the Comptroller and Auditor General;
    - (viii) the Central Bank and Financial Services Authority of Ireland;
    - (ix) the Irish Takeover Panel;
    - (x) the Irish Stock Exchange;
    - (xi) the Pensions Board;
    - (xii) a prescribed accountancy body;
    - (xiii) a member of a recognised accountancy body who is qualified for appointment as an auditor;
    - (xiv) an inspector appointed under any other enactment;
    - (xv) any person prescribed under Part A14, Head 45 (1) (i) [equivalent of Section 48(1)(i) of the Companies (Auditing and Accounting) Act, 2003] for the purposes of this head.
- (4) A person who contravenes subhead (1) is guilty of an offence.

**Explanatory note**

*Re-enactment of Section 31 of the Companies (Auditing and Accounting) Act, 2003.*

---

**Head 43 Appeals to and orders of High Court, including orders confirming decisions of Supervisory Authority**

---

- (1) In an appeal under Part A14 Head 35(8) or (1) or Part A14 Head 36(8) [equivalent of Section 23(8), (10) or 24(8) of the Companies (Auditing and Accounting) Act, 2003], the High Court may consider any evidence adduced or argument made, whether or not adduced or made to the Supervisory Authority or other body whose decision is under appeal.
- (2) On the hearing of the appeal, the Court may make any order or give any direction it thinks fit, including an order—
- (a) confirming the decision under appeal; or
  - (b) modifying or annulling that decision.
- (3) On application under Part A14, Head 35 [equivalent of Section 23(4) of the Companies (Auditing and Accounting) Act, 2003] for an order granting permission for an investigation under Part A14, Head 36 [equivalent of section 24 of the Companies (Auditing and Accounting) Act, 2003] into a possible breach of a prescribed accountancy body's rules by a member, the Court may—
- (a) grant or refuse to grant permission; and
  - (b) make any ancillary or consequential order it thinks fit, including, if permission is granted, an order setting aside any decision of the body relating to the member.

- (4) A decision of the Supervisory Authority annulling all or part of a decision of a prescribed accountancy body under Part A14 Head 35 (5) (a) [equivalent of Section 23(5)(a) of the Companies (Auditing and Accounting) Act, 2003], directing a fresh investigation under Part A14 Head 35 (5) (b) [equivalent of Section 23(5)(b) of the Companies (Auditing and Accounting) Act, 2003] or requiring the payment of an amount under Part A14 Head 35 (5) (c) or Part A14 36 (7) (a) [equivalent of Section 23(5)(c) or 24(7)(a) or (b) of the Companies (Auditing and Accounting) Act, 2003] does not take effect until that decision is confirmed by the Court either—

- (a) on appeal under Part A14 Head 35 (8) or Part A14 Head 36 (8) [equivalent of Section 23(8) or 24(8) of the Companies (Auditing and Accounting) Act, 2003]; or
- (b) on application by the Supervisory Authority under subhead (6) of this head.

- (5) Subhead (4)(b) applies also in relation to a decision of the Supervisory Authority requiring payment of costs under Part A14, Head 38 (5) [equivalent of Section 26(5) of the Companies (Auditing and Accounting) Act, 2003].
- (6) On application by motion on notice by the Supervisory Authority for an order confirming a decision referred to in subhead (4) or (5), the Court may make an order confirming the decision or may refuse to make such an order.
- (7) On application under Part A14, Head 22 (4) [equivalent of Section 10(4) Companies (Auditing and Accounting) Act, 2003] for an order compelling compliance with—

- (a) a rule adopted or guideline issued by the Supervisory Authority;
- (b) a term or condition of recognition; or
- (c) an obligation or obligations referred to in that subhead,

the Court may make any order or give any direction it thinks fit.

**Explanatory note**

*Re-enactment of Section 29 of the Companies (Auditing and Accounting) Act, 2003.*

---

## Head 44 Liability of Supervisory Authority for Acts, omissions, etc.

---

- (1) Neither the Supervisory Authority nor any person who is or was a member, director or other officer or employee of the Supervisory Authority is liable for damages for anything done, anything purported to be done or anything omitted to be done by the Supervisory Authority or that person in performing their functions or exercising their powers under this Bill, unless the act or omission is shown to have been in bad faith.
- (2) The matters in respect of which subhead (1) applies include, but are not limited to, the following—
- (a) any advice given or admonition or censure administered, to a prescribed accountancy body under Part A14, Head 35 (5) [equivalent of Section 23(5) of the Companies (Auditing and Accounting) Act, 2003];
  - (b) any statement published under Part A14, Head 35 (7) [equivalent of Section 23(7) of the Companies (Auditing and Accounting) Act, 2003] concerning a prescribed accountancy body;
  - (c) any investigation under Part A14, Head 36 [equivalent of Section 24 of the Companies (Auditing and Accounting) Act, 2003] of a possible breach of the standards of a prescribed accountancy body by a member of that body or any sanction or penalty imposed on such a member;
  - (d) any certificate of refusal issued by the Supervisory Authority in connection with an investigation under Part A14, Head 36 [equivalent of Section 24 of the Companies (Auditing and Accounting) Act, 2003];
  - (e) any review under Part A14, Head 37 [equivalent of Section 25 of the Companies (Auditing and Accounting) Act, 2003] of a member of a recognised accountancy body;

- (f) any notice given or statement made by the Supervisory Authority under Part A14, Head 38 [equivalent of Section 26 of the Companies (Auditing and Accounting) Act 2003] respecting whether an undertaking's accounts comply with the Companies Acts.
  - (3) Subject to any enactment or rule of law, the Supervisory Authority may indemnify any person who is or was a member, director, officer or employee of the Supervisory Authority in respect of anything done or omitted to be done by that person in good faith in carrying out duties under this Bill.
  - (4) The power to indemnify under subhead (3) includes, but is not limited to, the power to indemnify a person referred to in that subhead for any liability to pay damages or costs because of anything done or omitted to be done by that person in carrying out duties under this Bill where the liability—
    - (a) has been determined in proceedings before a court or tribunal in another state or arises by virtue of an agreement entered into in settlement of such proceedings; and
    - (b) would not have been determined had subheads (1) and (2) been applied in those proceedings or would not have been the subject of such an agreement but for that person's reliance in good faith on a legal opinion or advice that those subheads would not be applied by the court or tribunal in those proceedings.
- (b) prescribing designated bodies for the purposes of Part A14, Head 18 and 23 [equivalent of sections 6 and 11 Companies (Auditing and Accounting) Bill 2003];
  - (c) providing that, effective on a specified date, a body referred to in Part A14, Head 18 (2) [equivalent of Section 6(2) of the Companies (Auditing and Accounting) Act, 2003] ceases to be a designated body;
  - (d) varying, as a consequence of a regulation under paragraph (b) or (c), the numbers specified in Part A14, Head 23 (1) (2) and (3) [equivalent of Section 11(1) of the Companies (Auditing and Accounting) Act, 2003], as the Minister considers necessary or expedient;
  - (e) prescribing for the purposes of the criteria referred to in Part A14, Head 27 (2) (b) [equivalent of Section 15(2)(b) of the Companies (Auditing and Accounting) Act, 2003] amounts that are higher or lower than the euro amounts specified in that head and that apply instead of the euro amounts;
  - (f) prescribing the amount of a penalty under Part A14 Head 35 (5) [equivalent of Section 23(5)(c) of the Companies (Auditing and Accounting) Act, 2003];
  - (g) prescribing for the purpose of Part A14 Head 35 (7) [equivalent of Section 23(7) of the Companies (Auditing and Accounting) Act, 2003] the manner in which notice is to be given;
  - (h) prescribing, for the purposes of the criteria referred to in paragraph (c) of the definition of "relevant undertaking" in Part A14, Head 38 [equivalent of Section 26 of the Companies (Auditing and Accounting) Act, 2003], amounts that are higher or lower than the euro amounts specified in that definition and that apply instead of the euro amounts;
  - (i) prescribing for the purposes of Part A14 Head 42 (1) [equivalent of Section 31(3) of the Companies (Auditing and Accounting) Act, 2003] persons to whom the Supervisory Authority may disclose information;

**Explanatory note**

*Re-enactment of Section 33 of the Companies (Auditing and Accounting) Act, 2003.*

---

**Head 45 Minister's power to make regulations**

---

- (1) Subject to Part A14, Head 46 [equivalent of Section 49 of the Companies (Auditing and Accounting) Bill, 2003], the Minister may make regulations respecting any matter that is referred to in this Act as prescribed or that is necessary or advisable for giving effect to this Bill, including regulations—
  - (a) prescribing bodies of accountants for the purposes of this Act,

- (j) exempting from all or any of Part A14, Head 27 and 38 [equivalent of Sections 15 and 26 of the Companies (Auditing and Accounting) Act, 2003], Part A5, Head 7, Part A6, Head 13 and Part A6, Heads 34 to 35 [equivalents of sections 205A, 205B, 205C, 205D and 205E of the Companies Act, 1990]—
- (i) qualifying companies within the meaning of Section 110 of the Taxes Consolidation Act, 1997 (as inserted by Section 48 of the Finance Act 2003), and
- (ii) classes of other companies and other undertakings, if the extent to which or the manner in which they are or may be regulated under any enactment makes it, in the Minister's opinion, unnecessary or inappropriate to apply those provisions to them;
- (k) prescribing for the purposes of the definition of "accounting standards" in Part A6 Head 13 [equivalent of Section 205A of the Companies Act, 1990] one or more bodies that issue statements of accounting standards;
- (l) prescribing, for the purposes of the definitions of "large private company" and "relevant undertaking" in Part A4 Head 34 [equivalent of Section 205B of the Companies Act, 1990] or for the purposes of Part A5 Head 7(5) [equivalent of Section 205E(9) of the Companies Act, 1990], amounts that are higher or lower than the euro amounts specified in those definitions or in Part A5 Head 7(5) [equivalent of section 205E(9) of the Companies Act, 1990], as the case may be and that apply instead of the euro amounts;
- (m) prescribing for the purposes of Part A4 Head 34 [equivalent of Section 205B of the Companies Act, 1990]—
- (i) additional functions to be performed by audit committees,
- (ii) conditions to be met under subhead (8)(c) of that head, and
- (iii) supplementary rules governing the operation of those committees; and
- (n) prescribing the format in which information must be disclosed under Part A6 Head 35 [equivalent of Section 205D of the Companies Act, 1990] for audit work, audit related work and non audit work.
- (2) On a body ceasing,
- (a) to be a prescribed accountancy body because of the revocation of a regulation made under subhead (1)(a); or
- (b) to be a designated body because of a regulation under subhead (1)(c)
- any director who was nominated by that body under Section 11 immediately ceases to hold office.
- (3) Before preparing for the purposes of Part A14, Head 46 [equivalent of Section 49 of the Companies (Auditing and Accounting) Act 2003] a draft regulation under subhead (1)(a), (e), (h) or (l) of this head, the Minister shall consider any recommendations that the Supervisory Authority may make.
- (4) Subject to subhead (3), before making a regulation under this head the Minister may consult with any persons that the Minister considers should be consulted.
- (5) Regulations under this head may contain any transitional and other supplementary and incidental provisions that appear to the Minister to be appropriate.

**Explanatory note**

*Re-enactment of Section 48 of the Companies (Auditing and Accounting) Act, 2003.*

**Head 46 Prior approval by Oireachtas required for certain regulations**

A regulation may not be made under Part A14, Head 45 (1) (a), (e), (h), (j) or (l) [equivalent of Section 48(1)(a), (e), (h), (j) or (l) of the Companies (Auditing and Accounting) Act, 2003] unless—

- (a) a draft of the proposed regulation has been laid before the Houses of the Oireachtas; and
- (b) a resolution approving the draft has been passed by each House.



**Explanatory note**

*Re-enactment of Section 49 of the Companies (Auditing and Accounting) Act, 2003.*

---

**Head 47 Laying of other regulations before Oireachtas**

---

- (1) The Minister shall ensure that a regulation made under this Bill, other than one to which Part A14, Head 46 [equivalent of Section 49 of the Companies (Auditing and Accounting) Act, 2003] applies, is laid before each House of the Oireachtas as soon as practicable after it is made.
- (2) Either House of the Oireachtas may, by a resolution passed within 21 sitting days after the day on which the regulation is laid before it, annul the regulation.
- (3) The annulment of a regulation under subhead (2) takes effect immediately on the passing of the resolution concerned, but does not affect the validity of anything done under the regulation before the passing of the resolution.

**Explanatory note**

*Re-enactment of Section 50 of the Companies (Auditing and Accounting) Act, 2003.*

## Chapter 4

### Director of Corporate Enforcement

#### Head 48 Director of Corporate Enforcement

- (1) There shall be a Director of Corporate Enforcement.
- (2) The Minister shall, in writing, appoint a person to be the Director of Corporate Enforcement.
- (3) The Minister shall not appoint a person to be the Director unless the Civil Service Commissioners, after holding a competition under Section 15 of the Civil Service Commissioners Act, 1956, have, under Section 17 of that Act, selected the person for appointment and advised the Minister accordingly.
- (4) The Director shall be a corporation sole and, notwithstanding any casual vacancy in the office from time to time, shall have perpetual succession and shall be capable in his or her corporate name of holding and disposing of real or personal property and of suing and being sued.
- (5) The Director shall perform the functions conferred on him or her by or under this or any other Act and shall be assisted in the performance of those functions by the officers of the Director.
- (6) All judges, courts or other persons or bodies acting judicially shall take judicial notice of the signature of the Director on or affixed to any document and it shall be presumed, unless the contrary is proved, that it has been duly signed or affixed.

**Explanatory note**

*Re-enactment of Section 7 of the Company Law Enforcement Act, 2001.*

#### Head 49 Terms and conditions of appointment of Director

- (1) Subject to subhead (2), a person appointed to be the Director shall hold office for such period not exceeding 5 years beginning on the date of his or her appointment, and on such terms and conditions (which shall include a scheme of superannuation under Section 9), as the Minister, with the consent of the Minister for Finance, may determine, and the Minister may, if he or she thinks fit, with the consent of the Minister for Finance, continue the appointment (including an appointment previously continued under this subhead) for such further period, not exceeding 5 years at any one time, as the Minister thinks appropriate.
- (2) A person appointed as the Director is, by virtue of the appointment, a civil servant within the meaning of the Civil Service Regulation Act, 1956, as amended.
- (3) The Director shall not hold any other office or employment in respect of which emoluments are payable.

**Explanatory note**

*Re-enactment of Section 8 of the CLEA, 2001.*

#### Head 50 Superannuation

- (1) The Minister shall, with the consent of the Minister for Finance, if he or she considers it appropriate to do so, make and carry out a scheme or schemes for the granting of superannuation benefits to or in respect of one or more of the following, namely, the Director, the Acting Director and any officer of the Director.
- (2) Every such scheme shall fix the time and conditions of retirement for the person or persons to or in respect of whom superannuation benefits are payable under the scheme, and different times and conditions may be fixed in respect of different classes of such person.
- (3) Every such scheme may be amended or revoked by a subsequent scheme made under this head with the consent of the Minister for Finance.

- (4) No superannuation benefit shall be granted by the Minister to or in respect of the Director, the Acting Director or an officer of the Director otherwise than in accordance with a scheme under this head or, if the Minister with the consent of the Minister for Finance, sanctions the granting of such a benefit, in accordance with that sanction.
- (5) If any dispute arises as to the claim of any person to, or the amount of, any superannuation benefit payable in pursuance of a scheme or schemes under this head, such dispute shall be submitted to the Minister who shall refer it to the Minister for Finance, whose decision shall be final.
- (6) A scheme under this head shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the scheme is passed by either such House within the next 21 days on which that House has sat after the scheme is laid before it, the scheme shall be annulled accordingly, but without prejudice to the validity of anything previously done thereunder.
- (7) In this head, "superannuation benefits" means pensions, gratuities and other allowances payable on resignation, retirement or death.
- (c) regarded pursuant to Part XIII of the Second Schedule to the European Parliament Elections Act, 1997, as having been elected to the European Parliament, he or she shall thereon cease to be the Director.
- (4) A person who is for the time being—
- (a) entitled under the Standing Orders of either House of the Oireachtas to sit in that House;
- (b) a member of the European Parliament; or
- (c) a member of a local authority,
- is, while he or she is so entitled or is such a member, disqualified from being the Director.

**Explanatory note**

*Re-enactment of Section 10 of the Company Law Enforcement Act, 2001.*

---

## Head 52 Acting Director of Corporate Enforcement

---

- (1) Subject to subhead (2), the Minister may appoint a person to be the Acting Director of Corporate Enforcement to perform the functions of the Director during—
- (a) a period, or during all periods, when the Director is absent from duty or from the State or is, for any other reason, unable to perform the functions of the Director;
- (b) any suspension from office of the Director; or
- (c) a vacancy in the office of Director.

- (2) A person shall not be appointed to perform the functions of the Director for a continuous period of more than 6 months during a vacancy in the office of Director.
- (3) The Minister may, at any time, terminate an appointment under this head.

**Explanatory note**

*Re-statement of Section 11 of the Company Law Enforcement Act, 2001.*

---

## Head 51 Removal, disqualification or cessation of Director

---

- (1) The Minister may at any time, for stated reasons, remove the Director from office.
- (2) If the Director is removed from office under this head, the Minister shall cause to be laid before each House of the Oireachtas a statement of the reasons for the removal.
- (3) Where the Director is—
- (a) nominated as a member of Seanad Éireann;
- (b) nominated as a candidate for election to either House of the Oireachtas or to the European Parliament or becomes a member of a local authority; or

---

## Head 53 Functions of Director

---

- (1) The functions of the Director are—
- (a) to enforce the Companies Acts, including by the prosecution of offences by way of summary proceedings;
  - (b) to encourage compliance with the Companies Acts;
  - (c) to investigate instances of suspected offences under the Companies Acts;
  - (d) at his or her discretion, to refer cases to the Director of Public Prosecutions where the Director of Corporate Enforcement has reasonable grounds for believing that an indictable offence under the Companies Acts has been committed;
  - (e) to exercise, insofar as the Director feels it necessary or appropriate, a supervisory role over the activity of liquidators and receivers in the discharge of their functions under the Companies Acts;
  - (f) for the purpose of ensuring the effective application and enforcement of obligations, standards and procedures to which companies and their officers are subject, to perform such other functions in respect of any matters to which the Companies Acts relate as the Minister considers appropriate and may by order confer on the Director; and
  - (g) to perform such other functions for a purpose referred to in paragraph (f) as may be assigned to him or her by or under the Companies Acts or any other Act.
- (2) The Director may do all such acts or things as are necessary or expedient for the purpose of the performance of his or her functions under this or any other Act.
- (3) Notwithstanding that he or she has been so seconded but without prejudice to subheads (5) and (6), a member of the Garda Síochána seconded to the office of the Director shall continue to be under the general direction and control of the Commissioner of the Garda Síochána.

- (4) A member of the Garda Síochána so seconded shall continue to be vested with and may exercise or perform the powers or duties of a member of the Garda Síochána for purposes other than the purposes of this Bill, as well as for the purposes of this Bill.
- (5) The Director shall be independent in the performance of his or her functions.
- (6) The Director may perform such of his or her functions as he or she thinks fit through or by an officer of the Director and in the performance of those functions the officer shall be subject to the directions of the Director only.

### **Explanatory note**

*Re-enactment of Section 12 of the Company Law Enforcement Act, 2001.*

---

## Head 54 Delegation

---

- (1) Without prejudice to the generality of Part A14 Head 53 (6), the Director may, in writing, delegate to an officer of the Director any of the Director's powers under this or any other Act, except this power of delegation.
- (2) A power delegated under subhead (1) shall not be exercised by the delegate except in accordance with the instrument of delegation.
- (3) A delegate shall, on request by a person affected by the exercise of a power delegated to him or her, produce the instrument of delegation under this head, or a copy of the instrument, for inspection.
- (4) A delegation under this head is revocable at will and does not prevent the exercise by the Director of a power so delegated.

### **Explanatory note**

*Re-enactment of Section 13 of the Company Law Enforcement Act, 2001.*

---

## Head 55 Director or officer of Director indemnified against losses.

---

Neither the Director nor any officer of the Director shall be liable in damages in respect of any thing done or omitted to be done in good faith by him or her in the performance or purported performance of a function under the Companies Acts or any other Act.

**Explanatory note**

*Re-enactment of Section 15 of the Company Law Enforcement Act, 2001.*

---

**Head 56 Reporting by Director**

---

- (1) The Director shall, not later than 3 months after the end of each year, present a report to the Minister about the performance of the Director's functions and other activities of the Director in that year, and the Minister shall cause a copy of the report to be laid before each House of the Oireachtas within 2 months of receipt of the report.
- (2) A report under subhead (1) shall include information in such form and about such matters as the Minister may direct but nothing in that or this subhead shall be construed as requiring the Director to include in such a report information the inclusion of which therein would, in the opinion of the Director, be likely to prejudice the performance by him or her of any of his or her functions.
- (3) The Director shall furnish to the Minister such information about the performance of the Director's functions as the Minister may from time to time require (other than information the provision of which under this subhead would, in the opinion of the Director, be likely to prejudice the performance by him or her of any of his or her functions).
- (4) When so requested, the Director shall account to an appropriately established Committee of either House of the Oireachtas for the performance of his or her functions but in discharging his or her duties under this subhead the Director shall not be required to furnish any information or answer any questions the furnishing or answering of which would, in the opinion of the Director, be likely to prejudice the performance by him or her of any of his or her functions.

**Explanatory note**

*Re-enactment of Section 16 of the Company Law Enforcement Act, 2001.*

---

**Head 57 Disclosure of information**

---

- (1) Information obtained by virtue of the performance by the Director of any of his or her functions which has not otherwise come to the notice of the public, shall not be disclosed, except in accordance with law, by any person, including—
  - (a) the Director or a former Director;
  - (b) a professional or other adviser (including a former adviser) to the Director; and
  - (c) an officer or former officer of the Director.
- (2) Notwithstanding subhead (1), information referred to in that subhead which, in the opinion of the Director, may be required—
  - (a) for a purpose or reason specified in Part A13 Head 16(1) [equivalent of Subsection (1) of Section 21 of the Act of 1990];
  - (b) for the performance by a competent authority (within the meaning of that Part A13, Head 16) of a function or functions of the authority; or
  - (c) for the performance by the Director of a function or functions of the Director,may be disclosed by or under the authority of the Director to the extent that, in the opinion of the Director, is necessary for that purpose.
- (3) Notwithstanding subhead (1), information which, in the opinion of the Director or an officer of the Director, may relate to the commission of an offence which is not an offence under the Companies Acts may be disclosed to any member of An Garda Síochána.
- (4) A person who contravenes this head is guilty of an offence.

**Explanatory note**

*Re-enactment of Section 17 of the Company Law Enforcement Act, 2001.*



---

## **Head 58 Information relating to offences under Companies Acts may be disclosed to Director or officer of the Director**

---

### **Explanatory note**

*Re-enactment of Sections 14 (3) to (6) of the Company Law Enforcement Act, 2001.*

Notwithstanding any other law, information which, in the opinion of the Competition Authority or a member of An Garda Síochána or an officer of the Revenue Commissioners, may relate to the commission of an offence under the Companies Acts may be disclosed by that Authority, member or officer to the Director or an officer of the Director.

### **Explanatory note**

*Re-enactment of Section 18 of the Company Law Enforcement Act, 2001.*

---

## **Head 59 Transfer of functions**

---

- (1) A person authorised by the Minister under a relevantly amended provision shall be regarded as having been so authorised by the Director of Corporate Enforcement under that provision as relevantly amended.
- (2) Where, before its relevant amendment, legal proceedings were pending under a provision of this Bill to which the Minister is or was then the plaintiff or the prosecutor, the name of the Director of Corporate Enforcement shall be substituted in those proceedings for that of the Minister, or added in those proceedings as may be appropriate, and those proceedings shall not abate by reason of that substitution or addition.
- (3) To avoid doubt where, immediately before its relevant amendment, legal proceedings were pending under a provision of this Bill as then in force in which the Minister was a defendant, the Director of Corporate Enforcement shall not be substituted for the Minister in those proceedings notwithstanding the amendment of that provision.
- (4) In this head, “relevant amendment” means an amendment by any Act which comprises or includes the substitution for “Minister” of “Director of Corporate Enforcement” (including the substitution of an entire provision or part of a provision which has the effect of transferring a function from the Minister to the Director of Corporate Enforcement), and “relevantly amended” has a corresponding meaning.

## Chapter 5

### Company Law Review Group

#### Head 60 Establishment of Company Law Review Group

There shall be a body to be known as the Company Law Review Group.

**Explanatory note**

*Re-enactment of Section 67 of the Company Law Enforcement Act, 2001.*

*May be necessary, for transitional purposes, to provide for the continuation of the existing CLRG rather than to provide for the establishment of a new body.*

*“There is hereby established ...” has been replaced by “There shall be ...”.*

#### Head 61 Functions of Review Group

- (1) The Review Group shall monitor, review and advise the Minister on matters concerning—
  - (a) the implementation of the Companies Acts;
  - (b) the amendment of the Companies Acts;
  - (c) the consolidation of the Companies Acts;
  - (d) the introduction of new legislation relating to the operation of companies and commercial practices in Ireland;
  - (e) the Rules of the Superior Courts and case law judgments insofar as they relate to the Companies Acts;
  - (f) the approach to issues arising from the State’s membership of the European Union, insofar as they affect the operation of the Companies Acts;
  - (g) international developments in company law, insofar as they may provide lessons for improved State practice; and
  - (h) other related matters or issues, including issues submitted by the Minister to the Review Group for consideration.

- (2) In advising the Minister the Review Group shall seek to promote enterprise, facilitate commerce, simplify the operation of [the Companies Acts], enhance corporate governance and encourage commercial probity.

**Explanatory note**

*Re-enactment of Section 68 of the Company Law Enforcement Act, 2001.*

#### Head 62 Membership of Review Group

- (1) The Review Group shall consist of such and so many persons as the Minister from time to time appoints to be members of the Review Group.
- (2) The Minister shall from time to time appoint a member of the Review Group to be its chairperson.
- (3) Members of the Review Group shall be paid such remuneration and allowances for expenses as the Minister, with the consent of the Minister for Finance, may from time to time determine.
- (4) A member of the Review Group may at any time resign his or her membership of the Review Group by letter addressed to the Minister.
- (5) The Minister may at any time, for stated reasons, terminate a person’s membership of the Review Group.

**Explanatory note**

*Re-enactment of Section 69 of the Company Law Enforcement Act, 2001.*

#### Head 63 Meetings and business of Review Group

- (1) The Minister shall, at least once in every 2 years, after consultation with the Review Group, determine the programme of work to be undertaken by the Review Group over the ensuing specified period.
- (2) Notwithstanding subhead (1), the Minister may, from time to time, amend the Review Group’s work programme, including the period to which it relates.

- (3) The Review Group shall hold such and so many meetings as may be necessary for the performance of its functions and the achievement of its work programme and may make such arrangements for the conduct of its meetings and business (including by the establishment of sub-committees and the fixing of a quorum for a meeting) as it considers appropriate.
- (4) In the absence of the chairperson from a meeting of the Review Group, the members present shall elect one of their number to be chairperson for that meeting.
- (5) A member of the Review Group, other than the chairperson, who is unable to attend a meeting of the Review Group, may nominate a deputy to attend in his or her place.

**Explanatory note**

*Re-enactment of Section 70 of the Company Law Enforcement Act, 2001.*

---

## **Head 64 Annual Report and provision of information to Minister**

---

- (1) No later than 3 months after the end of each calendar year, the Review Group shall make a report to the Minister on its activities during that year and the Minister shall cause copies of the report to be laid before each House of the Oireachtas within a period of 2 months from the receipt of the report.
- (2) A report under subhead (1) shall include information in such form and regarding such matters as the Minister may direct.
- (3) The Review Group shall, if so requested by the Minister, provide a report to the Minister on any matter—
  - (a) concerning the functions or activities of the Review Group; or
  - (b) referred by the Minister to the Review Group for its advice.

**Explanatory note**

*Re-enactment of Section 71 of the Company Law Enforcement Act, 2001.*