



DÁIL ÉIREANN

BILLE NA gCUIDEACHTAÍ (FORÁLACHA ILGHNÉITHEACHA) 2009 COMPANIES (MISCELLANEOUS PROVISIONS) BILL 2009

LEASUITHE COISTE COMMITTEE AMENDMENTS

DÁIL ÉIREANN

BILLE NA gCUIDEACHTAÍ (FORÁLACHA ILGHNÉITHEACHA) 2009 —ROGHCHOISTE

COMPANIES (MISCELLANEOUS PROVISIONS) BILL 2009 —SELECT COMMITTEE

Leasuithe Amendments

SECTION 1

1. In page 4, lines 8 to 13, to delete subsection (3) and substitute the following:

“(3) To the extent that the use of US generally accepted accounting principles does not contravene any provision of the Companies Acts or of any regulations made thereunder—

- (a) a true and fair view of the state of affairs and profit or loss of a relevant parent undertaking may be given by the use by that undertaking of those principles in the preparation of its Companies Act individual accounts, and
- (b) a true and fair view of the state of affairs and profit or loss of a relevant parent undertaking and its subsidiary undertakings as a whole may be given by the use by that relevant parent undertaking of those principles in the preparation of its Companies Act group accounts.”.

—An Tánaiste agus an tAire Fiontar, Trádála agus Fostaíochta.

SECTION 2

2. In page 4, lines 18 to 24, to delete subsection (2) and substitute the following:

“(2) The Minister may make regulations providing for specified categories of parent undertakings which do not have securities admitted to trading on a regulated market and providing that—

- (a) a true and fair view of the state of affairs and profit or loss of a parent undertaking in such a category may be given by the preparation by it of its Companies Act individual accounts for a specified number, not to exceed 4, of its first financial years in accordance with specified accounting standards, and
- (b) a true and fair view of the state of affairs and profit or loss of a parent undertaking in such a category and its subsidiary undertakings as a whole may be given by the preparation by that parent undertaking of its Companies Act group accounts for a specified number, not to exceed 4, of its first financial years in accordance with specified accounting standards.”.

—An Tánaiste agus an tAire Fiontar, Trádála agus Fostaíochta.

SECTION 3

3. In page 6, line 30, to delete “and”.

—An Tánaiste agus an tAire Fiontar, Trádála agus Fostaíochta.

[SECTION 3]

4. In page 6, paragraph (h), line 33, to delete ““subsidiary”.” and substitute the following:

““subsidiary”,

- (i) in section 256(8), by inserting “, other than a company to which section 256F applies,” after “this Part applies”, and

- (j) by inserting the following after section 256E:

“Continuation of foreign investment companies.	256F.—(1) In this section— ‘migrating company’ means a body corporate which is established and registered under the laws of a relevant jurisdiction and which is a collective investment undertaking;
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‘registration documents’, in relation to a migrating company, means the following documents and, when the original registration documents are not written in the Irish language or the English language, means a translation into the Irish language or the English language certified as being a correct translation thereof by a person who is competent to so certify:

- (a) a copy, certified and authenticated in the prescribed manner, of the certificate of registration or equivalent certificate or document issued with respect to the migrating company under the laws of the relevant jurisdiction;
- (b) a copy, certified and authenticated in the prescribed manner, of the memorandum and articles of association of the migrating company or equivalent constitutive document of the migrating company;
- (c) a list setting out particulars in relation to the directors and secretary of the migrating company in accordance with the provisions of section 195 of the Principal Act;
- (d) a statutory declaration of a director of the migrating company made not more than 28 days prior to the date on which the application is made to the registrar to the effect that—
 - (i) the migrating company is, as of the date of the declaration, established and registered in the relevant jurisdiction, no petition or other similar proceeding to wind up or liquidate the migrating company has been notified to it and remains outstanding in any place, and no order has been notified to the migrating company or resolution adopted to wind up or liquidate the migrating company in any place,

[SECTION 3]

- (ii) the appointment of a receiver, liquidator, examiner or other similar person has not been notified to the migrating company and, at the date of the declaration, no such person is acting in that capacity in any place with respect to the migrating company or its property or any part thereof,
 - (iii) the migrating company is not, at the date of the declaration, operating or carrying on business under any scheme, order, compromise or other similar arrangement entered into or made by the migrating company with creditors in any place,
 - (iv) at the date of the declaration the migrating company has served notice of the proposed registration on the creditors of the migrating company,
 - (v) any consent or approval to the proposed registration in the State required by any contract entered into or undertaking given by the migrating company has been obtained or waived, as the case may be, and
 - (vi) the registration is permitted by and has been approved in accordance with the memorandum and articles of association or equivalent constitutive document of the migrating company;
- (e) a declaration of solvency prepared in accordance with section 256H;
- (f) a schedule of the charges or security interests created or granted by the migrating company that would, if such charges or security interests had been created or granted by a company incorporated under the Companies Acts, have been registrable under Part IV of the Principal Act and such particulars of those security interests and charges as are specified in section 103 of the Principal Act;
- (g) notification of the proposed name of the migrating company if different from its existing name; and
- (h) a copy of the memorandum and articles of association of the migrating company which the migrating company has resolved to adopt, which shall be in the Irish language or the English language, which shall take effect on registration under this section and which the migrating company undertakes not to amend before registration without the prior authorisation of the registrar;

[SECTION 3]

‘relevant jurisdiction’ means the prescribed place outside the State where the migrating company is established and registered at the time of its application under this section.

(2) A migrating company may apply to the registrar to be registered as a company in the State by way of continuation.

(3) Where an application is made under subsection (2), the registrar shall not register the migrating company as a company in the State unless he or she is satisfied that all of the requirements of the Companies Acts in respect of the registration and of matters precedent and incidental thereto have been complied with and, in particular, but without prejudice to the generality of the foregoing, he or she is satisfied that—

- (a) the migrating company has delivered to the registrar an application for the purpose, in the prescribed form and signed by a director of the migrating company, together with the registration documents,
- (b) the name or, if relevant, the proposed new name of the migrating company has not been determined to be undesirable pursuant to section 21 of the Principal Act,
- (c) the migrating company has paid to the registrar such fee as may be specified from time to time pursuant to section 369 of the Principal Act,
- (d) the migrating company has filed with the registrar notice of the address of its proposed registered office in the State,
- (e) the migrating company has applied to the Central Bank to be authorised to carry on business as a company under section 256(1) and the Central Bank has notified the migrating company and the registrar that it proposes to authorise the migrating company to so carry on business.

(4) An application under this section shall be accompanied by a statutory declaration in the prescribed form made by a solicitor engaged for this purpose by the migrating company, or by a director of the migrating company, and stating that the requirements mentioned in subsection (3) have been complied with. The registrar may accept such a declaration as sufficient evidence of compliance.

(5) The registrar shall, as soon as is practicable after receipt of the application for registration, publish notice of it in the Companies Registration Office Gazette.

(6) Where the registrar receives a notification under subsection (3)(e), the registrar—

[SECTION 3]

- (a) may issue a certificate of registration of the migrating company by way of continuation of the migrating company as a body corporate under the laws of the State, and
- (b) if he or she issues such a certificate, shall enter in the register maintained for the purpose of section 103 of the Principal Act, in relation to charges and security interests of the migrating company specified in paragraph (f) of the definition of 'registration documents' in subsection (1), the particulars prescribed by section 103 of the Principal Act which have been supplied by the migrating company.

(7) The migrating company shall, as soon as may be after being registered under subsection (6), apply to be de-registered in the relevant jurisdiction.

(8) The registrar shall enter in the register of companies the date of registration of the migrating company and shall forthwith publish notice in the Companies Registration Office Gazette of the following matters:

- (a) the date of the registration of the migrating company under this section;
- (b) the relevant jurisdiction; and
- (c) the previous name of the migrating company if different from the name under which it is being registered.

(9) From the date of registration, the migrating company shall be deemed to be a company formed and registered under this Act and shall continue for all purposes under this Act, and the provisions of this Part shall apply to the migrating company, provided always that this section shall not operate—

- (a) to create a new legal entity,
- (b) to prejudice or affect the identity or continuity of the migrating company as previously established and registered under the laws of the relevant jurisdiction for the period that the migrating company was established and registered in the relevant jurisdiction,
- (c) to affect any contract made, resolution passed or any other act or thing done in relation to the migrating company during the period that the migrating company was so established and registered,
- (d) to affect the rights, powers, authorities, functions and liabilities or obligations of the migrating company or any other person, or

[SECTION 3]

(e) to render defective any legal proceedings by or against the migrating company.

(10) Without prejudice to the generality of subsection (9)—

(a) the failure of a migrating company to send to the registrar the particulars of a charge or security interest created prior to the date of registration shall not prejudice any rights which any person in whose favour the charge was made or security interest created may have thereunder, and

(b) any legal proceedings that could have been continued or commenced by or against the migrating company before its registration under this section may, notwithstanding the registration, be continued or commenced by or against the migrating company after registration.

(11) The migrating company shall notify the registrar in the prescribed form, and notify the Central Bank, within 3 days of its de-registration in the relevant jurisdiction, of that de-registration.

(12) On registration of the migrating company under subsection (6), the Central Bank shall forthwith authorise the migrating company to carry on business under this Part.

(13) If there is any material change in any of the information contained in the statutory declaration mentioned in paragraph (d) of the definition of 'registration documents' in subsection (1) after the date of the declaration and before the date of the registration under this section, the director who made that statutory declaration, and any other director who becomes aware of that material change shall forthwith deliver a new statutory declaration to the registrar relating to the change.

(14) If the migrating company fails to comply with any provision of this section, the registrar may send to the company by post a registered letter stating that, unless the migrating company rectifies the failure within 1 month of the date of the letter and confirms that it has rectified the failure, a notice may be published in the Companies Registration Office Gazette with a view to striking the name of the migrating company off the register.

(15) If the failure mentioned in subsection (14) is not rectified within 1 month after the sending of the letter referred to in that subsection, the registrar may publish in the Companies Registration Office Gazette a notice stating that, at the expiration of 1 month from the date of that notice, the name of the migrating company mentioned therein will, unless the matter is resolved, be struck off the register, and the migrating company will be dissolved.

[SECTION 3]

(16) At the expiration of the time mentioned in the notice, the registrar may, unless cause to the contrary is previously shown by the migrating company, strike its name off the register, and shall publish notice thereof in the Companies Registration Office Gazette, and on that publication, the migrating company shall be dissolved.

(17) The Minister may make regulations prescribing places as relevant jurisdictions for the purposes of this section, where he or she is satisfied that the law of the place concerned makes provision for migrating companies to continue under the laws of the State or for companies to continue under the laws of that place in a substantially similar manner to continuations under this section.

(18) Every regulation made by the Minister under subsection (17) 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.

De-registration
of companies
when continued
under the law of
place outside
the State.

256G.—(1) In this section—

‘applicant’ means a company that applies to be de-registered under this section;

‘relevant jurisdiction’ means the prescribed place outside the State in which the company proposes to be registered;

‘transfer documents’, in relation to an applicant, means the following documents:

- (a) a statutory declaration of a director of the applicant made not more than 28 days prior to the date on which the application is made to the registrar to the effect that—
 - (i) the applicant will, upon registration, continue as a body corporate under the laws of the relevant jurisdiction,
 - (ii) no petition or other similar proceeding to wind up or liquidate the applicant has been notified to the applicant and remains outstanding in any place, and no order has been notified to the applicant or resolution adopted to wind up or liquidate the applicant in any place,
 - (iii) the appointment of a receiver, liquidator, examiner or other similar person has not been notified to the applicant and, at the date of the declaration, no such person is acting in that capacity in any place with respect to the applicant or its property or any part thereof,

[SECTION 3]

- (iv) the applicant is not, at the date of the declaration, operating or carrying on business under any scheme, order, compromise or other similar arrangement entered into or made by the applicant with creditors in any place,
 - (v) the application for de-registration is not intended to defraud persons who are, at the date of the declaration, creditors of the applicant,
 - (vi) any consent or approval to the proposed de-registration required by any contract entered into or undertaking given by the applicant has been obtained or waived, as the case may be, and
 - (vii) the de-registration is permitted by the memorandum and articles of association of the applicant;
- (b) a declaration of solvency prepared in accordance with the provisions of section 256H; and
- (c) a copy of a special resolution of the applicant that approves the proposed de-registration and the transfer of the applicant to the relevant jurisdiction.

(2) An applicant which proposes to be registered in a relevant jurisdiction by way of continuation as a body corporate may apply to the registrar to be de-registered in the State.

(3) Where an application is made under subsection (2), the registrar shall not de-register the applicant as a company in the State unless he or she is satisfied that all of the requirements of the Companies Acts in respect of the de-registration and of matters precedent and incidental thereto have been complied with and, in particular, but without prejudice to the generality of the foregoing, he or she is satisfied that—

- (a) the applicant has delivered to the registrar an application for the purpose, in the prescribed form and signed by a director of the applicant, together with the transfer documents,
- (b) the applicant has paid to the registrar such fee as may be specified from time to time pursuant to section 369 of the Principal Act,
- (c) the applicant has informed the Central Bank of its intention to be de-registered and the Central Bank has notified the registrar that it has no objection to the de-registration, so long as the applicant complies with any conditions that the Central Bank may impose on the applicant, and

[SECTION 3]

- (d) the applicant has filed with the registrar notice of any proposed change in its name and of its proposed registered office or agent for service of process in the relevant jurisdiction.

(4) An application under this section shall be accompanied by a statutory declaration in the prescribed form made by a solicitor engaged for this purpose by the applicant, or by a director of the applicant, and stating that the requirements mentioned in subsection (3) have been complied with. The registrar may accept such a declaration as sufficient evidence of compliance.

(5) The registrar shall, as soon as is practicable after receipt of the application for de-registration, publish notice of it in the Companies Registration Office Gazette.

- (6) (a) Where an application is made under subsection (2), a person mentioned in paragraph (b) may apply, on notice to the registrar and to all creditors of the applicant, to the High Court, not later than 60 days after the publication of the notice under subsection (5), for an order preventing the proposal or passage of a resolution specified in paragraph (c) of the definition of 'transfer documents' in subsection (1) from taking effect in relation to the application.

- (b) The following persons may apply for an order under this subsection:

- (i) the holders of not less than 5 per cent of the issued share capital of the applicant and who have not voted in favour of the resolution, or

- (ii) any creditor of the applicant.

- (c) Notice of an application for an order under this subsection may be given to the creditors concerned by publication in at least one national newspaper in the State.

(7) The High Court may make an order mentioned in subsection (6) only if it considers that it would be just and equitable to do so.

(8) An order made under subsection (7) shall specify the period in respect of which it shall remain in force.

(9) An order of the High Court under subsection (7) is final and conclusive.

(10) Unless the High Court orders otherwise, when one or more than one application is made under subsection (6), a resolution specified in paragraph (c) of the definition of 'transfer documents' in subsection (1) in relation to a company shall not take effect until—

[SECTION 3]

(a) where the application or all the applications to the High Court are withdrawn—

- (i) the day on which the resolution is passed,
- (ii) the day next following the day on which the last outstanding application is withdrawn, or
- (iii) the 31st day following the publication of the notice on the creditors under subsection (4),

whichever is the latest, and

(b) where all applications to the High Court are not withdrawn—

- (i) the day on which the resolution is passed,
- (ii) the day specified in the order or, if no date is specified in the order, the day next following the day on which the period for which the order is specified to remain in force expires or otherwise ceases to be in force, or
- (iii) the day next following the decision of the High Court,

whichever is the latest.

(11) When the applicant is registered as a company under the laws of the relevant jurisdiction, it shall give notice to the registrar of that fact within 3 working days of becoming so registered, including its new name, if any, and, as soon as practicable after receiving that notice, the registrar shall issue a certificate of de-registration of the applicant.

(12) The registrar shall enter in the register of companies the date of the de-registration of the applicant and shall, within 7 days of the issuance of the certificate under subsection (11), publish in the Companies Registration Office Gazette notice of the following matters:

- (a) the date of the de-registration of the applicant under this section;
- (b) the relevant jurisdiction; and
- (c) the new name of the applicant if different from the name under which it was registered.

(13) From the date of registration of the applicant in the relevant jurisdiction, it shall cease to be a company for all purposes of the Companies Acts and shall continue for all purposes as a body corporate under the laws of the relevant jurisdiction, provided always that this section shall not operate

- (a) to create a new legal entity,

[SECTION 3]

- (b) to prejudice or affect the identity or continuity of the applicant as previously constituted under the laws of the State for the period that the applicant was so constituted,
- (c) to affect any contract made, resolution passed or any other act or thing done in relation to the applicant during the period that the applicant was constituted under the laws of the State,
- (d) to affect the rights, powers, authorities, functions and liabilities or obligations of the applicant or any other person, or
- (e) to render defective any legal proceedings by or against the applicant.

(14) Without prejudice to the generality of subsection (13), any legal proceedings that could have been continued or commenced by or against the applicant before its de-registration under this section may, notwithstanding the de-registration, be continued or commenced by or against the applicant after registration.

(15) The Minister may make regulations prescribing places as relevant jurisdictions for the purposes of this section, where he or she is satisfied that the law of the place concerned makes provision for bodies corporate that are substantially similar to applicants under this section to continue under the laws of the State in a substantially similar manner to continuations under section 256F or for companies to continue under the laws of that place.

(16) Every regulation made by the Minister under subsection (15) 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.

Statutory
declarations.

256H.—(1) Where an application is made under section 256F or 256G, a director of the migrating company or applicant, as the case may be, making the application shall make a statutory declaration stating that he or she has made a full inquiry into its affairs and has formed the opinion that it is able to pay its debts as they fall due.

(2) A declaration under subsection (1) shall have no effect for the purposes of this section unless—

- (a) it is made not more than 28 days prior to the date on which the application is made to the registrar,

[SECTION 3]

- (b) it contains a statement of the migrating company's or applicant's assets and liabilities as at the latest practicable date before the making of the declaration, and, in any case as at a date that is not more than 3 months before the making of the declaration, and
- (c) a report made by an independent person under subsection (3) is attached to the declaration, along with a statement by the independent person that he or she has given and has not withdrawn consent to the making of the declaration with the report attached to it.

(3) The report mentioned in subsection (2)(c) shall state whether, in the independent person's opinion, based on the information and explanations given to him or her, the opinion of the director mentioned in subsection (1) and the statement of the migrating company's or applicant's assets and liabilities referred to in subsection (2)(b), are reasonable.

(4) For the purposes of subsection (3), the independent person shall be a person who, at the time the report is made, is qualified to be the auditor of the company or applicant, or of bodies corporate—

- (a) in the case of an application under section 256F, under the laws of the relevant jurisdiction, and
- (b) in the case of an application under section 256G, under the laws of the State.

(5) A director who makes a declaration under this section without having reasonable grounds for the opinion that the migrating company or applicant is able to pay its debts as they fall due commits an offence and is liable—

- (a) on summary conviction to a fine not exceeding €5,000, or imprisonment for a term not exceeding 12 months, or to both, or
- (b) on conviction on indictment to a fine not exceeding €50,000, or imprisonment for a term not exceeding 5 years, or to both.

(6) Where the migrating company or applicant is wound up within 1 year of the date on which the application is made to the registrar and its debts are not paid or provided for in full within that year, it shall be presumed, unless the contrary is shown, that the director did not have reasonable grounds for his or her opinion.”.”

—An Tánaiste agus an tAire Fiontar, Trádála agus Fostaíochta.

SECTION 5

5. In page 7, before section 5, to insert the following new section:

[SECTION 5]

“Amendment of UCITS Regulations. 5.—(1) The UCITS Regulations are amended by inserting the following after Regulation 36F (inserted by section 77 of and the Schedule to the Investment Funds, Companies and Miscellaneous Provisions Act 2005):

“Application of jurisdiction transfer provisions to investment companies established as UCITS. 36G.—The provisions of sections 256F to 256H of the Companies Act 1990 (inserted by *section 3* of the *Companies (Miscellaneous Provisions) Act 2009*) shall apply to any investment company authorised pursuant to these Regulations and for this purpose the references to authorisation shall be read as referring to authorisation pursuant to these Regulations.”.

(2) In this section “UCITS Regulations” means the European Communities (Undertakings for Collective Investment in Transferable Securities) Regulations 2003 (S.I. No. 211 of 2003) as amended.”.

—An Tánaiste agus an tAire Fiontar, Trádála agus Fostaíochta.

6. In page 7, between lines 16 and 17, to insert the following subsection:

“(2) This Act (other than *sections 1* and *2*, *paragraphs (a)* to *(h)* of *section 3*, and *section 4*) shall come into operation on such day or days as may be appointed by order or orders of the Minister for Enterprise, Trade and Employment, either generally or with reference to a particular purpose or provision, and different days may be so appointed for different purposes and different provisions.”.

—An Tánaiste agus an tAire Fiontar, Trádála agus Fostaíochta.

TITLE

7. In page 3, line 12, to delete “ACT 1990 AND” and substitute “ACT 1990,”.

—An Tánaiste agus an tAire Fiontar, Trádála agus Fostaíochta.

8. In page 3, line 13, after “2003” to insert the following:

“AND THE EUROPEAN COMMUNITIES (UNDERTAKINGS FOR COLLECTIVE INVESTMENT IN TRANSFERABLE SECURITIES) REGULATIONS 2003”.

—An Tánaiste agus an tAire Fiontar, Trádála agus Fostaíochta.