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**An Bille um Ascnamh Urrús Rannpháirteach, 2019**  
**Migration of Participating Securities Bill 2019**

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*Meabhrán Mínitheach*  
*Explanatory Memorandum*

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**AN BILLE UM ASCNAMH URRÚS RANNPHÁIRTEACH, 2019**  
**MIGRATION OF PARTICIPATING SECURITIES BILL 2019**

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**EXPLANATORY MEMORANDUM**

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**Interpretation**

*Section 1* contains definitions for a number of terms used throughout the Bill.

**Share in uncertificated form, certificated form, etc. - meaning of those expressions**

*Section 2* provides that the definitions of uncertificated and certificated securities as set out in the Companies Act 1990 (Uncertificated Securities) Regulations 1996 (S.I. No. 68 of 1996) apply for the purposes of the Bill.

**Migration – meaning of that expression and supplemental provision**

*Section 3* contains a definition of ‘nominated central securities depository’ and ‘security holders’ for the purposes of the legislation.

The section defines migration as the transfer of title to participating securities to a Central Securities Depository or its designated nominee for the purpose of recording those securities in book-entry form and the settlement of trades in those securities.

The section provides that no arrangements under the CREST system will apply to those participating securities after migration has been completed.

The section provides that no provision of the Bill related to migration will act to prevent the application of the Companies Act 2014 to those participating securities nor will it divest the security holders of their rights and interests in those securities save for the disapplication of certain provisions of the Act of 2014 as contained in Section 11 of the Bill.

**Migration of Securities by participating issuers**

*Section 4* sets out the conditions that an issuer wishing to consent to migration under the provisions of the Bill must satisfy in order to migrate.

The section provides that subsection (1) shall have effect notwithstanding any provisions in a participating issuer’s Constitution or Section 94(4) of the Act of 2014.

**Requirements to be complied with for consent by issuer to migration: special resolution**

*Section 5* sets out the conditions that must be satisfied regarding the special resolution that members of the participating issuer must approve in order to migrate.

The section specifies the information that a participating issuer must provide to its members as part of the special resolution including the name

of the nominated Central Securities Depository, the Member State in which it is located and the entity in which title to the relevant participating securities shall become vested if the nominee holder differs from the nominated Central Securities Depository itself.

The section requires that the nominated Central Securities Depository is authorised under Regulation 909/2014 (“CSDR”) in its home Member State and that a Central Securities Depository cannot be specified in the circular unless the participating securities of the relevant issuer have been accepted as eligible by the Central Securities Depository, that the Central Securities Depository has considered its obligations under Article 23 of the CSDR and that if it is not already the case, on and from the date on which migration will take effect, that the Central Securities Depository will be in compliance with Article 23 of the CSDR. The relevant Central Securities Depository must provide a statement to this effect to the issuer.

#### **Further requirements to be complied with for consent by issuer to migration**

*Section 6* sets out further conditions which a participating issuer must comply with in order to be deemed eligible to migrate, including providing its members with an explanation of the proposed migration, how it will affect the rights of members, and that subject to consent of those members by special resolution, migration shall take effect on a live date set by the Listing Authority under Section 12 of the Bill.

The section requires that a participating issuer explain the options available to its members that do not wish to have their securities form part of the migration.

The section requires that a participating issuer explain the options available to its members that currently hold their securities in certificated form and wish to participate in the migration process by converting them to uncertificated form.

The section requires that a participating issuer provide a summary of the relevant law of the Member State in which the nominated Central Securities Depository is authorised.

The section requires that a participating issuer provides its members with a list of documents related to the proposed migration and states where such documents can be inspected or accessed if in electronic form.

The section requires that the Directors of the participating issuer provide a recommendation to their members on the merits of the proposed migration.

The section requires that participating issuers provide their members with a timetable of the proposed migration and important dates in the process.

The section allows participating issuers to provide any further information they believe is necessary to allow their members to fully consider the migration proposal.

The section provides that a participating issuer shall publish a notice in a national newspaper circulated in the district of the issuer’s registered office, no earlier than 7 days before and no later than the date of the notice of the meeting to its Members, indicating its intention to migrate and noting that information related to the migration is available on its website.

#### **Offence in relation to failure to comply with certain provisions of section 5 or 6**

*Section 7* provides that a participating issuer or an officer of the company who makes default in complying with section 5 and 6 shall be guilty of an offence.

### **Quorum for meeting referred to in section 6(1)**

*Section 8* sets the necessary quorum for the meeting at which the special resolution is proposed.

The section provides that any member of the participating issuer who is present in person or by proxy at the meeting may demand a poll vote on the special resolution.

### **Registration of special resolution referred to in section 4(1)**

*Section 9* requires that the special resolution be filed with the Companies Registration Office in accordance with Section 198 of the Companies Act 2014.

### **Confirmation that relevant requirements have been complied with and consent of issuer to migration to be expressed in confirmatory statement**

*Section 10* requires a participating issuer that wishes to consent to migration to provide a statement to the Companies Registration Office and the Listing Authority verifying its compliance with the requirements of the legislation and that the issuer thereby consents to migration of its relevant participating securities. The statement must be submitted within 21 days of the passing of the special resolution or by the cut-off date specified by the Listing Authority for filings, whichever is the earlier.

The section requires that the statement provided to the Companies Registration Office is verified by affidavit sworn by one or more directors of the participating issuer.

The section requires the Listing Authority to maintain a list of participating issuers that have made the relevant filing and to publish that list on its website indicating the Central Securities Depository to which the relevant securities will migrate.

The section provides that an issuer which makes default in complying with these provisions shall be guilty of an offence.

The section provides that the director of a participating issuer that makes default in complying with these provisions shall be guilty of an offence.

### **Migration of relevant participating securities**

*Section 11* provides that where a participating issuer has satisfied the conditions set out in section 10 and completed its filings with the Companies Registration Office and Listing Authority, that its migration will take effect on the designated live date.

The section provides that a migration of securities to a nominated Central Securities Depository will not require a written instrument of transfer under section 94(4) of the Companies Act 2014.

The section provides that the participating issuer is not required to issue share certificates to the nominated Central Securities Depository and that the transfer of title will be evidenced by the recording of the name and address of the depository or its nominee in the register of members of the participating issuer. This provision will continue in force both on the live date and any time thereafter.

The section removes the requirement for a notification under section 18 of the Competition Act 2002 for a migration of securities to a Central Securities Depository, were such a requirement to otherwise arise on migration.

The section removes the requirement for a notification under section 8(3) of the Irish Takeover Panel Act 1997 for a migration of securities to a

Central Securities Depository, were such a requirement to otherwise arise on migration.

#### **Making of certain orders, by Listing Authority, for purposes of the Act**

*Section 12* grants the Listing Authority the power to make certain specified orders fixing dates for the migration of participating securities.

The section allows the Listing Authority to set a cut-off date, beyond which it will no longer accept filings from issuers for the purposes of migration. The Listing Authority may set different dates for different issuers and classes of issuers.

The section grants the Listing Authority the power to make an order appointing the live date for the migration of an issuer and it may set different dates for different issuers or classes of issuer.

#### **Supplemental provision in relation to section 12**

*Section 13* provides that the Listing Authority may also appoint a time on a particular date that was set under the provisions of section 12.

#### **Regulations**

*Section 14* provides the Minister with the necessary powers to make regulations prescribing anything required by the Bill to be prescribed, which includes a prescribed form for the purposes of section 10, and requires that such regulations be laid before the Oireachtas, whereupon they may be annulled by resolution within 21 days.

#### **Liability of Listing Authority for acts, omissions, etc.**

*Section 15* provides that no liability will attach to the Listing Authority in the exercise of its functions under the legislation unless it has acted in bad faith.

#### **Cesser of Section 4**

*Section 16* repeals section 4 of the legislation on 30 March 2021 which is the date set down in the European Commission's equivalence decision for UK based Central Securities Depositories in the event of a Hard Brexit.

This will mean that the other provisions of the legislation will remain in effect after 30 March 2021 but it will not be possible for an issuer to avail of this migration mechanism after the cessation date as it would not be able to consent to migration without the provisions of section 4 being in effect.

The Minister may extend this date if the Commission extends its equivalence decision to a later date subject to the approval of the Oireachtas.

#### **Short title and commencement**

*Section 17* provides in standard form for the Short Title and commencement.

*An Roinn Airgeadais,  
Samhain, 2019.*

