



**Bille na gCuideachtaí (Forálacha Ilghnéitheacha)
(Covid-19), 2020**
**Companies (Miscellaneous Provisions) (Covid-19) Bill
2020**

Meabhrán Míitheach agus Airgeadais
Explanatory and Financial Memorandum



**BILLE NA gCUIDEACHTAÍ (FORÁLACHA ILGHNÉITHEACHA)
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COMPANIES (MISCELLANEOUS PROVISIONS) (COVID-19)
BILL 2020**

EXPLANATORY AND FINANCIAL MEMORANDUM

Introduction

The purpose of the Bill is to address operational issues in respect of compliance, arising under the Companies Act 2014 and Industrial and Provident Societies Acts 1893 - 2018 as a result of COVID-19. The Bill also makes amendments in respect of examinership and the threshold at which a company is deemed unable to pay its debts to help business to trade through the crisis, preserve employment and support economic recovery post-crisis.

Part 1

Preliminary and General

Section 1 – Short title and commencement

Section 1 provides for the short title and commencement of the Act. It may be cited as the Companies (Miscellaneous Provisions) (Covid-19) Act and shall come into operation on such day or days as the Minister for Business, Enterprise and Innovation may by order or orders appoint.

Section 2 – Definitions

Section 2 provides for definitions. It provides that “Act of 1893” means the Industrial and Provident Societies Act 1893 and “Act of 2014” means the Companies Act 2014.

Part 2

Amendments to Companies Act 2014

Section 3 – Amendment of section 2 of Act of 2014

Section 3 amends section 2 of the Companies Act 2014 to insert additional definitions. It provides for a definition of “Covid-19” and “interim period”.

The interim period refers to the temporary period of time the amendments contained in the Bill will be operational for. This period begins on the commencement of section 3 of the Act and ends on 31 December 2020, and any such other period (if any) as may be specified by order under section 12A.

Section 4 – Extension of interim period

Section 4 provides for the manner in which the interim period can be extended under section 12A.

Subsection (1) provides that the Government may, on the request of the Minister made after consultation with the Minister for Health, from time to time, by order extend the interim period for such period as they consider appropriate if they are satisfied that it is necessary in order to control the spread of Covid-19 or to mitigate the economic effect of the disease.

Subsection (2) provides that every order under this section must be laid before each House of the Oireachtas as soon as possible after it's made. Should a resolution annulling the order be passed by either House within the next 21 days on which that House sits after the order has been laid before it, the order will be annulled. However, such an annulment is without prejudice to the validity of anything previously done under it.

Section 5 – Execution of instruments during interim period

Section 5 amends the Companies Act 2014 and inserts a new section 43A.

Section 43A deals with the sealing of documents during the interim period. Under the Companies Act, documents which are required to be executed under seal must be signed by the company director and secretary. However, as more and more companies provide for remote working this has resulted in a practical difficulty whereby the company seal, director and secretary are in different locations. This amendment allows a company seal and the necessary signatures to be on separate documents which will then be counted as one single document for the purpose of the Companies Act for the duration of the interim period.

Subsection (1) provides that (2) and (3) will apply during the interim period notwithstanding section 43 (2)(b) or (3) of the Companies Act or the company's constitution.

Subsection (2) provides that a document which is required to be executed under seal by a company may consist of several separate counter parts provided that:

- (a) one such document is signed by a person referred to in section 43(2)(b)(i),
- (b) one such document is signed by a person referred to in section 43(2)(b)(ii), and
- (c) one such document has the company's seal affixed to it.

Subsection (3) provides for the same requirements in respect of a document to be made or executed by a registered person in exercise of the powers of a company.

Subsection (4) provides that any document executed in accordance with (2) or (3) shall be counted as one document and shall be valid and effective for all purposes as if it were one single document.

Section 6 – General meetings during interim period

Section 6 amends the Companies Act 2014 by inserting a new section 174A before section 175 of the Act.

Subsection (1) provides that the section and any regulations made under it shall apply during the interim period only and shall apply notwithstanding any other provisions of the Companies Act or a company's constitution.

Subsection (2) provides that this section is in addition to, and not a derogation from, the provisions of subsection (3) of section 175 of the Companies Act.

Subsection (3) gives companies the option to defer their annual general meeting to a date not later than 31 December 2020.

The section is aligned with Article 2 of the Council Regulation 2020/699 on temporary measures concerning the general meetings of European companies (SE) and of European Cooperative Societies (SCE) adopted on 25 May 2020: “Where, in accordance with Article 54(1) of Regulation (EC) No 1435/2003, a general meeting of an SCE is to be held in 2020, the SCE may, by way of derogation from that provision, hold the meeting within 12 months of the end of the financial year, provided that the meeting is held by 31 December 2020.” (OJ 27.05.2020 L165 p 25).

Subsection (4) provides that where a company defers its AGM by virtue of (2) an amended version of section 341(2) of the Companies Act will apply to it and the words ‘not later than 9 months after financial year end day’ will be replaced by ‘at the meeting last mentioned in section 174A(2)’. This aligns the timeframe within which financial statements must be laid with the date of the deferred meeting.

Subsection (5) sets out the ways in which a general meeting may be conducted during the interim period. It explicitly enables companies to hold fully electronic meetings or a hybrid meeting, with some attendees participating remotely and others attending a physical meeting.

Subsection (6)(a) and (b) set out that during the interim period a company may provide for participation in a general meeting by electronic communications, which shall include a mechanism for casting votes, and the mechanism adopted shall not require a member or his/her proxy to be physically present at the meeting.

Subsection (7) clarifies that the use of the electronic communications may be made subject only to such requirements as are necessary to ensure the identification of those taking part in the meeting and the security of the electronic communication. Such requirements and restrictions must be proportionate to the achievement of these objectives. Subsection (8) requires that members shall be notified of any of these requirements or restrictions.

Subsection (9) sets out that when providing for electronic communications for participating in a meeting, the company must ensure (as far as practicable) that the security of any electronic communication by the member is guaranteed, that the risk of data corruption and unauthorised access is minimised and that the source of the communication is certain. In addition, where there is a failure or disruption in the electronic communications, the company must ensure that the failure or disruption is remedied as soon as possible. The electronic communications must enable the members to hear, speak and submit questions.

Subsection (10) clarifies that a temporary failure or disruption of the communication does not invalidate the general meeting or any proceedings relating to it.

Subsection (11) provides that the company is not responsible for any technological failure or disruption relating to the electronic equipment of the member, unless this is attributable to wrong doing by the company.

In light of the closing down of venues and the uncertainty surrounding venues, subsection (12) permits a company to the cancel, relocate or change the means of holding a general meeting should it be necessary to do so in order to company with Government guidelines in the interest of public health.

Subsection (13) provides that the Minister may by regulations make further provision for the convening and conduct of general meetings held by electronic communications, attendance, access to and participation in such meetings.

Subsection (14) provides the meaning of ‘attende’, ‘electronic communications and technology’, ‘electronic platform’ and a ‘general meeting’ for the purposes of section 14B.

Section 7 – Amendment of section 181 of Act of 2014

Section 7 Section 7 amends section 181(5) of the Companies Act and inserts a new paragraph (aa).

It provides provides for the particular details which a notice of a general meeting that includes participation by electronic communications must specify at a minimum, namely the electronic platform and details for access to it; the time and manner a by which a member must confirm his/her attention to attend the meeting; any requirements and restrictions put in place by the society to identify the members; the procedure for communicating questions and comments and the procedure for voting on resolutions.

Section 8 – Notice of rescheduled general meeting during the interim period

Section 8 amends the Companies Act and inserts a new section 8A which details requirements in respect of the notice of a rescheduled meeting during the interim period.

Subsection (1) provides that a notice will be given in the same manner as the previous meeting unless the directors of the company are of the opinion that such notice is not reasonably practicable. In this event notice shall be given on the company’s website (should they have one), by email to all attendees the company has an email address for and by notice in a national newspaper.

Subsection (2) provides that the requirements set out in (1) are not necessary where all members agree to the cancellation, change of venue or change of means of holding the general meeting or to dispensing with notice for the meeting.

Section 9 – Amendment of section 182 of Act of 2014

Section 9 amends section 182 of the Companies Act and inserts a new subsection (2A)

Subsection (2A) provides that notwithstanding (2) or any provision in a company’s constitution, each attendee who participates in a general meeting by electronic communications shall be counted in the quorum for the meeting.

Section 10 – Withdrawal or amendment of dividend resolutions

Section 10 amends the Companies Act and inserts a new section 186A which provides for the withdrawal or amendment of dividend resolutions.

Subsection (1) provides that where the directors of a company have recommended the declaration of a dividend at a general meeting they may amend or cancel the dividend due to the impact of Covid-19 on the affairs of the company.

Subsection (2) provides that the resolution to approve the dividend may be withdrawn or amended notwithstanding any provision to the contrary in the company’s constitution where all members of the company agree in writing and the relevant notice has been given no later than 3 days before the general meeting.

Section 11 – Voting on resolutions at general meetings during the interim period

Section 11 amends the Companies Act and inserts a new section 195A which provides for voting by poll shall be done in a general meeting by electronic communications for the duration of the interim period.

Subsection (1) provides that where a company has included in the notice of a general meeting, a notice of intention to require voting on a poll all resolutions at the meeting shall be taken on a poll and sections (1), (2) (3) of section 189 of the Companies Act do not apply.

Subsection (2) provides that the chairperson may conduct a vote by show of hands where he or she is satisfied that they can identify those entitled to vote and verify the voting instruction.

Section 12 – Amendment of section 520 of Act of 2014

Section 12 makes a consequential amendment to section 520 of the Companies Act to include reference to the amended section 534.

Section 13 – Amendment of section 534 of Act of 2014

Section 13 amends section 534 of the Companies Act by inserting a new subsection (3A) and extends the examinership process from 100 to 150 days.

Paragraph (a) makes a consequential amendment to subsection (3) to include reference to the new subsection (3A).

Paragraph (b) provides for the insertion of the new subsection (3A).

Subsection (3A) provides that during the interim period, the court may provide an examiner with an additional 50 days within which to present his or her report the court in circumstances whereby he or she would be unable to report with the 70 days provided by section 520(2) or the additional time provided by 520(3). In order to be granted additional time under this section the examiner must demonstrate to the court that there are exceptional circumstances.

Section 14 – Amendment of section 570 of Act of 2014

Section 14 amends section 570 of the Companies Act which provides for the amount at which a statutory demand can be issued to have a company wound up.

Paragraph (a) makes an amendment to paragraphs (a) and (b) to include reference to the interim period.

Paragraph (b) provides for the insertion of a new paragraph (ba).

Paragraph (ba) provides for an increase in the amount at which a statutory demand can be issued on a company from €10,000 in respect of a single creditor and €20,000 in the aggregate to €50,000 in respect of either such demands.

Section 15 – Amendment of section 584 of Act of 2014

Section 15 amends section 584 of the Companies Act by inserting a new subsection (1A).

Subsection (1A) sets out the particular details which a notice of a meeting summoned under this section by electronic communications must specify at a minimum, namely the electronic platform and details for access to it; the time and manner a by which a member must confirm his/her attention to attend the meeting; any requirements and restrictions put in place by the society to identify the members; the procedure for communicating questions and comments and the procedure for voting on resolutions.

Section 16 – Amendment of section 587 of Act of 2014

Section 16 amends section 587(3) of the Companies Act and provides for the insertion of a new paragraph (aa)

Paragraph (aa) sets out the particular details which a notice of a meeting held under this section by electronic communications must specify at a minimum, namely the electronic platform and details for access to it; the time and manner a by which a member must confirm his/her attention to attend the meeting; any requirements and restrictions put in place by the society to identify the members; the procedure for communicating questions and comments and the procedure for voting on resolutions.

Section 17 – Amendment of section 678 of Act of 2014

Section 17 amends section 678 of the Companies Act and substitutes “Workplace Relations Commission” for “Employment Appeals Tribunal”.

Section 18 – Amendment of section 680 of Act of 2014

Section 18 amends section 680 of the Companies Act and inserts a new subsection (2A)

Subsection (2A) sets out the particular details which a notice of a meeting summoned under this section by electronic communications must specify at a minimum, namely the electronic platform and details for access to it; the time and manner a by which a member must confirm his/her attention to attend the meeting; any requirements and restrictions put in place by the society to identify the members; the procedure for communicating questions and comments and the procedure for voting on resolutions.

Section 19 – Creditors meetings conducted by electronic means during the interim period

Section 19 amends the Companies Act and inserts a new section 690A which provides the general operational details in respect of creditors’ meetings held by electronic communications during the interim period.

Subsection (1) provides that the section shall apply during the interim period only and shall apply notwithstanding any other provisions of the Companies Act.

Subsection (2) provides that a relevant person may hold a creditors’ meeting either wholly or partly by electronic communications for the duration of the interim period so long as all those who are entitled to attend have a reasonable opportunity to participate.

Subsection (3) provides that a relevant person must provide for a creditors’ meeting by electronic communication in accordance with subsection (4).

Subsection (4) provides that a relevant person may provide for participating in a creditors’ meeting by electronic communications which shall include a mechanism for casting votes either before or during the meeting.

Subsection (5) clarifies that the use of the electronic communications may be made subject only to such requirements as are necessary to ensure the identification of those taking part in the meeting and the security of the electronic communication. Such requirements and restrictions must be proportionate to the achievement of these objectives. Subsection (6) requires that attendees shall be notified of any of these requirements or restrictions.

Subsection (7) sets out that when providing for electronic communications for participating in a meeting, the relevant person must ensure (as far as practicable) that the security of any electronic communication by the attendee

is guaranteed, that the risk of data corruption and unauthorised access is minimised and that the source of the communication is certain. In addition, where there is a failure or disruption in the electronic communications, the relevant person must ensure that the failure or disruption is remedied as soon as possible. The electronic communications must enable the attendees to hear, speak and submit questions, and if voting, guarantee the accuracy and confidentiality of an individual vote.

Subsection (8) clarifies that a temporary failure or disruption of the communication does not invalidate the general meeting or any proceedings relating to it.

Subsection (9) provides that the relevant person is not responsible for any technological failure or disruption relating to the electronic equipment of the member.

Subsection (10) provides that where a creditors' meeting is held by electronic communications the relevant person may conduct a vote to decide on a resolution by show of hands where satisfied that he or she can identify the attendees entitled to vote and verify the content of their voting instruction.

Subsection (11) provides for a definition of "creditors' meeting", "electronic communications", "relevant attendee" and "relevant person".

Section 20 – Amendment of section 691 of Act of 2014

Section 20 amends section 691 of the Companies Act and provides for the insertion of subsection (4A)

Subsection (4A) provides for the particular details which a notice of a meeting held under this section by electronic communications must specify at a minimum, namely the electronic platform and details for access to it; the time and manner a by which a member must confirm his/her attention to attend the meeting; any requirements and restrictions put in place by the society to identify the members; the procedure for communicating questions and comments and the procedure for voting on resolutions.

Section 21 – Amendment of section 692 of Act 2014

Section 21 amends section 692 of the Companies Act and inserts a new subsection (1A).

Subsection (1A) provides that notwithstanding (1) during the interim period a meeting may be held wholly or partly by electronic communications if it is the opinion of the person convening the meeting that this is the most convenient method for the majority of those entitled to attend.

Section 22 – Amendment of section 695 of Act of 2014

Section 22 amends section 695 of the Companies Act and provides for the insertion of new subsections (1A) and (2A).

Subsection (1A) provides that notwithstanding (1), that a resolution at a meeting of creditors held wholly or partly by electronic communications shall be deemed to be passed when a majority in number and value of those attending the meeting by electronic communications vote in favour of the resolution.

Subsection (2A) provides that notwithstanding (2), where a meeting of contributories is held wholly or partly by electronic communications that a resolution shall be deemed to be passed when a majority in number and value of those attending the meeting by electronic communications vote in favour of the resolution.

Section 23 – Amendment of section 697 of Act of 2014

Section 23 amends section 697 of the Companies Act and makes consequential insertions at (1) to reference the interim period and meetings held by electronic communications.

Section 24 – Amendment of section 701 of Act 2014

Section 24 amends section 701 of the Companies Act and inserts a new subsection (1A)

Subsection (1A) provides that during the interim period a creditor, contributory or member may vote by means of electronic communications or proxy.

Section 25 – Amendment of section 1103 of Act 2014

Section 25 amends section 1103 of the Companies Act in subsection (2) and inserts a new paragraph (aa).

Paragraph (aa) provides for the particular details which a notice of a meeting that includes participation by electronic communications must specify at a minimum, namely the electronic platform and details for access to it; the time and manner by which a member must confirm his/her intention to attend the meeting; any requirements and restrictions put in place by the relevant person to identify the members; the procedure for communicating questions and comments and the procedure for voting on resolutions.

Section 26 – Amendment of section 1106 of Act 2014

Section 26 amends section 1106 of the Companies Act in subsection (4) (a)(i) by the substitution of “provide for” for “guarantee”.

Part 3

Amendments to Industrial and Provident Societies Act 1893

Section 27 – Extension of interim period

The section mirrors section 4 of the companies provisions. It amends Industrial and Provident Society Act 1893 by inserting a new section 14A.

Subsection (1) provides that the Government may, on the request of the Minister made after consultation with the Minister for Health, extend the interim period by order if they are satisfied that the making of the order is in the public interest.

Subsection (2) sets out that every order under this section shall be laid before each House of the Oireachtas as soon as may be after it is made.

Section 28 – General meetings during interim period

Section 28 amends the Industrial and Provident Societies Act 1893 by inserting a new section 14B before section 15 of the Act.

Subsection (1) provides that the section and any regulations made under it shall apply during the interim period only and shall apply notwithstanding any other provisions of the Industrial and Provident Societies legislation or the rules of the registered societies.

Subsection (2) gives registered societies the option to defer their annual general meeting to a date not later than 31 December 2020. It provides that if a registered society fails to comply with the requirement to hold an annual general meeting on a relevant date in 2020, the society may hold the meeting at a later date but not later than 31 December 2020.

The section is aligned with Article 2 of the Council Regulation 2020/699 on temporary measures concerning the general meetings of European companies (SE) and of European Cooperative Societies (SCE) adopted

on 25 May 2020: “Where, in accordance with Article 54(1) of Regulation (EC) No 1435/2003, a general meeting of an SCE is to be held in 2020, the SCE may, by way of derogation from that provision, hold the meeting within 12 months of the end of the financial year, provided that the meeting is held by 31 December 2020.” (OJ 27.05.2020 L165 p 25).

Subsection (3) aligns the time frame for laying the income and expenditure account and the balance sheet referred to in subsections (1) and (2) of the Industrial and Provident Societies (Amendment) Bill 1978 with the timeframe for holding the AGM specified in subsection (2).

Subsection (4) sets out the ways in which a general meeting may be conducted during the interim period. While the Industrial and Provident Societies legislation is silent in relation to the holding of electronic meetings, the rules of a registered society may specify that general meetings should be held at a physical venue. Subsection (4) explicitly enables registered societies to hold fully electronic meetings, hybrid meetings (meetings where some of the members attend at the venue specified in the notice of the meeting while others participate by electronic means) or meetings held in more than one physical location.

Subsection (5) sets out that during the interim period a registered society may provide for participation in a general meeting by electronic communications, which shall include a mechanism for casting votes, and the mechanism adopted shall not require a member or his/her proxy to be physically present at the meeting.

Subsection (6) clarifies that the use of the electronic communications may be made subject only to such requirements as are necessary to ensure the identification of those taking part in the meeting and the security of the electronic communication. Such requirements and restrictions must be proportionate to the achievement of these objectives. Subsection (7) requires that members shall be notified of any of these requirements or restrictions.

Subsection (8) provides that members shall not permit a person, not authorised by the Chairman, to participate, listen or view the proceedings of a meeting. Persons who may be authorised to participate in the meeting by the Chairman may include auditors and accountants.

Subsection (9) sets out that when providing for electronic communications for participating in a meeting, the registered society must ensure (as far as practicable) that the security of any electronic communication by the member is guaranteed, that the risk of data corruption and unauthorised access is minimised and that the source of the communication is certain. In addition, where there is a failure or disruption in the electronic communications, the registered society must ensure that the failure or disruption is remedied as soon as possible. The electronic communications must enable the members to hear, speak and submit questions, and if voting, guarantee the accuracy and confidentiality of an individual vote.

Subsection (10) clarifies that a temporary failure or disruption of the communication does not invalidate the general meeting or any proceedings relating to it.

Subsection (11) provides that the society is not responsible for any technological failure or disruption relating to the electronic equipment of the member, provided that the failure is not attributable to the wrong doing of the society.

In light of the closing down of venues and the uncertainty surrounding venues, subsection (12) permits the postponement, relocation and changing the means of holding general meetings without the need to have a formal

technical meeting to adjourn to another date. In accordance with subsection (13) the registered society shall notify the members of such changes as soon as practicable.

Subsection (14) explicitly provides that each member and proxy (provided that the rules of the registered society allow for participating in a general meeting by proxy), shall be counted in the quorum where they participate in a meeting virtually.

Subsection (15) provides for the particular details which a notice of a general meeting that includes participation by electronic communications must specify at a minimum, namely the electronic platform and details for access to it; the time and manner by which a member must confirm his/her intention to attend the meeting; any requirements and restrictions put in place by the society to identify the members; the procedure for communicating questions and comments and the procedure for voting on resolutions.

Subsection (16) empowers the Minister to make regulations to make further provision for the convening and conduct of general meetings held by electronic communications, attendance, access to and participation in such meetings and notice in relation to these meetings.

Subsection (17) provides definition for 'attend', 'electronic communications and technology', 'electronic platform' and a 'general meeting' for the purposes of section 14B.

Section 29 – Amendment of section 79 of Act of 1893

Section 29 amends section 79 of the Industrial and Provident Societies Act 1893 by inserting the definitions of 'Covid-19' and 'interim period'.

Financial Implications

It is not expected that the proposed legislation will give rise to additional costs to the Exchequer. The amendments provided for in the area of insolvency are intended to support viable businesses to trade through the crisis and preserve employment thus reducing the costs to the Exchequer.

*An Roinn Gnó, Fiontar agus Nuálaíochta,
Iúil, 2020.*