

PART 1

PRELIMINARY AND GENERAL

Short title and commencement.

1. (1) This Act may be cited as the Companies Act 20[].

- (2) This Act shall come into operation on such day or days as the Minister may appoint by order or orders either generally or with reference to any particular purpose or provision and different days may be so appointed for different purposes or different provisions.

- (3) Without prejudice to the generality of *subsection (2)*, an order or orders under that subsection may appoint different days for the coming into operation of *section 4* so as to effect the repeal or revocation provided by that section of –
 - (a) an enactment or statutory instrument specified in *Schedule 2* on different days for different purposes, or
 - (b) different provisions of an enactment or statutory instrument specified in *Schedule 2* on different days.

Interpretation generally.

2. (1) In this Act –

“Acting Director” means a person appointed under *section 938* as the Acting Director of Corporate Enforcement;

“Act of 1963” means the Companies Act 1963;

“Act of 1990” means the Companies Act 1990;

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

“amendment”, in relation to a constitution, includes an alteration and a deletion;

“annual general meeting” means the meeting provided for in *section 173*;

“annual return” has the meaning given to it by *section 338*;

“annual return date” has the meaning given to it by *section 339*;

“appropriate rate”, in relation to interest, means

- (a) subject to *paragraph (b)*, 5 per cent per annum; or
- (b) such other rate as may be specified by order made by the Minister under *subsection (6)*;

“assignee in bankruptcy” means the Official Assignee (within the meaning of the Bankruptcy Act 1988) or a creditors’ assignee (within the meaning of that Act);

“authorised market operator” means a market operator (within the meaning of Directive 2004/39/EC of the European Parliament and the Council of 21 April 2004) who, for the time being, is authorised under –

- (a) the European Communities (Markets in Financial Instruments) Regulations 2007 (S.I. No.60 of 2007);or
- (b) the measures adopted by another Member State to implement that Directive, to operate the business of a regulated market (within the meaning of that Directive);

“Bankruptcy Acts” means the Bankruptcy Act 1988 and any enactment amending or extending that Act;

“book and paper” and “book or paper” includes deeds, writings and documents and, where not separately mentioned in the provision concerned, accounting records;

“books and documents” and “books or documents” includes deeds, writings and records made in any other manner and, where not separately mentioned in the provision concerned, accounting records;

“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 company’s constitution, the terms of allotment of the relevant shares or any other arrangements for payment of those shares, and “uncalled share capital” shall be read accordingly;

“category 1 offence” means an offence the penalties for which are specified in *section 861(1)*;

“category 2 offence” means an offence the penalties for which are specified in *section 861(2)*;

“category 3 offence” means an offence the penalties for which are specified in *section 861(3)*;

“category 4 offence” means an offence the penalties for which are specified in *section 861(4)*;

“Central Bank” means the Central Bank of Ireland;

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

“civil partner” has the meaning given to it by the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010;

“Community act” means an act adopted by an institution of the European Union;

“company” –

- (a) in *Parts 2 to 14*, shall be read in accordance with *section 10*;
- (b) subject to the foregoing, means a company formed and registered under this Act, or an existing company;

“company having a sole director” shall be read in accordance with *subsection (7)*;

“constitution” means the constitution of a company as provided for in *section 19* or, in the case of a company that is not a private company limited by shares, as provided for in *section ---*, or -- **[sections in the various Parts of Pillar B providing for the particular type of constitution concerned]** ;

“contravention” includes a failure to comply;

“contributory” has the meaning given to it by *section 549*;

“court” –

- (a) without prejudice to *paragraphs (b) and (c)*, where used in any provision of this Act in relation to a company, means -
 - (i) the High Court: or
 - (ii) where another court is specified for the purposes of that provision - that court;
- (b) where used in relation to proceedings for an offence, means –
 - (i) in the case of an offence that is being prosecuted summarily – the District Court; or

(ii) in any other case – the court with jurisdiction in the matter concerned;

(c) where used in connection with proceedings for a debt or the recovery of a sum otherwise provided by this Act to be recoverable and a particular court or a court of competent jurisdiction is not specified for the purpose, means any court of competent jurisdiction;

“CRO Gazette” means the Companies Registration Office Gazette referred to in *section 876(7)*;

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

“deliver” includes send or forward and, in the case of a requirement to deliver a document, notice or thing to the Registrar, where the provision concerned itself does not indicate that that is the purpose of its delivery, means deliver the document, notice or thing to the Registrar for the purposes of its registration;

“designated activity company” means a designated activity company as defined by *section – [section corresponding to Part B3, Head 1]*;

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

“Director” means the Director of Corporate Enforcement (but that title appears set out in full in any provision where it is desirable to avoid confusion or otherwise to provide clarity on the matter) 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 *section 942*;

“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 *section 499* or *507*;

“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 Act of 1963;

“extended notice” has the meaning given to it by *section 390*;

“extraordinary general meeting” shall be read in accordance with *section 175*;

“financial year” shall be read in accordance with *section 285*;

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

“holding company” has the meaning given to it by *section 8*;

“insolvency proceedings” means insolvency proceedings opened under Article 3 of the Insolvency Regulation in a Member State, 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;

“licensed bank” means the holder of a licence under section 9 of the Central Bank Act

1971;

“members’ voluntary winding up” has the meaning given to it by *section 549(1)*;

“Minister” means the Minister for Enterprise, Trade and Innovation;

“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 performing functions of the Director under this Act or any other enactment;

“ordinary resolution” has the meaning given to it by *section 189*;

“prescribed” –

- (a) subject to *paragraphs (b) and (c)*, means prescribed by regulations made by the Minister;
- (b) in *Part 11*, unless a power of the Supervisory Authority to prescribe by regulations is provided or that Part otherwise makes express provision –
 - (i) means prescribed by rules of court; and
 - (ii) where a power of the Minister to prescribe is provided, means prescribed by the means referred to in *paragraph (a)*;

and

- (c) in *Part 15*, where a power of the Minister to prescribe is provided or the provision in which the expression appears does not indicate otherwise, means prescribed by the means referred to in *paragraph (a)*;

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

“prior Companies Acts” means –

- (a) the Companies Acts 1963 to 2005;
- (b) Parts 2 and 3 of the Investment Funds, Companies and Miscellaneous Provisions Act 2006;
- (c) the Companies (Amendment) Act 2009;
- (d) the Companies (Miscellaneous Provisions) Act 2009; and
- (e) every other enactment passed or made before the commencement of this section which provides that it is to be read as one with the Companies Acts;

“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 (within the meaning of *section* - [**section corresponding to Part B2, Head 96**]), howsoever the document or documents are constituted, but does not include any advertisements in newspapers or journals derived from the foregoing;

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

“public limited company” means a public limited company as defined by *section* – [**section corresponding to Part B2, Head 1**];

“receiver of the property of a company” shall be read in accordance with *subsection (8)*;

“register” shall be read in accordance with *section 876(2)*;

“registered office”, in relation to a company, means the office provided for in *section 51*;

“Registrar” means –

- (a) the registrar appointed under *section 876(3)*; or
- (b) the person referred to in *subsection (6)* (which relates to the existing Registrar of Companies) of *section 876* for so long as the person holds office in accordance with *subsection (5)* of that section;

“related company” shall be read in accordance with *subsections (9) and (10)*;

“resolution for voluntary winding up” means a resolution referred to in *section 200, 570(1)* or *576(2)* to wind up a company voluntarily;

“shadow director” shall be read in accordance with *section 218*;

“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;

“single-member company” has the meaning given to it by *section 194*;

“special resolution” has the meaning given to it by *section 189*;

“statutory auditor” means an individual or a firm (with the meaning of those Regulations) that stands approved as a statutory auditor or statutory audit firm, as the case may be, under the European Communities (Statutory Audits) (Directive 2006/43/EC) Regulations 2010 (S.I. No.220 of 2010);

“subsidiary” has the meaning given to it by *section 7*;

“Summary Approval Procedure” has the meaning given to it by *section 200*;

“Supervisory Authority” has the meaning given to it by *section 889(1)*;

“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;

“written resolution” has the meaning given to it by *section 189(8)*.

(2) A word or expression used in *Part 6* and also used in another Part of this Act has, in that other Part, the same meaning as it has in *Part 6*.

(3) References in this Act to a body corporate or to a corporation shall be read as not including a corporation sole, but as including a company or body corporate incorporated outside the State.

(4) Any provision of this Act overriding or interpreting a company’s constitution shall, except as provided by this Act, apply in relation to the constitution in force on the provision’s commencement as well as to regulations of the constitution coming into force thereafter.

(5) References in this Act to a person being in partnership with another are references to the person's being in partnership, within the meaning of section 1(1) of the Partnership Act 1890, with that person and references to a partner of a person shall be read accordingly.

(6) The Minister may, by order, specify a rate of interest for the purposes of *paragraph (b)* of the definition of “appropriate rate” in *subsection (1)*.

(7) In this Act a reference to a company having a sole director is a reference to either of the following –

- (a) a case in which one person only is named in the statement delivered under

section 21(1)(a) as a director of the company (and the company's constitution does not stand subsequently amended to provide that there shall be 2 or more directors of the company); or

- (b) a case in which the company's constitution provides (or, as it stands subsequently amended, the company's constitution provides) that there shall be a single director of the company.

(8) In this Act a reference to a receiver of the property of a company includes –

- (a) a reference to –
 - (i) a receiver and manager of the property of a company; or
 - (ii) a manager of the property of a company;
- (b) a reference to a receiver or to a receiver and manager or to a manager, of part only of that property; and
- (c) a reference to a receiver only of the income arising from that property or from part of it.

(9) 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 (within the meaning of *section 7(10)*) 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 (within the meaning of *section 7(10)*) of each of them is held by members of the other (whether directly or indirectly, but other than in a fiduciary capacity); or
- (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 body corporate to which both companies are related,

and “related company” has a corresponding meaning; for the purpose of any preceding paragraph of this subsection that contains a reference to a company being related to another, the provisions of this subsection also apply to the construction of each such reference.

(10) For the purposes of *subsection (9)* “company” includes any body that is capable of being wound up under this Act.

Periods of time.

3. (1) Where the time limited by any provision of this Act for the doing of anything expires on a Saturday, a Sunday or a 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, a Sunday or a public holiday.

(2) Where in this Act anything is required or allowed to be done within a number of days not exceeding 6, a day that is a Saturday, a Sunday or a public holiday shall not be reckoned in computing that number.

Repeals and revocations.

4. (1) The enactments specified in *Part 1* of *Schedule 2* are repealed to the extent specified in the third column of that Part.

(2) The statutory instruments specified in *Part 2* of *Schedule 2* are revoked to the extent specified in the third column of that Part.

Savings and transitional provisions.

5. (1) The repeal by this Act of any enactment shall not affect the incorporation of any company registered under any enactment so repealed.

(2) Any document referring to any former enactment relating to companies shall be read as referring to the corresponding enactment of this Act.

(3) Any person, appointed to any office under or by virtue of any former enactment relating to companies, who is in office immediately before the commencement of the provision concerned of this Act, shall be deemed to have been appointed to that office under or by virtue of the provision concerned of this Act.

(4) Any register, kept under any former enactment relating to companies, shall be deemed part of the register to be kept under the corresponding provision of this Act.

(5) All funds and accounts constituted under this Act shall be deemed to be in continuation

of the corresponding funds and accounts constituted under the former enactments relating to companies.

(6) *Schedule 6* contains further savings and transitional provisions and shall have effect accordingly.

(7) This section is without prejudice to the generality of the Interpretation Act 2005 and, in particular, section 27 of it.

(8) In this section “former enactment relating to companies” means any enactment repealed or revoked by this Act and any enactment repealed or revoked by the Act of 1963 or the Companies (Consolidation) Act 1908.

Construction of references in other Acts to companies registered under Companies (Consolidation) Act 1908 and Act of 1963.

6. (1) References in any Act, other than this Act, to a company formed and registered, or registered, under the Companies (Consolidation) Act 1908 or the Act of 1963 shall, unless the contrary intention appears, be read as references to a company formed and registered, or registered, under whichever of those Acts is appropriate or this Act.

(2) *Subsection (1)* applies despite section 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).

Definition of “subsidiary”.

7. (1) In this section the expressions “superior company” and “lower company” are used solely to assist the understanding of its terms and -

- (a) are not indicative of the status (in any manner not relevant to this section) of the respective companies vis a vis one another; and
- (b) do not constitute definitions to which regard must be had for any other purpose of this Act.

(2) For the purposes of this Act, a company (the “lower company”) is, subject to *subsection (5)*, a subsidiary of another (the “superior company”) if, but only if -

- (a) the superior company -
 - (i) is a shareholder or member of it and controls the composition of its board of directors; or
 - (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 the lower 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 superior company has the right to exercise a dominant influence over it -
 - (i) by virtue of provisions contained in the lower company's constitution; or
 - (ii) by virtue of a control contract; or
 - (c) the superior company has the power to exercise, or actually exercises, dominant influence or control over it; or
 - (d) the superior company and the lower company are managed by the superior company on a unified basis; or
 - (e) the lower company is a subsidiary (by virtue of the application of any of the provisions of this section) of any company which is the superior company's subsidiary (by virtue of such application).

(3) For the purposes of *subsection (2)(a)(i)*, the composition of the lower company's board of directors shall be regarded as being controlled by the superior company if, but only if, the latter 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.

(4) In applying *subsection (3)*, the superior 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 to the directorship without the exercise in his or her favour by the superior company of such a power as is mentioned in that subsection; or
- (b) that a person's appointment to the directorship follows necessarily from his

or her appointment as director of the superior company.

(5) In determining whether the lower company is a subsidiary of the superior company–

- (a) any shares held or power exercisable by the superior company 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 the superior company (except where the latter company is concerned only in a fiduciary capacity), or
 - (ii) by, or by a nominee for, a subsidiary of the superior company, not being a subsidiary which is concerned only in a fiduciary capacity, shall be treated as held or exercisable by the superior company;
- (c) any shares held or power exercisable by the superior company or a nominee for the superior company or a subsidiary of it shall be treated as not held or exercisable by the superior company where the shares are so held or the power is so exercisable by way of security but only if such power or the rights attaching to such shares are exercised in accordance with instructions received from the person providing the security;
- (d) any shares held or power exercisable by the superior company or by a nominee for the superior company or a subsidiary of it shall be treated as not held or exercisable by the superior company if the ordinary business of the superior company or its subsidiary, as the case may be, includes the lending of money and the shares are so held or the power is so exercisable by way of security but only if such power or the rights attaching to such shares are exercised in the interests of the person providing the security.

(6) For the purposes of *subsection (2)(a)(iv)* and *(v)*, the total of the voting rights of the shareholders or members in the lower company shall be reduced by the following -

- (a) the voting rights attached to shares held by the lower company in itself; and
- (b) the voting rights attached to shares held in the lower company by any of its subsidiaries; and
- (c) the voting rights attached to shares held by a person acting in his or her own name but on behalf of the lower company or one of the lower company's own subsidiaries.

(7) For the purposes of *subsection (2)(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.

(8) In *subsection (2)(b)* “control contract” means a contract in writing conferring such a right as is there referred to 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.

(9) *Subsection (7)* shall not be read as affecting the construction of the expression “actually exercises dominant influence” in *subsection (2)(c)*.

(10) In this section -

“company” includes any body corporate;

“equity share capital” means, in relation to a company, its issued share capital excluding any part of it which, neither as respects dividends nor as respects capital, carries any right to participate beyond a specified amount in a distribution.

Definitions of “holding company”, “wholly owned subsidiary” and “group of companies”.

8. (1) For the purposes of this Act, a company is another company’s holding company if, but only if, that other is its subsidiary.

(2) For the purposes of this Act, a company is another company’s wholly owned subsidiary if, but only if, the company has no members except –

- (a) that other company; or
- (b) companies that are wholly-owned subsidiaries (by virtue of the application of this subsection to them) of that other company; or
- (c) nominees of any company referred to in *paragraph (a)* or *(b)*; or
- (d) a mixture of what is referred to in 2 or more of the foregoing paragraphs.

(3) For the purposes of this Act “group of companies” means a holding company and its subsidiaries.

(4) In this section “company” has the same meaning as it has in *section 7*.

Act structured to facilitate its use in relation to most common type of company.

9. (1) Subject to *subsection (3)*, all of the law in this Act in relation to private companies limited by shares is to be found in *Parts 1 to 14* (or instruments under them) and *Schedules 1 to 6*.

(2) Subject to *subsection (3)*, all of the law in this Act in relation to other types of company is to be found amongst the provisions of –

- (a) *Parts 16 to 24* [**“Pillar B” Parts**] (or instruments under them) and *Schedules ...* [**Schedules relating to “Pillar B” Parts**]; and
- (b) *Parts 1 to 14* (or instruments under them) and *Schedules 1 to 6* as applied or adapted by *Parts 16 to 24* [**“Pillar B” Parts**].

(3) *Part 15* (Persons with Regulatory Functions in Relation to Companies) applies to both –

- (a) private companies limited by shares; and
- (b) other types of company,

as well as to certain undertakings to which the European Communities (Accounts) Regulations 1993 (S.I. No.396 of 1993), as amended, apply.

Reference in *Parts 2 to 14* to company to mean private company limited by shares.

10. Unless expressly provided otherwise, a reference in *Parts 2 to 14* to a company is a reference to a private company limited by shares.

Construction of references to directors, board of directors and interpretation of certain other plural forms.

11. (1) References in this Act to the directors of a company shall, where the company has a sole director, be read as references to the director of the company.

(2) References in this Act to the board of directors of a company shall, where the company has a sole director, be read as references to the director of the company.

(3) References in this Act to the members of a company, or the subscribers to a company's constitution, shall, where the company has a sole member or where there is a single subscriber to its constitution, be read as references to the member of the company or the subscriber to its constitution, as the case may be.

(4) This section is in addition to, and does not derogate from, any special provision in this Act as to the construction of the expression “director” or “member” in a particular case.

(5) This section is without prejudice to the generality of section 18(a) of the Interpretation Act 2005.

Regulations and orders.

12. (1) Subject to *subsection (2)*, the Minister may make regulations prescribing anything referred to in this Act as prescribed or to be prescribed.

(2) *Subsection (1)* does not apply to anything that *Part 11* or *15* provides is to be prescribed by another authority.

(3) Every regulation made by the Minister under this Act (other than a regulation referred to in *section 934*) or order made by the Minister under this Act (other than an order under *section 1(2)* or *16(1)*) 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 or order is passed by either such House within the next 21 days on which that House has sat after the regulation or order is laid before it, the regulation or order shall be annulled accordingly but without prejudice to the validity of anything previously done thereunder.

Authentication of documents.

13. Any approval, sanction, direction or licence or revocation of licence which, under this Act, may be given or made by the Minister may be under the hand of any person authorised in that behalf by the Minister.

Expenses.

14. The expenses incurred by the Minister in the administration of this Act shall, to such extent as may be sanctioned by the Minister for Finance, be paid out of moneys provided by the Oireachtas.