



STATUTORY INSTRUMENTS.

S.I. No. 7 of 2024

RULES OF THE SUPERIOR COURTS (COMPANIES) 2024

S.I. No. 7 of 2024

RULES OF THE SUPERIOR COURTS (COMPANIES) 2024

We, the Superior Courts Rules Committee, constituted pursuant to the provisions of the Courts of Justice Act 1936, section 67, and reconstituted pursuant to the provisions of the Courts of Justice Act 1953, section 15, by virtue of the powers conferred upon us by the Courts of Justice Act 1924, section 36, the Courts of Justice Act, 1936, section 68 (as applied by the Courts (Supplemental Provisions) Act 1961, section 48), the Courts (Supplemental Provisions) Act 1961, the European Communities (Rules of Court) Regulations 1972 (S.I. No. 320 of 1972) and of all other powers enabling us in this behalf, do hereby make the following Rules of Court.

Dated this 23rd day of November 2023.

Donal O'Donnell (Chairperson)

George Birmingham

David Barniville

Elizabeth Dunne

Máire Whelan

Nuala Butler

Richard Humphreys

Siobhan Phelan

Yvonne McNamara

Michele O'Boyle

Áine Hynes

James Finn

Mary Cummins

John Mahon

I concur in the making of the following Rules of Court.

Dated this 9th day of January, 2024.

Helen McEntee

Minister for Justice

S.I. No. 7 of 2024

RULES OF THE SUPERIOR COURTS (COMPANIES) 2024

1. (1) These Rules, which may be cited as the Rules of the Superior Courts (Companies) 2024, shall come into operation on the 12th day of January 2024.

(2) These Rules shall be construed together with the Rules of the Superior Courts.

(3) The Rules of the Superior Courts as amended by these Rules may be cited as the Rules of the Superior Courts 1986 to 2024.

2. The Rules of the Superior Courts are amended;

(i) by the substitution for Order 75 of the Order set out in Schedule 1, and

(ii) by the substitution for Forms 11 and 12 in Appendix N of the forms set out in Schedule 2.

Schedule 1

“Order 75

Proceedings under Companies Legislation (Various) not relating to Winding-Up

I. Preliminary

1. (1) In this Order unless the context or subject matter otherwise requires:
“the Act” means the Companies Act 2014;
“the company” means the company to which any application under this Order relates;
“creditor” includes a company or corporation, or a firm or partnership;
the “inquiry” means the inquiry made as to the debts, claims or liabilities of or affecting the company or as to any such debts, claims or liabilities ordered by the Court under this Order;
the “Merger Control Regulation” means Council Regulation (EC) No. 139/2004 of 20 January 2004 on the control of concentrations between undertakings.

(2) Words and expressions contained in this Order shall have the same meaning as in the Act.

(3) In this Order, a reference to a section or subsection is to that section or subsection in the Act unless it is indicated that reference to some other enactment is intended.

II. Title of proceedings

2. (1) All proceedings under this Order shall be entitled “the High Court” and in the matter of the company and in the matter of the Companies Act 2014, and where the company is in liquidation, there shall be added after the name of the company the words “in liquidation”.

(2) Every originating notice of motion shall be in the Form No. 1 in Appendix N and the affidavit grounding the originating notice of motion shall verify the accuracy of any factual matter contained in the originating notice of motion.

III. Applications by originating notice of motion

3. (1) Any application under the Act, not being an application:
 - (a) which may be made ex parte;
 - (b) for which provision has been made in Order 74, Order 74A, Order 74B, or Order 74C, or
 - (c) made in proceedings which have already been commenced shall be made by originating notice of motion.
- (2) In any application mentioned in sub-rule (1) where the moving party is not the company concerned, copies of the originating notice of motion and any affidavit grounding the application (and any exhibits thereto) shall be served on the company (and on any liquidator or examiner, if the company is in

liquidation or in examinership) within three days after the originating notice of motion has been filed in the Central Office. In every case, the application shall, subject to the Court's directions in that regard, also be served on any director, officer, shareholder, debenture-holder or counterparty of the company concerned or any other person who would be directly affected by the making of the order sought in the application.

(3) Where several of the applications referred to in sub-rule (1) are begun simultaneously by the same applicant or applicants concerning the same company, all of the reliefs may be sought in a single originating notice of motion.

(4) A copy of any originating notice of motion in the case of an application under section 108 of the Act shall be served on every secured creditor of the company within four days after it has been filed in the Central Office.

(5) Every application referred to in sub-rule (1) shall be grounded upon the affidavit of the party making the application and shall be heard and determined on affidavit unless the Court otherwise authorises.

IV. Application for directions

4. (1) Where an originating notice of motion has been issued under rule 3, an application shall in every case be made to the Court on the return date of that motion for directions as to the proceedings to be taken.

(2) Upon the hearing of the motion or any adjourned hearing or hearings thereof or any subsequent application the Court may make such order or orders and give such directions as it may think fit before further proceedings are taken and more particularly in relation to the following matters, that is to say:

- (a) directions as to the publication of notices;
- (b) in cases where the Court orders an inquiry as to the debts, claims or liabilities of or affecting a company or as to any such debts, claims or liabilities, the proceedings to be taken for settling the list of creditors entitled to object, including the dispensing with the observance of section 85(4) of the Act as regards any class or classes of creditors, fixing the date with reference to which the list of such creditors is to be made out, and generally fixing a time for and giving directions as to all other necessary or proper steps in the matter whether expressly mentioned in any of the rules of this Order or not.

(3) The Court may, in any case where it considers it necessary or desirable in the interests of justice so to do, direct a plenary hearing in the matter and may make such order or give such directions as to the exchange of pleadings and the settling of the issues between the parties as appears proper in the circumstances.

(4) On the hearing of any application under rule 3 the Court may adjourn the further hearing of the motion until any other party or parties have been notified of the making of the application and may give directions as to the time and mode of service of such party or parties and may adjourn the hearing or the further hearing of such application to a date to be specified.

V. Proceedings when inquiry directed

5. (1) The company shall, within seven days after an inquiry has been directed pursuant to rule 4(2)(b) or within such further or other time as the Court may allow, file in the Central Office an affidavit made by some officer of the company verifying a list containing so far as possible the names and addresses of the creditors of the company to whom such inquiry extends. The said list shall also contain the amounts due to the creditors therein named respectively in respect of debts, claims or liabilities to which the inquiry extends, or in the case of any such debt payable on a contingency or not ascertained, of any such claim admissible to proof in a winding-up of the company, the value, so far as can be justly estimated, of such debt or claim. Every such list and an attested copy of such affidavit shall be left at the Central Office not later than three days after the filing of the affidavit.

(2) The person making any such affidavit shall state therein his belief that the list verified by such affidavit is correct, and there was not at the date so fixed as aforesaid, any debt, claim or liability which, if that date were the commencement of the winding up of the company, would be admissible in proof against the company, except the debts, or claims and liabilities set forth in such list and shall state his means of knowledge of the matters deposed to in such affidavit. Such affidavit and list shall be in the Forms Nos. 2 and 3 respectively in Appendix N.

(3) Complete copies of such list shall be kept at the registered office of the company and at the offices of their solicitor and any person who wishes to inspect the same may, at any time during the ordinary hours of business, inspect and take extracts from the same.

(4) The company shall within seven days after the filing of such affidavit or such further other time as the Court may allow, send to each creditor whose name is entered in the said list, a notice stating the amount of the proposed reduction of capital or, as the case may be, the effect of the order directing the inquiry and the amount or estimated value of the debt or the contingent debt or claim or both for which such creditor is entered in the said list, and the time (to be fixed by the Court) within which if he claims to be entitled to be entered on such a list as a creditor for a larger amount, he shall send in his name and address and the particulars of his debt or claim, and the name and address of his solicitor (if any) to the solicitor of the company; and such notice shall be sent by post addressed to each such creditor at his last known address or place of abode and may be in the Form No. 4 in Appendix N.

6. Notice of the presentation of the originating notice of motion, of the effect of the order directing the inquiry and of the filing of the list of creditors shall, after the filing of the affidavit mentioned in rule 5 be published at such times and in such newspapers as the Court shall direct. Every such notice shall state the amount of the proposed reduction of capital of the nature of the order sought by the applicant and the places where the aforesaid list of creditors may be inspected, and the times within which creditors of the company who are not, but are entitled to be entered on the said list, and who wish to be entered therein, or creditors who wish to be entered therein for a larger or different amount, shall send in their names and addresses, and the particulars of their

debts or claims, and the names and addresses of their solicitors (if any) to the solicitor of the company. Such notice may be in Form No. 5 in Appendix N.

7. The company shall, within such time as the Court shall direct, file in the Central Office an affidavit made by the person to whom the particulars of debts or claims are by such notices as are mentioned in rules 5(4) and 6 required to be sent, stating the result of such notices respectively and verifying lists, in the Forms Nos. 7 and 8 respectively in Appendix N, containing in alphabetical order the names and addresses of the persons (if any) who shall have sent in the particulars of their debts or claims in pursuance of such notices respectively, and the amounts of such debts or claims. Some officer of the company shall join in such affidavit, and shall in such list distinguish which (if any) of such debts and claims are wholly, or as to any and what part thereof, admitted by the company, and which (if any) of such debts and claims are wholly, or as to any and what part thereof, disputed by the company. Such affidavit shall also state which of the persons who are entered in the list as creditors and which of the persons who have sent in particulars of their debts or claims in pursuance of such notices as aforesaid have been paid or have consented to the proposed reduction. Such affidavit may be in the Form No. 6 in Appendix N and such list and an attested copy of such affidavit shall be left at the Central Office within such time as the Court shall direct.

8. (1) If any debt or claim, particulars of which are so sent in shall not be admitted by the company at its full amount, then and in every such case, unless the company are willing to set apart and appropriate in such manner as the Court shall direct, the full amount of such debt or claim, the company shall send to the creditor a notice that he is required to come in and prove such debt or claim, or such part thereof that is not admitted by the company, by a date to be therein named, being not less than four clear days after such notice, and being the time appointed by the Court for adjudicating on such debts and claims. Such notice may be in the Form No. 9 in Appendix N.

(2) Such creditors as come in to prove their debts or claims pursuant to any such notice shall be allowed their costs of proof against the company, and be answerable for costs, in the same manner as in the case of persons coming in to prove debts under a judgment in a cause.

9. The result of the settlement of the list of creditors shall be stated in a certificate by the Court and such certificate shall distinguish the debts or claims, the full amount of which the company are willing to set apart and appropriate, and the debts or claims (if any), the amount of which has been fixed by inquiry and adjudication in the manner provided by section 85 of the Act and the debts or claims (if any) the full amount of which is not admitted by the company, nor such as the company are willing to set apart and appropriate and the amount of which has not been fixed by inquiry and adjudication as aforesaid; and shall show which of the creditors have consented to the relief sought in the originating notice of motion and the total amount of the debts due to them, and the total amount of the debts or claims the payment of which has been provided for under section 85 of the Act and the persons to or by whom same are due or claimed; but it shall not be necessary to show in such certificate the several amounts of the debts or claims of any persons who have

consented to the relief sought in the originating notice of motion or the payment of whose debts or claims has been secured as aforesaid.

10. The originating notice of motion shall not be heard until the expiration of at least eight clear days from the filing of the certificate mentioned in rule 9.

Hearing of originating notice of motion

11. Notice of the day on which the originating notice of motion is to be heard shall be published at such times and in such newspaper or newspapers as the Court shall direct, and such notice shall be in the Form No. 10 in Appendix N with such variations as the circumstances of the case may require.

12. Any creditor may, upon giving two clear days' notice in writing to the solicitor of the company of his intention so to do, appear at the hearing of the originating notice of motion.

13. Where a creditor, the full amount of whose debt or claim is not admitted by the company, appears at the hearing and the validity of such debt or claim has not been inquired into and adjudicated upon, the costs of and occasioned by his appearance shall be dealt with as to the Court shall seem just. In all other cases the creditor appearing shall be entitled to the costs of such appearance unless the Court shall be of opinion that in the circumstances of the particular case his costs ought not to be allowed.

14. When the originating notice of motion comes on to be heard the Court may give such directions as may seem proper with reference to the securing in the manner provided by the Act the payment of the debts or claims of any creditors who do not consent to the relief sought in the originating notice of motion, and the further hearing of the originating notice of motion may be adjourned for the purpose of allowing any steps to be taken with reference to the securing in manner aforesaid the payment of such debts or claims.

VI. Order confirming a reduction of capital

15. Where the Court makes an order confirming a reduction of capital, such order shall give directions in what manner and in what newspapers, and at what times, notice of the registration of the order and of such minute as is mentioned in section 86 of the Act is to be published.

VII. Appeal against refusal to register a name

16. (1) An appeal under section 26 of the Act against the refusal to register a name of company shall be brought within 21 days after the applicant for such registration has received notice of such refusal but the Court may extend the time within which such appeal may be brought upon such terms (if any) as the Court may direct.

(2) A copy of the originating notice of motion shall be served on the Registrar of Companies within four days after it has been filed in the Central Office.

VIII. Ex parte applications

17. (1) The following applications shall be made by originating motion *ex parte*:

- (a) an application under section 400(5) of the Act for leave not to deliver the required notice;
 - (b) an application under section 401(5) of the Act for leave not to deliver the required notice;
 - (c) an application under section 821 of the Act for leave to inform the Court of any relevant matter;
 - (d) an application under section 848 of the Act for leave to report to the Court.
- (2) Every application under this rule shall be grounded upon the affidavit of the party making such an application and shall be heard and determined on affidavit unless the Court otherwise authorises.
- (3) The Court may, where it thinks fit, order that notice of the application be given to all such persons as the Court may direct, and may give directions as to the service of the said notice.

IX. Takeover Schemes

18. (1) This rule applies to any applications or proceedings involving:
- (a) the exercise, or a request for the exercise, by the Court of its powers under section 453 or section 455 of the Act with respect to a compromise or scheme of arrangement proposed between a “relevant company”, within the meaning of the Irish Takeover Panel Act 1997, and its members or any class of its members which constitutes a takeover within the meaning of that Act;
 - (b) the exercise, or a request for the exercise, by the Court of its powers under section 459 of the Act with respect to a scheme, contract or offer of the kind referred to in section 459, and which constitutes a takeover within the meaning of the Irish Takeover Panel Act 1997; and
 - (c) the granting, or a request for the granting, by the Court of any other relief in support of, or for the purpose of giving effect to, such a compromise or scheme of arrangement or scheme, contract or offer.

In this rule, any such applications or proceedings are referred to as “takeover scheme proceedings”.

(2) The originating document in any takeover scheme proceedings shall contain a statement that the proceedings are takeover scheme proceedings within the meaning of this rule.

(3) The applicant or other moving party in any takeover scheme proceedings shall notify the Irish Takeover Panel (in this rule referred to as “the Panel”) of any motion or other application made in takeover scheme proceedings, and shall provide the Panel with true copies of any motion or other application, and any affidavit, exhibit or other document filed or delivered in support of such application, promptly upon the filing or delivery of the same. The applicant or moving party shall provide the Panel with particulars of the terms of any order made by the Court on any motion or other

application in any takeover scheme proceedings promptly upon the making of such order, and with a true copy of such order promptly upon the perfection of the same.

(4) The Panel shall be at liberty to be heard in takeover scheme proceedings and may apply to the Court for that purpose.

(5) For the purpose of section 1440(2) of the Act, the Court may, in any takeover scheme proceedings, direct the Registrar to invite the Panel to provide to the Court, in such form as the Court may request, any report or other information which appears relevant to the exercise of the Court's jurisdiction concerning the compromise or scheme of arrangement or, as the case may be, the scheme, contract or offer which is the subject of the takeover scheme proceedings, and may give such directions as seem to it just and proper as to the transmission of a copy of such report or information to the applicant in the takeover scheme proceedings and to any other party to, or person interested in, those proceedings.

X. Applications under Chapter 3 of Part 9 of the Act (mergers) and Chapter 4 of Part 9 of the Act (divisions)

19. (1) An application to the Court:

- (a) under section 477 of the Act by all the merging companies for an order confirming a merger, or
- (b) under section 500 of the Act by all the companies involved in a division for an order confirming a division

shall be commenced by way of originating notice of motion, which shall be entitled in the matter of an application under section 477 or, as the case may be, section 500 of the Act and in the matter of each of the merging companies or, as the case may be, in the matter of each of the companies involved in the division.

(2) On the date first fixed for the hearing of an originating notice of motion referred to in sub-rule (1), or on any adjournment from that date, the Court may make such orders or give such directions for the further conduct of the proceedings as appear just and convenient for the determination of the proceedings, including:

- (a) an order fixing a date for the hearing of the application for an order under section 477 or, as the case may be, section 500 of the Act and for the publication of notice of the application and of the date fixed for the hearing;
- (b) for the service of copies of the originating notice of motion, grounding affidavit and exhibits on any person, and fixing time limits within which any such person is at liberty to deliver and file any affidavit, and any replying affidavit may be delivered and filed on behalf of the applicants;
- (c) an order determining any application under section 468(3)(b) of the Act or, as the case may be, under section 492(3)(b) of the Act, for the appointment of an expert.

(3) The originating notice of motion referred to in sub-rule (1) shall be grounded upon an affidavit sworn on behalf of each of the merging companies or, as the case may be, each of the companies involved in the division, which shall:

- (a) exhibit and verify each of the following or, where applicable, verify why it is not required in the circumstances:
 - (i) the common draft terms of merger approved in writing on behalf of each of the merging companies in accordance with section 466 of the Act;
 - (ii) a copy of the explanatory report referred to in section 467(1) of the Act, provided that in any case where an agreement referred to in section 467(4) of the Act has been made between or among the holders of shares or other securities, the affidavit shall instead verify the making of such an agreement and exhibit a copy of that agreement, if in writing;
 - (iii) the independent person's report referred to in section 468(1) of the Act, and
 - (iv) the merger financial statement referred to in section 469(1) of the Act or where no such financial statement is required for any company concerned, a copy of that company's latest annual accounts;

or, as the case may be,

- (i) the common draft terms of division approved in writing on behalf of each of the companies involved in the division in accordance with section 490 of the Act,
 - (ii) the explanatory report referred to in section 491(1) of the Act, provided that in any case where an agreement referred to in section 491(4) of the Act has been made between or among the holders of shares or other securities, the affidavit shall instead verify the making of such an agreement and exhibit a copy of that agreement, if in writing, and in any case where each of the companies involved in the division relies on section 491(5) of the Act, the affidavit shall instead verify the allocation of shares in each of the acquiring companies in accordance with section 491(5),
 - (iii) the independent person's report referred to in section 492(1) of the Act, and
 - (iv) any division financial statement referred to in section 493(1) of the Act or where no such division financial statement is required for any company concerned, a copy of that company's latest annual accounts;
- (b) contain an averment confirming the delivery by the applicant companies to the Registrar of Companies of the document

referred to in section 470(1) or, as the case may be, section 494(1) of the Act, or verifying the publication of that document in accordance with section 470(5) or, as the case may be, section 494(5) of the Act, on each relevant company's website;

- (c) verify the publication by the applicant companies of notice of such delivery in accordance with section 470(2) or, as the case may be, in accordance with section 494(2) of the Act;
- (d) include evidence of:
 - (i) the times during which the documents referred to in section 471(1) or, as the case may be, section 495(1) of the Act, were made available for inspection at the registered office of each company concerned in accordance with that section or, as the case may be,
 - (ii) the publication on each relevant company's website in accordance with section 471(5) and 471(6) of the Act of the documents referred to in section 471(1) of the Act or, as the case may be, the publication on each relevant company's website in accordance with section 495(5) and 495(6) of the Act of the documents referred to in section 495(1) of the Act;
- (e) exhibit a copy of every notice convening a general meeting referred to in section 473 or, as the case may be, section 496 of the Act, and include evidence of the passing of every special resolution referred to in section 473 or, as the case may be, section 496 of the Act;
- (f) exhibit any written request by any shareholder pursuant to section 476(1) or, as the case may be, section 499(1) of the Act and
- (g) exhibit the original or a true copy of and verify any other document relied upon in support of the application.

(4) The application for an order under section 477 or, as the case may be, section 500 of the Act shall additionally be grounded upon an affidavit sworn on behalf of each of the applicants, which shall:

- (a) contain, or exhibit and verify, the statement referred to in section 477(2) or as the case may be, section 500(2) of the Act, made up to a date as near as practicable to the date on which the application is to be heard, or a statement that no shareholder has made a request referred to in that section;
- (b) contain a statement as to whether any shareholder has made a request referred to in section 476(1) or as the case may be, section 499(1) of the Act, and, where such a request has been made, provide details of the measures taken or proposed to comply with each such request and those details or that statement shall be provided or made up to a date as near as practicable to the date on which the application is to be heard;

- (c) where necessary, include evidence as to the effect, if any, of the merger on creditors of any of the merging companies or, as the case may be, of the division on creditors of any of the companies involved in the division;
- (d) provide details of any provision made or proposed to be made for any creditor of any of the merging companies or, as the case may be, any creditor of any of the companies involved in the division, who has notified any of those companies of an objection on the grounds that that creditor would be unfairly prejudiced by an order under section 480 or, as the case may be, section 503 of the Act;
- (e) include evidence of the rights in the acquiring company or acquiring companies which will be given to holders of securities other than shares in any of the companies being acquired to which special rights are attached for the purposes of section 479(1) or, as the case may be, section 502(1) of the Act;
- (f) either:
 - (i) confirm that the merger or division is not a merger or acquisition which is referred to in section 16 of the Competition Act 2002 and to which paragraph (a) or (b) of section 18(1) of that Act applies or which is referred to in section 18(3) of that Act and which has been notified to the Competition and Consumer Protection Commission in accordance with that subsection, or
 - (ii) where the merger or division is such a merger or acquisition, confirm, and where appropriate exhibit the original or a true copy of any document evidencing:
 - (I) that the Competition and Consumer Protection Commission has determined under section 21 or 22 of that Act that the merger or division may be put into effect, or
 - (II) that the Competition and Consumer Protection Commission has made a conditional determination (within the meaning of that Act) in relation to the merger or division, or
 - (III) confirm that the period specified in section 21(2) of that Act has elapsed without the Competition and Consumer Protection Commission having informed the undertakings which made the notification concerned of the determination (if any) it has made under paragraph (a) or (b) of section 21(2) aforementioned in relation to the merger or division, or
 - (IV) confirm that a period of four months has elapsed since the appropriate date (within the meaning of that Act) without the Competition and Consumer

Protection Commission having made a determination under section 22 of that Act in relation to the merger or division;

- (g) either:
 - (i) confirm that the merger or division is not a concentration with a Community dimension within the meaning of the Merger Control Regulation, or
 - (ii) where the merger or division is such a concentration, confirm, and where appropriate exhibit the original or a true copy of any document evidencing:
 - (I) that the European Commission has issued a decision under Article 8 of the Merger Control Regulation declaring the concentration compatible with the common market, or
 - (II) that the concentration is deemed to have been declared compatible with the common market pursuant to Article 10(6) of the Merger Control Regulation, and specify the basis on which it is so deemed, or
 - (III) that after a referral by the European Commission to the Competition and Consumer Protection Commission under Article 9 of the Merger Control Regulation, one of the events specified in subparagraphs (i) to (iv) of paragraph (f)(ii), has occurred,
- (h) provide details of any requirement under any enactment for any other authorisation, approval, consent, waiver, licence, permission or agreement that affects the merger or division and confirm, and exhibit the original or a true copy of any document evidencing, that each such requirement has been satisfied, and
 - (i) exhibit the original or a true copy of, and verify, any document evidencing any other matter mentioned in section 480(2) of the Act or as the case may be, exhibit the original or a true copy of, and verify, any document evidencing any other matter mentioned in section 503(2) of the Act.

(5) The Registrar of the Court shall for the purposes of section 482 of the Act or, as the case may be, section 505 of the Act, send an attested copy of any order of the Court under section 480 or section 503 of the Act to the Registrar of Companies by pre-paid registered post or by any other means directed by the Court.

XI. Applications under Chapter 16 of Part 17 of the Act (mergers) and Chapter 17 of Part 17 of the Act (divisions)

20. (1) An application to the Court:

- (a) under section 1141 of the Act by all the merging companies for an order confirming a merger, or

- (b) under section 1163 of the Act by all the companies involved in a division for an order confirming a division

shall be commenced by way of originating notice of motion, which shall be entitled in the matter of an application under section 1141 or, as the case may be, section 1163 of the Act and in the matter of each of the merging companies or, as the case may be, in the matter of each of the companies involved in the division.

(2) On the date first fixed for the hearing of an originating notice of motion referred to in sub-rule (1), or on any adjournment from that date, the Court may make such orders or give such directions for the further conduct of the proceedings as appear just and convenient for the determination of the proceedings, including:

- (a) an order fixing a date for the hearing of the application for an order under section 1141 or, as the case may be, section 1163 of the Act and for the publication of notice of the application and of the date fixed for the hearing;
- (b) for the service of copies of the originating notice of motion, grounding affidavit and exhibits on any person, and fixing time limits within which any such person is at liberty to deliver and file any affidavit, and any replying affidavit may be delivered and filed on behalf of the applicants.

(3) The originating notice of motion referred to in sub-rule (1) shall be grounded upon an affidavit sworn on behalf of each of the merging companies or, as the case may be, each of the companies involved in the division, which shall:

- (a) exhibit and verify each of the following or, where applicable, verify why it is not required in the circumstances:
 - (i) the common draft terms of merger approved in writing on behalf of each of the merging companies in accordance with section 1131 of the Act;
 - (ii) a copy of the explanatory report referred to in section 1132(1) of the Act, provided that in any case where section 1132 of the Act does not apply, the affidavit shall instead explain and verify the reason why section 1132 of the Act does not apply and exhibit any document evidencing the reason for the inapplicability of section 1132 of the Act to the particular case;
 - (iii) the expert's report referred to in section 1133(1) of the Act, provided that in any case where section 1133 of the Act does not apply, the affidavit shall instead explain and verify the reason why section 1133 of the Act does not apply and exhibit any document evidencing the reason for the inapplicability of section 1133 of the Act to the particular case, and
 - (iv) the merger financial statement referred to in section 1134(1) of the Act or where no such financial statement is

required for any company concerned, a copy of that company's latest annual accounts;

or, as the case may be,

- (i) the common draft terms of division approved in writing on behalf of each of the companies involved in the division in accordance with section 1153 of the Act;
 - (ii) the explanatory report referred to in section 1154(1) of the Act, provided that in any case where section 1154 of the Act does not apply, the affidavit shall instead explain and verify the reason why section 1154 of the Act does not apply and exhibit any document evidencing the reason for the inapplicability of section 1154 of the Act to the particular case;
 - (iii) the expert's report referred to in section 1155(1) of the Act, provided that in any case where section 1155 of the Act does not apply, the affidavit shall instead explain and verify the reason why section 1155 of the Act does not apply and exhibit any document evidencing the reason for the inapplicability of section 1155 of the Act to the particular case, and
 - (iv) any division financial statement referred to in section 1156(1) of the Act or where no such division financial statement is required for any company concerned, a copy of that company's latest annual accounts;
- (b) contain an averment confirming the delivery by the applicant companies to the Registrar of Companies of the document referred to in section 1135(1)(a) of the Act or, as the case may be, section 1157(1)(a) of the Act, and verifying the publication of notice in accordance with section 1135(1)(b) of the Act or, as the case may be, section 1157(1)(b) of the Act or, as the case may be, verifying compliance with section 1135(3) of the Act or section 1157(3) of the Act;
- (c) include evidence of:
- (i) the times during which the documents referred to in section 1136(1) or, as the case may be, section 1158(1) of the Act, were made available for inspection at the registered office of each company concerned in accordance with that section or, as the case may be;
 - (ii) the compliance by each company concerned with the requirements of section 1138 of the Act or, as the case may be, with section 1160 of the Act;
- (d) exhibit a copy of every notice convening a general meeting referred to in section 1137 or, as the case may be, section 1159 of the Act, and include evidence of the passing of every special resolution at such a meeting;

- (e) exhibit any written request by any shareholder pursuant to section 1140(1) or, as the case may be, section 1162(1) of the Act and
 - (f) exhibit the original or a true copy of and verify any other document relied upon in support of the application.
- (4) The application under section 1141 of the Act for an order under section 1144 of the Act or, as the case may be, the application under section 1163 of the Act for an order under section 1166 of the Act shall additionally be grounded upon an affidavit sworn on behalf of each of the applicants, which shall:
- (a) contain, or exhibit and verify, the statement referred to in section 1141(2) or as the case may be, section 1163(2) of the Act, made up to a date as near as practicable to the date on which the application is to be heard, or a statement that no shareholder has made a request referred to in that section;
 - (b) contain a statement as to whether any shareholder has made a request referred to in section 1140(1) or as the case may be, section 1162(1) of the Act, and, where such a request has been made, provide details of the measures taken or proposed to comply with each such request and those details or that statement shall be provided or made up to a date as near as practicable to the date on which the application is to be heard;
 - (c) where necessary, include evidence as to the effect, if any, of the merger on creditors of any of the merging companies or, as the case may be, of the division on creditors of any of the companies involved in the division;
 - (d) provide details of any provision made or proposed to be made for any creditor of any of the merging companies or, as the case may be, any creditor of any of the companies involved in the division, who has notified any of those companies of an objection on the grounds that that creditor would be unfairly prejudiced by an order under section 1144 or, as the case may be, section 1166 of the Act;
 - (e) include evidence of the rights in the acquiring company or acquiring companies which will be given to holders of securities other than shares in any of the companies being acquired to which special rights are attached for the purposes of section 1143(1) or, as the case may be, section 1165(1) of the Act;
 - (f) either:
 - (i) confirm that the merger or division is not a merger or acquisition which is referred to in section 16 of the Competition Act 2002 and to which paragraph (a) or (b) of section 18(1) of that Act applies or which is referred to in section 18(3) of that Act and which has been notified to the Competition and Consumer Protection Commission in accordance with that subsection, or

- (ii) where the merger or division is such a merger or acquisition, confirm, and where appropriate exhibit the original or a true copy of any document evidencing:
 - (I) that the Competition and Consumer Protection Commission has determined under section 21 or 22 of that Act that the merger or division may be put into effect, or
 - (II) that the Competition and Consumer Protection Commission has made a conditional determination (within the meaning of that Act) in relation to the merger or division, or
 - (III) confirm that the period specified in section 21(2) of that Act has elapsed without the Competition and Consumer Protection Commission having informed the undertakings which made the notification concerned of the determination (if any) it has made under paragraph (a) or (b) of section 21(2) aforementioned in relation to the merger or division, or
 - (IV) confirm that a period of four months has elapsed since the appropriate date (within the meaning of that Act) without the Competition and Consumer Protection Commission having made a determination under section 22 of that Act in relation to the merger or division;
- (g) either:
 - (i) confirm that the merger or division is not a concentration with a Community dimension within the meaning of the Merger Control Regulation, or
 - (ii) where the merger or division is such a concentration, confirm, and where appropriate exhibit the original or a true copy of any document evidencing:
 - (I) that the European Commission has issued a decision under Article 8 of the Merger Control Regulation declaring the concentration compatible with the common market, or
 - (II) that the concentration is deemed to have been declared compatible with the common market pursuant to Article 10(6) of the Merger Control Regulation, and specify the basis on which it is so deemed, or
 - (III) that after a referral by the European Commission to the Competition and Consumer Protection Commission under Article 9 of the Merger Control Regulation, one of the events specified in

subparagraphs (i) to (iv) of paragraph (f)(ii), has occurred,

- (h) provide details of any requirement under any enactment for any other authorisation, approval, consent, waiver, licence, permission or agreement that affects the merger or division and confirm, and exhibit the original or a true copy of any document evidencing, that each such requirement has been satisfied, and
- (i) exhibit the original or a true copy of, and verify, any document evidencing any other matter mentioned in section 1144(2) of the Act or as the case may be, exhibit the original or a true copy of, and verify, any document evidencing any other matter mentioned in section 1166(2) of the Act.

(5) The Registrar of the Court shall for the purposes of section 1146 of the Act or, as the case may be, section 1168 of the Act, send an attested copy of any order of the Court under section 1144 or section 1166 of the Act to the Registrar of Companies by pre-paid registered post or by any other means directed by the Court.

XII. Applications under the European Union (Cross-Border Conversions, Mergers and Divisions) Regulations 2023 (S.I. No. 233 of 2023)

Preliminary

21. (1) In this Part:

the “Directive” means Directive (EU) 2017/1132 as regards cross-border conversions, mergers and divisions as amended by Directive (EU) 2019/2121;

the “2023 Regulations” means the European Union (Cross-Border Conversions, Mergers and Divisions) Regulations 2023 (S.I. No. 233 of 2023);

reference to a “Regulation” is to a Regulation of the 2023 Regulations;

words and expressions have the same meaning as in the 2023 Regulations.

(2) Where, in any proceedings under this Part, a document exhibited to any affidavit or produced to the Court is not in one of the official languages of the State, a translation thereof into the Irish or English language, certified by a person competent and qualified for the purpose, shall be admissible as evidence of same. The competence and qualification of the translator shall be verified by affidavit.

22. (1) Where the applicant so requests, an application mentioned in sub-rule (6) may be determined by the Court on the papers filed by the applicant without the necessity for an oral hearing, subject to the provisions of this rule.

(2) A request under sub-rule (1) shall be made on the face of the originating notice of motion concerned, which shall not include a return date.

(3) Where the application includes a request under sub-rule (1), there shall be lodged together with the originating notice of motion and any grounding affidavit a booklet containing copies of the originating notice of motion, each affidavit intended to be relied upon in the application and every exhibit to each such affidavit. Where the applicant intends to deliver a written legal submission, a copy of the submission shall also be included in the booklet.

(4) Where the application includes a request under sub-rule (1), the Court may, having considered the application determine the application and cause it to be listed at a sitting of the Court for the announcement of the reasons for the determination, or give such further directions as it considers necessary for the determination of the application, which may, without limitation, include directions for the filing of further affidavit evidence or the filing of further legal submissions.

(5) Where the application does not include a request under sub-rule (1), the originating notice of motion shall be assigned a return date before the Court.

(6) This rule applies to:

- (a) an application in accordance with rule 23(1) by an Irish converting company under Regulation 17 for a certificate of the Court that the company has complied with the pre-conversion requirements;
- (b) an application in accordance with rule 25(1) by a converting company under Regulation 20 to examine the legality of a cross-border conversion as regards the procedure which concerns the completion of the cross-border conversion;
- (c) an application in accordance with rule 27(1) by an Irish merging company under Regulation 39 for a certificate of the Court that the company has complied with the pre-merger requirements;
- (d) an application in accordance with rule 29(1) by all the merging companies under Regulation 42 to examine the legality of a cross-border merger as regards that part of the procedure which concerns the completion of the cross-border merger including the formation of a successor company in the State;
- (e) an application in accordance with rule 31(1) by an Irish dividing company under Regulation 62 for a certificate of the Court that the company has complied with the pre-division requirements;
- (f) an application in accordance with rule 33(1) by the dividing company under Regulation 42 (as applied to divisions by Regulation 65) to examine the legality of a cross-border division as regards the procedure which concerns the completion of the cross-border division.

Cross-border conversions

23. (1) An application to the Court by an Irish converting company under Regulation 17 for a certificate of the Court that the company has complied with the pre-conversion requirements shall be commenced by originating notice of motion entitled in the matter of an application under Regulation 17 of the 2023 Regulations and in the matter of the applicant company.

(2) The originating notice of motion referred to in sub-rule (1) shall be grounded upon an affidavit sworn on behalf of the Irish converting company, which shall:

- (a) verify that the company is not a company to which the Regulations are disappplied by virtue of Regulation 3 and that the

proposed conversion is one to which Chapter 2 of Part 2 of the Regulations applies;

- (b) set out the steps taken by the Irish converting company to complete the pre-conversion requirements;
- (c) include evidence of the manner in which, each of the directors' explanatory report referred to in Regulation 8, if any, and the expert report referred to in Regulation 9, if any, were made available;
- (d) where the requirement of a directors' explanatory report or, as the case may be, an expert report, has been waived, verify the fact and circumstances of such waiver;
- (e) verify the delivery by the applicant company to the Registrar of Companies of the documents referred to in Regulation 12(1) or, as the case may be, verifying the publication in accordance with Regulation 12(2) on the applicant company's website of the documents referred to in Regulation 12(2) and the publication by
 - (i) the Registrar of Companies and
 - (ii) the applicant company
 of notice of such delivery or, as the case may be, of such publication, in accordance with Regulations 12(4) and 12(5),
- (f) specify the number of employees of the applicant Irish converting company at the time of the drawing up of the draft terms;
- (g) identify the existence of any subsidiaries of the applicant Irish converting company and the geographical location of any such subsidiaries;
- (h) include information regarding the satisfaction by the applicant Irish converting company of any obligations to relevant authorities (within the meaning of Regulation 2);
- (i) include information, where relevant, as to whether the procedures concerning employee participation referred to in Part 5 of the Regulations have started;
- (j) exhibit the original or a true copy of, and verify, any document relied on in support of the application, which shall, without limitation, include:
 - (i) the draft terms referred to in Regulation 7 adopted by the board of the Irish converting company;
 - (ii) the resolution of the board of the Irish converting company adopting the draft terms;
 - (iii) the directors' explanatory report referred to in Regulation 8, and the appended opinion, if any, or evidence as to why such a report was not required including, if applicable, any resolution or other document recording the agreement of

the members under Regulation 8(6) and the absence of any employees;

- (iv) the expert's report to the members referred to in Regulation 9 or evidence as to why such a report was not required including, if applicable, any resolution or other document recording the agreement of the members under Regulation 9(7) that such a report is not necessary;
- (v) the notices delivered by the applicant company to the Registrar of Companies referred to in Regulations 12(1)(b) and 12(1)(c) or, as the case may be, the information published on the applicant company's website in accordance with Regulation 12(2);
- (vi) any comments submitted by members, creditors or employees' representatives;
- (vii) copies of the CRO Gazette containing the notice published by the Registrar of Companies and of the editions of the national daily newspaper containing the notice published by the applicant company in accordance with Regulations 12(5) and 12(6);
- (viii) a copy of any notification to the Central Bank of Ireland required in accordance with Regulation 13; proof of its delivery and any written response provided by the Central Bank of Ireland;
- (ix) any special resolution approved in accordance with Regulation 14 and evidence of the satisfaction of, or the arrangements made directed to satisfying, any condition to which such resolution is made subject pursuant to Regulation 14(2);
- (x) evidence of any approval by a member of the applicant company which is necessary in accordance with Regulation 14(3);
- (xi) any written request by any minority shareholder pursuant to Regulation 15(1).

(3) On the date first fixed for the hearing of an originating notice of motion referred to in sub-rule (1), the Court may, if not giving the certificate sought, make such orders or give such directions, including for the service of copies of the originating notice of motion, grounding affidavit and exhibits on any person, or for any adjournment, as appear just, which may, without limitation, include:

- (a) directions to facilitate assessment of all of the relevant facts and circumstances in accordance with Regulation 17(12);
- (b) directions to enable the Court to consult with an independent expert in accordance with Regulation 17(13);
- (c) directions to enable the Court to carry out further enquiries in accordance with Regulation 17(15);

(d) directions to enable the Court to consult with relevant authorities in accordance with Regulation 17(17).

(4) A certificate issued by the Court in accordance with Regulation 17 shall be in the Form No. 11 in Appendix N.

(5) The Registrar of the Court shall send a certified copy of any order of the Court under Regulation 17 to the Registrar of Companies by any means, including electronic means, directed by the Court or agreed by the Registrar of the Court and the Registrar of Companies.

24. (1) The following applications shall be commenced by originating notice of motion grounded on an affidavit and shall, unless otherwise directed by the Court, be conducted in accordance with Order 84B:

- (a) An application by a minority shareholder to the Court under Regulation 15(4) for additional cash compensation;
- (b) An application by a creditor to the Court under Regulation 16(1) for adequate safeguards;
- (c) A reference to the Court under Regulation 90(10) for determination by the Labour Court of a question of law arising in proceedings before the Labour Court concerning a proposed conversion.

(2) An appeal to the Court under Regulation 90(9) on a point of law from a determination of the Labour Court in proceedings before the Labour Court concerning a proposed conversion shall be commenced by originating notice of motion entitled as a notice of appeal and grounded on an affidavit and shall, unless otherwise directed by the Court, be conducted in accordance with Order 84C.

(3) Any proceedings against an expert mentioned in Regulation 10 shall be commenced by plenary summons.

25. (1) An application to the Court by the converting company under Regulation 20 to examine the legality of a cross-border conversion as regards the procedure which concerns the completion of the cross-border conversion, including the proposed formation of an Irish converted company, shall be commenced by way of originating notice of motion, which shall be entitled in the matter of an application under Regulation 20 and in the matter of the converting company.

(2) On the date first fixed for the hearing of an originating notice of motion referred to in sub-rule (1), or on any adjournment from that date, the Court may make such orders or give such directions for the further conduct of the proceedings as appear convenient for the determination of the proceedings, including:

- (a) for the publication of notice of the application, where the court considers such publication to be necessary;
- (b) for the service of copies of the originating notice of motion, grounding affidavit and exhibits on any person, and fixing time limits within which any such person is at liberty to deliver and

file any affidavit, and any replying affidavit may be delivered and filed on behalf of the applicant;

- (c) orders for the filing or giving of further evidence, in particular as to ensuring that the converted company will comply with the law on the incorporation and registration of companies, and for the adjournment of the application or the mention of the application from time to time for that purpose.

(3) The application shall be grounded upon an affidavit sworn on behalf of the applicant, which shall:

- (a) verify that the converted company will be an Irish company;
- (b) exhibit a true copy of the draft terms of the cross-border conversion approved by the general meeting of the converting company for the purposes of Article 86h of the Directive, and verify that the draft terms to which the certificate referred to in subparagraph (c) relates are the same draft terms;
- (c) exhibit the original or a true copy of the pre-conversion certificate which has been issued in respect of the converting company by the authority designated for the purposes of Article 86m(1) of the Directive by the EEA state under the law of which that company is governed;
- (d) verify that any arrangements for employee participation in the converted company as are required by Part 5 of the Regulations have been determined;

(4) Where the Court makes an order under Regulation 20 approving the cross-border conversion, the Court's order shall specify the date on which the conversion is to have effect.

(5) The Registrar of the Court shall send a certified copy of any order of the Court under Regulation 20 to the Registrar of Companies by any means, including electronic means, directed by the Court or agreed by the Registrar of the Court and the Registrar of Companies.

26. The Court may direct that all proceedings in relation to the same cross-border conversion (including any applications by any minority shareholder or creditor, and appeal or reference to the Court under Part 5 of the Regulations) be listed together for hearing in such sequence as the Court may direct.

Cross-border mergers

27. (1) An application to the Court by an Irish merging company under Regulation 39 for a certificate of the Court that the company has complied with the pre-merger requirements shall be commenced by way of originating notice of motion. The originating notice of motion shall be entitled in the matter of an application under Regulation 39 of the 2023 Regulations and in the matter of the applicant company.

(2) The originating notice of motion referred to in sub-rule (1) shall be grounded upon an affidavit sworn on behalf of the Irish merging company, which shall:

- (a) verify that the company is not a company to which the Regulations are disappiled by virtue of Regulation 3 and that the proposed merger is one to which Chapter 2 of Part 3 of the Regulations applies;
- (b) state whether the simplified formalities under Regulation 47 are being availed of in respect of the proposed merger;
- (c) set out the steps taken by the Irish merging company to comply with the pre-merger requirements;
- (d) include evidence of the manner in which the directors' explanatory report referred to in Regulation 29, if any, and the expert report referred to in Regulation 30, if any, were made available;
- (e) where the requirement of a directors' explanatory report or, as the case may be, an expert report, has been waived, verify the fact and circumstances of such waiver;
- (f) verify the delivery by the applicant company to the Registrar of Companies of the documents referred to in Regulation 33(1) or, as the case may be, verifying the publication in accordance with Regulation 33(2) on the applicant company's website of the documents referred to in Regulation 33(1) and the publication by
 - (i) the Registrar of Companies and
 - (ii) the applicant company
 of notice of such delivery or, as the case may be, of such publication, in accordance with Regulations 33(6) and 33(7);
- (g) specify the number of employees of the applicant Irish merging company at the time of the drawing up of the draft terms;
- (h) identify the existence of any subsidiaries of the applicant Irish merging company and the geographical location of any such subsidiaries;
- (i) include information regarding the satisfaction by the applicant Irish merging company of any obligations to relevant authorities (within the meaning of Regulation 2);
- (j) include information, where relevant, as to whether the procedures concerning employee participation referred to in Part 5 of the Regulations have started;
- (k) exhibit the original or a true copy of, and verify, any document relied on in support of the application, which shall, without limitation, include:
 - (i) the common draft terms referred to in Regulation 28 adopted by the board of any Irish merging company;
 - (ii) the resolution of the board of any Irish merging company adopting the common draft terms;

- (iii) the directors' explanatory report referred to in Regulation 29 and the appended opinion, if any, or evidence as to why such a report was not required including, if applicable, any resolution or other document recording the agreement of the members under Regulation 29(7) and the absence of any employees;
- (iv) the expert's report referred to in Regulation 30 or evidence as to why such a report was not required including, if applicable, any resolution or other document recording the agreement of the members under Regulation 30(6) concerned that such a report is not necessary;
- (v) the notices delivered by the applicant company to the Registrar of Companies referred to in Regulations 33(1)(b) and 33(1)(c) or, as the case may be, the information published on the applicant company's website in accordance with Regulation 33(2);
- (vi) any comments submitted by members, creditors or employees' representatives;
- (vii) copies of the CRO Gazette containing the notice published by the Registrar of Companies and of the editions of the national daily newspaper containing the notice published by the applicant company in accordance with Regulation 33(6)(b);
- (viii) a copy of any notification to the Central Bank of Ireland required in accordance with Regulation 34; proof of its delivery and any written response provided by the Central Bank of Ireland;
- (ix) any special resolution approved in accordance with Regulation 35(1) and evidence of the satisfaction of or the arrangements made directed to satisfying, any condition to which it is subject pursuant to Regulation 35(2) or, where the exemption under Regulation 36 from the requirement to hold a general meeting is relied on by an acquiring company, proof of compliance with the requirements of Regulation 36 including, where relevant copies of any written agreement of shareholders and the holders of other securities conferring the right to vote required by Regulation 36(3)(b);
- (x) any written request by any minority shareholder pursuant to Regulation 37.

(3) On the date first fixed for the hearing of an originating notice of motion referred to in sub-rule (1), the Court may, if not giving the certificate sought, make such orders or give such directions, including for the service of copies of the originating notice of motion, grounding affidavit and exhibits on any person, or for any adjournment, as appear just, which may, without limitation, include:

- (a) directions to facilitate assessment of all of the relevant facts and circumstances in accordance with Regulation 17(12), as applied by Regulation 39(3);
 - (b) directions to enable the Court to consult with an independent expert in accordance with Regulation 17(13), as applied by Regulation 39(3);
 - (c) directions to enable the Court to carry out further enquiries in accordance with Regulation 17(15), as applied by Regulation 39(3);
 - (d) directions to enable the Court to consult with relevant authorities in accordance with Regulation 17(17), as applied by Regulation 39(3).
- (4) A certificate issued by the Court in accordance with Regulation 39 shall be in the Form No. 12 in Appendix N.
- (5) The Registrar of the Court shall send a certified copy of any order of the Court under Regulation 39 to the Registrar of Companies by any means, including electronic means, directed by the Court or agreed by the Registrar of the Court and the Registrar of Companies.
28. (1) The following applications shall be commenced by originating notice of motion grounded on an affidavit and shall, unless otherwise directed by the Court, be conducted in accordance with Order 84B:
- (a) An application by a minority shareholder to the Court under Regulation 37(4) for additional cash compensation;
 - (b) An application by a shareholder to the Court under Regulation 37(7) to dispute the share exchange ratio and claim a cash payment
 - (c) An application by a creditor to the Court under Regulation 38(1) for adequate safeguards;
 - (d) A reference to the Court under Regulation 90(10) for determination by the Labour Court of a question of law arising in proceedings before the Labour Court concerning a proposed merger.
- (2) An appeal to the Court under Regulation 90(9) on a point of law from a determination of the Labour Court in proceedings before the Labour Court concerning a proposed merger shall be commenced by originating notice of motion entitled as a notice of appeal and grounded on an affidavit and shall, unless otherwise directed by the Court, be conducted in accordance with Order 84C.
- (3) Any proceedings against an expert mentioned in Regulation 10 (as applied to mergers by Regulation 31) shall be commenced by plenary summons.
29. (1) An application to the Court by all the merging companies under Regulation 42 to examine the legality of a cross-border merger as regards that part of the procedure which concerns the completion of the cross-border

merger including the formation of a successor company in the State, shall be commenced by way of originating notice of motion, which shall be entitled in the matter of an application under Regulation 42 of the 2008 Regulations and in the matter of each of the merging companies.

(2) On the date first fixed for the hearing of an originating notice of motion referred to in sub-rule (1), or on any adjournment from that date, the Court may make such orders or give such directions for the further conduct of the proceedings as appear convenient for the determination of the proceedings, including:

- (a) for the publication of notice of the application;
- (b) for the service of copies of the originating notice of motion, grounding affidavit and exhibits on any person, and fixing time limits within which any such person is at liberty to deliver and file any affidavit, and any replying affidavit may be delivered and filed on behalf of the applicants;
- (c) orders for the filing or giving of further evidence, in particular as to compliance with any applicable requirement of Regulation 43, and for the adjournment of the application or the mention of the application from time to time for that purpose.

(3) The application shall be grounded upon an affidavit sworn on behalf of the applicants, which shall:

- (a) verify that the successor company is an Irish company;
- (b) exhibit the original of the certificate issued under Regulation 39 in relation to each Irish merging company;
- (c) exhibit the original or a true copy of a certificate to the same effect as a certificate issued under Regulation 39 issued by the authority designated for the purposes of Article 127(1) of the Directive by the EEA state under the law of which each other merging company that is an EEA company is governed;
- (d) exhibit the common draft terms approved by the general meeting of each merging company for the purposes of Article 126 of the Directive or, where Article 132(3) of the Directive applies, the common draft terms approved by each merging company in accordance with the law of each EEA state concerned;
- (e) verify that the common draft terms to which each certificate, referred to in subparagraphs (b) and (c), relates are the same terms produced in accordance with paragraph (d);
- (f) verify that any arrangements for employee participation in the successor company as are required by Part 5 of the Regulations have been determined;
- (g) either:
 - (i) confirm that the cross-border merger is not a merger or acquisition which is referred to in section 16 of the Competition Act 2002 and to which paragraph (a) or (b) of

- section 18(1) of that Act applies or which is referred to in section 18(3) of that Act and which has been notified to the Competition and Consumer Protection Commission in accordance with that subsection, or
- (ii) where the cross-border merger is such a merger or acquisition confirm, and where appropriate exhibit the original or a true copy of any document evidencing:
- (I) that the Competition and Consumer Protection Commission has determined under section 21 or 22 of that Act that the merger may be put into effect, or
 - (II) that the Competition and Consumer Protection Commission has made a conditional determination (within the meaning of that Act) in relation to the merger, or
 - (III) that the period specified in section 21(2) of that Act has elapsed without the Competition and Consumer Protection Commission having informed the undertakings which made the notification concerned of the determination (if any) it has made under paragraph (a) or (b) of section 21(2) aforementioned in relation to the merger, or
 - (IV) that a period of four months has elapsed since the appropriate date (within the meaning of that Act) without the Competition and Consumer Protection Commission having made a determination under section 22 of that Act in relation to the merger;
- (h) either:
- (i) confirm that the cross-border merger is not a concentration with a Community dimension within the meaning of the Merger Control Regulation, or
 - (ii) where the cross-border merger is such a concentration confirm, and where appropriate exhibit the original or a true copy of any document evidencing:
 - (I) that the European Commission has issued a decision under Article 8 of the Merger Control Regulation declaring the concentration compatible with the common market, or
 - (II) that the concentration is deemed to have been declared compatible with the common market pursuant to Article 10(6) of the Merger Control Regulation, and specify the basis on which it is so deemed or
 - (III) that, after a referral by the European Commission to the Competition and Consumer Protection Commission under Article 9 of the Merger Control

Regulation, one of the events specified in subparagraphs (i) to (iv) of paragraph (j)(ii), has occurred, and

- (i) provide details of any requirement under any enactment for any other authorisation, approval, consent, waiver, licence, permission or agreement that affects the cross-border merger and confirm, and exhibit the original or a true copy of any document evidencing, that each such requirement has been satisfied.

(4) Where the Court makes an order under Regulation 42 approving the merger, the order of the Court shall specify the date on which and, as necessary, the time at which, the merger is to take effect.

(5) The Registrar of the Court shall send a certified copy of any order of the Court under Regulation 42 to the Registrar of Companies by any means, including electronic means, directed by the Court or agreed by the Registrar of the Court and the Registrar of Companies.

(6) Notwithstanding sub-rule (1), where an Irish merging company intends to seek a certificate under Regulation 39 and to join in an application under Regulation 42 in respect of the same merger, it shall be permissible for all of the merging companies intending to seek relief under Regulation 42 in respect of that merger to issue a single originating notice of motion, in which is sought both the relief sought by the Irish merging company under Regulation 39 and, contingently on that relief being given, the relief sought by all of the merging companies under Regulation 42. In such case, the Irish merging company may seek relief under Regulation 39 on the date first fixed for the hearing of that originating notice of motion and the Court may, on that date, give such directions for the further conduct of the proceedings and adjourn the application for other relief as it thinks appropriate.

30. The Court may direct that all proceedings in relation to the same cross-border merger (including any applications by any minority shareholder or other shareholder or creditor, and appeal or reference to the Court under Part 5 of the Regulations) be listed together for hearing in such sequence as the Court may direct.

Cross-border divisions

31. (1) An application to the Court by an Irish dividing company under Regulation 62 for a certificate of the Court that the company has complied with the pre-division requirements shall be commenced by originating notice of motion entitled in the matter of an application under Regulation 62 of the 2023 Regulations and in the matter of the applicant company.

(2) The originating notice of motion referred to in sub-rule (1) shall be grounded upon an affidavit sworn on behalf of the Irish dividing company, which shall:

- (a) verify that the company is not a company to which the Regulations are disapplied by virtue of Regulation 3 and that the proposed division is one to which Chapter 2 of Part 4 of the Regulations applies;

- (b) set out the steps taken by the Irish dividing company to complete the pre-division requirements;
- (c) include evidence of the manner in which, each of the directors' explanatory report referred to in Regulation 53, if any, and the expert report referred to in Regulation 54, if any, were made available;
- (d) where the requirement of a directors' explanatory report or, as the case may be, an expert report, has been waived, verify the fact and circumstances of such waiver;
- (e) verify the delivery by the applicant company to the Registrar of Companies of the documents referred to in Regulation 33(1)(as applied to divisions by Regulation 57) or, as the case may be, verifying the publication in accordance with Regulation 33(2)(as applied to divisions by Regulation 57)) on the applicant company's website of the documents referred to in Regulation 33(1)(as applied to divisions) and the publication by
 - (i) the Registrar of Companies and
 - (ii) the applicant company
 of notice of such delivery or, as the case may be, of such publication, in accordance with Regulations 33(6) and 33(7)(as applied to divisions by Regulation 57);
- (f) specify the number of employees of the applicant Irish dividing company at the time of the drawing up of the draft terms;
- (g) identify the existence of any subsidiaries of the applicant Irish dividing company and the geographical location of any such subsidiaries;
- (h) include information regarding the satisfaction by the applicant Irish dividing company of any obligations to relevant authorities (within the meaning of Regulation 2);
- (i) include information, where relevant, as to whether the procedures concerning employee participation referred to in Part 5 of the Regulations have started;
- (j) exhibit the original or a true copy of, and verify, any document relied on in support of the application, which shall, without limitation, include:
 - (i) the draft terms referred to in Regulation 52 adopted by the board of the Irish dividing company;
 - (ii) the resolution of the board of the Irish dividing company adopting the draft terms;
 - (iii) the directors' explanatory report referred to in Regulation 53, and the appended opinion, if any, or evidence as to why such a report was not required including, if applicable, any resolution or other document recording the agreement of the members under Regulation 29(7)(as

applied to divisions by Regulation 53) and the absence of any employees;

- (iv) the expert's report to the members referred to in Regulation 54 or evidence as to why such a report was not required including, if applicable, any resolution or other document recording the agreement of the members under Regulation 30(6) (as applied to divisions by Regulation 54) that such a report is not necessary;
- (v) the notices delivered by the applicant company to the Registrar of Companies referred to in Regulations 33(1)(b) and 33(1)(c)(each as applied to divisions by Regulation 57) or, as the case may be, the information published on the applicant company's website in accordance with Regulation 33(2)(as applied to divisions);
- (vi) any comments submitted by members, creditors or employees' representatives;
- (vii) copies of the CRO Gazette containing the notice published by the Registrar of Companies and of the editions of the two national daily newspapers containing the notice published by the applicant company in accordance with Regulations 33(6) and 33(7)(each as applied to divisions by Regulation 57);
- (viii) a copy of any notification to the Central Bank of Ireland required in accordance with Regulation 58; proof of its delivery and any written response provided by the Central Bank of Ireland;
- (ix) any special resolution approved in accordance with Regulation 59 and evidence of the satisfaction of, or the arrangements made directed to satisfying, any condition to which such resolution is made subject pursuant to Regulation 59(2);
- (x) evidence of any approval by a member of the applicant company which is necessary in accordance with Regulation 59(3);
- (xi) any written request by any minority shareholder pursuant to Regulation 60(1).

(3) On the date first fixed for the hearing of an originating notice of motion referred to in sub-rule (1), the Court may, if not giving the certificate sought, make such orders or give such directions, including for the service of copies of the originating notice of motion, grounding affidavit and exhibits on any person, or for any adjournment, as appear just, which may, without limitation, include:

- (a) directions to facilitate assessment of all of the relevant facts and circumstances in accordance with Regulation 17(12)(as applied to divisions by Regulation 62(3));

- (b) directions to enable the Court to consult with an independent expert in accordance with Regulation 17(13)(as applied to divisions by Regulation 62(3));
 - (c) directions to enable the Court to carry out further enquiries in accordance with Regulation 17(15)(as applied to divisions by Regulation 62(3));
 - (d) directions to enable the Court to consult with relevant authorities in accordance with Regulation 17(17)(as applied to divisions by Regulation 62(3)).
- (4) A certificate issued by the Court in accordance with Regulation 62 shall be in the Form No. 13 in Appendix N.
- (5) The Registrar of the Court shall send a certified copy of any order of the Court under Regulation 62 to the Registrar of Companies by any means, including electronic means, directed by the Court or agreed by the Registrar of the Court and the Registrar of Companies.
32. (1) The following applications shall be commenced by originating notice of motion grounded on an affidavit and shall, unless otherwise directed by the Court, be conducted in accordance with Order 84B:
- (a) An application by a minority shareholder to the Court under Regulation 60(4) for additional cash compensation;
 - (b) An application by a shareholder to the Court under Regulation 60(7) to dispute the share exchange ratio and claim a cash payment
 - (c) An application by a creditor to the Court under Regulation 61(1) for adequate safeguards;
 - (d) A reference to the Court under Regulation 90(10) for determination by the Labour Court of a question of law arising in proceedings before the Labour Court concerning a proposed division.
- (2) An appeal to the Court under Regulation 90(9) on a point of law from a determination of the Labour Court in proceedings before the Labour Court concerning a proposed division shall be commenced by originating notice of motion entitled as a notice of appeal and grounded on an affidavit and shall, unless otherwise directed by the Court, be conducted in accordance with Order 84C.
- (3) Any proceedings against an expert mentioned in Regulation 10 (as applied to divisions by Regulation 55) shall be commenced by plenary summons.

33. (1) An application to the Court by the dividing company under Regulation 42 (as applied to divisions by Regulation 65) to examine the legality of a cross-border division as regards the procedure which concerns the completion of the cross-border division shall be commenced by way of originating notice of motion, which shall be entitled in the matter of an application under Regulation 65 and in the matter of the dividing company.

(2) On the date first fixed for the hearing of an originating notice of motion referred to in sub-rule (1), or on any adjournment from that date, the Court may make such orders or give such directions for the further conduct of the proceedings as appear convenient for the determination of the proceedings, including:

- (a) for the publication of notice of the application;
- (b) for the service of copies of the originating notice of motion, grounding affidavit and exhibits on any person, and fixing time limits within which any such person is at liberty to deliver and file any affidavit, and any replying affidavit may be delivered and filed on behalf of the applicant;
- (c) orders for the filing or giving of further evidence, and for the adjournment of the application or the mention of the application from time to time for that purpose.

(3) The application shall be grounded upon an affidavit sworn on behalf of the applicant, which shall:

- (a) verify that the division is one to which Regulation 64 applies;
- (b) state whether the simplified formalities under Regulation 69 are being availed of in respect of the proposed division;
- (c) exhibit the original or a true copy of the pre-division certificate issued by the authority designated for the purposes of Article 160m(1) of the Directive by the EEA state under the law of which that company is governed;
- (d) exhibit the draft terms approved by the general meeting of the dividing company for the purposes of Article 160h of the Directive;
- (e) verify that the draft terms to which the certificate referred to in subparagraph (c) relates are the same terms produced in accordance with subparagraph (d);
- (f) verify that any arrangements for employee participation in the successor company as are required by Part 5 of the Regulations have been determined.

(4) The Registrar of the Court shall send a certified copy of any order of the Court under Regulation 42 (as applied to divisions by Regulation 65) to the Registrar of Companies by any means, including electronic means, directed by the Court or agreed by the Registrar of the Court and the Registrar of Companies.

34. The Court may direct that all proceedings in relation to the same cross-border division (including any applications by any minority shareholder or other shareholder or creditor, and appeal or reference to the Court under Part 5 of the Regulations be listed together for hearing in such sequence as the Court may direct.

XIII. Applications under the European Communities (European Public Limited-Liability Company) Regulations 2007

35. (1) In this Part:

the “2001 Council Regulation” means Council Regulation (EC) No. 2157/2001 of 8 October 2001 on the Statute for a European company (SE);

the “2007 Regulations” means the European Communities (European Public Limited-Liability Company) Regulations 2007 (SI No. 21 of 2007);

reference to a “Regulation” is to a Regulation of the 2007 Regulations;

“SE” means a European public limited-liability company (Societas Europaea or SE) as provided for by Council Regulation (EC) No. 2157/2001 of 8 October 2001, on the Statute for a European company (SE), and shall be construed in accordance with section 1003 of the Act;

words and expressions have the same meaning as in the 2007 Regulations.

(2) An application to the Court by a member or members of an SE for relief under Regulation 12(1) or Regulation 12(3) shall be commenced by way of originating notice of motion, which shall be entitled in the matter of an application under Regulation 12 of the 2007 Regulations and in the matter of the SE, on the application of the applicant, and shall be grounded upon an affidavit sworn by or on behalf of the applicant.

(3) On the date first fixed for the hearing of an originating notice of motion referred to in sub-rule (2), or on any adjournment from that date, the Court may make such orders or give such directions for the further conduct of the proceedings as appear convenient for the determination of the proceedings.

(4) An application to the Court by the Director for an order under Regulation 25(3) shall be commenced by way of originating notice of motion and conducted in accordance with Order 84B.

(5) An appeal to the Court by an SE or a public limited company under Regulation 26(2) against a decision of the Director referred to in Regulation 26(1) shall be commenced by way of originating notice of motion and conducted in accordance with Order 84C.

36. (1) An application to the Court by an Irish merging company for a certificate under Article 25(2) of the 2001 Council Regulation that the company has completed properly the pre-merger acts and formalities shall be commenced by way of originating notice of motion. The originating notice of motion shall be entitled in the matter of an application under Article 25(2) of the 2001 Council Regulation and in the matter of the applicant company. The originating notice of motion shall specify each of the pre-merger acts and formalities in the 2001 Council Regulation of which the Court is asked to certify completion.

(2) The originating notice of motion shall be grounded upon an affidavit sworn on behalf of the Irish merging company, which shall comply with the requirements of rule 19(4), in the case of a merger carried out in accordance with Chapter 16 of Part 17 of the Act, and shall:

(a) exhibit and verify:

(i) the draft terms of merger drawn up by each of the merging companies in accordance with Article 20 of the 2001

Council Regulation and in accordance with section 1131 of the Act,

- (ii) a copy of the directors' explanatory report referred to in section 1132(1) of the Act, provided that in any case where an agreement referred to in section 1132(5) of the Act has been made between or among the holders of shares or other securities, the affidavit shall instead verify the making of such an agreement and exhibit a copy of that agreement, if in writing;
- (iii) the expert's report referred to in section 1133(1) of the Act, or evidence as to why such a report was not required, and
- (iv) any merger financial statement referred to in section 1134(1) of the Act or where no such accounting statement is required for any company concerned, a copy of that company's latest annual accounts, provided that in any case where the company relies on section 1134(6) of the Act, the affidavit shall instead verify the making available of the half-yearly report concerned;
- (b) contain an averment confirming the delivery by the applicant companies to the Registrar of Companies of the documents referred to in section 1135(1)(a) of the Act, or verifying the publication of those documents in accordance with section 1135(3) of the Act on each relevant company's website;
- (c) verify the publication by the applicant companies of notice of such delivery in accordance with section 1135(1)(b) of the Act;
- (d) contain an averment confirming the publication in accordance with Article 21 of the 2001 Council Regulation in the CRO Gazette of:
 - (i) the type, name and registered office of every merging company;
 - (ii) the register in which the documents referred to in Article 3(2) of Directive 68/151/EEC are filed in respect of each merging company, and the number of the entry in that register;
 - (iii) an indication of the arrangements made in accordance with Article 24 of the 2001 Council Regulation for the exercise of the rights of the creditors of the company in question and the address at which complete information on those arrangements may be obtained free of charge;
 - (iv) an indication of the arrangements made in accordance with Article 24 of the 2001 Council Regulation for the exercise of the rights of minority shareholders of the company in question and the address at which complete information on those arrangements may be obtained free of charge;

- (v) the name and registered office proposed for the SE;
- (e) include evidence of:
 - (i) the times during which the documents referred to in section 1136(1) of the Act were made available at the registered office of each company concerned in accordance with that section or, as the case may be,
 - (ii) the publication on the website of each company concerned in accordance with sections 1136(5) of the Act of the documents referred to in section 1136(1) of the Act;
- (f) exhibit a copy of every notice convening a general meeting referred to in section 1137 of the Act and include evidence of the passing of every special resolution referred to in section 1137 of the Act;
- (g) exhibit any written request by any shareholder pursuant to section 1140(1) of the Act, and
- (h) exhibit the original or a true copy of and verify any other document relied upon in support of the application.

(3) The Court may, on the application jointly of two or more Irish merging companies appoint one or more experts for the purposes of Article 22 of the 2001 Council Regulation and such application shall, if any proceedings referred to in sub-rule (1) are in being, be by motion in those proceedings, or otherwise by originating notice of motion entitled in the matter of an application under Article 22 of the 2001 Council Regulation and in the matter of the Irish merging companies concerned, which originating notice of motion shall be grounded upon an affidavit setting out particulars of the merger concerned and proposing a qualified person or persons to be appointed.

(4) On the date first fixed for the hearing of an originating notice of motion referred to in sub-rule (2), the Court may, if not giving the certificate sought, make such order or give such directions, including for the service of copies of the originating notice of motion, grounding affidavit and exhibits on any person (including the Director as competent authority in respect of Article 19 of the 2001 Council Regulation), or for any adjournment, as appear just.

(5) A certificate issued by the Court in accordance with Article 25 of the 2001 Council Regulation shall be in the Form No. 14 in Appendix N.

37. (1) An application to the Court by all the merging companies for an order in accordance with Article 26 of the 2001 Council Regulation confirming scrutiny of the legality of the merger as regards that part of the procedure which concerns the completion of the merger and the formation of the SE, shall be commenced by way of originating notice of motion, which shall be entitled in the matter of an application under Article 26 of the 2001 Council Regulation and in the matter of each of the merging companies.

(2) On the date first fixed for the hearing of an originating notice of motion referred to in sub-rule (1), or on any adjournment from that date, the Court may make such orders or give such directions for the further conduct of the

proceedings as appear convenient for the determination of the proceedings, including:

- (a) for the publication of notice of the application;
- (b) for the service of copies of the originating notice of motion and, grounding affidavit and exhibits on any person, and fixing time limits within which any such person is at liberty to deliver and file any affidavit, and any replying affidavit may be delivered and filed on behalf of the applicants;
- (c) for the purpose of establishing the creditors of an Irish merging company entitled to be heard for the purposes of Article 24 of the 2001 Council Regulation, an order for an inquiry as to the debts or claims against that company, and for the proceedings to be taken for settling the list of creditors, which shall, unless the Court otherwise orders, be in accordance with rules 5 to 10;
- (d) orders for the filing or giving of further evidence, in particular as to any matter referred to in Articles 23, 24 and 26 of the 2001 Council Regulation, and for the adjournment of the application or the mention of the application from time to time for that purpose.

(3) The application shall be grounded upon an affidavit sworn on behalf of the applicants, which shall:

- (a) verify the steps taken for the formation of the SE and that the registered office proposed for the SE is in the State;
- (b) exhibit the original of the certificate issued under Article 25 of the 2001 Council Regulation in relation to each Irish merging company;
- (c) exhibit the original or a true copy of a certificate under Article 25 of the 2001 Council Regulation issued by the competent authority of the Member State under the law of which each other merging company is governed;
- (d) verify that the application is made not more than six months after the issuing of any certificate referred to in subparagraph (b) or (c);
- (e) verify that the common draft terms to which each certificate, referred to in subparagraphs (b) and (c), relates are the same terms;
- (f) provide details of, and verify, any arrangements for employee involvement determined pursuant to Directive 2001/86/EC and Article 26(3) of the 2001 Council Regulation;
- (g) in accordance with Article 24 of the 2001 Council Regulation, include evidence as to the effect, if any, of the merger on:
 - (i) creditors of any of the merging companies;
 - (ii) holders of bonds of any of the merging companies;

- (iii) holders of securities, other than shares, which carry special rights in any of the merging companies;
- (h) provide details of any provision made or proposed to be made for any creditor, holder of bonds or holder of securities, other than shares, which carry special rights, of any of the merging companies who has notified any of the merging companies of an objection on the grounds that that person would be unfairly prejudiced by an order under Article 26 of the 2001 Council Regulation;
- (i) contain a statement as to whether any minority shareholder has made a request referred to in section 1140(1) of the Act or has expressed opposition to the merger to any of the merging companies and, where such a request has been made or opposition expressed, provide details of the measures taken or proposed to comply with each such request or details of such expression of opposition and those details shall be provided or made up to a date as near as practicable to the date on which the application is to be heard;
- (j) where the law of a Member State to which a merging company is subject provides for a procedure to scrutinise and amend the share-exchange ratio, or a procedure to compensate minority shareholders, without preventing the registration of the merger, include evidence that the other merging companies situated in Member States which do not provide for such a procedure explicitly accepted, when approving the draft terms of the merger in accordance with Article 23(1) of the 2001 Council Regulation, the possibility for the shareholders of that merging company to have recourse to such a procedure, and include details of the conduct and (if known) outcome of that procedure;
- (k) either:
 - (i) confirm that the merger is not a merger or acquisition which is referred to in section 16 of the Competition Act 2002 and to which paragraph (a) or (b) of section 18(1) of that Act applies or which is referred to in section 18(3) of that Act and which has been notified to the Competition and Consumer Protection Commission in accordance with that subsection, or
 - (ii) where the merger is such a merger or acquisition, confirm, and exhibit the original or a true copy of any document evidencing:
- (I) that the Competition and Consumer Protection Commission has determined under section 21 or 22 of that Act that the merger may be put into effect, or
- (II) that the Competition and Consumer Protection Commission has made a conditional determination (within the meaning of that Act) in relation to the merger, or

- (III) confirm that the period specified in section 21(2) of that Act has elapsed without the Competition and Consumer Protection Commission having informed the undertakings which made the notification concerned of the determination (if any) it has made under paragraph (a) or (b) of section 21(2) aforesaid in relation to the merger, or
 - (IV) confirm that a period of four months has elapsed since the appropriate date (within the meaning of that Act) without the Competition and Consumer Protection Commission having made a determination under section 22 of that Act in relation to the merger;
- (l) either:
- (i) confirm that the merger is not a concentration with a Community dimension within the meaning of the Merger Control Regulation, or
 - (ii) where the merger is such a concentration, confirm, and exhibit the original or a true copy of any document evidencing:
 - (I) that the European Commission has issued a decision under Article 8 of the Merger Control Regulation declaring the concentration compatible with the common market, or
 - (II) that the concentration is deemed to have been declared compatible with the common market pursuant to Article 10(6) of the Merger Control Regulation and specify the basis on which it is so deemed, or
 - (III) that after a referral by the European Commission to the Competition and Consumer Protection Commission under Article 9 of the Merger Control Regulation, one of the events specified in subparagraphs (i) to (iv) of paragraph (k)(ii), has occurred, and
- (m) provide details of any requirement under any enactment for any other authorisation, approval, consent, waiver, licence, permission or agreement that affects the merger and confirm, and exhibit the original or a true copy of any document evidencing, that each such requirement has been satisfied.
- (4) The Registrar of the Court shall send an attested copy of any order of the Court under Article 26 of the 2001 Council Regulation to the Registrar of Companies by pre-paid registered post or by any other means directed by the Court.
- (5) Notwithstanding sub-rule (1), where an Irish merging company intends to seek a certificate under Article 25 of the 2001 Council Regulation and to

join in an application under Article 26 of the 2001 Council Regulation in respect of the same merger, it shall be permissible for all of the merging companies intending to seek relief under Article 26 of the 2001 Council Regulation in respect of that merger to issue a single originating notice of motion in which is sought both the relief sought by the Irish merging company under Article 25 and, contingently on that relief being given, the relief sought by all of the merging companies under Article 26. In such case, the Irish merging company may seek relief under Article 25 on the date first fixed for the hearing of that originating notice of motion, and the Court may, on that date, give such directions for the further conduct of the proceedings and adjourn the application for other relief as it thinks appropriate.

38. (1) The Court may direct that all proceedings in relation to the same merger (including any proceedings under Regulation 12 of the 2007 Regulations or Article 26 of the 2001 Council Regulation) be listed together for hearing in such sequence as the Court may direct.

(2) Where, in any proceedings under this Part, a document exhibited to any affidavit or produced to the Court is not in one of the official languages of the State, a translation thereof into the Irish or English language, certified by a person competent and qualified for the purpose, shall be admissible as evidence of same. The competence and qualification of the translator shall be verified by affidavit.

XIV. Applications under Chapter 6 of Part 14 of the Act

39. (1) An application to the Court for relief under section 861 of the Act shall be brought by motion on notice in the proceedings to which the application relates, grounded on an affidavit. Copies of the notice of motion, grounding affidavit and any exhibits shall also be served on the Director.

(2) An application to the Court requesting an order under section 862 of the Act shall be by notice of motion in the proceedings concerned, grounded on an affidavit.

40. In any proceedings in the Court to which section 863 of the Act applies, the Registrar of the Court shall send a copy of the order of the Court to the Registrar of Companies by registered prepaid post or by such other means, including electronic transmission, as the Registrar of the Court may agree with the Registrar of Companies.

XV. Applications under Chapter 2 of Part 15 of the Act¹

41. (1) An application to the Court by the Supervisory Authority for an order under section 933(4) of the Act shall be commenced by way of originating notice of motion and conducted in accordance with Order 84B.

(2) An application to the Court by the Supervisory Authority for an order under section 941(5) of the Act or under section 906(4) for an order under section 941(6) of the Act shall be commenced by way of originating notice of motion and conducted in accordance with Order 84B.

(3) An appeal to the Court under section 933(9), section 933(11) or section n934(10) of the Act shall be commenced by way of originating notice of motion and conducted in accordance with Order 84C.”

Schedule 2

No. 11

O. 75, r. 23

PRE-CONVERSION CERTIFICATE

THE HIGH COURT

20.... No.....

In the matter of Directive (EU) 2017/1132 as regards cross-border conversions, mergers and divisions as amended by Directive (EU) 2019/2121

and Regulation 17 of the European Union (Cross-Border Conversions, Mergers and Divisions) Regulations 2023

On the application of having its registered office at an Irish converting company (hereinafter referred to as “the Applicant”), under the above-mentioned Regulation in respect of a proposed cross-border conversion

THE COURT HEREBY CERTIFIES that the Applicant has complied with the pre-conversion requirements in respect of such conversion.

Dated this day of 20..

Signed.....

Registrar

No. 12

O. 75, r. 27

PRE-MERGER CERTIFICATE

THE HIGH COURT

20.... No.....

In the matter of Directive (EU) 2017/1132 as regards cross-border conversions, mergers and divisions as amended by Directive (EU) 2019/2121

and Regulation 39 of the European Union (Cross-Border Conversions, Mergers and Divisions) Regulations 2023

On the application of having its registered office at an Irish merging company (hereinafter referred to as “the Applicant”), under the above-mentioned Regulation in respect of a proposed cross-border merger

THE COURT HEREBY CERTIFIES that the Applicant has complied with the pre-merger requirements in respect of such merger.

Dated this day of 20..

Signed.....

Registrar

No. 13

O. 75, r. 31

**PRE-DIVISION CERTIFICATE
THE HIGH COURT**

20.... No.....

In the matter of Directive (EU) 2017/1132 as regards cross-border conversions, mergers and divisions as amended by Directive (EU) 2019/2121

and Regulation 62 of the European Union (Cross-Border Conversions, Mergers and Divisions) Regulations 2023

On the application of having its registered office at an Irish dividing company (hereinafter referred to as “the Applicant”), under the above-mentioned Regulation in respect of a proposed cross-border division

THE COURT HEREBY CERTIFIES that the Applicant has complied with the pre-division requirements in respect of such division.

Dated this day of 20..

Signed.....

Registrar

No. 14

O. 75, r. 36

**PRE-MERGER CERTIFICATE (FORMATION OF EUROPEAN PUBLIC
LIMITED LIABILITY COMPANY BY MERGER)**

THE HIGH COURT

20.... No.....

In the matter of Article 25(2) of Council Regulation (EC) No. 2157/2001 of 8 October 2001 on the Statute for a European company (SE)

On the application of having its registered office at an Irish merging company (hereinafter referred to as “the Applicant”), under the above-mentioned Regulation in respect of a proposed merger with

THE COURT HEREBY CERTIFIES that the Applicant has completed properly the pre-merger acts and formalities in respect of such merger.

Dated this day of 20..

Signed.....

Registrar

EXPLANATORY NOTE

(This note is not part of the Instrument and does not purport to be a legal interpretation.)

These rules amend Order 75 of the Rules of the Superior Courts to facilitate new provisions relating to cross-border mergers and to provide for cross-border conversions and cross-border divisions under Directive EU 2019/2121 of the European Parliament and of the Council and the European Union (Cross-Border Conversions, Mergers and Divisions) Regulations 2023.

BAILE ÁTHA CLIATH
ARNA FHOILSIÚ AG OIFIG AN tSOLÁTHAIR
Le ceannach díreach ó
FOILSEACHÁIN RIALTAIS,
BÓTHAR BHAILE UÍ BHEOLÁIN,
CILL MHAIGHNEANN,
BAILE ÁTHA CLIATH 8,
D08 XAO6

Tel: 046 942 3100
r-phost: publications@opw.ie

DUBLIN
PUBLISHED BY THE STATIONERY OFFICE
To be purchased from
GOVERNMENT PUBLICATIONS,
MOUNTSHANNON ROAD,
KILMAINHAM, DUBLIN 8,
D08 XAO6

Tel: 046 942 3100
E-mail: publications@opw.ie

ISBN 978-1-3993-2864-7



9 781399 328647 >

€ 8.00