



STATUTORY INSTRUMENTS.

S.I. No. 233 of 2023

EUROPEAN UNION (CROSS-BORDER CONVERSIONS, MERGERS AND
DIVISIONS) REGULATIONS 2023

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I, SIMON COVENEY, Minister for Enterprise, Trade and Employment, in exercise of the powers conferred on me by section 3 of the European Communities Act 1972 (No. 27 of 1972) and for the purpose of giving effect to Directive (EU) 2017/1132 of the European Parliament and of the Council of 14 June 2017¹ and Directive (EU) 2019/2121 of the European Parliament and of the Council of 27 November 2019², and for the purpose of giving further effect to Article 8 of Directive 2008/104/EC of the European Parliament and of the Council of 19 November 2008³, hereby make the following regulations:

PART 1
Preliminary and General

Citation, commencement and construction

1. (1) These Regulations may be cited as the European Union (Cross-Border Conversions, Mergers and Divisions) Regulations 2023.

(2) These Regulations shall, subject to paragraph (3), come into operation on the day they are made.

(3) The following Regulations shall come into operation on the 26th day of May 2023:

- (a) Regulations 9(9), (10) and (13), 11, and 21(4);
- (b) Regulations 30(4) in so far as it relates to Regulation 9(9), (10) and (13);
- (c) Regulations 32 and 44(4);
- (d) Regulation 54 in so far as it relates to Regulation 9(9), (10) and (13);
- (e) Regulations 56, 66(4), 91(2) and 91(5).

(4) The Act of 2014 and these Regulations shall be construed together as one.

Interpretation

2. (1) In these Regulations –

“Act of 2014” means the Companies Act 2014 (No. 38 of 2014);

¹ OJ No. L. 169, 30.6.2017, p. 46.

² OJ No. L. 321, 12.12.2019, p. 1.

³ OJ No. L. 327, 5.12.2008, p. 9.

“company” means an Irish company or an EEA company;

“converted company” has the meaning assigned to it by Regulation 4;

“converting company” has the meaning assigned to it by Regulation 4;

“Court”, other than in Part 5, means the High Court;

“cross-border conversion” has the meaning assigned to it by Regulation 4;

“cross-border division” has the meaning assigned to it by Regulation 49;

“cross-border merger” has the meaning assigned to it by Regulation 25;

“Directive” means Directive 2017/1132 of the European Parliament and of the Council of 14 June 2017¹ as amended by Directive (EU) 2019/1023 of the European Parliament and of the Council of 20 June 2019⁴, Directive (EU) 2019/1151 of the European Parliament and of the Council of 20 June 2019⁵, Directive (EU) 2019/2121 of the European Parliament and of the Council of 27 November 2019² and Regulation (EU) 2021/23 of the European Parliament and of the Council of 16 December 2020⁶;

“dividing company” has the meaning assigned to it by Regulation 49;

“document” includes information;

“EEA company” means a body corporate which is incorporated in an EEA state other than the State, which –

- (a) is of a type listed in Annex II of the Directive, or
- (b) in the case of a cross-border merger –

 - (i) is of that type, or
 - (ii) has share capital and legal personality, and possesses separate assets which alone serve to cover its debts and that is subject, under the national law governing it, to conditions concerning guarantees such as are provided for by Section 2 of Chapter II of Title I and Section 1 of Chapter III of Title I of the Directive for the protection of the interests of members and others;

“EEA register”, in relation to an EEA state, means the register maintained by that state in accordance with Article 16 of the Directive;

“EEA state” means a state that is a contracting party to the EEA Agreement (subject to Regulation 3(3));

“employees’ representatives”, in relation to a company, means the representatives elected or appointed in respect of the company for the purposes of these Regulations or, where there are no such representatives, the employees themselves;

“enactment” has the same meaning as it has in section 2 of the Interpretation Act 2005 (No. 23 of 2005);

⁴ OJ No. L. 172, 26.6.2019, p. 18.

⁵ OJ No. L. 186, 11.7.2019, p. 80.

⁶ OJ No. L. 22, 22.1.2021, p. 1.

“interconnection system” means the system of interconnection of registers established in accordance with Article 22 of the Directive;

“Irish company” means a limited company within the meaning of the Act of 2014;

“Irish merging company” has the meaning assigned to it by Regulation 25;

“pre-conversion certificate” has the meaning assigned to it by Regulation 4;

“recipient company” has the meaning assigned to it by Regulation 49;

“relevant authority” means –

- (a) a Department of state,
- (b) a local authority,
- (c) a person, body or organisation established –
 - (i) by or under any enactment (other than the Act of 2014 or a former enactment relating to companies within the meaning of section 5 of that Act), or
 - (ii) under the Act of 2014 or a former enactment relating to companies within the meaning of section 5 of that Act, in pursuance of powers conferred by or under another enactment and financed wholly or partly, whether directly or indirectly, by means of moneys provided, or loans made or guaranteed, by a Minister of the Government or shares held by or on behalf of a Minister of Government,

and includes the Central Bank of Ireland and any Minister of the Government or Minister of State;

“successor company” has the meaning assigned to it by Regulation 25;

“transferor company” has the meaning assigned to it by Regulation 25.

(2) A word or expression that is used in these Regulations (or in any enactment amended by these Regulations) and is also used in the Directive shall, unless the context otherwise requires, have the same meaning in these Regulations (or that enactment) as it has in the Directive.

(3) For the purposes of these Regulations, an agency worker to whom the Protection of Employees (Temporary Agency Work) Act 2012 (No. 13 of 2012) applies shall, for the duration of the agency worker's assignment with a hirer (within the meaning of that Act), be treated as being employed by the employment agency concerned, and accordingly references in these Regulations to a contract of employment shall, as respects any such agency worker, be construed as including references to a contract of employment within the meaning of that Act, and for those purposes –

- (a) “agency worker” means an agency worker to whom the Protection of Employees (Temporary Agency Work) Act 2012 applies, and
- (b) “agency worker information” means information as respects –

- (i) the number of agency workers temporarily engaged to work for the employer,
- (ii) those parts of the employer's business in which those agency workers are, for the time being, working, and
- (iii) the type of work that those agency workers are engaged to do.

Application

3. (1) These Regulations shall not apply to a company that –
- (a) is in liquidation and has begun to distribute assets to its members, or
 - (b) is subject to the resolution tools, powers and mechanisms provided for in Title IV of Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014⁷ establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC, and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No 1093/2010 and (EU) No 648/2012, of the European Parliament and of the Council or in Title V of Regulation (EU) 2021/23 of the European Parliament and of the Council of 16 December 2020⁸ on a framework for the recovery and resolution of central counterparties and amending Regulations (EU) No 1095/2010, (EU) No 648/2012, (EU) No 600/2014, (EU) No 806/2014 and (EU) 2015/2365 and Directives 2002/47/EC, 2004/25/EC, 2007/36/EC, 2014/59/EU and (EU) 2017/1132.
- (2) (a) These Regulations shall not apply to a cross-border conversion, cross-border merger or cross-border division involving a company the object of which is the collective investment of capital provided by the public which operates on the principle of risk-spreading and the units of which are, at the holders' request, repurchased or redeemed, directly or indirectly, out of the assets of that company.
- (b) Action taken by a company referred to in subparagraph (a) to ensure that the stock exchange value of its units does not vary significantly from its net asset value shall be regarded as equivalent to the repurchase or redemption of its units referred to in that subparagraph.
- (3) In the application of these Regulations before the Directive is incorporated into and has come into operation in respect of the EEA Agreement, a reference to an EEA state is to be construed as a reference to a Member State.

⁷ OJ No. L. 173, 12.6.2014, p. 190.

⁸ OJ No. L. 22, 22.1.2021, p. 1.

PART 2
Cross-Border Conversions
Chapter 1
Preliminary and General

Interpretation (Part 2)

4. In this Part –

“converted company”, in relation to a cross-border conversion, means a company that is formed in a destination EEA state as a result of the cross-border conversion;

“cross-border conversion” means an operation whereby a company, without being dissolved or wound up or going into liquidation, converts the legal form under which it is registered in a departure EEA state into a legal form of a destination EEA state listed in Annex II of the Directive and transfers at least its registered office to the destination EEA state, while retaining its legal personality;

“departure EEA state”, in relation to a cross-border conversion, means the EEA state in which the converting company is registered prior to the cross-border conversion;

“destination EEA state”, in relation to a cross-border conversion, means the EEA state in which the converted company is registered or proposed to be registered as a result of the cross-border conversion;

“effective date” means –

- (a) in relation to a cross-border conversion in which the proposed converted company is an Irish company, the date specified under Regulation 20(6), or
- (b) in relation to a cross-border conversion in which the proposed converted company is an EEA company, the date determined in accordance with the law of the EEA state concerned for the purposes of Article 86q of the Directive;

“Irish converted company” means a converted company that is an Irish company;

“Irish converting company” means a converting company that is an Irish company;

“pre-conversion certificate” means –

- (a) in relation to a cross-border conversion in which the converting company is an Irish company, a pre-conversion certificate issued by the Court under Regulation 17(1), or

- (b) in relation to a cross-border conversion in which the converting company is an EEA company, a certificate issued for the purposes of Article 86m(1) of the Directive;
- “pre-conversion requirements” has the meaning assigned to it by Regulation 17(19).

Application (Part 2)

5. (1) This Part applies to cross-border conversions.
- (2) Where a cross-border conversion is proposed to be carried out by an Irish converting company –
 - (a) the law of the State shall apply in relation to the cross-border conversion until a pre-conversion certificate is issued in respect of the conversion, and
 - (b) the law of the destination EEA state shall apply in relation to the cross-border conversion after a pre-conversion certificate is issued in respect of the conversion.
- (3) Where a cross-border conversion is proposed to be carried out and the proposed converted company to which the cross-border conversion relates is an Irish company –
 - (a) the law of the departure EEA state shall apply in relation to the cross-border conversion until a pre-conversion certificate is issued in respect of the conversion, and
 - (b) the law of the State shall apply in relation to the cross-border conversion after a pre-conversion certificate is issued in respect of the conversion.

Chapter 2

Pre-conversion Requirements

Application (Chapter 2 of Part 2)

6. This Chapter applies where a cross-border conversion is proposed to be carried out by an Irish converting company.

Cross-border conversions: draft terms

7. (1) Where a cross-border conversion is proposed to be entered into by an Irish converting company, draft terms shall be drawn up in writing and adopted by the board of the directors of that company.
- (2) The draft terms shall include –
 - (a) in relation to the Irish converting company –
 - (i) its legal form and name, and

- (ii) the location of its registered office in the State,
- (b) in relation to the proposed converted company, the particulars specified in subparagraph (a) that are proposed in respect of that company,
- (c) the draft instrument of constitution or equivalent document, and any associated documents, of the proposed converted company in the destination EEA state,
- (d) the proposed indicative timetable for the cross-border conversion,
- (e) the rights to be conferred by the proposed converted company on members enjoying special rights or on holders of securities other than shares representing the company capital, or the measures proposed concerning them,
- (f) any safeguards offered to creditors, such as guarantees or pledges,
- (g) any special advantages to be granted to members of the administrative, management, supervisory or controlling body of the Irish converting company,
- (h) details as to whether any incentives or subsidies were received by the Irish converting company in the State in the 5 years preceding the date on which the draft terms are drawn up,
- (i) details of the proposed cash compensation payable in response to requests made under Regulation 15(1),
- (j) the likely effect of the cross-border conversion on employment,
- (k) the agency worker information in relation to the converting company, and
- (l) where appropriate, information on the procedures by which arrangements for the involvement of employees in the definition of their rights to participation in the proposed converted company are determined pursuant to Part 5.

Cross-border conversions: directors' explanatory report

8. (1) Subject to paragraph (11), the board of directors of an Irish converting company shall, in accordance with this Regulation, draw up a report for members and employees of the company, which report shall –

- (a) explain and justify the legal and economic aspects of the cross-border conversion,
- (b) explain the implications of the cross-border conversion for employees, and
- (c) explain the implications of the cross-border conversion for the future business of the company.

(2) A report drawn up under this Regulation shall be made available electronically, together with the draft terms if available, to –

- (a) the members of the Irish converting company, and

- (b) the company's employees' representatives,

not less than 6 weeks before the date of the general meeting referred to in Regulation 14.

(3) The report shall, subject to paragraph (4), include a section for members that includes the information referred to in paragraph (5) and a section for employees that includes the information referred to in paragraph (7).

(4) The board of directors may draw up 2 separate reports, one for members including the section for members and another for employees including the section for employees.

(5) The section for members shall, in particular, explain –

- (a) the cash compensation payable in accordance with Regulation 15 and the method used to determine the cash compensation,
- (b) the implications of the cross-border conversion for members of the Irish converting company, and
- (c) the rights and remedies available to members of the Irish converting company in accordance with Regulation 15.

(6) The section for members shall not be required where every member of the Irish converting company has agreed to waive that requirement.

(7) The section for employees in the report shall, in particular, explain –

- (a) the implications of the cross-border conversion for employment in the Irish converting company, including in relation to employment relationships and any measures for safeguarding those relationships, organisation of work, and company-level social dialogue including any board-level employee representation,
- (b) any material changes to the conditions of employment of employees of the Irish converting company,
- (c) any material changes to the location of any place of business of the Irish converting company or to the location of specific posts in the company, and the expected consequences for employees occupying such posts, and
- (d) how the matters referred to in subparagraphs (a) to (c) affect any subsidiaries of the Irish converting company.

(8) The conditions of employment referred to in paragraph (7) shall include conditions of employment which apply by law and under any applicable collective agreement or transnational company agreement.

(9) Where the board of directors of an Irish converting company receives an opinion from the employees' representatives on the information referred to in paragraphs (1) and (7) within a reasonable period of time prior to the general meeting –

- (a) the members shall be informed of the opinion, and
- (b) the opinion shall be appended to the report, or reports as the case may be.

(10) The section for employees in the report shall not be required where the Irish converting company and its subsidiaries, if any, do not have any employees other than the board of directors.

(11) A report shall not be required under this Regulation where the section for members in the report is not required under paragraph (6) and the section for employees in the report is not required under paragraph (10).

(12) This Regulation is without prejudice to the Employees (Provision of Information and Consultation) Act 2006 (No. 9 of 2006) and the Transnational Information and Consultation of Employees Act 1996 (No. 20 of 1996).

Cross-border conversions: expert's report

9. (1) Subject to paragraph (7), a report to the shareholders of the Irish converting company on the draft terms shall be drawn up in accordance with this Regulation and be made available to the members not less than 30 days before the date of the general meeting referred to in Regulation 14.

(2) The report shall be drawn up by a person or persons (in this Regulation referred to as the "expert"), being a qualified person or persons, as the case may be, appointed for the Irish converting company by its directors.

(3) A person is a qualified person for the purposes of this Regulation if that person –

- (a) is a statutory auditor, and
- (b) is not –
 - (i) a person who is or, within the period of 12 months before the date of the draft terms, has been an officer or employee of the Irish converting company,
 - (ii) a parent, spouse, civil partner, brother, sister or child of an officer of the Irish converting company, or
 - (iii) a person who is a partner, or in the employment, of an officer or employee of the Irish converting company.

(4) A reference in paragraph (3)(b)(ii) to a child of an officer of the Irish converting company shall be deemed to include a child of the officer's civil partner who is ordinarily resident with the officer and the civil partner.

(5) The report referred to in paragraph (1) shall be in writing and shall –

- (a) state the method or methods used to determine the proposed cash compensation payable in accordance with Regulation 15,
- (b) state –
 - (i) whether the method or methods used to determine the proposed cash compensation is or are adequate for the assessment of the cash compensation,
 - (ii) the value arrived at using such methods, and
 - (iii) an opinion on the relative importance attributed to those methods in arriving at the value decided on,

- (c) state any special valuation difficulties which have arisen, and
- (d) state the opinion of the expert as to whether the proposed cash compensation is adequate, the expert having considered any market price of the shares in the Irish converting company prior to the announcement of the proposed conversion or the value of the company excluding the effect of the proposed conversion, as determined in accordance with generally accepted valuation methods.

(6) The opinions of the expert in the report referred to in paragraph (1) shall be impartial and objective and given with a view to providing assistance to the Court in accordance with any independence and impartiality requirements under the law of the State (including under Part 27 of the Act of 2014) and any professional standards to which the expert is subject.

(7) Neither an examination of the draft terms by the expert, nor the expert report, shall be required where every member of the Irish converting company agrees to waive these requirements.

(8) The expert may –

- (a) require the Irish converting company and its officers to give to the expert such information and explanations (whether oral or in writing), and
- (b) make such enquiries,

as the expert thinks necessary for the purposes of drawing up the report.

(9) Where an Irish converting company fails, pursuant to a requirement under paragraph (8)(a), to give to the expert any information or explanation in the power, possession or procurement of that company, the Irish converting company and every officer of it who is in default shall be guilty of a category 2 offence.

(10) Where an Irish converting company makes a statement (whether orally or in writing) or provides a document to the expert that conveys or purports to convey any information or explanation the subject of a requirement made of it under paragraph (8)(a) by the expert, and –

- (a) that information is false or misleading in a material respect, and
- (b) the company knows it to be so false or misleading or is reckless as to whether it is so false or misleading,

that company and every officer of it who is in default shall be guilty of a category 2 offence.

(11) If a person appointed under paragraph (2) ceases to be a qualified person –

- (a) the person's appointment under that paragraph shall immediately cease, and
- (b) the person shall give notice in writing of the person's ceasing to be a qualified person to the Irish converting company within 14 days of so ceasing to be a qualified person.

(12) Where a person ceases to be a qualified person in accordance with paragraph (11), this shall not affect the validity of any acts done by the person under this Regulation before ceasing to be a qualified person.

(13) A person who purports to carry out the functions of an expert under this Regulation after ceasing to be a qualified person shall be guilty of a category 2 offence.

Cross-border conversions: civil liability of experts

10. (1) Subject to paragraph (3), any shareholder of an Irish converting company who has suffered loss or damage by reason of the misconduct of an expert in the drawing up of an expert's report under Regulation 9 shall be entitled to have such loss or damage made good to him or her by the expert.

(2) Without prejudice to the generality of paragraph (1), any shareholder of the Irish converting company who has suffered loss or damage arising from the inclusion of any untrue statement in the report prepared by the expert under Regulation 9 shall, subject to paragraph (3), be entitled to have such loss or damage made good to him or her by the expert.

(3) An expert shall not be liable in the case of any untrue statement in the report if he or she proves –

- (a) that, on becoming aware of the statement, he or she forthwith informed the Irish converting company and its members of the untruth, or
- (b) that he or she was competent to make the statement and that he or she had reasonable grounds for believing and did up to the time the conversion took effect believe that the statement was true.

(4) In this Regulation, "expert" shall be construed in accordance with Regulation 9(2).

Cross-border conversions: criminal liability for untrue statements in expert's report

11. (1) Where any untrue statement has been included in an expert's report under Regulation 9, the expert and any person who authorised the issue of the report shall be guilty of a category 2 offence.

(2) In any proceedings against a person in respect of a category 2 offence under paragraph (1), it shall be a defence to prove that, having exercised all reasonable care and skill, the defendant had reasonable grounds for believing and did, up to the time of the issue of the report concerned, believe that the statement concerned was true.

(3) In this Regulation, "expert" shall be construed in accordance with Regulation 9(2).

Cross-border conversions: registration and publication of documents

12. (1) Subject to paragraph (2), an Irish converting company shall deliver to the Registrar for registration, at least 30 days before the date of the general meeting referred to in Regulation 14 –

- (a) a copy of the draft terms,
- (b) a notice informing the members, creditors and employees' representatives of the Irish converting company that they may submit to the company, no later than 5 working days before the date of the general meeting, comments concerning the draft terms, and
- (c) a notice, in the form set out in Part 1 of Schedule 1.

(2) Subject to paragraph (4), paragraph (1) shall not apply in relation to an Irish converting company where the company publishes, free of charge on its website, the documents specified in paragraph (1)(a) and (b) for a continuous period of at least 2 months which –

- (a) commences at least 30 days before, and
- (b) ends at least 30 days after,

the date fixed for the general meeting referred to in Regulation 14.

(3) Where paragraph (2) applies in relation to an Irish converting company, the company shall deliver to the Registrar for registration, at least 30 days before the date of the general meeting referred to in Regulation 14, a notice, in the form set out in Part 1 of Schedule 1.

(4) Where, in the period referred to in paragraph (2), access to the company's website is disrupted for a continuous period of at least 24 hours or for separate periods totalling not less than 72 hours, the period referred to in paragraph (2) shall be extended for a period corresponding to the period or periods of disruption.

(5) Notice of the delivery of the draft terms to the Registrar and the notice referred to in paragraph (1)(b) or, where paragraph (2) applies, the notice referred to in paragraph (3), shall be caused to be published –

- (a) by the Registrar, in the CRO Gazette, and
- (b) by the company, in a national daily newspaper,

at least 30 days before the date of the general meeting referred to in Regulation 14.

(6) The notice published in accordance with paragraph (5) shall include:

- (a) the date of the delivery of the documents under paragraph (1) or, where paragraph (2) applies, the date of publication under that paragraph;
- (b) the matters specified in paragraph (1)(b) and (c) or, where paragraph (2) applies, the matters specified in paragraph (3).

(7) The documents referred to in paragraphs (1) and (3) shall be accessible to the public free of charge through the register and the interconnection system.

(8) The Registrar may charge a fee in respect of the registration referred to in paragraph (1) or (3) which shall not exceed the cost to the Registrar of providing those services.

(9) The sole means to be used to deliver the documents referred to in paragraphs (1) and (3) to the Registrar shall be those provided for under the Electronic Commerce Act 2000 (No. 27 of 2000) effected in a manner which complies with any requirements of the Registrar of the kind referred to in sections 12(2)(b) and 13(2)(a) of that Act.

Cross-border conversions: notification to Central Bank of Ireland by certain companies

13. Where an Irish converting company is regulated by the Central Bank of Ireland, the company shall notify the Bank of its intention to carry out a cross-border conversion at least 90 days before the date of the general meeting referred to in Regulation 14.

Cross-border conversions: approval by general meeting

14. (1) The draft terms and the draft instrument of constitution of the proposed converted company shall be approved by a special resolution passed at a general meeting of the Irish converting company held not earlier than 30 days after the publication of the notice referred to in Regulation 12(5)(a), note having first been taken by the general meeting of –

- (a) the directors' explanatory report under Regulation 8 and expert's report under Regulation 9,
- (b) any opinion received under Regulation 8(9), and
- (c) any comments submitted in accordance with Regulation 12(1)(b).

(2) The approval of the members may be made subject to –

- (a) the ratification of the arrangements adopted for employee participation in the converted company in accordance with Part 5,
- (b) an order of the Court under Regulation 15(4) providing for additional cash compensation,
- (c) any regulatory approval, or the satisfaction of any applicable regulatory condition, or
- (d) such other conditions as they consider appropriate in the circumstances.

(3) Where –

- (a) a provision of the draft terms or the draft instrument of constitution of the proposed converted company would lead to an increase in the economic obligations of a member towards the company or towards a third party, and
- (b) that member is not entitled to make a request under Regulation 15(1),

that provision shall be approved by the member concerned.

(4) The approval of the cross-border conversion by the general meeting under paragraph (1) may not be challenged by a member solely on either of the following grounds:

- (a) the cash compensation referred to in Regulation 7(2)(i) having been inadequately set;
- (b) the information given with regard to the cash compensation not having complied with these Regulations or other legal requirements.

Cross-border conversions: protection of shareholders

15. (1) Where a special resolution referred to in Regulation 14(1) is passed at a general meeting of an Irish converting company in accordance with that Regulation, a minority shareholder in that company may, not later than 30 days after the date on which the general meeting was held, request the company in writing to acquire his or her shares for the cash compensation specified in the draft terms.

(2) A minority shareholder may make the request referred to in paragraph (1) by electronic means to an electronic address provided by the Irish converting company.

(3) Where a request is made by a minority shareholder in accordance with paragraph (1), the cash compensation payable to that shareholder shall be paid within 2 months after the effective date.

(4) Where a minority shareholder who has made a request in accordance with paragraph (1) considers that the cash compensation specified in the draft terms has not been adequately set, that shareholder may apply to the Court for additional cash compensation within 30 days after the date on which the general meeting was held.

(5) A final decision that additional cash compensation should be paid –

- (a) shall apply to each shareholder who has made a request in accordance with paragraph (1), notwithstanding that the shareholder concerned may not have made an application under paragraph (4), and
- (b) may provide for different levels of additional cash compensation for different classes of shareholder referred to in subparagraph (a).

(6) The courts of the State shall have exclusive competence to resolve any disputes relating to the rights referred to in this Regulation.

(7) In this Regulation –

“final decision” means a decision of the Court under paragraph (4) or, where an appeal against the decision of the Court is brought and is not withdrawn, abandoned or otherwise not proceeded with, the decision of a court in the State against which no further appeal lies or against which an appeal lies within a period which has expired without an appeal;

“minority shareholder”, in relation to an Irish converting company, means a shareholder of the company who voted against the special resolution proposed pursuant to Regulation 14(1).

Cross-border conversions: protection of creditors

16. (1) Where a creditor –

- (a) is dissatisfied with the safeguards offered to creditors in the draft terms under Regulation 7(2)(f), and
- (b) can credibly demonstrate that, due to the cross-border conversion, the satisfaction of the creditor’s claim is at stake and that the creditor has not obtained adequate safeguards from the company in this regard,

the creditor may apply to the Court for adequate safeguards within 3 months of the relevant date.

(2) Any safeguards for creditors shall be conditional on the cross-border conversion taking effect in accordance with Regulation 20(6).

(3) Paragraphs (1) and (2) shall be without prejudice to the application of the law of the State concerning the satisfaction or securing of pecuniary or non-pecuniary obligations due to relevant authorities.

(4) A creditor shall be permitted to institute proceedings against the company in the State within 2 years of the effective date, without prejudice to any jurisdiction rules under the law of the European Union, the law of the State or a contract.

(5) The option to institute proceedings under paragraph (4) shall be in addition to other rules on the choice of jurisdiction that are applicable under the law of the European Union.

(6) In this Regulation –

“creditor”, in relation to an Irish converting company, means a creditor of the company who is entitled to any debt or claim against the company on the relevant date;

“relevant date” means the date of the delivery to the Registrar under Regulation 12(1) or, where Regulation 12(2) applies, the date of the delivery to the Registrar under Regulation 12(3).

Cross-border conversions: pre-conversion certificate

17. (1) On application to it by an Irish converting company, the Court shall examine the proposed cross-border conversion and shall –

- (a) subject to paragraph (11), if it is satisfied that the company has complied with the pre-conversion requirements, issue a certificate (a “pre-conversion certificate”), or
- (b) if it is not so satisfied, refuse to issue such a certificate.

(2) In making the application referred to in paragraph (1), the Irish converting company shall submit the following documents to the Court:

- (a) the draft terms under Regulation 7;
- (b) where applicable, the directors' explanatory report under Regulation 8 and the expert's report under Regulation 9;
- (c) any opinion received under Regulation 8(9);
- (d) any comments submitted in accordance with Regulation 12(1)(b);
- (e) information on the approval by the general meeting referred to in Regulation 14;
- (f) the number of employees of the Irish converting company at the time of the drawing up of the draft terms;
- (g) the existence of any subsidiaries of the Irish converting company and the geographical location of any such subsidiaries;
- (h) information regarding the satisfaction by the Irish converting company of any obligations to relevant authorities;
- (i) without prejudice to the generality of subparagraph (h), where the company is regulated by the Central Bank of Ireland, a copy of the notification made under Regulation 13 and any written response received to this notification from the Central Bank of Ireland in advance of the general meeting referred to in Regulation 14.

(3) The Court may request that the information referred to in paragraph (2)(f) to (i) is provided by a relevant authority.

(4) The application referred to in paragraph (1), including the submission of any documents or information referred to in paragraph (2), may be completed, in accordance with any applicable rules of court, by the Irish converting company online, without any requirement to appear in person before the Court.

(5) A pre-conversion certificate issued in respect of an Irish converting company shall constitute conclusive evidence that the company has complied with the pre-conversion requirements.

(6) The Court shall carry out the examination under paragraph (1) within 3 months of the receipt by it of the documents referred to in paragraph (2).

(7) Where the Court is not satisfied that an Irish converting company has complied with the pre-conversion requirements, the Court may allow the Irish converting company to complete any outstanding pre-conversion requirements within an appropriate period of time.

(8) Where the Court refuses to issue a pre-conversion certificate under paragraph (1)(b), it shall give the company the reasons for the refusal.

(9) In respect of compliance with the rules concerning employee participation as specified in Part 5, the Court shall satisfy itself that the draft terms include information on the procedures by which the relevant arrangements are determined and on the possible options for such arrangements.

(10) In examining the proposed cross-border conversion under paragraph (1), the Court shall consider the following:

- (a) any documents submitted to the Court under paragraph (2);
- (b) an indication by the company that the procedures referred to in Part 5 have started, where relevant.

(11) The Court shall not issue a pre-conversion certificate under paragraph (1)(a) where it determines that the proposed cross-border conversion is being carried out –

- (a) for abusive or fraudulent purposes leading to or aimed at the evasion or circumvention of the law of the European Union or the law of the State, or
- (b) for criminal purposes.

(12) Where the Court considers, in relation to a cross-border conversion to which an application under paragraph (1) relates, that the conversion may be being carried out for purposes referred to in paragraph (11)(a) or (b), it shall assess all of the relevant facts and circumstances on a case-by-case basis.

(13) For the purposes of the assessment referred to in paragraph (12), the Court may consult with an independent expert.

(14) The facts and circumstances referred to in paragraph (12) shall include, where relevant, and not to be considered in isolation, indicative factors of which the Court has become aware in the course of the examination under paragraph (1), including through consultation with relevant authorities.

(15) Where it is necessary for the Court to take into account additional information or to carry out further enquiries for the purposes of the determination under paragraph (11) or the assessment under paragraph (12), the period of 3 months referred to in paragraph (6) may be extended by a further period of not more than 3 months.

(16) Where, due to the complexity of the proposed cross-border conversion, it is not possible for the Court to make the determination referred to in paragraph (11) or the assessment under paragraph (12) –

- (a) before the expiry of the period of 3 months provided for in paragraph (6), or
- (b) in the case of an extension to that period under paragraph (15), before the expiry of the period of the extension,

the Irish converting company shall be given the reasons for the delay before the expiry of the applicable period referred to in subparagraph (a) or (b).

(17) In examining a proposed cross-border conversion under paragraph (1), the Court may consult with relevant authorities having competence in different areas concerned by the proposed cross-border conversion and authorities in the destination EEA state that are considered to be relevant authorities in that state for the purposes of Article 86m of the Directive.

(18) The Court may require the authorities referred to in paragraph (17) and the Irish converting company to provide to the Court such documents as are

necessary for the purposes of the examination of the proposed cross-border conversion under paragraph (1).

(19) In this Regulation, “pre-conversion requirements” means the applicable requirements of the preceding provisions of this Chapter and of this Regulation.

Cross-border conversions: transmission of pre-conversion certificate

18. (1) Where an order is made by the Court under Regulation 17(1)(a), a certified copy of the order shall forthwith be delivered to the Registrar for registration by such officer of the Court as the Court may direct.

(2) The Registrar shall give notice of the pre-conversion certificate to the authorities designated by each EEA state other than the State for the purposes of Article 86o(1) of the Directive through the interconnection system, free of charge.

Chapter 3

Approval in State of Cross-Border Conversions

Application (Chapter 3 of Part 2)

19. This Chapter applies where –

- (a) a pre-conversion certificate has been issued in respect of a cross-border conversion, and
- (b) the proposed converted company to which the cross-border conversion relates is an Irish company.

Court examination of cross-border conversion

20. (1) On application to it by a converting company, the Court shall 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, and shall –

- (a) if it is satisfied that the requirements specified in paragraph (3) have been met, make an order approving the cross-border conversion as soon as it is so satisfied, or
- (b) if not so satisfied, refuse to make an order approving the cross-border conversion.

(2) In making the application referred to in paragraph (1), the converting company shall submit to the Court the draft terms of the cross-border conversion approved by the general meeting of that company for the purposes of Article 86h of the Directive.

(3) The requirements referred to in paragraph (1)(a) are that –

- (a) the proposed converted company is an Irish company,

- (b) a pre-conversion certificate 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,
- (c) the draft terms to which the certificate referred to in subparagraph (b) relates are the same draft terms referred to in paragraph (2), and
- (d) any arrangements for employee participation in the converted company as are required by Part 5 have been determined.

(4) The pre-conversion certificate referred to in paragraph (3)(b) shall be accepted by the Court as conclusively attesting to the proper completion of the applicable requirements for the issuing of a pre-conversion certificate in the departure EEA state.

(5) The application referred to in paragraph (1), including the submission of any documents or information referred to in paragraph (2), may be completed, in accordance with any applicable rules of court, by the converting company online, without any requirement to appear in person before the Court.

(6) The Court shall specify, in an order referred to in paragraph (1)(a), the date on which the conversion is to have effect.

(7) After the cross-border conversion has taken effect, an order made under this Regulation is conclusive evidence that –

- (a) the requirements specified in paragraph (3) have been satisfied, and
- (b) the pre-conversion requirements have been complied with.

Chapter 4

Consequences of Approval of Cross-Border Conversions

Cross-border conversions: copies of orders to be delivered to Registrar

21. (1) Where an order is made by the Court under Regulation 20(1)(a), a certified copy of the order shall forthwith be delivered to the Registrar for registration in accordance with Regulation 22 by such officer of the Court as the Court may direct.

(2) Where the Registrar receives a copy of an order of the Court under paragraph (1), the Registrar shall, within 14 days after the date of that delivery, cause to be published in the CRO Gazette notice that a copy of an order of the Court confirming the conversion has been delivered to the Registrar.

(3) Where an order is made in respect of an Irish converting company for the purposes of Article 86o(1) of the Directive, the Irish converting company shall

-
- (a) deliver a copy of that order to the Registrar for registration within 14 days after the date on which it was made, and

- (b) specify, in writing to the Registrar, the effective date.
- (4) Where a company fails to comply with paragraph (3), the company and every officer of it who is in default shall be guilty of a category 2 offence.

Cross-border conversions: action to be taken by Registrar on receipt of orders

22. (1) Where the Registrar receives a copy of an order under Regulation 21(1) or (3), the Registrar shall –

- (a) where the order was made by the Court under Regulation 20(1)(a), register the copy order in respect of the Irish converted company in the register on, or as soon as practicable after, the effective date, or
- (b) where the order was made by the authority designated by an EEA state other than the State for the purposes of Article 86o(1) of the Directive, give notice of that order as soon as practicable through the interconnection system to the authority responsible for maintaining the EEA register in which the company file for the converted company is kept, pursuant to Article 16 of the Directive, in the EEA state concerned.

(2) The following information shall be entered by the Registrar in the register and made publicly available and accessible through the interconnection system:

- (a) where an order is made by the Court under Regulation 20(1)(a) in relation to an Irish converted company –
 - (i) that the registration of the company is the result of a cross-border conversion,
 - (ii) the date of registration of the Irish converted company, and
 - (iii) the registration number, name and legal form of the Irish converted company;
- (b) where an order is made by an authority designated by an EEA state other than the State for the purposes of Article 86o(1) of the Directive in relation to an Irish converting company, and the Registrar has received notification of this through the interconnection system –
 - (i) that the striking-off or removal of the Irish converting company from the register is the result of a cross-border conversion,
 - (ii) the date of the striking-off or removal from the register of the Irish converting company, and
 - (iii) the registration number, name and legal form of the Irish converting company.

(3) Where an order is made by the Court under Regulation 20(1)(a) in relation to a cross-border conversion, the Registrar shall, through the

interconnection system, notify the EEA register in the departure EEA state concerned that the cross-border conversion has taken effect.

Consequences of cross-border conversion

23. (1) The consequences of a cross-border conversion, in relation to a converting company and an Irish converted company, are that, from the effective date –

- (a) all of the assets and liabilities, including all of the rights and obligations, of the converting company shall be those of the converted company,
- (b) all members of the converting company become members of the converted company, save for members who have made a request in accordance with Regulation 15(1),
- (c) all legal or regulatory proceedings pending by or against the converting company shall be continued with the substitution, for the converting company, of the converted company as a party,
- (d) the converted company is obliged to make to the members of the converting company any cash compensation payable in response to requests made under Regulation 15(1) or required by a Court under that Regulation,
- (e) the rights and obligations arising from contracts of employment of the converting company are transferred to the converted company,
- (f) every contract, agreement or instrument to which the converting company is a party shall, notwithstanding anything to the contrary contained in that contract, agreement or instrument, be construed and have effect as if –
 - (i) the converted company had been a party thereto instead of the converting company,
 - (ii) for any reference (however worded and whether express or implied) to the converting company there were substituted a reference to the converted company, and
 - (iii) any reference (however worded and whether express or implied) to the directors, officers, employees' representatives or employees of the converting company, or any of them –
 - (I) were, respectively, a reference to the directors, officers, employees' representatives or employees of the converted company or to such director, officer, employees' representative or employee of the converted company as the converted company nominates for that purpose, or
 - (II) in default of such nomination, were, respectively, a reference to the director, officer, employees'

representative or employee of the converted company who corresponds as nearly as may be to the first-mentioned director, officer, employees' representative or employee,

- (g) every contract, agreement or instrument to which the converting company is a party becomes a contract, agreement or instrument between the converted company and the counterparty with the same rights, and subject to the same obligations, liabilities and incidents (including rights of set-off), as would have been applicable thereto if that contract, agreement or instrument had continued in force between the converting company and the counterparty,
- (h) any money due and owing (or payable) by or to the converting company under or by virtue of any such contract, agreement or instrument as is mentioned in subparagraph (g) shall become due and owing (or payable) by or to the converted company instead of the converting company, and
- (i) an offer or invitation to treat made to or by the converting company before the effective date shall be construed and have effect, respectively, as an offer or invitation to treat made to or by the converted company.

(2) The following provisions have effect for the purposes of paragraph (1)

- (a) a reference to an “instrument” in that paragraph includes –
 - (i) a lease, conveyance, transfer, charge or any other instrument relating to real property (including chattels real), and
 - (ii) an instrument relating to personalty;
- (b) subparagraph (f)(ii) of that paragraph applies in the case of references to the converting company and its successors and assigns as it applies in the case of references to the converting company personally;
- (c) subparagraph (g) of that paragraph applies in the case of rights, obligations and liabilities mentioned in that subparagraph whether they are expressed in the contract, agreement or instrument concerned to be personal to the converting company or to benefit or bind (as appropriate) the converting company and its successors and assigns.

Cross-border conversions: validity

24. (1) A cross-border conversion which has taken effect in accordance with Regulation 20(6) may not be declared null and void.

(2) Paragraph (1) is without prejudice to the power of the State to impose any measures or penalties under the law of the State after the effective date,

including in relation to criminal law, the prevention and combatting of terrorist financing, social law, taxation and law enforcement.

PART 3
Cross-Border Mergers
Chapter 1
Preliminary and General

Interpretation (Part 3)

25. In this Part –

“acquiring company”, in relation to a merger by acquisition, means the company that acquires all of the assets of one or more other companies that is or are to be dissolved without going into liquidation;

“cross-border merger” means a merger of companies that involves at least one Irish company and at least one EEA company, being –

- (a) a merger by acquisition,
- (b) a merger by formation of a new company, or
- (c) a merger by absorption;

“effective date” means –

- (a) in relation to a cross-border merger in which the proposed successor company is an Irish company, the date specified under Regulation 42(6), or
- (b) in relation to a cross-border merger in which the proposed successor company is an EEA company, the date determined in accordance with the law of the EEA state concerned for the purposes of Article 129 of the Directive;

“Irish merging company” means a merging company that is an Irish company;

“Irish successor company” means a successor company that is an Irish company;

“Irish transferor company” means a transferor company that is an Irish company;

“Merger Control Regulation” means Council Regulation (EC) No 139/2004 of 20 January 2004⁹ on the control of concentrations between undertakings (the EC Merger Regulation);

“merger by absorption” means an operation whereby, on being dissolved and without going into liquidation, a company transfers all of its assets and liabilities to a company that is the holder of all the shares or other securities representing the capital of the first-mentioned company;

“merger by acquisition” means –

⁹ O.J. L 24, 29.01.2004, p. 1.

- (a) an operation in which a company acquires all the assets and liabilities of one or more other companies that is or are dissolved without going into liquidation in exchange for the issue to the members of that company or those companies of shares or other securities in the first-mentioned company representing the capital of that company, with or without a cash payment, or
- (b) an operation in which a company acquires all the assets and liabilities of one or more other companies that is or are dissolved without going into liquidation without the issue of any new shares by the first-mentioned company, where one person holds directly or indirectly all of the shares in the merging companies or the members of the merging companies hold their shares and other securities in the same proportion in all merging companies;

“merger by formation of a new company” means an operation in which 2 or more companies, on being dissolved without going into liquidation, transfer all of their assets and liabilities to a company that they form (the “new company”) in exchange for the issue to their members of shares or other securities representing the capital of the new company, with or without a cash payment;

“merging company” means –

- (a) in relation to a merger by acquisition or a merger by absorption, a company that is, in relation to that merger, a transferor company or the successor company,
- (b) in relation to a merger by formation of a new company, a company that is, in relation to that merger, a transferor company;

“pre-merger certificate” means –

- (a) in relation to a cross-border merger in respect of which application was made by an Irish merging company under Regulation 39(1), a pre-merger certificate issued by the Court under that Regulation, or
- (b) in relation to any other cross-border merger, a certificate issued for the purposes of Article 127(1) of the Directive by the authority designated by an EEA state other than the State for the purposes of that Article;

“pre-merger requirements” has the meaning assigned to it by Regulation 39(4);

“share exchange ratio” means the number of shares or other securities in any successor company that the common draft terms of a cross-border merger provide to be allotted to members of any transferor company for a given number of their shares or other securities in the transferor company;

“successor company”, in relation to a cross-border merger, means the company to which assets and liabilities are to be, or have been, transferred from the transferor companies by way of that merger;

“transferor company”, in relation to a cross-border merger, means a company the assets and liabilities of which are to be, or have been, transferred by way of that merger.

Application (Part 3)

26. This Part applies to cross-border mergers where –

- (a) at least one merging company is an Irish company, and
- (b) other than an Irish company that is a successor company in the case of a merger by formation of a new company, the Irish company delivers the documents referred to in Regulation 33(1) or (3), as the case may be, to the Registrar on or after the date on which these Regulations come into operation.

Chapter 2

Pre-merger Requirements

Application (Chapter 2 of Part 3)

27. This Chapter applies where a cross-border merger is proposed to be carried out and at least one merging company (other than a successor company in the case of a merger by formation of a new company) is an Irish company.

Cross-border mergers: common draft terms

28. (1) Where a cross-border merger is proposed to be entered into, common draft terms shall be drawn up in writing by all of the merging companies and adopted by the board of directors of each Irish merging company.

(2) The draft terms shall include –

- (a) in relation to each transferor company –
 - (i) its legal form and name, and
 - (ii) the location of its registered office,
- (b) in relation to the proposed successor company –
 - (i) where the successor company is an existing company, the particulars specified in subparagraph (a), and
 - (ii) where the successor company is a new company yet to be formed, the particulars specified in subparagraph (a) that are proposed in respect of that company,
- (c) where applicable –
 - (i) the proposed share exchange ratio and amount of any cash payment,
 - (ii) the proposed terms relating to allotment of shares or other securities in the successor company, and
 - (iii) the date from which the holding of shares or other securities in the successor company will entitle the holders to

participate in profits and any special conditions affecting that entitlement,

- (d) the likely effect of the cross-border merger on employment,
 - (e) the agency worker information in relation to each of the transferor companies,
 - (f) the date from which the transactions of the transferor companies are to be treated for accounting purposes as being those of the successor company,
 - (g) the rights to be conferred by the successor company on members of the transferor companies enjoying special rights or on holders of securities other than shares representing a transferor company's capital, or the measures proposed concerning them,
 - (h) any special advantages granted to members of the administrative, management, supervisory or controlling bodies of the merging companies,
 - (i) the draft instrument of constitution or equivalent document, and any associated documents, of the proposed successor company,
 - (j) where appropriate, information on the procedures by which arrangements for the involvement of employees in the definition of their rights to participation in the proposed successor company are determined pursuant to Part 5,
 - (k) information on the evaluation of the assets and liabilities to be transferred to the successor company,
 - (l) the dates of the accounts of each merging company which were used for the purpose of preparing the common draft terms,
 - (m) details of the proposed cash compensation payable in response to requests made under Regulation 37(1), and
 - (n) any safeguards offered to creditors, such as guarantees or pledges.
- (3) The common draft terms shall not provide for any shares in an acquiring company to be exchanged for shares in a transferor company which are held either –
- (a) by the acquiring company itself or its nominee on its behalf, or
 - (b) by the transferor company itself or its nominee on its behalf.

Cross-border mergers: directors' explanatory report

29. (1) Subject to paragraph (12), the board of directors of an Irish merging company shall, in accordance with this Regulation, draw up a report for members and employees of the company, which report shall –

- (a) explain and justify the legal and economic aspects of the cross-border merger,
- (b) explain the implications of the cross-border merger for employees, and

- (c) explain the implications of the cross-border merger for the future business of the company.

(2) A report drawn up under this Regulation shall be made available electronically, together with the common draft terms if available, to –

- (a) the members, and
- (b) the employees' representatives,

of the Irish merging company not less than 6 weeks before the date of the general meeting referred to in Regulation 35.

(3) Where the approval of a cross-border merger by the general meeting of an acquiring company is not required in accordance with Regulation 36, the report shall be made available at least 6 weeks before the date of the general meeting of the other merging company or companies.

(4) The report shall, subject to paragraph (5), include a section for members that includes the information referred to in paragraph (6) and a section for employees that includes the information referred to in paragraph (8).

(5) The board of directors may draw up 2 separate reports, one for members including the section for members and another for employees including the section for employees.

(6) The section for members shall, in particular, explain –

- (a) the cash compensation payable in response to requests made under Regulation 37(1) and the method used to determine the cash compensation,
- (b) where applicable, the share exchange ratio and the method or methods used to arrive at the share exchange ratio,
- (c) the implications of the cross-border merger for members of the Irish merging company, and
- (d) the rights and remedies available to members of the Irish merging company in accordance with Regulation 37.

(7) The section for members shall not be required where every member of the Irish merging company has agreed to waive that requirement.

(8) The section for employees in the report shall, in particular, explain –

- (a) the implications of the cross-border merger for employment in the Irish merging company, including in relation to employment relationships and any measures for safeguarding those relationships, organisation of work, and company-level social dialogue including any board-level employee representation,
- (b) any material changes to the conditions of employment of employees of the Irish merging company,
- (c) any material changes to the location of any place of business of the Irish merging company or to the location of specific posts in the company, and the expected consequences for employees occupying such posts, and

(d) how the matters referred to in subparagraphs (a) to (c) affect any subsidiaries of the Irish merging company.

(9) The conditions of employment referred to in paragraph (8) shall include conditions of employment which apply by law and under any applicable collective agreement or transnational company agreement.

(10) Where the board of directors of an Irish merging company receives an opinion from the employees' representatives on the information referred to in paragraphs (1) and (8) within a reasonable period of time prior to the general meeting –

- (a) the members shall be informed of the opinion, and
- (b) the opinion shall be appended to the report, or reports as the case may be.

(11) The section for employees in the report shall not be required where the Irish merging company and its subsidiaries, if any, do not have any employees other than the board of directors.

(12) A report shall not be required under this Regulation where the section for members in the report is not required under paragraph (7) and the section for employees in the report is not required under paragraph (11).

(13) This Regulation is without prejudice to the Employees (Provision of Information and Consultation) Act 2006 and the Transnational Information and Consultation of Employees Act 1996.

Cross-border mergers: expert's report

30. (1) Subject to paragraph (6), a report to the shareholders of an Irish merging company on the draft terms shall be drawn up in accordance with this Regulation and be made available to the members not less than 30 days before the date of the general meeting referred to in Regulation 35.

(2) Where the approval of a cross-border merger by the general meeting of an acquiring company is not required in accordance with Regulation 36, the report shall be made available at least 30 days before the date of the general meeting of the other merging company or companies.

(3) The report shall be drawn up by a person or persons (in this Regulation referred to as the "expert"), being –

- (a) a person appointed for the Irish merging company by its directors,
- (b) a person or persons, appointed by the Court, on the application of all of the merging companies, for all of them, or
- (c) a person appointed for all of the merging companies for the purposes of Article 125(2) of the Directive by an authority of an EEA state other than the State.

(4) An expert appointed under paragraph (3)(a) or (b) shall be a qualified person, and Regulation 9(3), (4), (6) and (8) to (13) shall have effect for that purpose with any necessary modifications.

(5) The report referred to in paragraph (1) shall be in writing and shall –

- (a) state the method or methods used to determine –
 - (i) the proposed cash compensation payable in accordance with Regulation 37, and
 - (ii) the proposed share exchange ratio,
 - (b) state –
 - (i) whether the method or methods used to determine the proposed cash compensation and the share exchange ratio is or are adequate for the assessment of the cash compensation and the share exchange ratio,
 - (ii) the value arrived at using such methods,
 - (iii) an opinion on the relative importance attributed to those methods in arriving at the value decided on, and
 - (iv) in the event that different methods are used in the merging companies, state whether the use of different methods was justified,
 - (c) state any special valuation difficulties which have arisen,
 - (d) state the opinion of the expert as to whether the proposed cash compensation is adequate, the expert having considered any market price of the shares in the merging companies prior to the announcement of the proposed merger or the value of the companies excluding the effect of the proposed merger, as determined in accordance with generally accepted valuation methods, and
 - (e) state the opinion of the expert as to whether the share exchange ratio is adequate.
- (6) Neither an examination of the common draft terms by the expert, nor the expert report, shall be required where every member of each merging company agrees to waive these requirements.

Cross-border mergers: civil liability of experts

31. Regulation 10 shall apply to an Irish merging company in respect of an expert's report under Regulation 30 as it applies in relation to a converting company, with any necessary modifications.

Cross-border mergers: criminal liability for untrue statements in expert's report

32. Regulation 11 shall apply to an Irish merging company in respect of an expert's report under Regulation 30 as it applies to a converting company, with any necessary modifications.

Cross-border mergers: registration and publication of documents

33. (1) Subject to paragraph (2), an Irish merging company shall deliver to the Registrar for registration, at least 30 days before the date of the general meeting referred to in Regulation 35 –

- (a) a copy of the common draft terms, and
- (b) a notice informing the members, creditors and employees' representatives that they may submit to their respective company, no later than 5 working days before the date of the general meeting, comments concerning the common draft terms, and
- (c) a notice, in the form set out in Part 2 of Schedule 1.

(2) Subject to paragraph (4), paragraph (1) shall not apply in relation to an Irish merging company where the company publishes, free of charge on its website, the documents specified in paragraph (1)(a) and (b) for a continuous period of at least 2 months which –

- (a) commences at least 30 days before, and
- (b) ends at least 30 days after,

the date fixed for the general meeting referred to in Regulation 35.

(3) Where paragraph (2) applies in relation to an Irish merging company, the company shall deliver to the Registrar for registration, at least 30 days before the date of the general meeting referred to in Regulation 35, a notice, in the form set out in Part 2 of Schedule 1.

(4) Where, in the period referred to in paragraph (2), access to the company's website is disrupted for a continuous period of at least 24 hours or for separate periods totalling not less than 72 hours, the period referred to in paragraph (2) shall be extended for a period corresponding to the period or periods of disruption.

(5) Where the approval of a cross-border merger by the general meeting of an acquiring company is not required in accordance with Regulation 36, the disclosure referred to in paragraphs (1) to (3) shall be made at least 30 days before the date of the general meeting of the other merging company or companies.

(6) Notice of the delivery of the common draft terms to the Registrar and the notice referred to in paragraph (1)(b) or, where paragraph (2) applies, the notice referred to in paragraph (3), shall be caused to be published –

- (a) by the Registrar in the CRO Gazette, and
- (b) by the company, in a national daily newspaper,

at least 30 days before the date of the general meeting referred to in Regulation 35.

(7) The notice published in accordance with paragraph (6) shall include:

- (a) the date of the delivery of the documents under paragraph (1) or, where paragraph (2) applies, the date of publication under that paragraph;
- (b) the matters specified in paragraph (1)(b) and (c) or, where paragraph (2) applies, the matters specified in paragraph (3).

(8) The documents referred to in paragraphs (1) and (3) shall be accessible to the public free of charge through the register and the interconnection system.

(9) The Registrar may charge a fee in respect of the registration referred to in paragraph (1) or (3) which shall not exceed the cost to the Registrar of providing these services.

(10) The sole means to be used to deliver the documents referred to in paragraphs (1) and (3) to the Registrar shall be those provided for under the Electronic Commerce Act 2000 effected in a manner which complies with any requirements of the Registrar of the kind referred to in sections 12(2)(b) and 13(2)(a) of that Act.

Cross-border mergers: notification to Central Bank of Ireland by certain companies

34. Where an Irish merging company is regulated by the Central Bank of Ireland, the company shall notify the Bank of its intention to carry out a cross-border merger at least 90 days before the date of the general meeting referred to in Regulation 35.

Cross-border mergers: approval by general meeting

35. (1) Subject to Regulation 36, the common draft terms and any proposed amendment to the constitution shall be approved by a special resolution passed at a general meeting of an Irish merging company held not earlier than 30 days after the publication of the notice referred to in Regulation 33(6)(a), note having first been taken by the general meeting of –

- (a) the directors' explanatory report under Regulation 29 and the expert's report under Regulation 30,
- (b) any opinion received under Regulation 29(10), and
- (c) any comments submitted in accordance with Regulation 33(1)(b).

(2) The approval of the members may be made subject to –

- (a) the ratification of the arrangements adopted for employee participation in the successor company in accordance with Part 5,
- (b) an order of the Court under Regulation 37(4) or (7), or of the authority designated by an EEA state other than the State providing for a cash payment for the purposes of Article 126a(6) of the Directive or additional cash compensation for the purposes of Article 126a(4) of the Directive,
- (c) receipt, where required, of –
 - (i) merger control approval from the Competition and Consumer Protection Commission under Part 3 of the Competition Act 2002 (No. 14 of 2002),
 - (ii) a determination by the Minister for the Environment, Climate and Communications under section 28D(1)(a) or (b) or section 28G(1)(a) or (c) (inserted by section 74 of the

- Competition and Consumer Protection Act 2014 (No. 29 of 2014)) of the Competition Act 2002,
- (iii) merger control approval from the European Commission under the Merger Control Regulation, or
 - (iv) merger control approval under the law of any other jurisdiction,
 - (d) any other regulatory approval, or the satisfaction of any applicable regulatory condition, or
 - (e) such other conditions as they consider appropriate in the circumstances.
- (3) The directors of each Irish merging company shall inform –
- (a) the general meeting of that company, and
 - (b) as soon as practicable, the directors of each of the other merging companies,
- of any material change in the assets and liabilities of that Irish merging company between the date of the common draft terms and the date of that general meeting.
- (4) The directors of each such other merging company shall inform the general meeting of that company of all changes of which they have been informed pursuant to paragraph (3).
- (5) The approval of the cross-border merger by the general meeting under paragraph (1) may not be challenged by a member solely on any of the following grounds:
- (a) the share exchange ratio referred to in Regulation 28(2)(c)(i) having been inadequately set;
 - (b) the cash compensation referred to in Regulation 28(2)(m) having been inadequately set;
 - (c) the information given with regard to the share exchange ratio or the cash compensation not having complied with these Regulations or other legal requirements.
- Cross-border mergers: exemption from requirement to hold general meeting**
36. (1) Approval by the general meeting under Regulation 35 is not required in respect of an acquiring company where –
- (a) the publication referred to in Regulation 33 is effected, for the acquiring company, at least 30 days before the date fixed for the general meeting of the company or companies being acquired which is to decide on the common draft terms,
 - (b) subject to paragraph (4), at least 30 days before the date specified in subparagraph (a), all members of the acquiring company are entitled to inspect the following documents at the registered office of the acquiring company:
- (i) the common draft terms;

- (ii) the audited annual accounts and annual reports of the merging companies for the preceding 3 financial years;
 - (iii) subject to paragraph (3), the accounting statement in relation to each merging company which is required to be prepared pursuant to paragraph (2) and which shall be drawn up on a date that is not earlier than the first day of the third month preceding the date of the common draft terms (if the latest annual accounts relate to a financial year which ended more than 6 months before that date);
 - (iv) where applicable, the directors' explanatory report under Regulation 29 and the expert's report under Regulation 30,
- and
- (c) one or more members of the acquiring company holding together not less than 5 per cent of the subscribed capital is entitled to require that a general meeting of the acquiring company be called to decide whether to approve the merger.

(2) The accounting statement shall be drawn up using the same methods and the same layout as the last annual balance sheet.

(3) The accounting statement shall not be required if –

- (a) the company publishes a half-yearly financial report in accordance with Article 5 of Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004¹⁰ and makes it available to shareholders in accordance with this Regulation, or
- (b) all shareholders and the holders of other securities conferring the right to vote of each of the merging companies have so agreed.

(4) Subject to paragraph (7), every shareholder shall be entitled to obtain, on request and free of charge, full or, if so desired, partial copies of the documents referred to in paragraph (1)(b).

(5) Where a shareholder has consented to the use by the company of electronic means for conveying information, the copies referred to in paragraph (4) may be provided by electronic mail.

(6) A company shall be exempt from the requirement to make the documents referred to in paragraph (1)(b) available at its registered office if, for a continuous period beginning at least 30 days before the date fixed for the general meeting which is to decide on the common draft terms and ending not earlier than the conclusion of that meeting, it makes them available on its website.

(7) Paragraph (4) shall not apply where –

- (a) the website referred to in paragraph (6) gives shareholders the possibility, throughout the period referred to in that paragraph, of downloading and printing the documents referred to in paragraph (1)(b), and

¹⁰ OJ No. L. 390, 31.12.2004, p. 38.

- (b) the company makes those documents available at its registered office for inspection by shareholders.

Cross-border mergers: protection of shareholders

37. (1) Where a special resolution referred to in Regulation 35(1) is passed at a general meeting of an Irish merging company, a minority shareholder in that company may, not later than 30 days after the date on which the general meeting was held, request the company in writing to acquire his or her shares for the cash compensation specified in the common draft terms.

(2) A minority shareholder may make the request referred to in paragraph (1) by electronic means to an electronic address provided by the Irish merging company.

(3) Where a request is made by a minority shareholder in accordance with paragraph (1), the cash compensation payable to that shareholder shall be paid within 2 months after the effective date.

(4) Where a minority shareholder who has made a request in accordance with paragraph (1) considers that the cash compensation specified in the common draft terms has not been adequately set, that shareholder may apply to the Court for additional cash compensation within 30 days after the date on which the general meeting was held.

(5) A final decision that additional cash compensation should be paid –

- (a) shall apply to each shareholder who has made a request in accordance with paragraph (1), notwithstanding that the shareholder concerned may not have made an application under paragraph (4), and
- (b) may provide for different levels of additional cash compensation for different classes of shareholder referred to in subparagraph (a).

(6) The courts of the State shall have exclusive competence to resolve any disputes relating to the rights referred to in paragraphs (1) to (5).

(7) A shareholder of an Irish merging company who –

- (a) considers that the share exchange ratio set out in the common draft terms is inadequate, and
- (b) is not a minority shareholder or did not make a request under paragraph (1),

may apply to the Court to dispute the share exchange ratio and claim a cash payment within 30 days after the date on which the general meeting was held.

(8) A final decision to modify the exchange ratio and make a cash payment

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- (a) shall apply to each shareholder who is not a minority shareholder or did not make a request under paragraph (1), notwithstanding that the shareholder concerned may not have made an application under paragraph (6), and

- (b) may provide for different levels of cash payment for different classes of shareholder referred to in subparagraph (a).
- (9) Where an application is made to the Court under paragraph (8), this shall not prevent the approval or registration of the cross-border merger, and the decision of the Court in relation to the application under paragraph (8) shall be binding on the successor company.

(10) A successor company may provide shares or other compensation instead of a cash payment.

(11) In this Regulation –

“final decision” means a decision of the Court under paragraph (4), or paragraph (7) as the case may be, or, where an appeal against the decision of the Court under paragraph (4) or (7) is brought and is not withdrawn, abandoned or otherwise not proceeded with, the decision of a court in the State against which no further appeal lies or against which an appeal lies within a period which has expired without an appeal;

“minority shareholder”, in relation to an Irish merging company, means a shareholder of the company who voted against the special resolution proposed pursuant to Regulation 35(1) and, as a result of the merger, would acquire shares in a successor company that is governed by the law of an EEA state other than the State.

Cross-border mergers: protection of creditors

38. (1) Where a creditor –

- (a) is dissatisfied with the safeguards offered to creditors in the common draft terms under Regulation 28(2)(n), and
- (b) can credibly demonstrate that, due to the cross-border merger, the satisfaction of the creditor’s claim is at stake and that the creditor has not obtained adequate safeguards from the company in this regard,

the creditor may apply to the Court for adequate safeguards within 3 months of the relevant date.

(2) Any safeguards for creditors shall be conditional on the cross-border merger taking effect in accordance with Regulation 42(6).

(3) This Regulation shall be without prejudice to the application of the law of the State concerning the satisfaction or securing of pecuniary or non-pecuniary obligations due to relevant authorities.

(4) In this Regulation –

“creditor”, in relation to an Irish merging company, means a creditor of the company who is entitled to any debt or claim against the company on the relevant date;

“relevant date” means the date of the delivery to the Registrar under Regulation 33(1) or, where Regulation 33(2) applies, the date of the delivery to the Registrar under Regulation 33(3).

Cross-border mergers: pre-merger certificate

39. (1) On application to it by an Irish merging company, the Court shall examine the proposed cross-border merger and shall –

- (a) subject to Regulation 17(11) as applied by paragraph (3), if it is satisfied that the company has complied with the pre-merger requirements, issue a certificate (a “pre-merger certificate”), or
- (b) if it is not so satisfied, refuse to issue such a certificate.

(2) In making the application referred to in paragraph (1), the Irish merging company shall submit the following documents to the Court:

- (a) the common draft terms under Regulation 28;
- (b) where applicable, the directors’ explanatory report under Regulation 29 and expert’s report under Regulation 30;
- (c) any opinion received under Regulation 29(10);
- (d) any comments submitted in accordance with Regulation 33(1)(b);
- (e) information on the approval by the general meeting referred to in Regulation 35;
- (f) the number of employees of the Irish merging company at the time of the drawing up of the common draft terms;
- (g) the existence of any subsidiaries of the Irish merging company and the geographical location of any such subsidiaries;
- (h) information regarding the satisfaction by the Irish merging company of any obligations to relevant authorities;
- (i) without prejudice to the generality of subparagraph (h), where the company is regulated by the Central Bank of Ireland, a copy of the notification made under Regulation 34 and any written response received to this notification from the Central Bank of Ireland in advance of the general meeting referred to in Regulation 35.

(3) Regulation 17(3) to (18) shall apply to the examination of a cross-border merger under this Regulation as it applies to a cross-border conversion, with any necessary modifications.

(4) In this Regulation, “pre-merger requirements” means the applicable requirements of the preceding provisions of this Chapter and of this Regulation.

Cross-border mergers: transmission of pre-merger certificate

40. Regulation 18 shall apply in relation to a pre-merger certificate as it applies in relation to a pre-conversion certificate, with any necessary modifications.

Approval in State of Cross-Border Mergers

Application (Chapter 3 of Part 3)

41. This Chapter applies where –

- (a) a pre-merger certificate has been issued in respect of a cross-border merger, and
- (b) the successor company to which the cross-border merger relates is an Irish company.

Court examination of cross-border merger

42. (1) On application to it made jointly by the merging companies, the Court shall examine the legality of a cross-border merger as regards the procedure which concerns the completion of the cross-border merger, including the proposed formation of a successor company in the State, and shall –

- (a) if it is satisfied that the requirements specified in paragraph (3) have been met, make an order approving the cross-border merger as soon as it is so satisfied, or
- (b) if not so satisfied, refuse to make an order approving the cross-border merger.

(2) In making the application referred to in paragraph (1), each merging company shall submit to the Court the common draft terms approved by the general meeting of that 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.

(3) The requirements referred to in paragraph (1)(a) are that –

- (a) the proposed successor company is an Irish company,
- (b) a pre-merger certificate has been issued under Regulation 39 in respect of each Irish merging company,
- (c) a pre-merger certificate has been issued in respect of each merging company that is an EEA company by the authority designated for the purposes of Article 127(1) of the Directive by the EEA state under the law of which that company is governed,
- (d) the common draft terms to which each certificate referred to in subparagraphs (b) and (c) relates are the same common draft terms referred to in paragraph (2), and
- (e) any arrangements for employee participation in the successor company as are required by Part 5 have been determined.

(4) The pre-merger certificate referred to in paragraph (3)(c) shall be accepted by the Court as conclusively attesting to the proper completion of the applicable requirements for the issuing of a pre-merger certificate in the EEA state concerned.

(5) The application referred to in paragraph (1), including the submission of any documents or information referred to in paragraph (2), may be completed, in accordance with any applicable rules of court, by the merging company online, without any requirement to appear in person before the Court.

(6) The Court shall specify, in an order referred to in paragraph (1)(a), the date on which the merger is to have effect.

(7) If the taking effect of the merger would fall at a time (being the time ascertained by reference to the general law and without regard to this paragraph) on the effective date that is a time that would not, in the opinion of the Court, be suitable having regard to the need to co-ordinate various transactions, the court may, in appointing an effective date, specify a time, different from the foregoing, on the effective date and, where such a time is so specified –

- (a) the merger takes effect on that time on the effective date, and
- (b) references in these Regulations to the effective date shall be construed accordingly.

(8) After the cross-border merger has taken effect, an order made under this Regulation is conclusive evidence that –

- (a) the requirements specified in paragraph (3) have been satisfied, and
- (b) the pre-merger requirements have been complied with.

Compliance with other laws relating to mergers and takeovers

43. (1) The Court shall not make an order under Regulation 42 in respect of a cross-border merger that is 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 this Regulation referred to as the “Commission”) in accordance with that subsection, or in respect of which the Commission has made a requirement pursuant to section 18A(2) of that Act, unless –

- (a) the Commission has determined under section 21 or 22 of that Act that the merger may be put into effect,
- (b) the Commission has made a conditional determination (within the meaning of that Act) in relation to the merger,
- (c) the period specified in section 21(2) of that Act has elapsed without the Commission having informed the undertakings which made the notification concerned of the determination (if any) it has made under subsection (2)(a) or (b) of that section in relation to the merger, or
- (d) subject to section 19(5) of that Act, the relevant period referred to in section 19(1)(d) of that Act has elapsed without the Commission having made a determination under section 22 of that Act in relation to the merger.

(2) The Court shall not make an order under Regulation 42 in respect of a cross-border merger that is a concentration with a Community dimension (within the meaning of the Merger Control Regulation) unless –

- (a) the European Commission has issued a decision under Article 8 of that Regulation declaring the concentration compatible with the common market,
- (b) the concentration is deemed to have been declared compatible with the common market pursuant to Article 10(6) of that Regulation, or
- (c) after a referral by the European Commission to the Commission under Article 9 of that Regulation, one of the events specified in subparagraphs (a) to (d) of paragraph (1) has occurred.

(3) The Court shall not make an order under Regulation 42 in respect of a cross-border merger while any requirement under an enactment for any other authorisation, approval, consent, waiver, licence, permission or agreement that affects the merger remains unsatisfied.

(4) Nothing in these Regulations shall be taken to imply that the satisfaction of a requirement mentioned in paragraph (3) in relation to a merging company is effective in relation to the successor company.

(5) Nothing in this Regulation shall affect any conditions to which a determination by the Commission, a decision of the European Commission or an authorisation of a Regulator is subject.

(6) Nothing in these Regulations limits the jurisdiction of the Irish Takeover Panel under the Irish Takeover Panel Act 1997 (No. 5 of 1997) with respect to a cross-border merger that –

- (a) involves a relevant company (within the meaning of that Act), and
- (b) constitutes a takeover (within the meaning of that Act), and, accordingly –
 - (i) the Irish Takeover Panel has power to make rules under section 8 of that Act in relation to cross-border mergers of that kind, to the same extent and subject to the same conditions, as it has power to make rules under that section in relation to any other kind of takeover, and
 - (ii) the Court, in exercising its powers under these Regulations, shall have due regard to the exercise of powers under that Act.

(7) In this Regulation, “Regulator” means a person, body or organisation referred to in subparagraph (c)(i) of the definition of “relevant authority” in Regulation 2(1).

Cross-border mergers: copies of orders to be delivered to Registrar

44. (1) Where an order is made by the Court under Regulation 42(1)(a), a certified copy of the order shall forthwith be delivered to the Registrar for registration in accordance with Regulation 45 by such officer of the Court as the Court may direct.

(2) Where the Registrar receives a copy of an order of the Court under paragraph (1), the Registrar shall, within 14 days after the date of that delivery, cause to be published in the CRO Gazette notice that a copy of an order of the Court confirming the merger has been delivered to the Registrar.

(3) Where an order is made in respect of a cross-border merger by an authority designated by an EEA state other than the State for the purposes of Article 128(1) of the Directive, any transferor company which is an Irish company shall –

- (a) deliver a copy of that order to the Registrar for registration within 14 days after the date on which it was made, and
- (b) specify, in writing to the Registrar, the effective date.

(4) Where a company fails to comply with paragraph (3), the company and every officer of it who is in default shall be guilty of a category 2 offence.

Cross-border mergers: action to be taken by Registrar on receipt of orders

45. (1) Where the Registrar receives a copy of an order under Regulation 44(1) or (3), the Registrar shall –

- (a) where the order was made by the Court under Regulation 42(1)(a), register the copy order in respect of the Irish successor company in the register on, or as soon as practicable after, the effective date, or
- (b) where the order was made by the authority designated by an EEA state other than the State for the purposes of Article 128(1) of the Directive, give notice of that order as soon as practicable through the interconnection system to the authority responsible for maintaining the EEA register in which the company file for the successor company is kept, pursuant to Article 16 of the Directive, in the EEA state concerned.

(2) Without prejudice to the generality of Regulation 46(4), the following information shall be entered by the Registrar in the register and made publicly available and accessible through the interconnection system:

- (a) where an order is made by the Court under Regulation 42(1)(a) in relation to an Irish successor company –
 - (i) that the registration of the company is the result of a cross-border merger,
 - (ii) the date of registration of the Irish successor company,
 - (iii) the registration number, name and legal form of the Irish successor company and each transferor company, and

- (iv) in respect of any Irish transferor company to which the cross border merger relates –
 - (I) that the striking-off or removal of the company from the register is the result of a cross-border merger, and
 - (II) the date of the striking off or removal of the company from the register;
 - (b) where an order is made by an authority designated by an EEA state other than the State for the purposes of Article 128(1) of the Directive in relation to an Irish transferor company, and the Registrar has received notification of this through the interconnection system –
 - (i) that the striking-off or removal of the Irish transferor company from the register is the result of a cross-border merger,
 - (ii) the date of the striking-off or removal from the register of the Irish transferor company, and
 - (iii) the registration number, name and legal form of the successor company and each transferor company.
- (3) Where an order is made by the Court under Regulation 42(1)(a) in relation to a cross-border merger, the Registrar shall, through the interconnection system, notify the EEA register in the EEA state in which each of the merging companies that is not an Irish merging company is registered that the cross-border merger has taken effect.

Consequences of cross-border merger

46. (1) The consequences of a cross-border merger are that, from the effective date –
- (a) all of the assets and liabilities, including all of the rights and obligations, of the transferor companies shall be transferred to the successor company,
 - (b) in the case of a merger by acquisition or a merger by formation of a new company, all remaining members of the transferor companies except the successor company (if it is a member of a transferor company) shall become members of the successor company, save for members who have made a request in accordance with Regulation 37(1),
 - (c) the transferor companies shall be dissolved,
 - (d) all legal or regulatory proceedings pending by or against any transferor company shall be continued with the substitution, for the transferor company concerned, of the successor company as a party,
 - (e) the successor company is obliged to make to the members of the transferor companies any cash payment required by the common draft terms or by a court under Regulation 37,

- (f) the successor company is obliged to pay to the members of the transferor companies any cash compensation payable in response to requests made under Regulation 37(1) or required by a court under that Regulation,
- (g) the rights and obligations arising from contracts of employment of the transferor companies are transferred to the successor company,
- (h) every contract, agreement or instrument to which a transferor company is a party shall, notwithstanding anything to the contrary contained in that contract, agreement or instrument, be construed and have effect as if –
 - (i) the successor company had been a party thereto instead of the transferor company,
 - (ii) for any reference (however worded and whether express or implied) to the transferor company there were substituted a reference to the successor company, and
 - (iii) any reference (however worded and whether express or implied) to the directors, officers, employees' representatives or employees of the transferor company, or any of them –
 - (I) were, respectively, a reference to the directors, officers, employees' representatives or employees of the successor company or to such director, officer, representative or employee of the successor company as the successor company nominates for that purpose, or
 - (II) in default of such nomination, were, respectively, a reference to the director, officer, employees' representative or employee of the successor company who corresponds as nearly as may be to the first-mentioned director, officer, employees' representative or employee,
- (i) every contract, agreement or instrument to which the transferor company is a party becomes a contract, agreement or instrument between the successor company and the counterparty with the same rights, and subject to the same obligations, liabilities and incidents (including rights of set-off), as would have been applicable thereto if that contract, agreement or instrument had continued in force between the transferor company and the counterparty,
- (j) any money due and owing (or payable) by or to the transferor company under or by virtue of any such contract, agreement or instrument as is mentioned in subparagraph (i) shall become due and owing (or payable) by or to the successor company instead of the transferor company, and

(k) an offer or invitation to treat made to or by the transferor company before the effective date shall be construed and have effect, respectively, as an offer or invitation to treat made to or by the successor company.

(2) The following provisions have effect for the purposes of paragraph (1)

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- (a) a reference to an “instrument” in that paragraph includes —
 - (i) a lease, conveyance, transfer, charge or any other instrument relating to real property (including chattels real), and
 - (ii) an instrument relating to personalty;
- (b) subparagraph (h)(ii) of that paragraph applies in the case of references to the transferor company and its successors and assigns as it applies in the case of references to the transferor company personally;
- (c) subparagraph (i) of that paragraph applies in the case of rights, obligations and liabilities mentioned in that subparagraph whether they are expressed in the contract, agreement or instrument concerned to be personal to the transferor company or to benefit or bind (as appropriate) the transferor company and its successors and assigns.

(3) Without prejudice to paragraphs (4) and (5), the successor company shall comply with registration requirements and any other special formalities required by law (including the law of an EEA state other than the State) and as directed by the Court for the transfer of the assets and liabilities of the transferor company or companies to be effective in relation to other persons.

(4) There shall be entered by the keeper of any register in the State —

- (a) upon production of a certified copy of the order under Regulation 42(1)(a) or an order made by an authority designated by an EEA state other than the State for the purposes of Article 128(1) of the Directive, and
- (b) without the necessity of there being produced any other document (and, accordingly, any provision requiring such production shall, if it would otherwise apply, not apply),

the name of the successor company in place of the transferor company in respect of the information, act, ownership or other matter in that register and any document kept in that register.

(5) Without prejudice to the generality of paragraph (4), the Property Registration Authority, as respects any deed (within the meaning of section 32 of the Registration of Deeds and Title Act 2006 (No. 12 of 2006)) registered by that Authority or produced for registration by it, shall, upon production of the document referred to in paragraph (4)(a) but without the necessity of there being produced that which is referred to in paragraph (4)(b), enter the name of the successor company in place of any transferor company in respect of such deed.

(6) Without prejudice to the application of paragraph (4) to any other type of register in the State, each of the following shall be deemed to be a register in the State for the purposes of that paragraph:

- (a) the register of members of a company referred to in section 169 of the Act of 2014;
- (b) the register of charges kept by the Registrar pursuant to section 414 of the Act of 2014;
- (c) the Land Registry;
- (d) any register of shipping kept under the Mercantile Marine Act 1955 (No. 29 of 1955).

Cross-border mergers: simplified formalities

47. (1) This paragraph applies where –

- (a) a cross-border merger by acquisition is carried out either by a company which holds all the shares and other securities conferring the right to vote at general meetings of the company or companies being acquired, or by a person who holds directly or indirectly all the shares and other securities in the acquiring company and in the company or companies being acquired, and
- (b) the acquiring company does not allot any shares or other securities under the merger.

(2) Where paragraph (1) applies –

- (a) Regulations 28(2)(c) and (m), 30 and 46(1)(b) shall not apply in relation to the cross-border merger, and
- (b) Regulations 29 and 35 shall not apply to the company or companies being acquired.

(3) Where a cross-border merger by acquisition is carried out by a company which holds 90 per cent or more, but not all, of the shares and other securities conferring the right to vote at general meetings of the company or companies being acquired, the expert's report under Regulation 30 and the documents necessary for examination shall not be required.

(4) Where –

- (a) Regulation 36 and paragraph (1) apply to an Irish merging company in respect of a cross-border merger,
- (b) approval by the general meeting of the common draft terms is not required under national law in respect of any of the merging companies for the purposes of Article 126(3) of the Directive, and
- (c) Article 132(1) of the Directive applies in respect of each merging company,

the following shall be made available by the Irish merging company at least 30 days before the decision on the merger is made by the company –

- (i) the common draft terms or the information referred to in Regulation 33(1) or (3), as the case may be,
- (ii) the directors' explanatory report under Regulation 29, and
- (iii) the expert's report under Regulation 30.

Cross-border mergers: validity

48. (1) A cross-border merger which has taken effect in accordance with Regulation 42(6) may not be declared null and void.

(2) Paragraph (1) is without prejudice to the power of the State to impose any measures or penalties under the law of the State after the effective date, including in relation to criminal law, the prevention and combatting of terrorist financing, social law, taxation and law enforcement.

PART 4
Cross-Border Divisions
Chapter 1
Preliminary and General

Interpretation (Part 4)

49. In this Part –

“cross-border division” means a full division, partial division or division by separation of a company which has its registered office, central administration or principal place of business within the European Union, provided that at least one of the recipient companies is an Irish company and at least one is an EEA company;

“dividing company” means a company which, in the process of a cross-border division –

- (a) transfers all its assets and liabilities to 2 or more companies, in the case of a full division, or
- (b) transfers part of its assets and liabilities to one or more companies, in the case of a partial division or division by separation;

“division” means a full division, a partial division or a division by separation;

“division by separation” means an operation whereby a dividing company transfers part of its assets and liabilities to one or more recipient companies, in exchange for the issue to the dividing company of securities or shares in the recipient company or companies;

“effective date” means –

- (a) in relation to a cross-border division in which the dividing company is an Irish company, the date on which the Registrar gives notice under Regulation 67(2), or
- (b) in relation to a cross-border division in which the dividing company is an EEA company, the date determined in accordance with the law of the EEA state concerned for the purposes of Article 160q of the Directive;

“full division” means an operation whereby a dividing company, on being dissolved without going into liquidation, transfers all its assets and liabilities to 2 or more recipient companies, in exchange for the issue to the members of the dividing company of securities or shares in the recipient companies and, if applicable, a cash payment;

“Irish dividing company” means a dividing company that is an Irish company;

“Irish recipient company” means a recipient company that is an Irish company;

“partial division” means an operation whereby a dividing company transfers part of its assets and liabilities to one or more recipient companies, in exchange for the issue to the members of the dividing company of securities or shares in the

recipient company or companies, in the dividing company, or in both and if applicable, a cash payment;

“pre-division certificate” means –

- (a) in relation to a cross-border division in respect of which application was made by an Irish dividing company under Regulation 62(1), a pre-division certificate issued by the Court under that Regulation, or
- (b) in relation to any other cross-border division, a certificate issued for the purposes of Article 160m of the Directive by the authority designated by an EEA state other than the State for the purposes of that Article;

“recipient company” means a company newly formed in the course of a cross-border division;

“share exchange ratio” means the number of shares or other securities in any recipient company that the draft terms of a cross-border division provide to be allotted to members of any dividing company for a given number of their shares or other securities in the dividing company.

Application (Part 4)

- 50. (1) This Part applies to cross-border divisions.
- (2) The law of the EEA state of the dividing company shall apply in relation to a cross-border division until a pre-division certificate is issued in respect of the division.
- (3) The laws of the EEA states of the recipient company or companies shall apply in relation to a cross-border division after a pre-division certificate is issued in respect of the division.

Chapter 2 Pre-division Requirements

Application (Chapter 2 of Part 4)

- 51. This Chapter applies where a cross-border division is proposed to be carried out and the dividing company is an Irish company.

Cross-border divisions: draft terms

- 52. (1) Where a cross-border division is proposed to be entered into by an Irish dividing company, draft terms shall be drawn up in writing and adopted by the board of directors of that company.

- (2) The draft terms shall include –
 - (a) in relation to the dividing company –
 - (i) its legal form and name, and

- (ii) the location of its registered office,
- (b) in relation to each proposed recipient company, the particulars specified in subparagraph (a) that are proposed in respect of that company,
- (c) where applicable, the proposed share exchange ratio and amount of any cash payment,
- (d) the proposed terms relating to allotment of shares or other securities in the recipient companies or the dividing company,
- (e) the date from which the holding of securities or shares representing the companies' capital will entitle the holders to share in profits, and any special conditions affecting that entitlement,
- (f) the proposed indicative timetable for the cross-border division,
- (g) the likely effect of the cross-border division on employment,
- (h) the agency worker information in relation to the dividing company,
- (i) the date or dates from which the transactions of the dividing company will be treated for accounting purposes as being those of the recipient companies,
- (j) the rights conferred by the recipient companies on members of the dividing company enjoying special rights or on holders of securities other than shares representing the capital of the company, or the measures proposed concerning them,
- (k) any special advantages granted to members of the administrative, management, supervisory or controlling bodies of the dividing company,
- (l) the draft instruments of constitution or equivalent document, and any associated documents, of the proposed recipient companies, and any proposed amendments to the instrument of constitution of the dividing company in the case of a partial division or a division by separation,
- (m) where appropriate, information on the procedures by which arrangements for the involvement of employees in the definition of their rights to participation in the recipient companies are determined pursuant to Part 5,
- (n) a precise description of the assets and liabilities of the dividing company and a statement of how those assets and liabilities are to be allocated between the recipient companies, or are to be retained by the dividing company in the case of a partial division or a division by separation, including provisions on the treatment of assets or liabilities not explicitly allocated in the draft terms, such as assets or liabilities which are unknown on the date on which the draft terms are drawn up,

- (o) information on the evaluation of the assets and liabilities which are to be allocated to each company involved in the cross-border division,
 - (p) the date of the accounts of the dividing company which were used for the purpose of preparing the draft terms,
 - (q) where appropriate, the allocation to the members of the dividing company of shares and securities in the recipient companies, in the dividing company or in both, and the criterion upon which such allocation is based,
 - (r) details of the proposed cash compensation payable in response to requests made under Regulation 60(1), and
 - (s) any safeguards offered to creditors, such as guarantees or pledges.
- (3) The draft terms shall not provide for any shares in a recipient company to be exchanged for shares in the dividing company which are held either by the company itself or its nominee on its behalf.

Cross-border divisions: directors' explanatory report

53. Regulation 29 (other than paragraph (3)) shall apply to an Irish dividing company as it applies to an Irish merging company, with any necessary modifications.

Cross-border divisions: expert's report

54. Regulation 30 (other than paragraphs (2) and (3)(b) and (c)) shall apply to an Irish dividing company as it applies to an Irish merging company, with any necessary modifications.

Cross-border divisions: civil liability of experts

55. Regulation 10 shall apply to an Irish dividing company in respect of an expert's report under Regulation 54 as it applies to a converting company, with any necessary modifications.

Cross-border divisions: criminal liability for untrue statements in expert's report

56. Regulation 11 shall apply to an Irish dividing company in respect of an expert's report under Regulation 54 as it applies to a converting company, with any necessary modifications.

Cross-border divisions: registration and publication of documents

57. Regulation 33 (other than paragraph (5)) shall apply to an Irish dividing company as it applies to an Irish merging company, with any necessary modifications.

Cross-border divisions: notification to Central Bank of Ireland by certain companies

58. Where an Irish dividing company is regulated by the Central Bank of Ireland, the company shall notify the Bank of its intention to carry out a cross-border division at least 90 days before the date of the general meeting referred to in Regulation 59.

Cross-border divisions: approval by general meeting

59. (1) The draft terms and any proposed amendment to the constitution shall be approved by a special resolution passed at a general meeting of an Irish dividing company held not earlier than 30 days after the publication of the notice referred to in Regulation 33(6)(a) (as applied by Regulation 57), note having first been taken by the general meeting of –

- (a) the directors' explanatory report under Regulation 53 and the expert's report under Regulation 54,
- (b) any opinion received under Regulation 29(10) as applied by Regulation 53, and
- (c) any comments submitted in accordance with Regulation 33(1)(b) as applied by Regulation 57.

(2) The approval of the members may be made subject to –

- (a) the ratification of the arrangements adopted for employee participation in the recipient company in accordance with Part 5,
- (b) an order of the Court under Regulation 60(4) or (7), or of the authority designated by an EEA state other than the State providing for a cash payment for the purposes of Article 126a(6) of the Directive or additional cash compensation for the purposes of Article 126a(4) of the Directive,
- (c) any regulatory approval, or the satisfaction of any applicable regulatory condition, or
- (d) such other conditions as they consider appropriate in the circumstances.

(3) Where –

- (a) a provision of the draft terms or the amendment to the constitution of would lead to an increase in the economic obligations of a member towards the company or towards a third party, and
- (b) that member is not entitled to make a request under Regulation 60(1),

that provision shall be approved by the member concerned.

(4) The approval of the cross-border division by the general meeting under paragraph (1) may not be challenged by a member solely on any of the following grounds:

- (a) the share exchange ratio referred to in Regulation 52(2)(c) having been inadequately set;
- (b) the cash compensation referred to in Regulation 52(2)(r) having been inadequately set;
- (c) the information given with regard to the share exchange ratio or the cash compensation not having complied with these Regulations or other legal requirements.

Cross-border divisions: protection of shareholders

60. (1) Where a special resolution referred to in Regulation 59(1) is passed at a general meeting of an Irish dividing company, a minority shareholder in that company may, not later than 30 days after the date on which the general meeting was held, request the company in writing to acquire his or her shares for the cash compensation specified in the draft terms.

(2) A minority shareholder may make the request referred to in paragraph (1) by electronic means to an electronic address provided by the Irish dividing company.

(3) Where a request is made by a minority shareholder in accordance with paragraph (1), the cash compensation payable to that shareholder shall be paid within 2 months after the effective date.

(4) Where a minority shareholder who has made a request in accordance with paragraph (1) considers that the cash compensation specified in the draft terms has not been adequately set, that shareholder may apply to the Court for additional cash compensation within 30 days after the date on which the general meeting was held.

(5) A final decision that additional cash compensation should be paid –

- (a) shall apply to each shareholder who has made a request in accordance with paragraph (1), notwithstanding that the shareholder concerned may not have made an application under paragraph (4), and
- (b) may provide for different levels of additional cash compensation for different classes of shareholder referred to in subparagraph (a).

(6) The courts of the State shall have exclusive competence to resolve any disputes relating to the rights referred to in paragraphs (1) to (5).

(7) A shareholder of an Irish dividing company who –

- (a) considers that the share exchange ratio set out in the draft terms is inadequate, and
- (b) is not a minority shareholder or did not make a request under paragraph (1),

may apply to the Court to dispute the share exchange ratio and claim a cash payment within 30 days after the date on which the general meeting was held.

(8) A final decision to modify the exchange ratio and make a cash payment –

- (a) shall apply to each shareholder who is not a minority shareholder or did not make a request under paragraph (1), notwithstanding that the shareholder concerned may not have made an application under paragraph (7), and
- (b) may provide for different levels of cash payment for different classes of shareholder referred to in subparagraph (a).

(9) Where an application is made to the Court under paragraph (7), this shall not prevent the approval or registration of the cross-border division, and the decision of the Court in relation to the application under paragraph (7) shall be binding on any recipient company and, in the event of a partial division, on the dividing company.

(10) A recipient company and, in the event of a partial division, the dividing company may provide shares or other compensation instead of a cash payment.

(11) In this Regulation –

“final decision” means a decision of the Court under paragraph (4), or paragraph (7) as the case may be, or, where an appeal against the decision of the Court under paragraph (4) or (7) is brought and is not withdrawn, abandoned or otherwise not proceeded with, the decision of a court in the State against which no further appeal lies or against which an appeal lies within a period which has expired without an appeal;

“minority shareholder”, in relation to an Irish dividing company, means a shareholder of the company who voted against the special resolution proposed pursuant to Regulation 59(1) and, as a result of the division, would acquire shares in a recipient company that is governed by the law of an EEA state other than the State.

Cross-border divisions: protection of creditors

61. (1) Where a creditor –

- (a) is dissatisfied with the safeguards offered to creditors in the draft terms under Regulation 52(2)(s), and
- (b) can credibly demonstrate that, due to the cross-border division, the satisfaction of the creditor’s claim is at stake and that the creditor has not obtained adequate safeguards from the company in this regard,

the creditor may apply to the Court for adequate safeguards within 3 months of the relevant date.

(2) Any safeguards for creditors shall be conditional on the cross-border division taking effect in accordance with the effective date.

(3) Where a creditor of the dividing company does not obtain satisfaction from the company to which the liability is allocated, the other recipient companies, and in the case of a partial division or a division by separation, the dividing company, shall be jointly and severally liable with the company to which the liability is allocated for that obligation.

(4) However, the maximum amount of joint and several liability of any company involved in the division shall be limited to the value, at the effective date, of the net assets allocated to that company.

(5) This Regulation shall be without prejudice to the application of the law of the State concerning the satisfaction or securing of pecuniary or non-pecuniary obligations due to relevant authorities.

(6) In this Regulation –

“creditor”, in relation to an Irish dividing company, means a creditor of the company who is entitled to any debt or claim against the company on the relevant date;

“relevant date” means the date of the delivery to the Registrar under Regulation 33(1) or, where Regulation 33(2) applies, the date of the delivery to the Registrar under Regulation 33(3) (in each case, as applied by Regulation 57).

Cross-border divisions: pre-division certificate

62. (1) On application to it by an Irish dividing company, the Court shall examine the proposed cross-border division and shall –

- (a) subject to Regulation 17(11) as applied by paragraph (3), if it is satisfied that the company has complied with the pre-division requirements, issue a certificate (a “pre-division certificate”), or
- (b) if it is not so satisfied, refuse to issue such a certificate.

(2) In making the application referred to in paragraph (1), the Irish dividing company shall submit the following documents to the Court:

- (a) the draft terms under Regulation 52;
- (b) where applicable, the directors’ explanatory report under Regulation 53 and expert’s report under Regulation 54;
- (c) any opinion received under Regulation 29(10) as applied by Regulation 53;
- (d) any comments submitted in accordance with Regulation 33(1)(b) as applied by Regulation 57;
- (e) information on the approval by the general meeting referred to in Regulation 59;
- (f) the number of employees of the Irish dividing company at the time of the drawing up of the draft terms;
- (g) the existence of any subsidiaries of the Irish dividing company and the geographical location of any such subsidiaries;

- (h) information regarding the satisfaction by the Irish dividing company of any obligations to relevant authorities;
- (i) without prejudice to the generality of subparagraph (h), where the company is regulated by the Central Bank of Ireland, a copy of the notification made under Regulation 58 and any written response received to this notification from the Central Bank of Ireland in advance of the general meeting referred to in Regulation 59.

(3) Regulation 17(3) to (18) shall apply to the examination of a cross-border division under this Regulation as it applies to the examination of a cross-border conversion, with any necessary modifications.

(4) In this Regulation, “pre-division requirements” means the applicable requirements of the preceding provisions of this Chapter and of this Regulation.

Cross-border divisions: transmission of pre-division certificate

63. Regulation 18 shall apply in relation to a pre-division certificate as it applies in relation to a pre-conversion certificate, with any necessary modifications.

Chapter 3

Approval in State of Cross-Border Divisions

Application (Chapter 3 of Part 4)

64. This Chapter applies where –

- (a) a pre-division certificate has been issued in respect of a cross-border division, and
- (b) a recipient company to which the cross-border division relates is an Irish company.

Court examination of cross-border division

65. Regulation 42 (other than paragraph (6)) shall apply in relation to a cross-border division as it applies in relation to a cross-border conversion, with any necessary modifications.

Chapter 4
Consequences of Approval of Cross-Border Divisions

Cross-border divisions: copies of orders to be delivered to Registrar

66. (1) Where an order is made by the Court under Regulation 42(1)(a) (as applied by Regulation 65), a certified copy of the order shall forthwith be delivered to the Registrar for registration in accordance with Regulation 67 by such officer of the Court as the Court may direct.

(2) Where the Registrar receives a copy of an order of the Court under paragraph (1), the Registrar shall, within 14 days after the date of that delivery, cause to be published in the CRO Gazette notice that a copy of an order of the Court confirming the division has been delivered to the Registrar.

(3) Where an order is made in respect of a cross-border division by an authority designated by an EEA state other than the State for the purposes of Article 160o(1) of the Directive and the dividing company is an Irish company, the Irish dividing company shall deliver a copy of that order to the Registrar for registration within 14 days after the date on which it was made.

(4) Where a company fails to comply with paragraph (3), the company and every officer of it who is in default shall be guilty of a category 2 offence.

Cross-border divisions: action to be taken by Registrar on receipt of orders

67. (1) Where the Registrar receives a copy of an order in relation to a cross-border division under Regulation 66(1) or, where Regulation 66(3) applies, under that Regulation or through the interconnection system, the Registrar shall

-
- (a) where the order was made by the Court under Regulation 42(1)(a) (as applied by Regulation 65), register the copy order in respect of the Irish recipient company in the register on, or as soon as practicable after, the effective date, or
- (b) where the order was made by the authority designated by an EEA state other than the State for the purposes of Article 160o(1) of the Directive, give notice of that order as soon as practicable through the interconnection system to the authority or authorities responsible for maintaining the EEA register in which the company file for the recipient company or companies is kept, pursuant to Article 16 of the Directive, in the EEA state concerned.

(2) Where an order made for the purposes of Article 160o(1) has been received by the Registrar in respect of each recipient company to which a cross-border division relates, the Registrar shall, through the interconnection system, give notice that the cross-border division has taken effect to the authority responsible for maintaining the EEA register in which the company file for each recipient company or companies is kept, pursuant to Article 16 of the Directive, in the EEA state concerned.

(3) The following information shall be entered by the Registrar in the register and made publicly available and accessible through the interconnection system:

- (a) where an order is made by the Court under Regulation 42(1)(a) (as applied by Regulation 65) in relation to an Irish recipient company –
 - (i) that the registration of the company is the result of a cross-border division,
 - (ii) the date of registration of the Irish recipient company,
 - (iii) the registration number, name and legal form of the Irish recipient company, the dividing company and each other recipient company,
 - (iv) in respect of any Irish dividing company to which the cross border division relates, in the case of a full division –
 - (I) that the striking-off or removal of the company from the register is the result of a cross-border division, and
 - (II) the date of the striking off or removal of the company from the register;
- (b) where an order is made by an authority designated by an EEA state other than the State for the purposes of Article 160o(1) of the Directive in relation to an Irish dividing company, and the Registrar has received notification of this through the interconnection system –
 - (i) in the case of a full division, that the striking-off or removal of the Irish dividing company from the register is the result of a cross-border division,
 - (ii) in the case of a full division, the date of the striking-off or removal from the register of the Irish dividing company, and
 - (iii) the registration number, name and legal form of the dividing company and each recipient company.

Consequences of a cross-border division

68. (1) The consequences of a cross-border division are that, from the effective date –

- (a) the assets and liabilities, including all of the rights and obligations, of the dividing company shall be transferred to the recipient company or companies in accordance with the allocation specified in the draft terms,
- (b) in the case of a full division, all, or, in the case of a partial division, at least some, remaining members of the dividing company shall become members of the recipient company or companies in accordance with the allocation specified in the draft

terms, save for members who have made a request in accordance with Regulation 60(1),

- (c) in the case of a partial division, at least some of the members shall remain in the dividing company in accordance with the allocation specified in the draft terms, save for members who have made a request in accordance with Regulation 60(1),
- (d) in the case of a division by separation, the shares of the recipient company or companies shall be allocated to the dividing company,
- (e) in the case of a full division, the dividing company shall be dissolved,
- (f) legal or regulatory proceedings pending by or against the dividing company shall be continued with the substitution, for the dividing company, of the recipient company as a party in accordance with the allocation specified in the draft terms,
- (g) any cash payment required by the draft terms or by a court under Regulation 60 is obliged to be paid,
- (h) any cash compensation payable in response to requests made under Regulation 60(1) or required by a court under that Regulation is obliged to be paid,
- (i) the rights and obligations arising from contracts of employment of the dividing company are transferred to the recipient company or companies, in accordance with the allocation specified in the draft terms where applicable,
- (j) in accordance with the allocation specified in the draft terms, a contract, agreement or instrument to which the dividing company is a party shall, notwithstanding anything to the contrary contained in that contract, agreement or instrument, be construed and have effect as if –
 - (i) the recipient company had been a party thereto instead of the dividing company,
 - (ii) for any reference (however worded and whether express or implied) to the dividing company there were substituted a reference to the recipient company, and
 - (iii) any reference (however worded and whether express or implied) to the directors, officers, employees' representatives or employees of the dividing company –
 - (I) were, respectively, a reference to the directors, officers, employees' representatives or employees of the recipient company or to such director, officer, representative or employee of the recipient company as the recipient company nominates for that purpose, or

- (II) in default of such nomination, were, respectively, a reference to the director, officer, employees' representative or employee of the recipient company who corresponds as nearly as may be to the first-mentioned director, officer, employees' representative or employee,
 - (k) in accordance with the allocation specified in the draft terms, a contract, agreement or instrument to which the dividing company is a party becomes a contract, agreement or instrument between the recipient company and the counterparty with the same rights, and subject to the same obligations, liabilities and incidents (including rights of set-off), as would have been applicable thereto if that contract, agreement or instrument had continued in force between the dividing company and the counterparty,
 - (l) in accordance with the allocation specified in the draft terms, money due and owing (or payable) by or to the dividing company under or by virtue of any such contract, agreement or instrument as is mentioned in subparagraph (i) shall become due and owing (or payable) by or to the recipient company instead of the dividing company, and
 - (m) in accordance with the allocation specified in the draft terms, an offer or invitation to treat made to or by the dividing company before the effective date shall be construed and have effect, respectively, as an offer or invitation to treat made to or by the recipient company.
- (2) Regulation 46(2) to (6) shall apply in relation to a cross-border division as it applies in relation to a cross-border merger, with any necessary modifications and in accordance with any allocation specified in the draft terms.
- (3) Without prejudice to Regulation 61(4), where an asset or a liability of the dividing company is not explicitly allocated under the draft terms of the cross-border division, as referred to in Regulation 52(2)(n), and where the interpretation of those terms does not make a decision on its allocation possible, the asset, the consideration therefor or the liability is allocated to all the recipient companies or, in the case of a partial division or a division by separation, to all the recipient companies and the dividing company in proportion to the share of the net assets allocated to each of those companies under the draft terms of the cross-border division.

Cross-border divisions: simplified formalities

69. Where a cross-border division is carried out as a division by separation, Regulations 52(2)(c), (d), (e), (j), (q) and (r), 53, 54 and 60 shall not apply.

Cross-border divisions: validity

70. (1) A cross-border division which has taken effect in accordance with Regulation 67(2) may not be declared null and void.

(2) Paragraph (1) is without prejudice to the power of the State to impose any measures or penalties under the law of the State after the effective date, including in relation to criminal law, the prevention and combatting of terrorist financing, social law, taxation and law enforcement.

PART 5
Employee Participation
Chapter 1
Preliminary and General

Interpretation (Part 5)

71. In this Part –

“appointed” means, in the absence of an election, appointed by the employees and the basis on which that appointment is made may, if the employees so determine, be such as is agreed by them with the participating companies, or the resulting company as the case may be;

“Commission” means the Workplace Relations Commission;

“consultation” means the establishment of dialogue and exchange of views between the representative body or the employees’ representatives (or both) and the competent organ of the resulting company or companies at a time, in a manner and with a content which allows the employees’ representatives, on the basis of the information provided, to express an opinion on measures envisaged by the competent organ which may be taken into account in the decision making process within the resulting company;

“Council Regulation (EC) No 2157/2001” means Council Regulation (EC) No 2157/2001 of 8 October 2001¹¹ on the Statute for a European company (SE) as amended by Council Regulation (EC) No 885/2004 of 26 April 2004¹² and Council Regulation (EU) No 517/2013 of 13 May 2013¹³;

“Court” means the Labour Court;

“cross-border operation” means a cross-border conversion, cross-border merger or cross-border division of companies in accordance with Parts 2, 3 and 4;

“EEA” means the European Economic Area constituted by the EEA Agreement;

“employee” means a person who has entered into or works under a contract of employment and references, in relation to the participating company or companies, or a resulting company, to an employee shall be construed as references to an employee employed by any of them;

“employee participation” means the influence of the representative body or the employees’ representatives (or both) in the affairs of a company by the way of

¹¹ OJ No. L 294, 10.11.2001, p. 1.

¹² OJ No. L 168, 1.5.2004, p. 1.

¹³ OJ No. L 158, 10.6.2013, p. 1.

- (a) the right to elect or appoint some of the members of the company's supervisory or administrative organ, or
- (b) the right to recommend or oppose, or both to recommend and oppose, the appointment of some or all of the members of the company's supervisory or administrative organ;

“establishment” means, in relation to a company, a division (however described) of the undertaking physically separated from other parts of the company;

“excepted body” has the meaning assigned to it by section 6(3) of the Trade Union Act 1941 (No. 22 of 1941);

“expert” means an individual, and may be the holder from time to time of a named office or position in a body corporate or other body or organisation;

“information” means the informing of the representative body or the employees’ representatives (or both), by the competent organ of the converted company, successor company or recipient company or companies on questions which concern the company or companies itself and any of its subsidiaries or establishments situated in another EEA state or which exceed the powers of the decision-making organs in a single EEA state at a time, in a manner and with a content (including agency worker information) which allows the employees’ representatives to undertake an in depth assessment of the possible impact and, where appropriate, prepare consultations with the competent organ of the company or companies;

“involvement of employees” means any mechanism including information, consultation and employee participation, through which employees’ representatives may exercise an influence on decisions to be taken within the company;

“Irish resulting company” means a resulting company that is an Irish company;

“participating company or companies” means the converting, merging or dividing company or companies directly involved in the cross-border operation;

“representative body” means the body representative of the employees referred to in Schedule 2 set up for the purpose of informing and consulting the employees of a converted company, successor company or recipient company or companies situated in the EEA and, where applicable, of exercising employee participation rights in relation to the converted company, successor company or recipient company or companies;

“resulting company” means a converted company, a successor company or a recipient company established under these Regulations;

“special negotiating body” means the body established in accordance with Regulation 75 to negotiate with the competent body of the participating companies regarding the establishment of arrangements for the involvement of employees within the resulting company or companies;

“Standard Rules” means the rules set out in Schedule 2;

“trade union” means a trade union which holds a negotiation licence under Part II of the Trade Union Act 1941;

“wages” has the meaning assigned to it by the Payment of Wages Act 1991 (No. 25 of 1991).

Employee information and consultation

72. (1) Employees’ rights to information and consultation shall be respected in relation to all 3 cross-border operations and exercised in accordance with the legal framework provided for in –

- (a) Directive 2002/14/EC and, where applicable for Community-scale undertakings or groups of undertakings, in accordance with Directive 2009/38/EC, and
- (b) Directive 2001/23/EC where a cross-border merger or division is considered to be a transfer of an undertaking within the meaning of that Directive.

(2) Notwithstanding Regulations 8(9), 12(1)(b), 29(10) (including as applied by Regulation 53) and 33(1)(b) (including as applied by Regulation 57), employees’ rights to information and consultation shall be respected, at least before the draft terms or common draft terms of the cross-border operation under Regulation 7, 28 or 52 or the report referred to in Regulations 8, 29 or 53 is decided upon, whichever is earlier, in such a way that a reasoned response is given to the employees before the general meeting referred to in Regulations 14, 35 or 59.

(3) Without prejudice to any provisions or practices in force that are more favourable to employees, the practical arrangements for exercising the right to information and consultation shall be in accordance with Article 4 of Directive 2002/14/EC.

(4) In this Regulation –

“Directive 2001/23/EC” means Council Directive 2001/23/EC of 12 March 2001¹⁴ on the approximation of the laws of the Member States relating to the safeguarding of employees’ rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses as amended by Directive 2015/1794 of the European Parliament and of the Council of 6 October 2015¹⁵;

“Directive 2002/14/EC” means Directive 2002/14/EC of the European Parliament and of the Council of 11 March 2002¹⁶ establishing a general framework for informing and consulting employees in the European Community as amended by Directive 2015/1794 of the European Parliament and of the Council of 6 October 2015¹⁷;

“Directive 2009/38/EC” means Directive 2009/38/EC of the European Parliament and of the Council of 6 May 2009¹⁸ on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and

¹⁴ OJ No. L. 82, 22.3.2001, p. 16.

¹⁵ OJ No. L. 263, 8.10.2015, p. 1.

¹⁶ OJ No. L. 80, 23.3.2002, p. 29.

¹⁷ OJ No. L. 263, 8.10.2015, p. 1.

¹⁸ OJ No. L 122, 16.5.2009, p. 28.

consulting employees (Recast) as amended by Directive 2015/1794 of the European Parliament and of the Council of 6 October 2015¹⁹.

Requirement for employee participation

73. (1) Arrangements for the participation of employees in every Irish resulting company shall be established in accordance with these Regulations.

(2) Without prejudice to paragraph (3), the Irish resulting company or companies shall be subject to the rules in force in the State concerning employee participation, if any.

(3) Notwithstanding paragraph (2), the rules in force concerning employee participation in the State, if any, shall not apply, where –

- (a) the participating company or, as the case may be at least one of the participating companies has, in the 6 months before the publication of the draft terms or common draft terms, an average number of employees equivalent to 4 fifths of the applicable threshold as specified in the law of the EEA state of the participating company, for triggering the participation of employees within the meaning of Regulation 2(1) of the European Communities (European Public Limited-Liability Company) (Employee Involvement) Regulations 2006 (S.I. No. 623 of 2006), or
- (b) there is no provision in any enactment –
 - (i) for at least the same level of employee participation as operated in the relevant participating companies, measured by reference to the proportion of employee representatives amongst the members of the administrative or supervisory organ or their committees or of the management group which covers the profit units of the company, subject to employee representation, or
 - (ii) for employees of establishments of the resulting company or companies that are situated in other EEA states of the same entitlement to exercise employee participation rights as is enjoyed by those employees employed in the State.

(4) In the cases referred to in paragraph (3), the participation of employees in the resulting company and their involvement in the definition of such rights shall be regulated in accordance with Regulations 74 to 94 and in accordance with Article 12(2), (3) and (4) of Council Regulation (EC) No 2157/2001 as given full effect by the European Communities (European Public Limited-Liability Company) Regulations 2007 (S.I. No. 21 of 2007), and the following provisions of Council Directive 2001/86/EC of 8 October 2001²⁰:

- (a) in the case of a cross-border conversion or a cross-border division, Article 3(1), points (a)(i) and (b) of Article 3(2), Article 3(3), the first 2 sentences of Article 3(4), Article 3(5) and (7),

¹⁹ OJ No. L. 263, 8.10.2015, p. 1.

²⁰ OJ No. L 294, 10.11.2001, p. 22.

Article 4(1), points (a), (g) and (h) of Article 4(2), Article 4(3) and (4), Article 5, Article 6, Article 7(1) (with the exception of the second indent of point (b)), Articles 8, 10, 11 and 12, and point (a) of Part 3 of the Annex;

- (b) in the case of a cross-border merger, Article 3(1), (2) and (3), the first indent of the first subparagraph of Article 3(4), the second subparagraph of Article 3(4), Article 3(5) and (7), Article 4(1), Article 4(2)(a), (g) and (h), Article 4(3), Article 5, Article 6, Article 7(1), point (b) of the first subparagraph of Article 7(2), the second subparagraph of Article 7(2) and Article 7(3) (however, for the purposes of these Regulations, the percentages required by point (b) of the first subparagraph of Article 7(2) for the application of the standard rules contained in Part 3 of the Annex shall be raised from 25 per cent to 33 and 1/3 per cent), Articles 8, 10 and 12, Article 13(4) and point (b) of Part 3 of the Annex.

Requirement to begin negotiations with employees

74. (1) As soon as possible after the publication of the draft terms of a cross-border operation, the management or administrative organ of each company shall take the necessary steps to start negotiations with the representatives of the employees of that company on arrangements for the involvement of those employees in the resulting company or companies.

(2) The steps to start negotiations shall include the provision of information about the identity of the participating company or companies, the number of employees in each (identified according to the EEA state in which they are located), and the number of such employees covered by an employee participation system.

(3) The information referred to in paragraph (2) shall be supplied to the employees' representative for that participating company or, where there is no such representative, to the employees themselves.

Chapter 2
Special Negotiating Body

Creation of special negotiating body

75. (1) For the purposes of the negotiations mentioned in Regulation 74, the management or administrative organs of the participating company or companies shall make arrangements, in accordance with this Regulation, for the establishment of a special negotiating body that is representative of the employees of the participating company or companies.

(2) The membership of the special negotiating body shall be determined in accordance with paragraphs (3) to (5) and the members shall be elected or appointed –

- (a) in the case of members to be elected or appointed to represent employees in the State, in accordance with the procedure specified in Regulations 76 and 77, and
- (b) in the case of members to be elected or appointed to represent employees in any other EEA state, in accordance with such procedures specified in laws or measures adopted by that EEA state.

(3) Subject to paragraphs (4) and (5), seats on the special negotiating body shall be distributed in proportion to the number of workers employed in each EEA state by the participating company or companies by allocating in respect of a relevant EEA state one seat for each portion of employees employed in that EEA state which equals 10 per cent, or a fraction thereof, of the total number of employees employed by the participating companies in all relevant EEA states taken together.

(4) In the case of cross border mergers only, there shall be such further additional members from each EEA state as are necessary to ensure that the special negotiating body includes at least one member representing each transferor company which is registered and has employees in that EEA state, but so that –

- (a) the number of additional members does not exceed 20 per cent of the number of members provided for by paragraph (3), and
- (b) the addition of members under this paragraph does not result in double representation of the employees concerned.

(5) In the application of paragraph (4), if the number of those transferor companies is greater than the number of additional seats available, those additional seats shall be allocated in relation to those companies in decreasing order of the number of employees they employ.

Representation of Irish employees on special negotiating body

76. (1) The representation on a special negotiating body of the employees in the State of the participating companies is allocated as specified in this Regulation.

(2) Where the number of seats on the special negotiating body allocated to the State is equal to the number of participating companies which have employees in the State, there shall be at least one seat for each of the participating companies, and each member elected or appointed to fill such a seat shall be considered as representing the employees of the participating company that elected or appointed them.

(3) Where the number of seats on the special negotiating body allocated to the State is greater than the number of participating companies which have employees in the State, there shall be one seat for each of the participating companies, and additional seats shall be allocated to participating companies in decreasing order of the number of employees they employ, and each member elected or appointed to fill a seat in accordance with this paragraph shall be taken to represent those employees of the companies that elected or appointed them.

(4) Where the number of seats on the special negotiating body allocated to the State is less than the number of the participating companies which have employees in the State, the number of members equal to the number of available seats shall be elected or appointed according to the greatest number of votes won, and the representatives so elected or appointed shall between them represent the employees of the participating companies in the State that elected or appointed them.

(5) The references in paragraphs (2), (3) and (4) to participating companies include the concerned subsidiaries or establishments of a participating company and, where the presence of a participating company in the State is only by virtue of the presence of its concerned subsidiaries or establishments, those entities are to be taken, for the purposes of those paragraphs, to constitute that participating company.

(6) Employees of a participating company in which there are no employees' representatives shall not, by virtue of that fact alone, be prevented from exercising their right to elect or appoint members of the special negotiating body.

(7) An employee who is employed in the State by a participating company on the day the date or dates for the election of members of the special negotiating body conducted in accordance with Regulation 77 is or are fixed and who is, on the election day or days, an employee of such a company shall be entitled to vote in the election.

(8) Each of the following is eligible to stand as a candidate in the election of members of the special negotiating body conducted in accordance with Regulation 77, namely:

- (a) an employee who has been employed in the State by the participating company, or as the case may be one or more of the participating companies for a continuous period of not less than one year on the nomination day;
- (b) a trade union official, whether or not he or she is an employee;
- (c) an official of an excepted body, whether or not he or she is an employee, provided that, in each case, he or she is nominated as such a candidate by –

- (i) a trade union or an excepted body which is already recognised by the relevant participating companies located in the State for collective bargaining or information and consultation purposes, or
- (ii) at least 2 employees.

Conduct of election

77. (1) Where elections of members of a special negotiating body fall to be conducted, being elections by employees in the State of the participating company, or as the case may be the participating companies, the management or administrative organs of the participating companies shall arrange for the conducting of those elections in accordance with this Regulation.

(2) The management or administrative organs of the participating companies shall, in consultation with employees or their representatives (or both), appoint one or more persons as returning officers (referred to collectively in this Regulation as the “returning officer”), whose duties include the organisation and conduct of nominations and the election, and any person so appointed may authorise other persons to assist in the performance of those duties.

(3) Where the number of candidates on the nomination day exceeds the number of members to be elected, a poll or polls shall be taken by the returning officer and voting in the poll shall take place by a secret ballot on a day or days to be decided by the returning officer.

(4) The returning officer shall perform the duties of that office in a fair and reasonable manner and in the interests of an orderly and proper conduct of nomination and election procedures.

(5) As soon as is reasonably practicable after the result of the election is known, the returning officer shall make such arrangements as are necessary to ensure that the result is sent to the candidates, employees and employees’ representatives and to the management or administrative organs of the participating company or companies.

(6) Once the result of the election is sent by the returning officer in accordance with paragraph (5), the candidates concerned shall be regarded as having been duly elected.

(7) All reasonable costs of the nomination and election procedure in the election shall be borne by the management or administrative organs of the participating company or companies.

(8) Where, for any reason, a vacancy arises amongst those of the members of the special negotiating body who have been elected in accordance with this Regulation, arrangements shall be made by the competent organs of the participating company or companies and the special negotiating body for that vacancy to be filled.

(9) Where a member of the special negotiating body whose nomination for election was on the basis of his or her satisfying the requirement contained in Regulation 76(8)(a) ceases to be employed in any of the participating companies, that person shall cease to be a member of the special negotiating body.

(10) Where a member of the special negotiating body whose nomination for election was on the basis of his or her satisfying the requirement contained in Regulation 76(8)(b) or (c) ceases to be an official of the trade union or excepted body concerned, that person shall cease to be a member of the special negotiation body.

Remit of special negotiating body

78. (1) The special negotiating body and the management or administrative organs of the participating company or companies shall negotiate and determine, by written agreement, arrangements for the involvement of employees within the resulting company or companies in accordance with the principles set out in Regulation 82.

(2) With a view to concluding that agreement, the management or administrative organs of the participating company or companies shall –

- (a) convene a meeting with the special negotiating body and shall inform local managements accordingly, and
- (b) inform the special negotiating body of the plan, the expected timetable, and the actual process of carrying out the cross-border operation, up to its registration.

(3) The management or administrative organs of the participating company or companies shall convene regular meetings as necessary with the special negotiating body in order to facilitate the negotiation of a written agreement referred to in paragraph (1).

(4) The agreement referred to in paragraph (1) shall be binding on the entire group of companies within the company resulting from the cross-border operation, irrespective of the EEA state in which it was signed and the location of those companies.

Voting procedure in the special negotiating body

79. (1) Subject to paragraph (2), the special negotiating body shall take its decisions (including the final decision whether to approve the entering into of an agreement under Regulation 78) by both –

- (a) an absolute majority of its members, with each member having one vote, and
- (b) an absolute majority of the employees represented by those members.

(2) In the case of cross-border mergers only, if –

- (a) at least 25 per cent of the overall number of employees of the merging companies are covered by employee participation, and
- (b) the result of negotiations would lead to a reduction of employee participation rights,

the majority required for a decision to approve the entering into of an agreement under Regulation 78 is the votes of 2 thirds of the members of the special

negotiating body representing at least 2 thirds of the total number of employees, including the votes of members representing employees employed in at least 2 EEA states.

(3) For the purposes of paragraph (2), a reduction of employee participation rights occurs when the proportion of members of the organs of the successor company having employee participation rights is lower than the highest proportion existing within the merging companies.

(4) Any decision made in accordance with paragraph (2) shall be brought to the attention of the employees by the special negotiation body as soon as reasonably practicable and, in any event, no later than 14 days after the making of the decision.

Engagement of experts by special negotiating body

80. (1) For the purpose of the negotiations, the special negotiating body may engage experts of its choice to assist with its work.

(2) The experts may be representatives of appropriate EEA-level trade union organisations.

(3) The experts may be present at negotiation meetings in an advisory capacity at the request of the special negotiating body, where appropriate to promote coherence and consistency at EEA-level.

(4) The special negotiating body may decide to inform the representatives of appropriate external organisations, including trade unions and excepted bodies, of the start of the negotiations.

Expenses

81. The reasonable expenses relating to the functioning of the special negotiating body and, in general, to negotiations under these Regulations shall be borne by the participating companies so as to enable the special negotiating body to carry out its functions in an appropriate manner.

Chapter 3

Negotiations and Agreement

Spirit of cooperation

82. (1) The parties shall negotiate or work together, as the case may be, in a spirit of cooperation with due regard for their reciprocal rights and obligations and taking into account the interests both of the resulting company and of the employees.

(2) In paragraph (1), “parties” means –

- (a) the competent organs of the participating companies and the special negotiating body, in relation to reaching an agreement in accordance with Regulation 78 on arrangements for the

involvement of the employees within the resulting company or companies,

- (b) the competent organ of the resulting company or companies and the representative body as set out in Schedule 2, and
- (c) the supervisory or administrative organ of the resulting company or companies and the employees or their representatives (or both), with regard to a procedure for the information and consultation of employees.

Content of agreement

83. (1) Without prejudice to the autonomy of the parties, the agreement referred to in Regulation 78 shall specify –

- (a) the scope of the agreement,
- (b) the substance of any arrangements for employee participation that, in the course of the negotiations, the parties decide to establish, including, where applicable –
 - (i) the number of members of the administrative or supervisory body of the resulting company whom the employees will be entitled to elect, appoint, recommend or oppose,
 - (ii) the procedures as to how the members referred to in clause (i) may be elected, appointed, recommended or opposed by employees, and their rights, and
- (c) the date of entry into force of the agreement, its duration, the circumstances requiring renegotiation of the agreement and the procedure for its renegotiation.

(2) Unless it otherwise provides, the agreement is not subject to the Standard Rules.

(3) Without prejudice to the matters referred to in Article 13(3)(a) of Council Directive 2001/86/EC of 8 October 2001²⁰, in the case of a cross-border conversion or a cross-border division, the agreement shall provide for at least the same level of all elements of employee involvement as the ones existing within the participating company.

Duration of negotiations

84. (1) The management or administrative organs of the participating companies and the special negotiating body shall commence negotiations as soon as the special negotiating body is established, and those negotiations may continue for up to 6 months from the establishment of that body.

(2) The parties may decide, by joint agreement, to extend negotiations beyond the period referred to in paragraph (1) up to a total of one year from the establishment of the special negotiating body.

(3) In the case of cross-border mergers only, the special negotiating body may decide, by a majority of 2 thirds of its members representing at least 2 thirds

of the employees, including the votes of members representing employees in at least 2 different EEA states, not to open negotiations or to terminate negotiations already opened and to rely on the rules on employee participation in force in each of the EEA states (including the State) where the successor company has its employees.

(4) A decision under paragraph (3) shall terminate the procedure referred to in Regulation 78 for the conclusion of an agreement, and Schedule 2 shall not apply.

Standard Rules

85. (1) In order to ensure the establishment of arrangements for the involvement of employees in the resulting company, the Standard Rules apply, from the date of its registration, to the resulting company if its registered office is located in the State and –

- (a) the parties so agree, or
- (b) no agreement has been concluded within the time limit specified in Regulation 84, and –
 - (i) the management or administrative organs of the participating company or companies decide to accept the application of the Standard Rules in relation to the resulting company and, on that basis, to continue with the cross-border operation, and
 - (ii) in the case of cross-border mergers only, the special negotiating body of the merging company has not made a decision under Regulation 79(2).

(2) In the case of cross-border mergers only, Part 3 of Schedule 2 applies to the successor company only if, before registration of the successor company –

- (a) one or more forms of employee participation applied to one or more of the merging companies employing at least 33 per cent of the total number of employees in all merging companies in each of the EEA states concerned, or
- (b) one or more forms of employee participation applied in one or more of the merging companies employing less than 33 per cent of the total number of employees in all the merging companies in the EEA states and the special negotiating body decides that the rules set out in that Part are to apply.

(3) In the case of cross-border mergers only, where there was more than one form of employee participation within the various merging companies, the special negotiating body shall choose which of those forms shall be established in the company resulting from the cross-border merger.

(4) The special negotiating body shall inform the management or administrative organs of the merging companies of any decisions taken pursuant to paragraph (3).

(5) In the case of cross-border mergers only, the relevant organs of the merging companies, in the event that at least one of the merging companies is operating under an employee participation system within the meaning of point (k) of Article 2 of Council Directive 2001/86/EC of 8 October 2001²⁰, may choose without any prior negotiation to be directly subject to the Standard Rules and to abide by them from the date of registration of the successor company.

(6) For all 3 cross border operations, where, following prior negotiations, the Standard Rules apply, the parties may, notwithstanding those Rules, agree to limit the proportion of employee representatives in the administrative organ of the resulting company or companies, but if in one of the participating companies employee representatives constituted at least one third of the administrative or supervisory board, the limitation may not result in a lower proportion of employee representatives than one third in the administrative organ of the resulting company or companies.

(7) Where, in accordance with paragraph (6), the parties agree to limit the proportion of employee representatives in the administrative organ, the majority required for such a decision shall be the votes of –

- (a) 2 thirds of the employees including the votes of employees employed in at least 2 EEA states, or
- (b) 2 thirds of the members of the representative body representing at least 2 thirds of the total number of employees, including the votes of members representing employees employed in at least 2 EEA states.

Chapter 4

Supplementary

Definition

86. In this Chapter -

“relevant company” means –

- (a) a converting company, a merging company, or a dividing company;
- (b) in relation to a merger by formation of a new company, the successor company, and
- (c) in relation to a division, the recipient company or companies;

“merger by formation of a new company” has the meaning assigned to it by Regulation 25.

Protection of employee participation rights

87. When the resulting company or companies are operating under an employee participation system, that company or those companies shall ensure that employees’ participation rights are protected in the event of subsequent

cross-border or domestic conversions, mergers or divisions for a period of 4 years after the cross-border operation has taken effect, by applying, mutatis mutandis, the rules specified in these Regulations.

Confidential information

88. (1) An individual who is or at any time was –
- (a) an employee of a relevant company,
 - (b) a member of –
 - (i) the special negotiating body, or
 - (ii) the representative body,
 - (c) an employees' representative for the purposes of these Regulations, or
 - (d) an expert providing assistance,

shall not reveal any information which, in the legitimate interest of any relevant company, has been expressly provided in confidence to him or her or to the body by a relevant company.

- (2) The duty of confidentiality imposed by paragraph (1) continues to apply after the cessation of the employment of the individual concerned or the expiry of his or her term of office.
- (3) A relevant company may refuse to communicate information to a special negotiating body where the nature of that information is such that, by reference to objective criteria, it would –
- (a) seriously harm the functioning of any relevant company, or
 - (b) be prejudicial to any relevant company.
- (4) The Court or any member of the Court or the Registrar or any officer or servant of the Court, including any person or persons appointed by the Court as an expert or mediator, shall not disclose any information obtained in confidence in the course of any proceedings before the Court under these Regulations.

Protection of employees' representatives

89. (1) A relevant company shall not penalise –
- (a) a member of the special negotiating body,
 - (b) a member of the representative body,
 - (c) an employees' representative performing functions under these Regulations, or
 - (d) an employees' representative in the supervisory or administrative organ of a resulting company who is an employee of that company or of a participating company,

for the performance of his or her functions in accordance with these Regulations.

(2) For the purposes of this Regulation, a person referred to in paragraph (1) is penalised if that person –

- (a) is dismissed or suffers any unfavourable change to his or her conditions of employment or any unfair treatment (including selection for redundancy), or
- (b) is the subject of any other action prejudicial to his or her employment.

(3) Schedule 3 has effect in relation to an alleged contravention of paragraph (1).

(4) Subject to paragraph (6), a person referred to in paragraph (1) shall be afforded any reasonable facilities, including time off, that will enable him or her to perform promptly and efficiently his or her functions as a member of the special negotiating body or representative body or as an employees' representative, as the case may be.

(5) A person referred to in paragraph (1) shall be paid his or her wages for any period of absence afforded to him or her in accordance with paragraph (4).

(6) The granting of facilities under paragraph (4) shall have regard to the needs, size and capabilities of the relevant company and shall not impair the efficient operation of that company.

(7) This Regulation applies in particular to attendance by representatives at meetings of the special negotiating body or representative body or any other meetings within the framework of an agreement referred to in Regulation 83 or Schedule 2 or any meeting of the administrative or supervisory organ.

(8) Subject to paragraph (9), this Regulation is in addition to, and not in substitution for, any rights enjoyed by an employees' representative, whether under any enactment or otherwise.

(9) If a penalisation of a person referred to in paragraph (1), in contravention of that paragraph, constitutes a dismissal of that person within the meaning of the Unfair Dismissals Acts 1977 to 2015, relief may not be granted to that person in respect of that penalisation both under Schedule 3 and under those Acts.

Dispute resolution

90. (1) Subject to paragraph (2), a dispute between any relevant company and its employees or their representatives (or both) concerning –

- (a) matters provided for in Regulations 75 to 81 relating to the special negotiating body,
- (b) the negotiation, interpretation or operation of an agreement in relation to Regulation 74, 83 or 84,
- (c) the interpretation or operation of the Standard Rules as provided for in Regulation 85 and Schedule 2, and
- (d) a matter provided for in paragraph (4), (5), (6) or (7) of Regulation 89, or

- (e) a complaint by an employee or his or her representative (or both) that, in relation to Regulation 87, the company resulting from any subsequent domestic merger or division is being or will be misused for the purpose of depriving employees of their rights to employee involvement or of withholding those rights,

may be referred by one or more relevant company, employees employed in the State or their representatives (or both) to the Court for investigation.

- (2) A dispute may be referred to the Court only after –

- (a) recourse to the internal dispute resolution procedure (if any) in place in the relevant company concerned has failed to resolve the dispute, and
- (b) the dispute has been referred to the Commission, and, having made available such of its services as are appropriate for the purpose of resolving the dispute, the Commission provides a certificate to the Court stating that the Commission is satisfied that no further efforts on its part will advance the resolution of the dispute.

(3) Having investigated a dispute under paragraph (1), the Court may make a recommendation in writing, giving its opinion in the matter.

(4) Where, in the opinion of the Court, a dispute that is the subject of a recommendation under paragraph (3) has not been resolved, the Court may, at the request of –

- (a) one or more relevant company, or
- (b) one or more employees or their representatives (or both),

and following a review of all relevant matters, make a determination in writing.

(5) Disputes between any relevant company and employees or their representatives (or both) concerning matters of confidential information provided for in Regulation 88 may be referred by –

- (a) one or more relevant company, or
- (b) any employee of the company or his or her representatives (or both),

to the Court for determination.

- (6) In relation to a dispute referred to it under this Regulation, the Court shall

–

- (a) give the parties an opportunity to be heard by it and to present any evidence relevant to the dispute,
- (b) make a recommendation or determination, as the case requires, in writing in relation to the dispute, and
- (c) communicate the recommendation or determination to the parties.

(7) The following matters, or procedures to be followed in relation to them, shall be determined by the Court:

- (a) the procedure in relation to all matters concerning the initiation and hearing by the Court of a dispute under this Regulation;
- (b) the times and places of hearings of such disputes;
- (c) the publication and notification of recommendations and determinations of the Court;
- (d) any matters consequential on, or incidental to, the matters referred to in subparagraphs (a) to (c).

(8) In deciding what constitutes confidential information, the Court may be assisted by a panel of experts.

(9) A party to a dispute under this Regulation may appeal from a determination of the Court to the High Court on a point of law and the decision of the High Court shall be final and conclusive.

(10) The Court may refer a question of law arising in proceedings before it under this Regulation to the High Court for determination and the decision of the High Court shall be final and conclusive.

Power of Court to administer oaths and compel witnesses

91. (1) The Court shall, on the hearing of a dispute referred to it for recommendation or determination under Regulation 90 or on the hearing of an appeal under Schedule 3, have power to take evidence on oath and for that purpose may cause to be administered oaths to persons attending as witnesses at that hearing.

(2) Any person who, upon examination on oath authorised by this Regulation, wilfully makes any statement which is material for that purpose and which he or she knows to be false or does not believe to be true commits a category 2 offence.

(3) The Court may, by giving notice in that behalf in writing to any person, require that person to attend at such time and place as is specified in the notice to give evidence in relation to a dispute referred to the Court for recommendation or determination under Regulation 90 or an appeal under Schedule 3, or to produce any documents in the person's possession, custody or control which relate to any such matter.

(4) A notice under paragraph (3) may be given either by delivering it to the person to whom it relates or by sending it by post in a prepaid registered letter addressed to that person at the address at which he or she ordinarily resides or, in the case of a relevant company, at the address at which the relevant company ordinarily carries on any profession, business or occupation.

(5) If a person to whom a notice under paragraph (3) has been given refuses or wilfully neglects to attend in accordance with the notice or, having so attended, refuses to give evidence or refuses or wilfully fails to produce any document to which the notice relates, that person commits a category 2 offence.

(6) A witness in a hearing of a dispute or appeal before the Court has the same privileges and immunities as a witness before the High Court.

Enforcement

92. (1) If –

- (a) a party to a Court determination fails to carry out in accordance with its terms a determination of the Court in relation to a dispute under Regulation 90, or
- (b) a party to a complaint under Schedule 3 fails to carry out in accordance with its terms a decision of an adjudication officer or a determination of the Court under that Schedule in relation to the complaint,

within the period specified in the determination or decision or if no such period is so specified within 6 weeks from the date on which the determination or decision is communicated to the parties, the Circuit Court shall, on application to it in that behalf by one or more of the parties to the dispute or complaint, without hearing any evidence (other than in relation to the matters aforesaid) make an order directing the party concerned to carry out the determination or decision in accordance with its terms.

(2) The reference in paragraph (1) to a determination of the Court or a decision of an adjudication officer is a reference to such a determination or decision in relation to which, at the end of the time for bringing an appeal against it, no such appeal has been brought or, if such an appeal has been brought it has been abandoned, and the references to the date on which the determination or decision is communicated to the parties shall, in a case where such an appeal is abandoned, be construed as references to the date of that abandonment.

(3) In an order under this Regulation providing for the payment of compensation of the kind referred to in paragraph 2(1)(c) of Schedule 3, the Circuit Court may, if in all the circumstances it considers it appropriate to do so, direct a relevant company to pay to the employee concerned interest on the compensation at the rate referred to in section 22 of the Courts Act 1981 (No. 11 of 1981), in respect of the whole or any part of the period beginning 6 weeks after the date on which the determination of the Court or the decision of the adjudication officer is communicated to the parties and ending on the date of the order.

(4) An application under this Regulation to the Circuit Court shall be made to the judge of the Circuit Court for the circuit in which the relevant company concerned has its principal place of business.

Workforce thresholds in other legislation

93. The extension of employee participation rights to employees of establishments of the resulting company or companies employed in other EEA states, referred to in Regulation 73(3)(b)(ii), shall not entail any obligation to take those employees into account when calculating the size of workforce thresholds giving rise to participation rights under national law.

Legal form of company

94. When the participating company, or as the case may be, at least one of the participating companies is operating under an employee participation system and the resulting company or companies is to be governed by such a system in accordance with the rules referred to in Regulation 73, that company or those companies shall take a legal form allowing for the exercise of employee participation rights.

PART 6

Miscellaneous

Consequential amendments

95. The Acts specified in column (3) of Schedule 4 are amended to the extent specified in column (4) of that Schedule.

Revocation and savings

96. (1) Subject to paragraph (2), the Regulations of 2008 are revoked.

(2) The Regulations of 2008 shall continue to have effect in relation to an Irish merging company that has delivered the common draft terms and notice referred to in Regulation 8(1) of the Regulations of 2008 to the Registrar in accordance with that Regulation before the day on which these Regulations come into operation, notwithstanding the revocation of the Regulations of 2008 under paragraph (1).

(3) In this Regulation, “Regulations of 2008” means the European Communities (Cross-Border Mergers) Regulations 2008 (S.I. No. 157 of 2008).

SCHEDULE 1
FORMS FOR NOTICE UNDER REGULATIONS 12, 33 AND 57
PART 1
CROSS-BORDER CONVERSION

CBC1 Notice of Proposed Cross Border Conversion

***Regulation 12 of the European Union (Cross-Border
Conversions, Mergers and Divisions) Regulations 2023***

Company Details	
Company number:	
Company name:	
1. Draft Terms and Notice	
Please attach a copy of the Draft Terms and Notice to creditors, members and employees:	
OR	
If publishing Draft Terms and Notice to company website, please provide details of the website	
Please provide an indication of the arrangements made for exercise of the rights of employees, creditors and members:	
2. Add Proposed Converted Company Details	
Proposed name:	
Proposed legal form:	
Proposed location of the registered office:	
Please upload details indicating the arrangements made for the exercise of the rights of employees, creditors, and members:	
Submission Attachments	
Type	Description
Verification Details	
Signature method:	
Signature type:	
Person name:	
Presenter Details	
Presenter name:	
Presenter address:	
Presenter Email:	
Presenter telephone number:	

DX number:	
DX exchange:	
<p>An Irish company regulated by the Central Bank of Ireland (the Bank) must notify the Bank of a proposed cross-border conversion 90 days before the date set for the general meeting.</p>	

PART 2
CROSS-BORDER MERGER

CBM1 Notice of Proposed Cross Border Merger

***Regulation 33 of the European Union (Cross-Border
Conversions, Mergers and Divisions) Regulations 2023***

Company Details	
Company number:	
Company name:	
Type of Merger	
By acquisition:	
By absorption:	
By formation of a new company:	
1. Common Draft Terms and Notice	
Please attach a copy of the Draft Terms and Notice to creditors, members and employees:	
Or	
If publishing Draft Terms and Notice to company website, please provide details of the website address:	
Please provide an indication of the arrangements made for exercise of the rights of employees, creditors and members:	
2. Details of each Merging Company	
Name:	
Legal form:	
Location of the registered office:	
Register in which documents are filed:	
Registration number:	
Please upload details indicating the arrangements for the exercise of the rights of employees, creditors, and members:	
3.1 Merger by Acquisition	
Name:	
Legal form:	

Location of the registered office:	
Register in which documents are filed:	
Registration number (if Irish company):	
3.2 Merger by Absorption	
Name:	
Legal form:	
Location of the registered office:	
Register in which documents are filed:	
Registration number:	
3.3 Merger by Formation of a New Company	
Proposed name:	
Proposed legal form:	
Proposed location of the registered office:	
Proposed register in which documents are filed:	
Submission Attachments	
Type	Description
Verification Details	
Signature method:	
Signature type:	
Person name:	
Presenter Details	
Presenter name:	
Presenter address:	
Presenter Email:	
Presenter telephone number:	
DX number:	
DX exchange:	
<p style="color: red;">An Irish company regulated by the Central Bank of Ireland (the Bank) must notify the Bank of a proposed cross-border merger 90 days before the date set for the general meeting.</p>	

PART 3
CROSS-BORDER DIVISION

CBD1 Notice of Proposed Cross Border Division

***Regulation 57 of the European Union (Cross-Border
Conversions, Mergers and Divisions) Regulations 2023***

Company Details	
Company number:	
Company name:	
Type of Division	
Full division:	
Partial division:	
Division by separation:	
1. Draft Terms and Notice	
Please attach a copy of the Draft Terms and Notice to creditors, members and	
Or	
If publishing Draft Terms and Notice to company website, please provide details	
Please provide an indication of the arrangements made for exercise of the rights of employees, creditors and	
2. Add Proposed Newly Formed Company Details	
Proposed name:	
Proposed legal form:	
Proposed location of the registered office:	
Please upload details indicating the arrangements made for the exercise of the rights of employees, creditors, and members:	
Submission Attachments	
Type	Description
Verification Details	
Signature method:	
Signature type:	
Person name:	
Presenter Details	
Presenter name:	

Presenter address:	
Presenter Email:	
Presenter telephone number:	
DX number:	
DX exchange:	
An Irish company regulated by the Central Bank of Ireland (the Bank) must notify the Bank of a proposed cross-border division 90 days before the date set for the general meeting.	

SCHEDULE 2*Regulations 71, 82, 84, 85, 89 and 90***Standard Rules****PART 1****Composition of Body Representative of Employees**

1. In cases falling within Regulation 83, a representative body shall be set up in accordance with this Part.
2. The representative body shall be composed of employees of the resulting company or companies and its subsidiaries and establishments elected or appointed from their number by the employees' representatives or, in the absence thereof, by the entire body of employees.
3. The members of the representative body shall be elected or appointed in proportion to the number of employees employed in each EEA state by the participating company or companies, by allocating in respect of an EEA state one seat per portion of employees employed in that EEA state which equals 10 per cent or a fraction thereof, of the number of employees employed by the participating company or companies in all the EEA states taken together.
4. The election or appointment of members of the representative body shall be carried out in accordance with a procedure agreed by the special negotiating body.
5. The number of members of, and allocation of seats on, the representative body shall be adapted to take account of changes occurring within the resulting company, and the representative body shall take any steps it deems necessary to ensure this.
6. Where its size so warrants, the representative body shall elect a select committee from among its members, comprising at most 3 members.
7. The representative body shall adopt its own rules of procedure.
8. The competent organ of the resulting company shall be informed of the composition of the representative body as soon as is reasonably practicable.

9. (1) Four years after the representative body is established, it shall examine whether to open negotiations for the conclusion of an agreement referred to in Regulation 76 or to continue to apply the Standard Rules as provided for in this Schedule.

(2) If such a decision has been taken to negotiate an agreement, Regulations 77 to 79 and 81 and 82 apply with the necessary modifications and, for that purpose, references in those Regulations to “special negotiating body” shall be construed as references to “representative body”.

(3) Where, on the expiry of the time limit specified in Regulation 82 (as applied by this paragraph), no such agreement has been concluded, the arrangements initially adopted in accordance with this Schedule continue to apply.

PART 2

Standard Rules for Information and Consultation

10. The competence and powers of the representative body set up in the resulting company or companies are governed by this Part.

11. (1) The competence of the representative body shall be limited to questions which concern the resulting company or companies situated in another EEA state or which exceed the powers of the decision-making organs in a single EEA state.

(2) Without prejudice to meetings held pursuant to paragraph 13(1), the representative body has the right to be informed and consulted and, for that purpose, to meet with the competent organ of the resulting company or companies at least once a year, on the basis of regular reports drawn up by the competent organ, on the progress of the business of the participating company or companies and its prospects, and the local managements shall be informed accordingly.

(3) The competent organ of the resulting company or companies shall provide the representative body with the agenda for meetings of the administrative, or, where appropriate, the management and supervisory organ, and with copies of all documents submitted to the general meeting of its shareholders.

(4) The meeting shall relate in particular to the structure, economic and financial situation, the probable development of the business and of production and sales, the situation and probable trend of employment, investments, and substantial changes concerning organisation, introduction of new working methods or production processes, transfers of production, mergers, cut-backs or closures of undertakings, establishments or important parts thereof, and collective redundancies.

(5) The following matters shall also be the subject of discussion at the meeting:

- (a) the number of agency workers temporarily engaged to work for the employer;
- (b) those parts of the employer's enterprise in which those agency workers are, for the time being, working;
- (c) the type of work that those agency workers are engaged to do.

12. (1) Where there are exceptional circumstances affecting the employees' interests to a considerable extent, particularly in the event of relocations, transfers, the closure of establishments or undertakings or collective redundancies, the representative body has the right to be informed.

(2) The representative body, or where it so decides, in particular for reasons of urgency, the select committee, has the right to meet at its request the competent organ of the resulting company or companies, or any more appropriate level of management within the resulting company having its own powers of decision, so as to be informed and consulted on measures significantly affecting employees' interests.

(3) Where the competent organ decides not to act in accordance with the opinion expressed by the representative body, the representative body has the right to a further meeting with the competent organ of the resulting company or companies with a view to seeking agreement.

(4) In the case of a meeting organised with a select committee, those members of the representative body who represent employees who are directly concerned by the measures in question also have the right to participate.

(5) The meetings referred to in this paragraph do not affect the prerogatives of the competent organ.

13. (1) Before any meeting with the competent organ of the resulting company or companies, the representative body or the select committee, where necessary enlarged in accordance with paragraph 12(4), is entitled to meet without the representatives of the competent organ being present.

(2) Without prejudice to Regulation 86, the members of the representative body shall inform the employees of the resulting company or companies or their representatives (or both), of the content and outcome of the information and consultation procedures.

14. (1) The representative body or the select committee may be assisted by experts of its choice.

(2) The reasonable costs of the representative body shall be borne by the resulting company, which shall provide the body's members with the financial and material resources needed to enable them to perform their duties in an appropriate manner.

(3) In so far as is necessary for the fulfilment of their duties, the members of the representative body shall be entitled to time off for training without loss of wages.

PART 3
Standard Rules for Employee Participation

15. (1) Subject to Regulation 83, the employees of the resulting company or companies and their representative body (or both) have the right to elect, appoint, recommend or oppose the appointment of a number of members of the administrative or supervisory body of that company equal to the highest proportion in force in the participating companies concerned before registration of the resulting company or companies.

(2) If none of the participating companies was governed by employee participation rules before registration of the resulting company, the company is not required to establish provisions for employee participation.

(3) In the case of cross-border mergers only, the representative body shall decide on the allocation of seats within the administrative or supervisory body among the members representing the employees from the various EEA states or on the way in which the employees of the successor company may recommend or oppose the appointment of the members of these bodies according to the proportion of the company's employees in each EEA state.

(4) If, as a consequence of a decision under paragraph (3), the employees of one or more EEA states are not covered by the proportional criterion, the representative body shall, where possible, appoint a member from one of those EEA states, in particular the EEA state where the successor company has its registered office where that is appropriate.

(5) For the purposes of paragraph (4) and the determination of the allocation of the seats given within the administrative or supervisory body to employees in the State, those members of the representative body representing employees in the State shall select from amongst their number, a number of representatives equal to the number of seats available.

16. For cross-border mergers only, every member of the administrative body or, where appropriate, the supervisory body of the resulting company or companies who have been elected, appointed or recommended by the representative body or, depending on the circumstances, by the employees shall be a full member with the same rights and obligations as the members representing the shareholders, including the right to vote.

SCHEDULE 3*Regulations 89, 91 and 92***Redress for Contravention of Regulation 87***Interpretation (Schedule 3)*

1. In this Schedule, “relevant company” has the meaning assigned to it by Regulation 84.

Decision under section 41 of Workplace Relations Act 2015

2. A decision of an adjudication officer under section 41 of the Workplace Relations Act 2015 (No. 16 of 2015) in relation to a complaint by a person referred to in clause (a), (b), (c) or (d) of Regulation 87(1) of a contravention by a relevant company of that Regulation shall do one or more of the following, namely:

- (a) declare that the complaint was or, as the case may be, was not well founded;
- (b) require the relevant company to take a specified course of action;
- (c) require the relevant company to pay to the person referred to in clause (a), (b), (c) or (d) of Regulation 87(1) compensation of such amount (if any) as the adjudication officer considers just and equitable having regard to all the circumstances but not exceeding 2 years’ remuneration in respect of the person’s employment.

Decision of Labour Court on appeal from decision referred to in paragraph 2

3. A decision of the Labour Court under section 44 of the Workplace Relations Act 2015, on appeal from a decision of an adjudication officer referred to in paragraph 2, shall affirm, vary or set aside the decision of the adjudication officer.

SCHEDULE 4
Regulation 95
CONSEQUENTIAL AMENDMENTS

Reference (1)	Number and Year (2)	Short title (3)	Extent of Amendment (4)
1.	No. 38 of 2014	Companies Act 2014	<p>Section 102 is amended –</p> <p>(a) in subsection (1) –</p> <ul style="list-style-type: none"> (i) in paragraph (f), by the deletion of “or”, (ii) in paragraph (g), by the substitution of “of Part 9; or” for “of Part 9.”, and (iii) by the insertion of the following paragraph after paragraph (g): <p>“(h) pursuant to a conversion, merger or division under the European Union (Cross-Border Conversions, Mergers and Divisions) Regulations 2023 (S.I. No. 233 of 2023).”,</p> <p>and</p> <p>(b) in subsection (2), by the substitution of “a merger effected in accordance with Chapter 3 of Part 9 or a scheme of arrangement sanctioned under that Part, or a conversion, merger or division effected in accordance with the European Union (Cross-Border Conversions, Mergers and Divisions) Regulations 2023 (S.I. No. 233 of 2023)” for “a merger</p>

			<p>effected in accordance with Chapter 3 of Part 9 or a scheme of arrangement sanctioned under that Part”.</p> <p>Section 965(3) is amended by the substitution of the following paragraph for paragraph (e):</p> <p>“(e) the merger, conversion or division operation provided for by the European Union (Cross-Border Conversions, Mergers and Divisions) Regulations 2023 (S.I. No. 233 of 2023).”.</p> <p>Section 1004(2) is amended by the substitution of the following paragraph for paragraph (d):</p> <p>“(d) the merger, conversion or division operation provided for by the European Union (Cross-Border Conversions, Mergers and Divisions) Regulations 2023 (S.I. No. 233 of 2023).”.</p> <p>Section 1028(7) is amended, in subsection (7) –</p> <p>(a) by the substitution of the following paragraph for paragraph (a):</p> <p>“(a) a proposed merger, where that company was formed as a successor company for the purpose of the proposed merger, the merger being a merger by formation of a new company within the meaning of Chapter 16 or a cross-border merger (within the meaning of the European Union (Cross-Border Conversions, Mergers and Divisions) Regulations 2023 (S.I. No. 233 of 2023)) which is a merger by formation of a new company;”, and</p>
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			<p>(b) by the substitution of “Regulation 30” for “Regulation 7”.</p> <p>Section 1390 is amended, in subsection (2), by the substitution of the following paragraph for paragraph (e):</p> <p>“(e) the merger, conversion or division operation provided for by the European Union (Cross-Border Conversions, Mergers and Divisions) Regulations 2023 (S.I. No. 233 of 2023).”.</p>
2.	No. 16 of 2015	Workplace Relations Act 2015	<p>Section 3 is amended, in subsection (9) –</p> <p>(a) by the substitution of “European Union (Cross-Border Conversions, Mergers and Divisions) Regulations 2023 (S.I. No. 233 of 2023)” for “European Communities (Cross-Border Mergers) Regulations 2008 (S.I. No. 157 of 2008)”,</p> <p>(b) in paragraph (a), by the substitution of “Part 5” for “Part 3”, and</p> <p>(c) in paragraph (b), by the substitution of “ subparagraph (a), (b), (c) or (d) of Regulation 89(1)” for “ subparagraph (a), (b), (c) or (d) of Regulation 39(1)”.</p> <p>Part 3 of Schedule 1 is amended by the substitution of the following for “11. European Communities (Cross-Border Mergers) Regulations 2008 (S.I. No. 157 of 2008)”:</p> <p>“11. European Union (Cross-Border Conversions, Mergers and Divisions) Regulations 2023 (S.I. No. 233 of 2023)”.</p>

			<p>Part 2 of Schedule 5 is amended by the substitution of the following for “7. Regulation 39(1) of the European Communities (Cross-Border Mergers) Regulations 2008 (S.I. No. 157 of 2008)”:</p> <p>“7. Regulation 89(1) of the European Union (Cross-Border Conversions, Mergers and Divisions) Regulations 2023 (S.I. No. 233 of 2023)”.</p> <p>Schedule 6 is amended –</p> <ul style="list-style-type: none"> (a) in Part 1, by the substitution of the following for “6. Paragraph 2 of Schedule 2 to the European Communities (Cross-Border Mergers) Regulations 2008 (S.I. No. 157 of 2008)”: <p>“6. Paragraph 2 of Schedule 3 to the European Union (Cross-Border Conversions, Mergers and Divisions) Regulations 2023 (S.I. No. 233 of 2023)”, and</p> <ul style="list-style-type: none"> (b) in Part 2, by the substitution of the following for “6. Paragraph 3 of Schedule 2 to the European Communities (Cross-Border Mergers) Regulations 2008 (S.I. No. 157 of 2008)”: <p>“6. Paragraph 3 of Schedule 3 to the European Union (Cross-Border Conversions, Mergers and Divisions) Regulations 2023 (S.I. No. 233 of 2023)”.</p>
3.	No. 31 of 1999	Stamp Duties Consolidation Act 1999	Section 87B is amended, in subsection (1), by the substitution of “Regulation 25 of the European Union (Cross-Border Conversions, Mergers and Divisions) Regulations 2023 (S.I. No. 233 of 2023)” for “Regulation 2(1) of the European Communities (Cross-Border Mergers) Regulations 2008 (S.I. No. 157 of 2008)”.



GIVEN under my Official Seal,
24 May, 2023.

SIMON COVENEY,
Minister for Enterprise, Trade and Employment.

EXPLANATORY NOTE

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

These Regulations give effect to Directive 2019/2121/EU of the European Parliament and of the Council of 27 November 2019 amending Directive 2017/1132/EU as regards cross-border conversions, mergers and divisions.

The Regulations provide for new procedural rules for cross-border mergers and, for the first time, introduce legal certainty for companies in Ireland who wish to exercise their right to enter cross-border conversions and divisions. The Regulations aim to reduce the administrative cost for companies, whilst safeguarding other legitimate public interests such as the protection of employees, creditors, and minority shareholders along with the introduction of an anti-abuse provision.

The anti-abuse provision provides that the Court must scrutinise the legality of the cross-border operation within three months of receiving an application. Where the Court has serious doubts about whether the operation is for abusive or fraudulent purposes, an assessment must be conducted on a case-by-case basis. In such a scenario, the scrutiny period may be extended by the Court for another three months. The Court may, as part of its examination, consult an independent expert and/or other relevant authorities within and outside its jurisdiction if necessary.

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