

Application to external companies of certain provisions of Parts 1 to 14

1301. (1) In this section “relevant external company” means an external company that satisfies the following conditions—

(a) either—

(i) after the commencement of this section, a branch in the State is established by the external company, or

(ii) immediately before that commencement, a branch in the State stands established by it,

and

(b) subject to subsection (2)(b), the foregoing branch is not subsequently closed, or has not otherwise ceased to be established in the State, at the time this section falls to be applied.

(2) For the purposes of subsection (1)—

(a) in relation to the application of Part 7 by this section, the relevant time that this section falls to be applied at shall be taken to be the time of the creation by the company of the charge, the acquisition by it of the property or the creation of the judgment mortgage referred to in subsection (4)(a), (b) or (c), as the case may be, and

(b) in relation to the application of Part 13 by this section, it suffices, for a company to be a relevant external company, that it satisfies the condition specified in paragraph (a) of subsection (1).

(3) Section 132 shall apply to a relevant external company as it applies to a company referred to in section 132.

(4) Subject to subsection (5), Part 7 shall apply to—

(a) charges on property in the State which are created after the commencement of this section by a relevant external company,

(b) charges on property in the State which is acquired after that commencement by such a company, and

(c) judgment mortgages created after that commencement and affecting property in the State of such a company,

as that Part applies to charges created, or charges on property acquired, by a company referred to in that Part or, as the case may be, judgment mortgages affecting property of a company so referred to.

(5) Without prejudice to the application generally of the provisions of Part 7 by subsection (4) and, in particular, the consequence of a charge being void under section 409 (1), the following provisions of that Part, namely, sections 409 (3) and (4) and 410 (2), may not, with respect to a charge created by a relevant external company, be availed of by the company or a person referred to in section 410 (2) unless the company has complied with, as the case may be—

(a) section 1302 (1) and (2), or

(b) section 1302 (1) and (2) as applied by section 1304.

(6) Subject to subsection (7), Parts 13 and 14 ) shall apply to a relevant external company as Part 13 or 14, as the case may be, applies to a company referred to in that Part.

(7) The following provisions have effect as regards the foregoing application of Parts 13 and 14 —

(a) in section 747 —

(i) paragraphs (a) to (d) (which confer standing on certain persons to apply to have one or more competent inspectors appointed to investigate the affairs of a company) of subsection (2) shall not apply, and

(ii) the following shall be substituted for paragraph (e) of subsection (2):

“(e) a person who is a creditor of the company, but only if the person is the company's creditor by reference to a liability which has arisen under and by virtue of business carried on in the State by the company.”;

(b) section 763 (investigation of share dealing by inspector appointed by Director) shall not apply;

(c) in section 797 (court may order compliance by company or officer) “officer” shall include the one or more persons authorised by the relevant external company to ensure compliance with this Part;

(d) references to an insolvent company in Chapters 3, 5 and 6 of Part 14 shall be read as including references to a relevant external company that is insolvent if, but only if, the latter is an unregistered company of Part 22) that is being wound up pursuant to that Chapter;

(e) for the avoidance of doubt, the reference in subsection (6) to a company referred to in Part 14 — so far as it is in Chapter 3, 4, 5 or 6 of that Part that the reference occurs — includes, as well as a private company limited by shares, any other company referred to in section 819 (6) where the following is the context—

(i) the context of the reference in section 819 (1) to a person's being appointed or acting as a director or secretary of a company, or taking part in the formation or promotion of a company;

(ii) the context of section 825;

(iii) the context of section 838;

(iv) the context of a provision that otherwise imposes a restriction on a company by reference to the fact of its having a restricted person ) or otherwise makes provision in consequence of that fact; and

(v) the context of a provision that otherwise makes provision in consequence of a person's being disqualified );

(f) in section 879 (1), for “ Parts 1 to 13 or Part 15” there shall be substituted “ Parts 1 to 13 or Part 15 or 22”;

(g) in section 880 (1), for “ Parts 1 to 13 or Part 15” there shall be substituted “ Parts 1 to 13 or Part 15 or 22”; and

(h) the principal place of business in the State of the relevant external company shall be deemed to be its registered office.

(8) This section is in addition to section 1311 (2) and (3) and 271 to external companies and certain persons having responsibilities in relation to them).