

Continuation of foreign investment company

1410. (1) A migrating company may apply to the Registrar to be registered as an investment company in the State by way of continuation.

(2) Where an application is made under subsection (1), the Registrar shall not register the migrating company as an investment company in the State unless he or she is satisfied that all of the requirements of this Act in respect of the registration and of matters precedent and incidental thereto have been complied with and, in particular, but without prejudice to the generality of the foregoing, he or she is satisfied that—

(a) the migrating company has delivered to the Registrar an application for the purpose, in the prescribed form and signed by a director of the migrating company, together with the registration documents;

(b) the name or, if relevant, the proposed new name of the migrating company has not been determined to be undesirable pursuant to section 26;

(c) the migrating company has delivered to the Registrar notice of the address of its proposed registered office in the State;

(d) the migrating company has applied to the Central Bank to be authorised to carry on business as an investment company under section 1395 and the Central Bank has notified the migrating company and the Registrar that it proposes to authorise the migrating company to so carry on business.

(3) An application under this section shall be accompanied by a statutory declaration in the prescribed form made by a solicitor engaged for this purpose by the migrating company, or by a director of the migrating company, and stating that the requirements mentioned in subsection (2) have been complied with. The Registrar may accept such a declaration as sufficient evidence of compliance.

(4) The Registrar shall, as soon as is practicable after receipt of the application for registration, publish notice of it in the CRO Gazette.

(5) Where the Registrar receives a notification under subsection (2)(d), the Registrar—

(a) may issue a certificate of registration of the migrating company by way of continuation of the migrating company as an investment company under the laws of the State; and

(b) if he or she issues such a certificate, shall enter in the register maintained for the purpose of section 414, in relation to charges and security interests of the migrating company specified in paragraph (f) of the definition of “registration documents” in section 1409 (1), the particulars specified by section 414 which have been supplied by the migrating company.

(6) The migrating company shall, as soon as may be after being registered under subsection (5), apply to

be de-registered in the relevant jurisdiction.

(7) The Registrar shall enter in the register of companies the date of registration of the migrating company and shall forthwith publish notice in the CRO Gazette of the following matters:

(a) the date of the registration of the migrating company under this section;

(b) the relevant jurisdiction; and

(c) the previous name of the migrating company if different from the name under which it is being registered.

(8) From the date of registration, the migrating company shall be deemed to be an investment company formed and registered under this Part and shall continue for all purposes under this Act, and the provisions of this Part shall apply to the migrating company, but this section does not operate—

(a) to create a new legal entity;

(b) to prejudice or affect the identity or continuity of the migrating company as previously established and registered under the laws of the relevant jurisdiction for the period that the migrating company was established and registered in the relevant jurisdiction;

(c) to affect any contract made, resolution passed or any other act or thing done in relation to the migrating company during the period that the migrating company was so established and registered;

(d) to affect the rights, authorities, functions and liabilities or obligations of the migrating company or any other person; or

(e) to render defective any legal proceedings by or against the migrating company.

(9) Without prejudice to the generality of subsection (8)—

(a) the failure of a migrating company to send to the Registrar the particulars of a charge or security interest created before the date of registration shall not prejudice any rights which any person in whose favour the charge was made or security interest created may have thereunder; and

(b) any legal proceedings that could have been continued or commenced by or against the migrating company before its registration under this section may, notwithstanding the registration, be continued or commenced by or against the migrating company after registration.