

## Procedure for re-registration as designated activity company under this Chapter

63. (1) This section contains the procedure for re-registration by an existing private company as a designated activity company under section 56 (1), (2) or (3) or pursuant to an order of the court under section 57 (1).

(2) Either—

(a) in the case of re-registration under section 56 (1), the ordinary resolution referred to in that provision; or

(b) in the case of re-registration under subsection (2) or (3) of section 56 or pursuant to an order of the court under section 57 (1), a resolution of the directors of the company passed for the purpose in consequence of that subsection's operation or that order,

shall alter the company's memorandum so that it states that the company is to be a designated activity company and shall, unless this Act provides that on re-registration the company shall continue to enjoy an exemption conferred by or under either of the sections referred to in section 61 (3), alter that document and the articles so that there is substituted “designated activity company” or “cuideachta ghníomhaíochta ainmnithe” for “limited” or “teoranta”, as the case may be, in the company's name.

(3) An application for the purpose of re-registration, in the prescribed form and signed by a director or secretary of the company, shall be delivered by the company to the Registrar together with the documents specified in subsection (4).

(4) Those documents are—

(a) a copy of the ordinary resolution or the resolution of the directors referred to in subsection (2)(a) or (b);

(b) a copy of the memorandum and articles of the company as altered by the resolution; and

(c) a statement in the prescribed form (in this section referred to as a “statement of compliance”) by a director or secretary of the company that the requirements of this Chapter as to re-registration as a designated activity company have been complied with by the company, including the passing of the resolution referred to in paragraph (a).

(5) The Registrar may accept the statement of compliance as sufficient evidence that the resolution referred to in subsection (4)(a) has been duly passed and the other conditions of this Chapter for re-registration as a designated activity company have been satisfied and that the company is entitled to be re-registered as that type of company.

(6) If, on an application under subsection (3) for re-registration of an existing private company as a

designated activity company, the Registrar is satisfied that a company is entitled to be so re-registered, the Registrar shall—

(a) retain the application and the other documents delivered to him or her under this section; and

(b) issue to the company a certificate of incorporation in respect of it, being a certificate of incorporation that—

(i) is altered to meet the circumstances of the case; and

(ii) states that it is issued on re-registration of the company and the date on which it is issued.

(7) If the existing private company had not registered articles and, by reason of section 58, the regulations in Table A are, immediately before the making by the company of an application under subsection (3), deemed to be its articles, then each of the references in the preceding subsections of this section to articles shall be disregarded, but in such a case the application under subsection (3) shall be accompanied by a statement in the prescribed form that the articles of the company comprise those regulations.

(8) Upon the issue to a company of a certificate of incorporation on re-registration under subsection (6)—

(a) the company shall, by virtue of the issue of that certificate, become a designated activity company; and

(b) any alterations in the memorandum and articles set out in the resolution concerned shall take effect accordingly.

(9) A certificate of incorporation issued on re-registration to a company under subsection (6) shall be conclusive evidence—

(a) that the requirements of this Chapter as to re-registration and of matters precedent and incidental thereto have been complied with; and

(b) that the company is the type of company which is set out in the certificate,

and, accordingly, without prejudice to section 58, Part 16, on and from the issue of the certificate, shall apply to the company as a designated activity company.

(10) If, by reason of section 58, an existing private company was, immediately before the making by the company of an application under subsection (3), governed (in whole or in part) by the regulations contained in Table A, then for the purposes of this section and in addition to the other cases where their continuance in force for a particular purpose is provided for by this Chapter, those regulations shall, despite the repeal of the Act of 1963, continue in force and upon the issue of the aforementioned certificate of incorporation the articles of the designated activity company shall be deemed to comprise the whole of those regulations or, as the case may be, to include the parts concerned of those regulations, but—

(a) this is save to the extent that those regulations are inconsistent with a mandatory provision;

(b) those regulations may be altered or added to under and in accordance with the conditions under which the designated activity company's articles are permitted by Part 16 to be altered or added to; and

(c) references in those regulations to any provision of the prior Companies Acts shall be read as references to the corresponding provision of this Act.

(11) Subject to paragraphs (b) and (c) of that subsection, the regulations referred to in subsection (10) shall be interpreted according to the form in which they existed on the date of repeal of the Act of 1963.

(12) The re-registration of an existing private company as a designated activity company pursuant to this Chapter shall not affect any rights or obligations of the company or render defective any legal proceedings by or against the company, and any legal proceedings which might have been continued or commenced against it in its former status may be continued or commenced against it in its new status.

(13) The procedures under this section may be followed, after consultation by the company with the relevant Minister, by an existing private company that has been incorporated under a former enactment relating to companies ) pursuant to, or in compliance with a requirement of, any statute (in subsection (11) referred to as the “relevant statute”) and may be so followed notwithstanding that statute but—

(a) the provisions otherwise of that statute (and any other relevant statute) shall apply to the designated activity company that the foregoing company re-registers as under this section as they apply to the foregoing company before such re-registration; and

(b) if the foregoing company is a company to which section 1446 applies, the provision made by subsection (1) requiring the substitution of certain words in its name shall be taken to be omitted from that subsection.

(14) In subsection (13) “relevant Minister” means the Minister of the Government concerned in the administration of the relevant statute.

(15) For the avoidance of doubt, references in Part 6, and in particular section 349 (which exempts a company from having to annex financial statements to its first annual return), to the incorporation of a company are references to its original incorporation.