

Interpretation generally

2. (1) In this Act—

“Acting Director” means a person appointed under section 948 as the Acting Director of Corporate Enforcement;

“Act of 1963” means the Companies Act 1963 ;

“Act of 1990” means the Companies Act 1990 ;

“agent” does not include a person's counsel acting as such;

“amendment”, in relation to a constitution, includes an alteration and a deletion;

“annual general meeting” means the meeting provided for in section 175;

“annual return” has the meaning given to it by section 342;

“annual return date” has the meaning given to it by section 343;

“appropriate rate”, in relation to interest, means—

(a) subject to paragraph (b), 5 per cent per annum; or

(b) such other rate as may be specified by order made by the Minister under subsection (7);

“articles” means articles of association;

“assignee in bankruptcy” means the Official Assignee) or a creditors' assignee (within the meaning of that Act);

“authorised market operator” means a market operator (within the meaning of Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004) who, for the time being, is authorised under—

(a) the European Communities (Markets in Financial Instruments) Regulations 2007); or

(b) the measures adopted by another Member State to implement that Directive,

to operate the business of a regulated market (within the meaning of that Directive);

“Bankruptcy Acts” means the Bankruptcy Act 1988 and any enactment amending or extending that Act;

“book and paper” and “book or paper” includes deeds, writings and documents and, where not separately mentioned in the provision concerned, accounting records;

“books and documents” and “books or documents” includes deeds, writings and records made in any other manner and, where not separately mentioned in the provision concerned, accounting records;

“called-up share capital”, in relation to a company, means so much of its share capital as equals the aggregate amount of the calls made on its shares, whether or not those calls have been paid, together with any share capital paid up without being called and any share capital to be paid on a specified future date under the company's constitution, the terms of allotment of the relevant shares or any other arrangements for payment of those shares, and “uncalled share capital” shall be read accordingly;

“category 1 offence” means an offence the penalties for which are specified in section 871 (1);

“category 2 offence” means an offence the penalties for which are specified in section 871 (2);

“category 3 offence” means an offence the penalties for which are specified in section 871 (3);

“category 4 offence” means an offence the penalties for which are specified in section 871 (4);

“Central Bank” means the Central Bank of Ireland;

“child” includes a step-child and an adopted child and “son”, “daughter” and “parent” shall be read accordingly;

“civil partner” has the meaning given to it by the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010 ;

“Community act” means an act adopted by an institution of the European Union;

“company”—

(a) in Parts 2 to 14, shall be read in accordance with section 10;

(b) subject to the foregoing, means a company formed and registered under this Act, or an existing company;

“company having a sole director” shall be read in accordance with subsection (8);

“constitution” means the constitution of a company as provided for in section 19 or, in the case of a company that is not a private company limited by shares, as provided for in Part 16, 17, 18, 19 or 24, as appropriate;

“contravention” includes a failure to comply;

“contributory” has the meaning given to it by section 559;

“court”—

(a) without prejudice to paragraphs (b) and (c), where used in any provision of this Act in relation to a company, means—

(i) the High Court; or

(ii) where another court is specified for the purposes of that provision — that court;

(b) where used in relation to proceedings for an offence, means—

(i) in the case of an offence that is being prosecuted summarily — the District Court; or

(ii) in any other case — the court with jurisdiction in the matter concerned;

(c) where used in connection with proceedings for a debt or the recovery of a sum otherwise provided by this Act to be recoverable and a particular court or a court of competent jurisdiction is not specified for the purpose, means any court of competent jurisdiction;

“CRO Gazette” means the Companies Registration Office Gazette referred to in section 887 (7);

“debenture” includes debenture stock, bonds and any other securities of a company whether constituting a charge on the assets of the company or not;

“de facto director” shall be read in accordance with section 222;

“deliver” includes send or forward and, in the case of a requirement to deliver a document, notice or thing to the Registrar, where the provision concerned itself does not indicate that that is the purpose of its delivery, means deliver the document, notice or thing to the Registrar for the purposes of its registration;

“director” includes any person occupying the position of director by whatever name called;

“Director” means the Director of Corporate Enforcement (but that title appears set out in full in any provision where it is desirable to avoid confusion or otherwise to provide clarity on the matter) and includes an Acting Director while so acting and, in relation to a particular power of the Director, a delegate to whom the power is delegated under section 954;

“document” includes summons, notice, order and other legal process, and register;

“EEA Agreement” means the Agreement on the European Economic Area signed at Oporto on 2 May 1992, as adjusted by the Protocol signed at Brussels on 17 March 1993;

“EEA state” means a state, including the State, which is a contracting party to the EEA Agreement;

“electronic means” or “electronic communications” includes the use of electronic mail;

“enactment” means a statute or an instrument made under a power conferred by a statute;

“examiner” means an examiner appointed under section 509 or 517;

“existing company” means a company formed and registered in a register kept in the State under the Joint Stock Companies Acts, the Companies Act 1862, the Companies (Consolidation) Act 1908 or the Act of 1963;

“extended notice” has the meaning given to it by section 396;

“extraordinary general meeting” shall be read in accordance with section 177;

“financial year” shall be read in accordance with section 288;

“hire-purchase agreement” has the same meaning as it has in the Consumer Credit Act 1995 ;

“holding company” has the meaning given to it by section 8;

“insolvency proceedings”, other than in Chapter 15 of Part 11, means insolvency proceedings opened under Article 3 of the Insolvency Regulation in a Member State, other than the State and Denmark, where the proceedings relate to a body corporate;

“Insolvency Regulation” means Council Regulation (EC) No. 1346/2000 of 29 May 2000 on insolvency proceedings;

“Joint Stock Companies Acts” means the Joint Stock Companies Act 1856, the Joint Stock Companies Acts 1856, 1857, the Joint Stock Banking Companies Act 1857 and the Act to enable Joint Stock Banking Companies to be formed on the principle of limited liability, or any one or more of those Acts as the case may require, but does not include the Act 7 & 8 Victoria, Chapter 110;

“limited company” means a company the liability of whose members is limited;

“members' voluntary winding up” has the meaning given to it by section 559 (1);

“memorandum” means memorandum of association;

“Minister”, other than in Parts 23 and 24, means the Minister for Jobs, Enterprise and Innovation;

“officer”, in relation to a body corporate, includes a director or secretary;

“officer of the Director” means—

(a) an officer of the Minister assigned to the Director;

(b) a member of An Garda Síochána seconded to the Director; or

(c) a person employed by the Minister or the Director under a contract for service or otherwise, to assist the Director in performing functions of the Director under this Act or any other enactment;

“ordinary resolution” has the meaning given to it by section 191;

“prescribed”—

(a) subject to paragraphs (b), (c) and (d), means prescribed by regulations made by the Minister;

(b) in Part 11, unless a power of the Supervisory Authority to prescribe by regulations is provided or that Part otherwise makes express provision—

(i) means prescribed by rules of court; and

(ii) where a power of the Minister to prescribe is provided, means prescribed by the means referred to in paragraph (a);

(c) in Part 15, where a power of the Minister to prescribe is provided or the provision in which the expression appears does not indicate otherwise, means prescribed by the means referred to in paragraph (a); and

(d) in Parts 23 and 24, means prescribed by regulations made by the Minister for Finance;

“printed” includes reproduced in any legible and durable form approved by the Registrar;

“prior Companies Acts” means—

(a) the Companies Acts 1963 to 2005;

(b) Parts 2 and 3 of the Investment Funds, Companies and Miscellaneous Provisions Act 2006 ;

(c) the Companies (Amendment) Act 2009 ;

(d) the Companies (Miscellaneous Provisions) Act 2009 ;

(e) the Companies (Amendment) Act 2012 ;

(f) the Companies (Miscellaneous Provisions) Act 2013 ; and

(g) every other enactment passed or made before the commencement of this section which provides that it is to be read as one with the Companies Acts;

“private company limited by shares” means, unless otherwise indicated, a private company limited by shares registered under Part 2 as distinct from a designated activity company of the type referred to in section 965 (2)(a);

“prospectus” means a document or documents in such form and containing such information as may be required by or under Irish prospectus law or EU prospectus law of Part 23), howsoever the document or documents are constituted, but does not include any advertisements in newspapers or journals derived from the foregoing;

“public holiday” means a day which is a public holiday under the Organisation of Working Time Act 1997 ;

“public limited company” includes to 15) an investment company within the meaning of Part 24;

“receiver of the property of a company” shall be read in accordance with subsection (9);

“register” shall be read in accordance with section 887 (2);

“registered office”, in relation to a company, means the office provided for in section 50;

“Registrar” means—

(a) the registrar appointed under section 887 (3); or

(b) the person referred to in subsection (6) (which relates to the existing Registrar of Companies) of section 887 for so long as the person holds office in accordance with subsection (5) of that section;

“related company” shall be read in accordance with subsections (10) and (11);

“resolution for voluntary winding up” means a resolution referred to in—

(a) section 202 (1)(a)(i) as it relates to section 579; or

(b) section 580 (1) or 586 (2),

to wind up a company voluntarily;

“sealed”, other than in provisions governing the use of a company's common seal or of any official seal of it, means executed in the manner specified in section 64 of the Land and Conveyancing Law Reform Act 2009 obviates the need for a seal);

“shadow director” shall be read in accordance with section 221;

“share” means share in the share capital of a company, and includes stock except where a distinction between stock and shares is express or implied;

“single-member company” has the meaning given to it by section 196;

“special resolution” has the meaning given to it by section 191;

“statutory auditor” means an individual or a firm (within the meaning of those Regulations) that stands approved as a statutory auditor or statutory audit firm, as the case may be, under the European Communities (Statutory Audits) (Directive 2006/43/ EC) Regulations 2010);

“subscribe” includes, where the means of authentication referred to in section 888 are employed, subscribe in the prescribed non-legible form;

“subsidiary” has the meaning given to it by section 7;

“Summary Approval Procedure” has the meaning given to it by section 202;

“Supervisory Authority” has the meaning given to it by section 900 (1);

“system of interconnection of registers” means the system of interconnection of central commercial and companies registers established in accordance with Article 4a(2) of Directive 2009/101/EC of the European Parliament and of the Council of 16 September 2009;

“undischarged bankrupt” means a person who is declared bankrupt by a court of competent jurisdiction, within the State or elsewhere, and who has not obtained a certificate of discharge or its equivalent in the relevant jurisdiction;

“written resolution” has the meaning given to it by section 191 (8).

(2) A word or expression used in Part 6 and also used in another Part of this Act has, in that other Part, the same meaning as it has in Part 6.

(3) A reference in this Act to Table A in the First Schedule to the Act of 1963 shall, where appropriate, be read as a reference to Tábla A in that Schedule.

(4) References in this Act to a body corporate or to a corporation shall be read as not including a corporation sole, but as including a company or body corporate incorporated outside the State.

(5) Any provision of this Act overriding or interpreting a company's constitution shall, except as provided by this Act, apply in relation to the constitution in force on the provision's commencement as well as to regulations of the constitution coming into force thereafter.

(6) References in this Act to a person being in partnership with another are references to the person's being in partnership, within the meaning of section 1 (1) of the Partnership Act 1890 , with that person and references to a partner of a person shall be read accordingly.

(7) The Minister may, by order, specify a rate of interest for the purposes of paragraph (b) of the

definition of “appropriate rate” in subsection (1).

(8) In this Act a reference to a company having a sole director is a reference to its having, for the time being and for whatever reason, a single director (and this applies notwithstanding a stipulation in the constitution that there be 2 directors, or a greater number).

(9) In this Act a reference to a receiver of the property of a company includes—

(a) a reference to—

(i) a receiver and manager of the property of a company; or

(ii) a manager of the property of a company;

(b) a reference to a receiver or to a receiver and manager or to a manager, of part only of that property; and

(c) a reference to a receiver only of the income arising from that property or from part of it.

(10) For the purposes of this Act, a company is related to another company if—

(a) that other company is its holding company or subsidiary; or

(b) more than half in nominal value of its equity share capital (11) is held by the other company and companies related to that other company (whether directly or indirectly, but other than in a fiduciary capacity); or

(c) more than half in nominal value of the equity share capital (11) of each of them is held by members of the other (whether directly or indirectly, but other than in a fiduciary capacity); or

(d) that other company or a company or companies related to that other company, or that other company together with a company or companies related to it, are entitled to exercise or control the exercise of more than one half of the voting power at any general meeting of the company; or

(e) the businesses of the companies have been so carried on that the separate business of each company, or a substantial part thereof, is not readily identifiable; or

(f) there is another body corporate to which both companies are related,

and “related company” has a corresponding meaning; for the purpose of any preceding paragraph of this subsection that contains a reference to a company being related to another, the provisions of this subsection also apply to the construction of each such reference.

(11) For the purposes of subsection (10) “company” includes any body that is capable of being wound up under this Act.