



Number 50 of 2019

Migration of Participating Securities Act 2019



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MIGRATION OF PARTICIPATING SECURITIES ACT 2019

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ACTS REFERRED TO

Companies Act 2014 (No. 38)

Competition Act 2002 (No. 14)

Irish Takeover Panel Act 1997 (No. 5)

Stock Transfer Act 1963 (No. 34)



Number 50 of 2019

MIGRATION OF PARTICIPATING SECURITIES ACT 2019

An Act to make, in the public interest, provision with respect to the contingency that a substitute securities settlement system, compatible with the law of the European Union, may be required, on or after 30 March 2021, for the securities settlement system commonly known as “CREST”; for that purpose to enable issuers of certain securities to avail themselves of the procedures hereafter provided whereby such a substitute securities settlement system will, by virtue of the operation of this Act, become available in respect of those securities and to provide for related matters.

[26th December, 2019]

Be it enacted by the Oireachtas as follows:

Interpretation

1. (1) In this Act—

“Act of 2014” means the Companies Act 2014;

“applicable CREST arrangements” means the rules, practices and procedures, as referred to in the Schedule to the Regulations of 1996, of Euroclear UK & Ireland Limited with respect to CREST;

“central securities depository” has the meaning given to it by the CSD Regulation;

“certificated form”, in relation to a share, shall be construed in accordance with *section 2(2)*;

“CREST” means the relevant system operated by Euroclear UK & Ireland Limited, being the person who, under Regulation 28 of the Regulations of 1996, has been granted recognition by the Minister for Business, Enterprise and Innovation to operate that system;

“CSD Regulation” means Regulation 909/2014 of the European Parliament and of the Council of 23 July 2014¹ on improving securities settlement in the European Union and on central securities depositories and amending Directives 98/26/EC and 2014/65/EU and Regulation (EU) No. 236/2012;

“Listing Authority” means the Irish Stock Exchange plc;

¹ OJ No. L 257, 28.08.2014, p.1

“live date”, subject to *section 6(2)*, means the date appointed by the Listing Authority under *subsection (5) of section 12* to be the live date for the purposes of this Act and *subsection (7) of section 12* and *section 13* supplement this definition;

“migration”, in relation to participating securities, shall be construed in accordance with *section 3*;

“Minister” means the Minister for Finance;

“nominated central securities depository” has the meaning given to it by *section 3(1)*;

“participating issuer” has the meaning given to it by the Regulations of 1996;

“participating security” has the meaning given to it by the Regulations of 1996;

“prescribed” means prescribed by regulations made by the Minister under *section 14*;

“Regulations of 1996” means the Companies Act 1990 (Uncertificated Securities) Regulations 1996 (S.I. No. 68 of 1996);

“relevant participating securities” shall be construed in accordance with *section 4(1)*;

“relevant system” has the meaning given to it by the Regulations of 1996;

“securities” means transferable securities as defined by Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014² on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU;

“share”, in relation to a participating issuer, includes stock in the share capital of the participating issuer;

“uncertificated form”, in relation to a share, shall be construed in accordance with *section 2(1)*.

- (2) A reference in this Act to the Member State in which a central securities depository is authorised is a reference to the Member State, the competent authority of which has authorised the central securities depository under the CSD Regulation.

Share in uncertificated form or certificated form - meaning of those expressions

2. (1) A reference in this Act to a share that is in uncertificated form is a reference to such a share that is an uncertificated unit of a security (within the meaning of the Regulations of 1996).
- (2) A reference in this Act to a share that is in certificated form is a reference to the share being the subject of a certificate as referred to in *section 99(1)* of the Act of 2014 (as applied by Part 17 or any other Part of that Act).

Migration - meaning of that expression and supplemental provision

3. (1) In this section—

2 OJ No. L 173, 12.6.2014, p.349

“nominated central securities depository” means the particular central securities depository that is expressed in the special resolution specified in *section 5(1)* to be the central securities depository to which it is proposed that the participating securities concerned will be migrated;

“security holders” means the holders of the participating securities of the kind referred to in *section 4(1)*.

(2) In this Act, a reference to the migration of participating securities of the kind referred to in *section 4(1)* shall be construed as a reference to both of the following occurring (with effect, as provided under *section 11*, on the live date referred to therein):

(a) the title to those participating securities becoming and being vested in—

(i) the nominated central securities depository, or

(ii) if such a body has been so nominated in this behalf, a body nominated by the nominated central securities depository with respect to its operations as a central securities depository,

for the purpose of the recording of those securities in book-entry form and the settlement of trades in respect of them being effected through that depository’s settlement system;

(b) the applicable CREST arrangements in relation to those participating securities ceasing to be in force.

(3) Neither *subsection (2)* nor any other provision of this Act shall be construed as—

(a) affecting the continued application of the Act of 2014 to the participating issuer concerned, or

(b) operating to divest the security holders of their relevant rights or interests in the participating securities concerned,

on and from the date on which the migration takes effect, but *subsections (3) and (4) of section 11* make provision with respect to the application of sections 94(4) and 99(2) of the Act of 2014 and this subsection shall be construed subject to those subsections.

Migration of securities by participating issuers

4. (1) A participating issuer may consent to a migration, in accordance with this Act, of those of the participating securities in the issuer that are shares (referred to subsequently in this Act as “relevant participating securities”), subject to—

(a) a special resolution, as specified in *subsection (1) of section 5* and which satisfies *subsection (2) of that section*, having been passed by the participating issuer, and

(b) each of the following—

(i) the conditions specified in *section 5(5)* in relation to that resolution and the condition specified in *section 6(4)*,

- (ii) *section 6(1)*, and
 - (iii) *section 198* of the Act of 2014 (as applied by *section 9*),
having been satisfied or complied with by the participating issuer.
- (2) *Subsection (1)* shall have effect notwithstanding *section 94(4)* of the Act of 2014 (as applied by Part 17 or any other Part of that Act) or anything in the participating issuer's constitution.

Requirements to be complied with for consent by issuer to migration: special resolution

5. (1) The special resolution referred to in *section 4(1)* is a special resolution that approves of the participating issuer giving its consent to the migration, in accordance with this Act, of the relevant participating securities in the participating issuer and which satisfies *subsection (2)*.
- (2) The following applies as respects the terms of the foregoing special resolution, so far as they relate to the migration to which the resolution refers, namely, the migration shall be expressed to be a migration of the relevant participating securities to a central securities depository specified in the resolution, and there shall be stated in the resolution—
- (a) the name of the Member State in which that central securities depository is authorised, and
 - (b) if, as referred to in *section 3(2)(a)*, the title to the relevant participating securities will become and be vested in a body nominated by that central securities depository, the fact that the title will become so vested and the name of the body concerned,
- and *subsections (3) to (6)* supplement this subsection.
- (3) For the purposes of *subsection (2)* where, as respects the fact of the central securities depository's authorisation, the resolution states, without more, that the central securities depository is authorised in a particular Member State, such a statement shall suffice and it shall not be necessary to specify that the competent authority of that Member State has authorised the central securities depository under the CSD Regulation.
- (4) The name of a central securities depository shall not be specified in the special resolution referred to in this section unless the following conditions are satisfied prior to the giving of the notice to the members of the participating issuer of the meeting at which it is proposed to pass the special resolution.
- (5) The conditions referred to in *subsection (4)* are:
- (a) the participating issuer has, in writing, notified the central securities depository of the proposal that the relevant participating securities in the issuer are to be the subject of migration, in accordance with this Act, to that depository;

- (b) there has been received by the participating issuer the statement specified in *subsection (6)(a)* following consideration by that depository of Article 23 of the CSD Regulation as it relates to the proposed provision of the services of the settlement system concerned to that issuer;
 - (c) there has been received by the participating issuer the statement specified in *subsection (6)(b)* following—
 - (i) such inquiries as have been made of the issuer by that depository, and
 - (ii) the provision of such information by or on behalf of the issuer, in writing, to that depository as the latter specifies,which satisfy that depository that the relevant participating securities in the issuer meet the criteria stipulated by that depository for what is commonly referred to as the entry of the participating securities into the settlement system operated by the depository.
- (6) The statement referred to in—
- (a) *paragraph (b)* of *subsection (5)* is a statement in writing of the central securities depository concerned to the effect that the provision of the services of the settlement system concerned to the issuer there mentioned will, on and from the date on which the migration takes effect, be in compliance with Article 23 of the CSD Regulation, and
 - (b) *paragraph (c)* of *subsection (5)* is a statement in writing of the central securities depository concerned to the effect that the participating issuer's relevant participating securities meet the criteria referred to in that *paragraph (c)*.

Further requirements to be complied with for consent by issuer to migration

6. (1) The circular next mentioned shall accompany the notice given to the members of the participating issuer of the meeting (the “relevant meeting”) at which it is proposed to pass the special resolution referred to in *section 4(1)*, namely, a circular containing at least the following particulars, in addition to any particulars that may be required under the rules of the trading venue on which the relevant participating securities in the participating issuer are listed or admitted to trading:
- (a) an explanation of the proposed migration and—
 - (i) of how it will affect the rights of members of the participating issuer, and
 - (ii) that the consent that is enabled to be given by the participating issuer, in relation to relevant participating securities under this Act, is a consent to the migration of those securities to take effect on the live date appointed under *section 12(5)*;
 - (b) an explanation of—
 - (i) the options for a member of the participating issuer who does not wish his or her shares to be the subject of the proposed migration and the steps the

member must follow in order that those securities are not so subject, including, where appropriate, the member's right to request that those shares be converted to certificated form in accordance with the Regulations of 1996, and

- (ii) the options for a member of the participating issuer whose shares are in certificated form to convert those shares to uncertificated form in order that the shares shall be included amongst the securities that shall be the subject of the migration;
 - (c) a summary of the relevant law of the Member State in which the nominated central securities depository is authorised;
 - (d) a list of the documentation relating to the proposed migration and where it can be inspected (or, if it is in electronic form, accessed);
 - (e) a recommendation from the directors of the participating issuer on the merits of the proposed migration for the members of the issuer;
 - (f) a timetable relating to the proposed migration and important dates for the members leading up to the live date;
 - (g) any further information which the directors of the participating issuer believe is necessary in order to allow members to fully understand and consider the proposed migration.
- (2) In *subsection (1)(f)* the reference to the live date is a reference to the date that the participating issuer reasonably anticipates will be the date that is appointed under *section 12(5)* to be the live date for the purposes of this Act in relation to the participating issuer.
- (3) In addition to what is specified in *subsection (1)*, *subsection (4)* sets out a further condition that must be satisfied in order for the participating issuer to consent to the migration referred to in *section 4(1)*.
- (4) The participating issuer shall publish, no earlier than 7 days before, and no later than, the date on which the notice of the relevant meeting is given to members of the issuer, a notice stating—
- (a) its intention to consent to the migration, and
 - (b) that the information contained in the circular referred to in *subsection (1)* is available on a website maintained by the issuer,

and such notice shall be published in a daily national newspaper circulating in the district in which the issuer has its registered office.

Offence in relation to failure to comply with certain provisions of *section 5* or *6*

7. (1) If a participating issuer makes default in complying with *section 5(4)* or *section 6(1)* or (4), the issuer and any officer of it who is in default shall be guilty of an offence

and shall be liable on summary conviction to a class A fine or imprisonment for a term not exceeding 6 months or both.

- (2) Section 270 of the Act of 2014 applies to the construction of the reference in *subsection (1)* to an officer of the issuer who is in default as it applies to the construction of any provision of the Act of 2014 which provides that an officer of a company who is in default shall be guilty of an offence.

Quorum for meeting referred to in *section 6(1)*

8. Notwithstanding anything contained in the participating issuer's constitution—
- (a) the quorum for the meeting referred to in *section 6(1)* at which the special resolution there mentioned is to be proposed shall be at least 3 persons holding or representing by proxy at least one-third in nominal value of the issued shares in the participating issuer and section 182 of the Act of 2014 shall, in relation to that meeting, be construed accordingly, and
 - (b) any member of the participating issuer who is present in person or by proxy at the foregoing meeting may demand a poll in relation to a matter at the meeting and section 189 of the Act of 2014 shall, in relation to that meeting, be construed accordingly.

Registration of special resolution referred to in *section 4(1)*

9. Section 198 of the Act of 2014 shall apply to a special resolution referred to in *section 4(1)* passed by a participating issuer as section 198 applies to a special resolution referred to in subsection (4)(a) of that section.

Confirmation that relevant requirements have been complied with and consent of issuer to migration to be expressed in confirmatory statement

10. (1) A participating issuer that wishes to consent to a migration referred to in *section 4(1)* of the relevant participating securities in the issuer shall before—
- (a) the date of expiry of 21 days after the passing by it of the special resolution referred to in *section 4(1)*, or
 - (b) the date appointed under *section 12(2)* by the Listing Authority for the purposes of this section,
- whichever is the earlier, furnish a statement by the issuer, in the prescribed form, to the Registrar of Companies which states—
- (i) that the requirements of, or conditions specified in, each of *sections 4 to 6*, and section 198 of the Act of 2014 (as applied by *section 9*), have been complied with or satisfied in respect of the issuer's consenting to that migration, and
 - (ii) that the issuer, thereby, consents to the migration of the relevant participating securities in the issuer.

- (2) The statement referred to in *subsection (1)* shall be verified by an affidavit sworn by one or more directors of the participating issuer, which affidavit shall accompany the furnishing of the statement to the Registrar of Companies.
- (3) A participating issuer shall, before whichever of the dates referred to in *subsection (1) (a)* and *(b)* is the earlier, furnish a copy of the statement referred to in *subsection (1)* to the Listing Authority and that Authority shall prepare a list of the participating issuers which have furnished such statements to it; that list shall be published by that Authority on its website and the list so published shall indicate the nominated central securities depository in relation to the relevant participating securities in each issuer.
- (4) If a participating issuer makes default in complying with *subsection (1)*, the issuer and any officer of it who is in default shall be guilty of an offence and shall be liable on summary conviction to a class A fine or imprisonment for a term not exceeding 6 months or both.
- (5) If a participating issuer, in purported compliance with *subsection (1)*, furnishes a statement to the Registrar of Companies that is false or misleading in a material respect, knowing it to be so false or misleading or being reckless as to whether it is so false or misleading, the issuer and any officer of it who is in default shall be guilty of an offence and shall be liable—
 - (a) on summary conviction, to a class A fine or imprisonment for a term not exceeding 6 months or both, or
 - (b) on conviction on indictment, to a fine not exceeding €50,000 or imprisonment for a term not exceeding 5 years or both.
- (6) If a director of a participating issuer makes default in complying with *subsection (2)*, the director shall be guilty of an offence and shall be liable on summary conviction to a class A fine or imprisonment for a term not exceeding 6 months or both.
- (7) Section 270 of the Act of 2014 applies to the construction of the reference in *subsection (4)* to an officer of the issuer who is in default as it applies to the construction of any provision of the Act of 2014 which provides that an officer of a company who is in default shall be guilty of an offence.

Migration of relevant participating securities

11. (1) *Subsection (2)* shall apply if each of the following—
 - (a) a statement referred to in *subsection (1)* of *section 10*, and
 - (b) a copy of such a statement as is referred to in *subsection (3)* of that section,has, in accordance with *subsections (1)* and *(2)* or, as the case may be, *subsection (3)* of that section, been furnished to the Registrar of Companies or the Listing Authority, as appropriate, by a participating issuer.
- (2) Where this subsection applies, the migration of the relevant participating securities in the participating issuer shall, by virtue of this subsection, take effect on and from the live date.

- (3) Without prejudice to the generality of *section 3(2)*—
- (a) notwithstanding section 94(4) of the Act of 2014, section 2(1) of the Stock Transfer Act 1963 or any other enactment, with respect to the migration referred to in *subsection (2)*, a written instrument of transfer shall not be necessary to transfer title to—
- (i) the relevant participating securities to the nominated central securities depository (or, as the case may be, to the body nominated, as referred to in *section 3(2)(a)*, by the nominated central securities depository with respect to its operations as a central securities depository) from any holder of the rights or interests in the securities referred to in *section 3(3)(b)*, or
- (ii) any of the relevant participating securities from the settlement system operated by the nominated central securities depository (or, as the case may be, from the foregoing body nominated by that depository) to any holder of the rights or interests in the securities referred to in *section 3(3)(b)*,
- (b) notwithstanding section 99(2) of the Act of 2014, the participating issuer is not required to issue share certificates to the nominated central securities depository (or, as the case may be, to the foregoing body nominated by that depository) on the migration taking effect under *subsection (2)* on the live date and title of the nominated central securities depository (or, as the case may be, of the foregoing body nominated by that depository) to the relevant participating securities shall be evidenced by the recording of the name and address of that depository or body, as appropriate, in the register of members of the participating issuer, and *subsection (4)* supplements this paragraph.
- (4) *Paragraph (b) of subsection (3)* operates to disapply section 99(2) of the Act of 2014, with respect to the matters referred to in that paragraph, both on the live date concerned and at all times thereafter.
- (5) To the extent that such an obligation would otherwise apply, any obligation to make a notification under section 18 of the Competition Act 2002 does not apply with respect to a migration of relevant participating securities in a participating issuer taking effect under *subsection (2)* but this subsection does not prejudice the application of the Competition Act 2002 to any act or omission, subsequent to the migration taking effect, that occurs in relation to the participating issuer.
- (6) Rules made under section 8(3)(a) of the Irish Takeover Panel Act 1997 do not apply with respect to a migration of relevant participating securities in a participating issuer taking effect under *subsection (2)* but this subsection does not prejudice the application of rules made under that section 8(3)(a) to any act or omission, subsequent to the migration taking effect, that occurs in relation to the participating issuer.

Making of certain orders, by Listing Authority, for purposes of Act

- 12.** (1) The Listing Authority shall have power to make each of the orders referred to in this section.

- (2) The Listing Authority shall, by order, appoint a date for the purposes of *section 10* before which the statement referred to in *subsection (1)* or *(3)*, as the case may be, of that section must be furnished by a participating issuer to the Registrar of Companies or, as appropriate, the Listing Authority.
- (3) A different date may be appointed under *subsection (2)* in relation to different participating issuers or classes of such issuer, and different dates—
 - (a) may be so appointed by several different orders made by the Listing Authority under that subsection, or
 - (b) may be so appointed by a single order made, for the purpose, by that Listing Authority under that subsection.
- (4) A reference in *section 10(1)* or *(3)* to the date appointed under *subsection (2)* by the Listing Authority for the purposes of *section 10* shall be construed as a reference to the date so appointed in relation to the participating issuer concerned or the class concerned of such issuer.
- (5) The Listing Authority shall, by order, appoint a date to be the live date for the purposes of this Act.
- (6) A different date may be appointed under *subsection (5)* in relation to different participating issuers or classes of such issuer, and different dates—
 - (a) may be so appointed by several different orders made by the Listing Authority under that subsection, or
 - (b) may be so appointed by a single order made, for the purpose, by the Listing Authority under that subsection.
- (7) A reference in this Act to the live date shall be construed as a reference to the date appointed under *subsection (5)* to be the live date for the purposes of this Act in relation to the participating issuer concerned or the class concerned of such issuer.

Supplemental provision in relation to *section 12*

13. (1) A power under any provision of *section 12* to appoint a date includes a power to appoint a time on a date and *subsection (2)* shall apply to a case in which a power under any provision of that section has been exercised so as to appoint a time (the “particular time”) on a date (the “particular date”).
- (2) In a case to which this subsection applies, a reference in this Act to a date, in respect of the particular matter the subject of the exercise of the power referred to in *subsection (1)*, shall be construed as a reference to the particular time on the particular date.

Regulations

14. (1) The Minister may make regulations prescribing anything referred to in this Act as prescribed or to be prescribed.

- (2) A regulation made under this section shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the regulation is passed by either such House within the next 21 days on which that House has sat after the regulation is laid before it, the regulation shall be annulled accordingly, but without prejudice to the validity of anything previously done thereunder.

Liability of Listing Authority for acts, omissions, etc.

- 15.** (1) The Listing Authority shall not be under any duty to verify any information contained in a copy of a statement referred to in *subsection (1) of section 10* that is furnished to it under *subsection (3)* of that section.
- (2) The Listing Authority shall not be liable in damages—
- (a) for the manner in which it exercises its discretion in performing any of its functions under *section 12*, or
- (b) in relation to any other of its functions under this Act, in respect of anything done or omitted to be done by it in the performance of that function,
- unless the exercise of that discretion was carried out, or the act or omission concerned was done or made, in bad faith.

Cesser of section 4

- 16.** (1) *Section 4* shall stand repealed on 30 March 2021 or such later day as may be appointed by the Minister under *subsection (2)*.
- (2) The Minister may, if the European Commission adopts, under Article 25(9) of the CSD Regulation, a further implementing decision to that made by it under that Article 25(9) on 19 December 2018 (Commission Implementing Decision (EU) 2018/2030 of 19 December 2018³), and relating to the equivalence, for the purposes of the CSD Regulation, of the regulatory framework applicable to central securities depositories of the United Kingdom of Great Britain and Northern Ireland, appoint, by order, a day later than 30 March 2021 for the purposes of *subsection (1)*.
- (3) An order made under this section shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the order is passed by either such House within the next 21 days on which that House has sat after the order is laid before it, the order shall be annulled accordingly, but without prejudice to the validity of anything previously done thereunder.

Short title and commencement

- 17.** (1) This Act may be cited as the Migration of Participating Securities Act 2019.
- (2) This Act shall come into operation on such day or days as the Minister may appoint by order or orders either generally or with reference to any particular purpose or

³ OJ No. L 325, 20.12.2018, p.47

provision and different days may be so appointed for different purposes or different provisions.