



STATUTORY INSTRUMENTS.

S.I. No. 306 of 2011



EUROPEAN COMMUNITIES (MERGERS AND DIVISIONS OF
COMPANIES) (AMENDMENT) REGULATIONS 2011

(Prn. A11/1087)

EUROPEAN COMMUNITIES (MERGERS AND DIVISIONS OF COMPANIES) (AMENDMENT) REGULATIONS 2011

I, RICHARD BRUTON, Minister for Jobs, Enterprise and Innovation, in exercise of the powers conferred on me by section 3 of the European Communities Act 1972 (No. 27 of 1972) and for the purpose of giving further effect to Directive No. 2007/63/EC of the European Parliament and of the Council of 13 November 2007¹ and effect to Directive No. 2009/109/EC of the European Parliament and of the Council of 16 September 2009², hereby make the following regulations:

Citation, construction and commencement

1. (1) These Regulations may be cited as the European Communities (Mergers and Divisions of Companies) (Amendment) Regulations 2011.

(2) The Companies Acts and these Regulations shall be construed together as one.

(3) Subject to paragraph (4), these Regulations come into operation on 30 June 2011.

(4) Notwithstanding Regulation 4(a) and Regulation 5(d), section 30(2)(b) of the Act of 1983 and Regulation 10 of the Regulations of 1987 continue to apply to a proposed merger in respect of which the date of the draft terms of merger or of the common draft terms as the case may be is prior to 30 June 2011.

Interpretation

2. In these Regulations—

“Act of 1983” means the Companies (Amendment) Act 1983 (No. 13 of 1983);

“Regulations of 1987” means the European Communities (Mergers and Divisions of Companies) Regulations 1987 (S.I. No. 137 of 1987).

Amendment of Section 2 of Act of 1983

3. The Act of 1983 is amended in subsection (1) of section 2 by inserting the following definitions:

“ ‘Regulations of 1987’ means the European Communities (Mergers and Divisions of Companies) Regulations 1987 (S.I. No. 137 of 1987);

‘Regulations of 2008’ means the European Communities (Cross-Border Mergers) Regulations 2008 (S.I. No. 157 of 2008);”.

¹O.J. No. L 300, 17.11.2007, p.47.

²O.J. No. L 259, 2.10.2009, p.14.

Notice of the making of this Statutory Instrument was published in “Iris Oifigiúil” of 24th June, 2011.

Amendment of Section 30 of Act of 1983

4. Section 30 of the Act of 1983 is amended—

- (a) in subsection (2), by deleting paragraph (b),
- (b) in subsection (4), by substituting “(5A)” for “(2)(b)”,
- (c) in subsection (5), by substituting “Subject to subsection (5A), the valuation and report required by subsection (1)” for “The valuation and report required by subsection (1)”, and
- (d) by inserting the following subsection after subsection (5):

“(5A) Where the allotment of shares by a company is in connection with—

- (a) a proposed merger, where that company was formed as an acquiring company for the purpose of the proposed merger, the merger being a ‘merger by formation of a new company’ within the meaning of Part II of the Regulations of 1987 or the Regulations of 2008,
- (b) a proposed merger of that company with another company, or
- (c) a proposed division of that company,

the valuation and report required by subsection (1) may be made by the person appointed pursuant to Regulation 8 or 28 of the Regulations of 1987 or an “expert” within the meaning of Regulation 7 of the Regulations of 2008 in which case the person so appointed shall be deemed to be an independent person for the purposes of subsection (5).”.

Amendment of European Communities (Mergers and Divisions of Companies) Regulations 1987

5. The Regulations of 1987 are amended—

- (a) in Regulation 2 by inserting the following definition:
 - “ ‘Regulations of 2007’ means the Transparency (Directive 2004/109/EC) Regulations 2007 (S.I. No. 277 of 2007);”.
- (b) in Regulation 7—
 - (i) in paragraph (1) by substituting “Subject to paragraph (4), a separate written report” for “A separate written report”, and
 - (ii) by inserting the following paragraph after paragraph (3):

“(4) This Regulation shall not apply where all of the holders of shares and other securities conferring the right to vote in

general meetings of each of the merging companies have so agreed.”,

(c) in Regulation 9—

(i) in paragraph (1), by substituting “Subject to paragraphs (6) and (7), where the latest annual accounts” for “Where the latest annual accounts”, and

(ii) by inserting the following paragraphs after paragraph (5):

“(6) Paragraph (1) does not apply to a merging company which makes public a half-yearly financial report covering the first 6 months of its financial year pursuant to Regulation 6 of the Regulations of 2007 if the merging company makes that report available for inspection pursuant to Regulation 12.

(7) This Regulation does not apply to a merging company if all of the holders of shares and other securities conferring the right to vote in general meetings of the company have so agreed.”,

(d) by deleting Regulation 10,

(e) in Regulation 11—

(i) in paragraph (1) by substituting “Subject to paragraph (3), each of the merging companies shall” for “Each of the merging companies shall”, and

(ii) by inserting the following paragraphs after paragraph (2):

“(3) Paragraph (1) does not apply to a merging company if the company—

(a) publishes, free of charge on its website for a continuous period of at least 2 months, commencing at least one month before the date of the general meeting which by virtue of Regulation 13 is to consider the draft terms of merger and ending at least one month after that date, a copy of the draft terms of merger, signed and dated pursuant to Regulation 6, and

(b) causes to be published in the Companies Registration Office Gazette and once at least in 2 daily newspapers circulating in the district in which the registered office or principal place of business of the company is situate notice of publication on its website of the draft terms of merger.

(4) Where, in the period referred to in paragraph (3)(a), access to the company’s website is disrupted for a continuous period of at least 24 hours or for separate periods totalling not less than 72 hours, the period referred to in paragraph (3)(a) shall be extended for a period corresponding to the period or periods of disruption.”,

(f) in Regulation 12—

- (i) in paragraph (1) by substituting “subject to paragraphs (2) and (3)” for “subject to paragraph (2)”,
- (ii) in subparagraph (c) of paragraph (1) by substituting “where applicable, the explanatory reports” for “the explanatory reports”,
- (iii) by substituting the following subparagraph for subparagraph (e) of paragraph (1):

“(e) where applicable, an accounting statement or half-yearly financial report in relation to any of the merging companies which is required pursuant to Regulation 9.”, and

- (iv) by inserting the following paragraphs after paragraph (2):

“(3) Subject to paragraph (4), paragraph (1) does not apply to a merging company if it publishes, free of charge on its website the documents listed in that paragraph for a continuous period of at least 2 months, commencing at least one month before the date of the general meeting which by virtue of Regulation 13 is to consider the draft terms of merger and ending at least one month after that date.

(4) Paragraph (3) does not apply where the entitlement referred to in paragraph (3) of Regulation 13 does not apply in consequence of the application of paragraph (3B) of that regulation.

(5) Where, in the period referred to in paragraph (3), access to the company’s website is disrupted for a continuous period of at least 24 hours or for separate periods totalling not less than 72 hours, the period referred to in paragraph (3) shall be extended for a period corresponding to the period or periods of disruption.”,

(g) in Regulation 13—

- (i) in paragraph (3) by substituting “Subject to paragraphs (3A) and (3B), the notice” for “The notice”, and

(ii) by inserting the following paragraphs after paragraph (3):

“(3A) Subject to paragraph (3B), where a shareholder has consented to the use by the company of electronic means for conveying information, the copies referred to in paragraph (3) may be provided to that shareholder by electronic mail and the notice convening the general meeting referred to in paragraph (1) shall contain a statement to that effect.

(3B) Where, for a continuous period of at least 2 months, commencing at least one month before the date of the general meeting which by virtue of this regulation is to consider the draft terms of merger and ending at least one month after that date, copies of the documents specified in paragraph (1) of Regulation 12 are available to download and print, free of charge, from the company’s website by shareholders of the company, the entitlement referred to in paragraph (3) shall not apply.

(3C) Where, in the period referred to in paragraph (3B), access to the company’s website is disrupted for a continuous period of at least 24 hours or for separate periods totalling not less than 72 hours, the period referred to in paragraph (3B) shall be extended for a period corresponding to the period or periods of disruption.”,

(iii) in subparagraph (b) of paragraph (4) by substituting “a merger by acquisition carried out by a company which holds ninety per cent or more, but not all,” for “an operation whereby one or more companies are acquired by another company which holds ninety per cent or more, but not all,”

(iv) in paragraph (5) by substituting “involved in a merger” for “being acquired”,

(v) in subparagraph (b) of paragraph (5) by substituting “each of the other companies involved in the merger” for “the acquiring company”, and by substituting “that company” for “the company or companies being acquired”,

(vi) in paragraph (6) by substituting “each such other company involved in the merger” for “the acquiring company”, and

(vii) in paragraph (9) by substituting “19(2)(b) and 22” for “19(1)(b) and 21”,

(h) in Regulation 27—

(i) in paragraph (1) by substituting “Subject to paragraphs (5) and (6), a separate written report” for “A separate written report”, and

(ii) by inserting the following paragraphs after paragraph (4):

“(5) This Regulation does not apply if all of the holders of shares and other securities conferring the right to vote in general meetings of each of the companies involved in the division have so agreed.

(6) Paragraph (1) does not apply to a company involved in a division by formation of new companies where the shares in each of the acquiring companies are allocated to the shareholders of the company being acquired in proportion to their rights in the capital of that company.”,

(i) in Regulation 28—

(i) by deleting paragraph 8, and

(ii) by substituting the following paragraph for paragraph (12):

“(12) Paragraph (1) does not apply—

(a) if all of the holders of shares and other securities conferring the right to vote in general meetings of each of the companies involved in the division have so agreed, or

(b) to a company involved in a division by formation of new companies where the shares in each of the acquiring companies are allocated to the shareholders of the company being acquired in proportion to their rights in the capital of that company,”,

(j) in Regulation 29—

(i) in paragraph (1) by substituting “Subject to paragraph (6), where the latest annual accounts” for “Where the latest annual accounts”, and

(ii) by inserting the following paragraphs after paragraph (5):

“(6) Paragraph (1) does not apply to a company involved in a division which makes public a half-yearly financial report covering the first 6 months of its financial year pursuant to Regulation 6 of the Regulations of 2007 where it makes that report available for inspection pursuant to Regulation 12.

(7) This regulation does not apply to a company involved in a division if all of the holders of shares and other securities conferring the right to vote in general meetings of the company have so agreed.”,

(k) in Regulation 30—

(i) in paragraph (1) by substituting “Subject to paragraph (3), each of the companies involved in the division shall” for “Each of the companies involved in the division shall”, and

(ii) by inserting the following paragraphs after paragraph (2):

“(3) Paragraph (1) does not apply to a company involved in the division if the company—

(a) publishes, free of charge on its website for a continuous period of at least 2 months, commencing at least one month before the date of the general meeting which by virtue of Regulation 32 is to consider the draft terms of division and ending at least one month after that date, a copy of the draft terms of division, signed and dated pursuant to Regulation 26, and

(b) causes to be published in the Companies Registration Office Gazette and once at least in 2 daily newspapers circulating in the district where the registered office or principal place of business of the company is situated notice of publication on its website of the draft terms of division.

(4) Where, in the period referred to in paragraph (3)(a), access to the company’s website is disrupted for a continuous period of at least 24 hours or for separate periods totalling not less than 72 hours, the period referred to in paragraph (3)(a) shall be extended for a period corresponding to the period or periods of disruption.”,

(l) in Regulation 31—

(i) in paragraph (1) by substituting “Subject to paragraphs (3) and (4), each of the companies involved in the division” for “Each of the companies involved in the division”,

(ii) in subparagraph (c) of paragraph (1) by inserting “where applicable,” before “the explanatory reports”,

(iii) by substituting the following subparagraph for subparagraph (e) of paragraph (1):

“(e) where applicable, any accounting statement or half-yearly financial report in relation to any of the companies which is required pursuant to Regulation 29.”, and

(iv) by inserting the following paragraphs after paragraph (2):

“(3) Paragraph (1)(e) of this regulation does not apply to a company involved in a division by formation of new companies where the shares in each of the acquiring companies are allocated to the shareholders of the company being acquired in proportion to their rights in the capital of that company.

(4) Subject to paragraph (5), paragraph (1) does not apply to a company involved in the division if it publishes, free of charge on its website the documents listed in that paragraph, for a continuous period of at least 2 months, commencing at least one month before the date of the general meeting which by virtue of Regulation 32 is to consider the draft terms of division and ending at least one month after that date,

(5) Paragraph (4) does not apply where the entitlement referred to in paragraph (3) of Regulation 32 does not apply pursuant to the application of paragraph (3B) of that regulation.

(6) Where, in the period referred to in paragraph (4), access to the company’s website is disrupted for a continuous period of at least 24 hours or for separate periods totalling not less than 72 hours, the period referred to in paragraph (4) shall be extended for a period corresponding to the period or periods of disruption.”,

(m) in Regulation 32—

(i) in paragraph (3) by substituting “Subject to paragraphs (3A) and (3B), the notice convening the general meeting” for “The notice convening the general meeting”,

(ii) by inserting the following paragraphs after paragraph (3):

“(3A) Subject to paragraph (3B), where a shareholder has consented to the use by the company of electronic means for conveying information, the copies referred to in paragraph (3) may be provided to that shareholder by electronic mail and the notice convening the general meeting referred to in paragraph (1) shall contain a statement to that effect.

(3B) Where, for a continuous period of at least 2 months, commencing at least one month before the date of the general meeting which by virtue of this regulation is to consider the draft terms of division and ending at least one month after that date, copies of the documents specified in Regulation 31 are available to download and print, free of charge, from the company’s website by shareholders of the company, the entitlement referred to in paragraph (3) shall not apply.

(3C) Where, in the period referred to in paragraph (3B), access to the company’s website is disrupted for a continuous period of 24 hours or for separate periods totalling not less than 72 hours, the period referred to in paragraph (3)(a) shall be extended for a period corresponding to the period or periods of disruption.”,

(iii) by inserting the following paragraphs after paragraph (4):

“(4A) This regulation shall not apply in the case of a company being acquired provided that the following conditions are fulfilled—

(a) the acquiring companies together hold all of the shares and other securities carrying the right to vote at general meetings of the company being acquired,

(b) the companies involved in the division comply with the requirements of Regulations 30 and 31 at least one month before the earlier of the dates specified in sub-paragraphs (e) and (f) of Regulation 26(2), and

(c) the directors of the companies involved in the division have complied with paragraph (6A).”,

(iv) in paragraph (5) by substituting “Subject to paragraph (6A), the directors of the company” for “The directors of the company”,

(v) in paragraph (6) by substituting “Subject to paragraph (6A), the directors of the company” for “The directors of the company”,

(vi) by inserting the following paragraphs after paragraph (6):

“(6A) Where paragraph (4A) applies and a general meeting of the company being acquired is not convened, the directors of the company being acquired shall inform—

(a) the members of that company, and

(b) the directors of the acquiring companies,

of any material change in the assets and liabilities of the company being acquired since the date of the draft terms of division and paragraph (6) shall be construed as referring to that information.”.

Amendment of European Communities (Cross-Border Mergers) Regulations 2008

6. The European Communities (Cross-Border Mergers) Regulations 2008 (S.I. No. 157 of 2008) are amended—

(a) in Regulation 8—

- (i) in paragraph (1) by substituting “Subject to paragraphs (1A) and (1B), each” for “Each”,
- (ii) by inserting the following paragraphs after paragraph (1):

“(1A) Paragraph (1) does not apply to an Irish merging company if it publishes, free of charge on its website for a continuous period of at least 2 months, commencing at least one month before the date of the general meeting convened in accordance with Regulation 10 and ending at least one month after that date—

- (a) a copy of the common draft terms, as adopted by the board of directors of each Irish merging company as required by Regulation 5(1), and
- (b) the information specified at paragraph (1)(b) in a form as close as practicable to the form set out in Schedule 3.

(1B) Where, in the period referred to in paragraph (1A), access to the company’s website is disrupted for a continuous period of at least 24 hours or for separate periods totalling not less than 72 hours, the period referred to in paragraph (1A) shall be extended for a period corresponding to the period or periods of disruption.”,

- (iii) in paragraph (2) by substituting “Notice of the delivery of the common draft terms to the Registrar or, as the case may be, notice of publication on the company’s website of the common draft terms, pursuant to this Regulation and the notice referred to in paragraph (1)(b) or (1A)(b) shall, at least 1 month before the general meeting referred to in Regulation 10, be caused to be published—” for “Notice of the delivery of the common draft terms to the Registrar pursuant to this Regulation and the notice referred to in paragraph (1)(b) shall, at least 1 month before the general meeting referred to in Regulation 10, be caused to be published—”.
- (iv) in paragraph (3)(b) by inserting “or (1A)(b)” after “paragraph (1)(b)”, and
- (v) in paragraph (3)(d) by inserting “or from the company” after “from the Registrar”,

(b) in Regulation 9—

- (i) in paragraph (1) by substituting “Subject to paragraph (1A), for the period” for “For the period”,

(ii) by inserting the following paragraphs after paragraph (1):

“(1A) Subject to paragraph (1B), paragraph (1) does not apply to an Irish merging company if, it publishes, free of charge on its website, the documents listed in paragraph (1) for a continuous period of at least 2 months commencing at least one month before the date of the general meeting convened in accordance with Regulation 10 and ending at least one month after that date.

(1B) Paragraph (1A) does not apply where the entitlement referred to in paragraph (2) does not apply as a result of the application of paragraph (2B).

(1C) Where, in the period referred to in paragraph (1A), access to the company’s website is disrupted for a continuous period of at least 24 hours or separate periods totalling not less than 72 hours, the period referred to in paragraph (1A) shall be extended for a period corresponding to the period or periods of disruption.”,

(iii) in paragraph (2) by substituting “Subject to paragraph (2A), the notice” for “The notice”, and

(iv) by inserting the following paragraphs after paragraph (2):

“(2A) Subject to paragraph (2B), where a member of the company has consented to the use by the company of electronic means for conveying information, the copies referred to in paragraph (2) may be provided by electronic mail to that member and the notice convening the general meeting referred to in paragraph (2) shall contain a statement to that effect.

(2B) Where, for a continuous period of at least 2 months commencing at least one month before the date of the general meeting convened in accordance with Regulation 10 and ending at least one month after that date, full copies of the documents listed in paragraph (1) are available to download and print, free of charge, from the company’s website by the members of the company and its employee representatives (or, if there are no employee representatives, the employees), the entitlement referred to in paragraph (2) shall not apply.

(2C) Where, in the period referred to in paragraph (2B), access to the company’s website is disrupted for a continuous period of at least 24 hours or for separate periods totalling not less than 72 hours, the period referred to in paragraph (2B) shall be extended for a period corresponding to the period or periods of disruption.”,

(c) in Regulation 10—

(i) by substituting the following paragraph for paragraph (3):

“(3) The directors of each Irish merging company shall inform—

(a) the general meeting of that company, and

(b) as soon as practicable, the directors of each of the other merging companies,

of any material change in the assets and liabilities of that Irish merging company between the date of the common draft terms and the date of that general meeting.”, and

(ii) in paragraph (4) by substituting “each such other merging company” for “the successor company”,

(d) in Regulation 11—

(i) in paragraph (2) by substituting “Subject to paragraphs (3A), (3B) and (3C), the conditions referred to in paragraph (1)(b) are the following:” for “The conditions referred to in paragraph (1)(b) are the following:”,

(ii) in clause (i) of paragraph (2)(b) by substituting “to inspect, at the registered office of the successor company, during ordinary hours of business, or to have access on the successor company’s website under the conditions specified in paragraphs (1A), (1B) and (1C) of Regulation 9, to copies of—” for “to inspect, at the registered office of the successor company, during ordinary hours of business, copies of—”,

(iii) in clause (ii) of paragraph (2)(b) by inserting “or to download copies of them from the successor company’s website pursuant to paragraphs (2A), (2B) and (2C) of Regulation 9” after “on request”,

(iv) in paragraph (3) by substituting “Subject to subparagraph (e), where the latest annual accounts” for “Where the latest annual accounts”, and

(v) in paragraph (3) by inserting the following subparagraph after subparagraph (d):

“(e) this paragraph does not apply to a merging company—

(i) which makes public a half-yearly financial report covering the first 6 months of its financial year

pursuant to Regulation 6 of the Transparency (Directive 2004/109/EC) Regulations 2007 (S.I. No. 277 of 2007) if it makes that report available for inspection at its registered office or on its website pursuant to subparagraph (b) of paragraph (2), or

(ii) if all of the holders of shares and other securities conferring the right to vote in general meetings of the company have so agreed.”, and

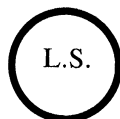
(vi) by inserting the following paragraphs after paragraph (3):

“(3A) Subject to paragraph (3B), where a member of the company has consented to the use by the company of electronic means for conveying information, the copies referred to in clause (i) of paragraph (2)(b) may be so provided.

(3B) Where, for a continuous period of at least 2 months commencing at least one month before the date of the general meeting convened in accordance with Regulation 10 and ending at least one month after that date, full copies of the documents listed in clause (i) of paragraph (2)(b) are available to download and print, free of charge, from the company’s website by members of the company, the entitlement referred to in that clause shall not apply.

(3C) Where, in the period referred to in paragraph (3B), access to the company’s website is disrupted for a continuous period of at least 24 hours or for separate periods totalling not less than 72 hours, the period referred to in paragraph (3B) shall be extended for a period corresponding to the period or periods of disruption.”, and

(e) by deleting paragraph (1) of Regulation 21.



GIVEN under my Official Seal,
20 June 2011.

RICHARD BRUTON,
Minister for Jobs, Enterprise and Innovation.

EXPLANATORY NOTE

(This note is not part of the Instrument and does not purport to be a legal interpretation.)

These Regulations give effect to Directive 2009/109/EC of the European Parliament and of the Council of 16th September 2009 amending Council Directives 77/91/EEC, 78/855/EEC and 82/891/EEC, and Directive 2005/56/EC as regards reporting and documentation requirements in the case of mergers and divisions.

The Directive was adopted in the context of the EU drive to reduce administrative burdens, in this instance, on companies undertaking mergers or divisions.

The Regulations allow for—

- a relaxation of the reporting requirements imposed on companies undertaking mergers or divisions, particularly where the participants in such mergers or divisions are parent companies and their subsidiaries and the shareholders resolve to dispense with certain reports.
- the avoidance of duplication where similar or equivalent reports are required by different EU instruments; and
- the facilitation of the use of the internet and other electronic means for the publication and dissemination of documents involved in mergers/divisions.

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TEACH SUN ALLIANCE, SRÁID THEACH LAIGHEAN, BAILE ÁTHA CLIATH 2,
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