



STATUTORY INSTRUMENTS.

**S.I. No. 356 of 2012**



RULES OF THE SUPERIOR COURTS (ORDER 75) 2012

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We, the Superior Courts Rules Committee, constituted pursuant to the provisions of the Courts of Justice Act 1936, section 67, and reconstituted pursuant to the provisions of the Courts of Justice Act 1953, section 15, by virtue of the powers conferred upon us by the Courts of Justice Act 1924, section 36, and the Courts of Justice Act, 1936, section 68 (as applied by the Courts (Supplemental Provisions) Act 1961, section 48), and the Courts (Supplemental Provisions) Act 1961, section 14, and of all other powers enabling us in this behalf, do hereby make the following Rules of Court.

Dated this 13th day of October, 2011.

Susan Denham  
Nicholas Kearns  
Joseph Finnegan  
Donal O'Donnell  
Paul McGarry  
Patrick O'Connor  
Mary Cummins  
Noel Rubotham  
Geraldine Manners

I concur in the making of the following Rules of Court.

Dated this 15th day of September, 2012.

ALAN SHATTER,  
Minister for Justice and Equality.

*Notice of the making of this Statutory Instrument was published in  
"Iris Oifigiúil" of 25th September, 2012.*

## S.I. No. 356 of 2012

## RULES OF THE SUPERIOR COURTS (ORDER 75) 2012

1. (1) These Rules, which may be cited as the Rules of the Superior Courts (Order 75) 2012, shall come into operation on the 15th day of October 2012.

(2) These Rules shall be construed together with the Rules of the Superior Courts.

(3) The Rules of the Superior Courts as amended by these Rules may be cited as the Rules of the Superior Courts 1986 to 2012.

2. The Rules of the Superior Courts are amended:

(i) by the substitution for paragraphs (c), (d) and (e) of sub-rule (3) of rule 25 of Order 75 of the following paragraphs:

“(c) contain an averment confirming the delivery by the applicant company to the Registrar of Companies of the documents referred to in Regulation 8(1) or, as the case may be, verifying the publication in accordance with Regulation 8(1A) on the applicant company’s website of the documents referred to in Regulation 8(1A) and the publication by

(i) the Registrar of Companies and

(ii) the applicant company

of notice of such delivery or, as the case may be, of such publication, in accordance with Regulation 8(2) and (3);

(d) include evidence of the places at which and times during which the documents referred to in Regulation 9(1) were made available in accordance with that Regulation, or, as the case may be, verifying the publication in accordance with Regulations 9(1A) and 9(1C) on the applicant company’s website of the documents referred to in Regulation 9(1) and the applicant company’s compliance with Regulations 9(2A), 9(2B) and 9(2C) so far as they apply, and

(e) exhibit the original or a true copy of, and verify, any document relied on in support of the application, which shall, without limitation, include:

(i) the common draft terms referred to in Regulation 5 adopted by the board of any Irish merging company;

(ii) the resolution of the board of any Irish merging company adopting the common draft terms;

- (iii) the directors' explanatory report referred to in Regulation 6;
  - (iv) the expert's report to the members referred to in Regulation 7 or evidence as to why such a report was not required including, if applicable, any resolution or other document recording the agreement of the shareholders concerned that such a report is not necessary;
  - (v) the notice delivered by the applicant company to the Registrar of Companies referred to in Regulation 8(1)(b) or as the case may be, the information published on the applicant company's website in accordance with Regulation 8(1A)(b);
  - (vi) copies of the CRO Gazette containing the notice published by the Registrar of Companies and of the editions of the two national daily newspapers containing the notice published by the applicant company in accordance with Regulation 8(2) and (3);
  - (vii) any special resolution approved in accordance with Regulation 10 and evidence of the satisfaction of any condition to which it is subject pursuant to Regulation 10(2);
  - (viii) any written request by any minority shareholder pursuant to Regulation 12.”;
- (ii) by the substitution for sub-rule (4) of rule 28 of Order 75 of the following sub-rule:

“(4) The originating notice of motion referred to in sub-rule (1) shall be grounded upon an affidavit sworn on behalf of each of the merging companies or, as the case may be, each of the companies involved in the division, which shall:

(a) exhibit and verify:

- (i) the draft terms of merger signed and dated on behalf of each of the merging companies in accordance with Regulation 6(4),
- (ii) a copy of the explanatory report referred to in Regulation 7(1), provided that in any case where an agreement referred to in Regulation 7(4) has been made between or among the holders of shares or other securities, the affidavit shall instead verify the making of such an agreement and exhibit a copy of that agreement, if in writing;

- (iii) the independent person's report referred to in Regulation 8(1), and
- (iv) any accounting statement referred to in Regulation 9(1) or where no such accounting statement is required for any company concerned, a copy of that company's latest annual accounts, provided that in any case where a merging company relies on Regulation 9(6), the affidavit shall instead exhibit the financial report referred to in Regulation 9(6) and shall verify that merging company's compliance with Regulation 12, and in any case where an agreement referred to in Regulation 9(7) has been made between or among the holders of shares or other securities, the affidavit shall instead verify the making of such an agreement and exhibit a copy of that agreement, if in writing

or, as the case may be,

- (i) the draft terms of division signed and dated on behalf of each of the companies involved in the division in accordance with Regulation 26(4),
- (ii) the explanatory report referred to in Regulation 27(1), provided that in any case where an agreement referred to in Regulation 27(5) has been made between or among the holders of shares or other securities, the affidavit shall instead verify the making of such an agreement and exhibit a copy of that agreement, if in writing, and in any case where each of the companies involved in the division relies on Regulation 27(6), the affidavit shall instead verify the allocation of shares in each of the acquiring companies in accordance with Regulation 27(6),
- (iii) the independent person's report referred to in Regulation 28(1), and
- (iv) any accounting statement referred to in Regulation 29(1) or where no such accounting statement is required for any company concerned, a copy of that company's latest annual accounts, provided that in any case where a company relies on Regulation 29(6), the affidavit shall instead exhibit the financial report referred to in Regulation 29(6) and shall verify that company's compliance with Regulation 31, and in any case where an agreement referred to in Regulation 29(7) has been made between or among the holders of shares or other securities, the affidavit shall instead verify the making of such an

agreement and exhibit a copy of that agreement, if in writing;

- (b) contain an averment confirming the delivery by the applicant companies to the Registrar of Companies of the document referred to in Regulation 11(1)(a) or, as the case may be, Regulation 30(1)(a), or verifying the publication of that document in accordance with Regulation 11(3)(a) or, as the case may be, Regulation 30(3)(a), on each relevant company's website;
  - (c) verify the publication by the applicant companies of notice of such delivery in accordance with Regulation 11(1)(b) or Regulation 30(1)(b) or, as the case may be, notice of such publication in accordance with Regulation 11(3)(b) or Regulation 30(3)(b);
  - (d) include evidence of:
    - (i) the times during which the documents referred to in Regulation 12(1) or, as the case may be, Regulation 31(1), were made available for inspection at the registered office of each company concerned in accordance with that Regulation or, as the case may be,
    - (ii) the publication on each relevant company's website in accordance with Regulations 12(3) and 12(5) of the documents referred to in Regulation 12(1) and that company's compliance with Regulations 13(3B) and 13(3C) so far as they apply or, as the case may be, the publication on each relevant company's website in accordance with Regulations 31(4) and 31(6) of the documents referred to in Regulation 31(1) and that company's compliance with Regulations 32(3B) and 32(3C) so far as they apply;
  - (e) exhibit a copy of every notice convening a general meeting referred to in Regulation 13 or, as the case may be, Regulation 32, and include evidence of the passing of every special resolution referred to in Regulation 13 or, as the case may be, Regulation 32;
  - (f) exhibit any written request by any shareholder pursuant to Regulation 15(1) or, as the case may be, Regulation 34(1), and
  - (g) exhibit the original or a true copy of and verify any other document relied upon in support of the application.”, and
- (iii) by the substitution for sub-rule (2) of rule 30 of Order 75 of the following sub-rule:

“(2) The originating notice of motion shall be grounded upon an affidavit sworn on behalf of the Irish merging company, which shall comply with the requirements of rule 28(4), in the case of a merger carried out in accordance with the 1987 Regulations, and shall:

(a) exhibit and verify:

- (i) the draft terms of merger drawn up by each of the merging companies in accordance with Article 20 of the 2001 Council Regulation and in accordance with Regulation 6(4) of the 1987 Regulations,
- (ii) a copy of the explanatory report referred to in Regulation 7(1) of the 1987 Regulations, provided that in any case where an agreement referred to in Regulation 7(4) of the 1987 Regulations has been made between or among the holders of shares or other securities, the affidavit shall instead verify the making of such an agreement and exhibit a copy of that agreement, if in writing,
- (iii) the independent person’s report referred to in Regulation 8(1) of the 1987 Regulations, or evidence as to why such a report was not required including, if applicable, any resolution or other document recording the agreement of the persons mentioned in Regulation 8(11) of the 1987 Regulations that Regulation 8(1) of the 1987 Regulations shall not apply, and
- (iv) any accounting statement referred to in Regulation 9(1) of the 1987 Regulations or where no such accounting statement is required for any company concerned, a copy of that company’s latest annual accounts, provided that in any case where the company relies on Regulation 9(6), the affidavit shall instead exhibit the financial report referred to in Regulation 9(6) and shall verify that company’s compliance with Regulation 12, and in any case where an agreement referred to in Regulation 9(7) has been made between or among the holders of shares or other securities, the affidavit shall instead verify the making of such an agreement and exhibit a copy of that agreement, if in writing;

(b) contain an averment confirming the delivery by the applicant companies to the Registrar of Companies of the documents referred to in Regulation 11(1)(a) of the 1987 Regulations, or verifying the publication of those documents in accordance with Regulation 11(3)(a) of the 1987 Regulations on each relevant company’s website;

- (c) verify the publication by the applicant companies of notice of such delivery in accordance with Regulation 11(1)(b) of the 1987 Regulations or, as the case may be, notice of such publication in accordance with Regulation 11(3)(b) of the 1987 Regulations and the publication by the applicant companies of notice of such delivery in;
- (d) contain an averment confirming the publication in accordance with Article 21 of the 2001 Council Regulation in the CRO Gazette of:
  - (i) the type, name and registered office of every merging company;
  - (ii) the register in which the documents referred to in Article 3(2) of Directive 68/151/EEC are filed in respect of each merging company, and the number of the entry in that register;
  - (iii) an indication of the arrangements made in accordance with Article 24 of the 2001 Council Regulation for the exercise of the rights of the creditors of the company in question and the address at which complete information on those arrangements may be obtained free of charge;
  - (iv) an indication of the arrangements made in accordance with Article 24 of the 2001 Council Regulation for the exercise of the rights of minority shareholders of the company in question and the address at which complete information on those arrangements may be obtained free of charge;
  - (v) the name and registered office proposed for the SE;
- (e) include evidence of:
  - (i) the times during which the documents referred to in Regulation 12(1) of the 1987 Regulations were made available at the registered office of each company concerned in accordance with that Regulation or, as the case may be,
  - (ii) the publication on the website of each company concerned in accordance with Regulations 12(3) and 12(5) of the 1987 Regulations of the documents referred to in Regulation 12(1) of the 1987 Regulations and each such company's compliance with Regulations 13(3B) and 13(3C) of the 1987 Regulations so far as they apply;
- (f) exhibit a copy of every notice convening a general meeting referred to in Regulation 13 of the 1987 Regulations and

include evidence of the passing of every special resolution referred to in Regulation 13 of the 1987 Regulations;

- (g) exhibit any written request by any shareholder pursuant to Regulation 15(1) of the 1987 Regulations, and
- (h) exhibit the original or a true copy of and verify any other document relied upon in support of the application.”

EXPLANATORY NOTE

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

These rules effect amendments to Order 75 consequential on the European Communities (Mergers and Divisions of Companies) (Amendment) Regulations 2011 ("the 2011 Regulations"), which dispense with certain requirements in the case of—

- (a) a merger to which the European Communities (Mergers and Divisions of Companies) Regulations 1987 (S.I. No. 137 of 1987) ("the 1987 Regulations") and the European Communities (Cross-Border Mergers) Regulations 2008 (S.I. No. 157 of 2008) respectively apply,
- (b) a division by acquisition or by formation of new companies to which the 1987 Regulations apply, in the circumstances specified in the 2011 Regulations.

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