



STATUTORY INSTRUMENTS.

S.I. No. 306 of 2014



EUROPEAN COMMUNITIES (COMPANIES) REGULATIONS 2014

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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 effect to Directive 2009/101/EC of the European Parliament and of the Council of 16 September 2009¹ and Directive 2012/17/EU of the European Parliament and of the Council of 13 June 2012², hereby make the following regulations:

Citation, construction and commencement

1. (1) These Regulations may be cited as the European Communities (Companies) Regulations 2014.

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

Interpretation

2. (1) In these Regulations—

“Act of 1963” means the Companies Act 1963 (No. 33 of 1963);

“certified translation” means certified to be a true and correct translation in accordance with rules drawn up by the registrar of companies and published in the Companies Registration Office Gazette;

“company” shall be construed in accordance with Regulation 3;

“Directive” means Directive No. 2009/101/EC of the European Parliament and of the Council of 16 September 2009³, as amended by Directive No. 2012/17/EU of the European Parliament and of the Council of 13 June 2012⁴;

“electronic gazette” means a gazette which is kept solely in electronic form;

“interconnection system” means the system of interconnection of central, commercial and companies registers established in accordance with Article 4a(2) of the Directive;

“Irish register” means the register maintained by the registrar of companies;

“letters and order forms” means letters and order forms in paper form or in any other medium;

¹OJ No. L 258, 1.10.2009, p.11.

²OJ No. L 156, 16.6.2012, p.1.

³OJ No. L 258, 1.10.2009, p.11.

⁴OJ No. L 156, 16.6.2012, p.1.

*Notice of the making of this Statutory Instrument was published in
“Iris Oifigiúil” of 8th July, 2014.*

“Member State” means a state that is a member of the European Union (within the meaning of the European Communities Act 1972 (No. 27 of 1972)) or a state that is a party to the agreement on the European Economic Area signed at Oporto on 2 May 1992, as adjusted by the protocol done at Brussels on 17 March 1993;

“Official Assignee” has the same meaning as it has in the Bankruptcy Act 1988;

“Regulations of 1973” means the European Communities (Companies) Regulations 1973 (S.I. No. 163 of 1973);

“Regulations of 1987” mean the European Communities (Mergers and Division of Companies) Regulations 1987 (S.I. No. 137 of 1987);

“Regulations of 1989” mean the European Communities (European Economic Interest Groupings) Regulations 1989 (S.I. No. 191 of 1989);

“Regulations of 1993” mean the European Communities (Branch Disclosures) Regulations 1993 (S.I. No. 395 of 1993);

“unregistered company” shall be construed in accordance with Regulation 3.

(2) A word or expression that is used in these Regulations and is also used in the Directive has the same meaning in these Regulations as it has in the Directive.

Application

3. These Regulations apply to every company, being a company registered under the Act of 1963 with limited liability or an unregistered company with limited liability to which certain provisions are applied by section 377 (1) of the Act of 1963, and the terms "company" and "unregistered company" shall be construed accordingly.

CRO Gazette

4. (1) For the purposes of the Directive the registrar of companies shall maintain on the website of the Companies Registration Office an electronic gazette which shall be known and is in these Regulations referred to as the Companies Registration Office Gazette.

(2) The Companies Registration Office Gazette is appointed for the purposes of publication of the documents and particulars required to be disclosed by section 227B(1) of the Act of 1963, these Regulations, the Regulations of 1987, the Regulations of 1989 and the Regulations of 1993;

Publication of Notices

5. (1) A company shall cause to be published in the Companies Registration Office Gazette, notice of the delivery to or the issue by the registrar of companies of the following documents and particulars:

- (a) any certificate of incorporation of the company;

- (b) the memorandum and articles of association, or the charter, statutes or other instrument constituting or defining the constitution of the company (in these Regulations included in the term “memorandum and articles of association”);
- (c) any document making or evidencing an alteration in the memorandum or articles of association of the company;
- (d) every amended text of the memorandum and articles of association of the company;
- (e) any return relating to the company’s register of directors or notification of a change among the directors of the company;
- (f) any return relating to the persons, other than the board of directors, authorised to enter into transactions binding the company, or notification of a change among such persons;
- (g) the annual return of the company and the accounting documents that are required to be published in accordance with—
 - (i) Fourth Council Directive 78/660/EEC of 25 July 1978⁵,
 - (ii) Seventh Council Directive 83/349/EEC of 13 June 1983⁶,
 - (iii) Council Directive 86/635/EEC of 8 December 1986⁷, and
 - (iv) Council Directive 91/674/EEC of 19 December 1991⁸;
- (h) any notice of the situation of the registered office of the company, or of any change therein;
- (i) any copy of a winding up order in respect of the company;
- (j) any order for the dissolution of the company on a winding up;
- (k) any return by a liquidator of the final meeting of the company on a winding up;
- (l) any changes to the documents and particulars referred to at subparagraphs (a) to (f) and (h) to (k).

(2) A notice in respect of the documents and particulars referred to at subparagraphs (a) to (k) of paragraph (1) shall be published within six weeks of the relevant delivery or issue.

⁵OJ No. L 222, 14.8.1978, p. 11.

⁶OJ No. L 193, 18.7.1983, p. 1.

⁷OJ No. L 372, 31.12.1986, p. 1.

⁸OJ No. L 374, 31.12.1991, p. 7.

(3) A notice in respect of a change to any of the documents and particulars referred to at subparagraphs (a) to (f) and (h) to (k) of paragraph (1) shall, so far as practicable, be published within 21 days of the relevant delivery or issue.

(4) In a voluntary winding up, the liquidator shall within 14 days after his appointment cause to be published in the Companies Registration Office Gazette, a notice of his appointment in addition to delivering notice to the registrar of companies as required by section 278 of the Act of 1963.

(5) For the purposes of the provisions of Article 3(4) of the Directive the registrar of companies shall ensure that certification of electronic copies of documents or particulars guarantees both the authenticity of their origin and the integrity of their contents, by means at least of an advanced electronic signature within the meaning of Article 2(2) of Directive 1999/93/EC of the European Parliament and of the Council of 13 December 1999⁹.

(6) Any document or particular specified in these Regulations that is required to be delivered to the registrar of companies shall be drawn up in the Irish or English language, and may be accompanied by a certified translation of that document or particular into any other official language of the European Union.

(7) Where a certified translation referred to in paragraph (6) has been delivered and there is a discrepancy between—

- (a) a document or particular required to be delivered or disclosed to the registrar of companies under paragraph (6), and
- (b) the certified translation accompanying it,

the certified translation—

- (i) may not be relied upon by the company as against any person dealing with the company, and
- (ii) may be relied upon by a person dealing with the company as against that company, unless the company proves that the person dealing with the company had knowledge of the document or particular in the Irish or English version.

(8) On and from the date of the establishment of the interconnection system, the registrar of companies shall make the documents and particulars referred to in paragraph (1)(other than the documents and particulars referred to in subparagraph (l) of paragraph (1)) available to members of the public through the interconnection system in a standard message form and shall ensure that such documents and particulars are accessible by electronic means.

(9) The registrar of companies may charge members of the public a fee for obtaining access to the documents and particulars referred to in paragraph (1) through the interconnection system which shall be no greater than the amount

⁹OJ No. L 013, 19.1.2000, p.12.

the registrar of companies estimates it will incur in, or in connection with, making the documents and particulars referred to in paragraph (1) available through the interconnection system.

(10) On and from the date of the establishment of the interconnection system, the name and legal form, registered office, country of registration and registration number of the company shall be available free of charge through the interconnection system.

(11) On and from the date of the establishment of the interconnection system, as soon as practicable following receipt, the registrar of companies shall make available through the interconnection system the following information in respect of a company:

- (a) the making of a winding-up order under section 213 of the Act of 1963;
- (b) the appointment of a provisional liquidator under section 226 of that Act;
- (c) the appointment of a liquidator under section 225 of that Act;
- (d) the passing of a resolution for a voluntary winding-up under section 251 of that Act;
- (e) the appointment of a liquidator in a creditors' voluntary winding up under section 267 of that Act;
- (f) an arrangement under the control of the High Court that involves the vesting of all or part of the property of the company in the Official Assignee for realisation and distribution;
- (g) the appointment of an examiner (whether interim or otherwise) under section 2 of the Companies (Amendment) Act 1990 (No. 27 of 1990);
- (h) the appointment of a receiver of the whole or substantially the whole of the property of a company;
- (i) the cessation of an appointment of a receiver of the whole or substantially the whole of the property of a company;
- (j) the striking off under section 311 of the Act of 1963, section 12 or 12A of the Companies (Amendment) Act 1982 or section 43 of the Companies (Amendment) (No. 2) Act, 1999 from the register referred to in those sections of those Acts.

(12) Compliance by the registrar of companies with the obligations under paragraph (11) shall constitute compliance by the registrar of companies with its obligations under Regulation 5D of the Regulations of 1993.

(13) On and from the date of the establishment of the interconnection system, the registrar of companies shall enable receipt from registers in other Member

States of the information referred to in Article 3d(1) of the Directive relating to a company with a branch or branches in the State.

(14) The registrar of companies shall make the information referred to in paragraph (11) available free of charge to registers in other Member States.

(15) The registrar of companies shall ensure that up-to-date information is made available to the public explaining the provisions of Irish law in accordance with which third parties can rely on the documents and particulars referred to in paragraph (1).

Text of altered memorandum and articles

6. Where any alteration is made in a company's memorandum or articles of association, notice of which the company is required to publish under Regulation 5, the company shall deliver to the registrar of companies, in addition to the alteration, a copy of the text of the memorandum and articles as so altered.

Organs Authorised to Bind Company

7. (1) In favour of a person dealing with a company in good faith, any transaction entered into by any organ of the company, being its board of directors or any person registered under these Regulations as a person authorised to bind the company, shall be deemed to be within the capacity of the company and any limitation of the powers of that board or person, whether imposed by the memorandum or articles of association or otherwise, may not be relied upon as against any person so dealing with the company.

(2) Any person dealing with a company shall be presumed to have acted in good faith unless the contrary is proved.

(3) For the purpose of this Regulation, the registration of a person authorised to bind the company shall be effected by delivering to the registrar of companies a notice giving the name and description of the person concerned.

Registration of Unregistered Companies

8. (1) Every unregistered company shall within one month of its incorporation deliver to the registrar of companies for registration a certified copy of the memorandum and articles of association of the company as amended to date.

(2) Every unregistered company shall cause to be published in the Companies Registration Office Gazette, notice of the delivery of all documents required to be delivered under paragraph (1), stating in the notice the name of the company, the description of the document and the delivery date.

Application of Act to Unregistered Companies

9. (1) The provisions specified in the second column of the Ninth Schedule to the Act of 1963 shall apply to unregistered companies as they apply to companies generally, notwithstanding anything to the contrary in the third column of that Schedule.

(2) In addition to the provisions specified in the Ninth Schedule to the Act of 1963, the provisions of that Act specified in the following Table shall apply to unregistered companies with necessary modifications.

TABLE

Subject Matter	Provisions of Act of 1963 applied
Acts done by company (ultra vires rule)	Section 8
Pre-incorporation contracts	Section 37 (1) and (2)
Registered office	Section 113
Validity of acts of directors	Section 178

Letters, Order Forms and Websites

10. (1) Every company shall include the following particulars on its letters and order forms:

- (a) the name and legal form of the company;
- (b) the place of registration of the company and the number with which it is registered;
- (c) the address of the registered office of the company;
- (d) in the case of a company exempt from the obligation to use the word 'limited' or 'teoranta' as part of its name, the fact that it is a limited company;
- (e) in the case of a company that is being wound up, the fact that it is being wound up;
- (f) if reference is made in the letter or order form to the share capital of the company, the reference shall be to the capital that is subscribed and paid up.

(2) Where a company has a website, it shall display in a prominent and easily accessible place on that website the particulars referred to in subparagraphs (a) to (f) of paragraph (1), except that the reference in subparagraph (f) to 'in the letter or order forms' shall be construed as a reference to 'on the website'.

Failure to Notify Documents

11. (1) Subject to paragraph (2), the documents and particulars, notice of which is required by these Regulations, or was required by the Regulations of 1973, to be published in the Companies Registration Office Gazette, may not be relied upon by the company as against any other person until after such publication unless the company proves that such person had knowledge of them.

(2) Documents and particulars, notice of which is required by these Regulations, or was required by the Regulations of 1973, to be published in the Companies Registration Office Gazette, shall not be relied upon for the purposes of transactions taking place before the sixteenth day after the date of publication

against a person who proves that it was impossible for him to have had knowledge of them.

Extension of Time for Delivery of Documents

12. The High Court may by order at any time extend the time for delivery of documents under these Regulations for such period as that court may think proper.

Offences and Penalties

13. (1) If a company fails to comply with Regulation 5, 6, 8 or 10, the company and—

- (a) every officer of the company who is in default, and
- (b) any person in accordance with whose directions or instructions the directors of the company are accustomed to act and to whose directions or omissions the default is attributable,

shall be guilty of an offence.

(2) A person who is convicted of an offence under these Regulations shall be liable, on summary conviction, to a class C fine.

(3) Where a person has been convicted of an offence under these Regulations, the person shall be guilty of a further offence on each day on which the contravention of which the first mentioned offence consists continues after the person's having been so convicted and in respect of each such further offence shall be liable, on summary conviction, to a fine not exceeding €100.

Interconnection system

14. (1) The registrar of companies shall apply a unique identifier to each company on the Irish register.

(2) The unique identifier referred to in paragraph (1) shall include the company number and elements which make it possible to identify that the register of the company is the Irish register.

Revocation and transitional

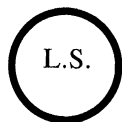
15. (1) The Regulations of 1973 and the European Communities (Companies) Regulations 2004 (S.I. No. 839 of 2004) are revoked.

(2) An act in compliance with a provision listed in the first column of the following table is effective as if undertaken in compliance with the provision listed opposite in the second column of the table.

Provision of the Regulations of 1973	Provision of these Regulations
Regulation 4(1)	Regulation 5(1)
Regulation 4(3)	Regulation 5(4)
Regulation 5	Regulation 6
Regulation 6(3)	Regulation 7(3)

Provision of the Regulations of 1973	Provision of these Regulations
Regulation 7(1)	Regulation 8(1)
Regulation 7(2)	Regulation 8(2)

(3) Where, before the commencement of these Regulations, a person was convicted of an offence under the Regulations of 1973 and, after having been so convicted, the person continues to commit the contravention of which that offence consisted, then, if that person continues to commit that contravention after such commencement, the person shall be guilty of a further offence under these Regulations on each day after such commencement on which the contravention of which the first mentioned offence consists continues and, in respect of each such further offence, shall be liable on summary conviction to a fine not exceeding €100.



GIVEN under my Official Seal,
3 July 2014.

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 2009/101/EC of the European Parliament and of the Council of 16 September 2009 which is the codified version of First Council Directive 68/151/EEC of 9 March 1968 and its subsequent amendments.

The Regulations also give effect to Directive 2012/17/EU of the European Parliament and of the Council of 13 June 2012 on the interconnection of central, commercial and companies registers.

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