



**BILLE NA gCUIDEACHTAÍ (FORÁLACHA
ILGHNÉITHEACHA) 2009**
COMPANIES (MISCELLANEOUS PROVISIONS) BILL 2009

Mar a ritheadh ag Dáil Éireann
As passed by Dáil Éireann

ARRANGEMENT OF SECTIONS

Section

1. Transitional accounting standards.
 2. Regulations.
 3. Amendment of Companies Act 1990.
 4. Amendment of Companies (Auditing and Accounting) Act 2003.
 5. Amendment of UCITS Regulations.
 6. Short title, commencement and construction.
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ACTS REFERRED TO

Companies Act 1990	1990, No. 33
Companies Acts	
Companies (Auditing and Accounting) Act 2003	2003, No. 4
Investment Funds, Companies and Miscellaneous Provisions Act 2005	2005, No. 12



**BILLE NA gCUIDEACHTAÍ (FORÁLACHA
ILGHNÉITHEACHA) 2009**
COMPANIES (MISCELLANEOUS PROVISIONS) BILL 2009

BILL

5 *entitled*

AN ACT TO PROVIDE, IN LIMITED CIRCUMSTANCES, FOR
THE TRANSITIONAL USE BY CERTAIN PARENT
UNDERTAKINGS OF INTERNATIONALLY RECOG-
NISED ACCOUNTING STANDARDS OTHER THAN
10 THOSE GENERALLY ACCEPTED ACCOUNTING PRIN-
CIPLES AND POLICIES USED IN THE STATE, TO
AMEND THE COMPANIES ACT 1990, THE COMPANIES
(AUDITING AND ACCOUNTING) ACT 2003 AND THE
EUROPEAN COMMUNITIES (UNDERTAKINGS FOR
15 COLLECTIVE INVESTMENT IN TRANSFERABLE
SECURITIES) REGULATIONS 2003, AND TO PROVIDE
FOR RELATED MATTERS.

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

1.—(1) In this section—

20 “accounts” means Companies Act individual accounts and Compan-
ies Act group accounts;

Transitional
accounting
standards.

“relevant parent undertaking” means a parent undertaking—

- (a) which does not have securities admitted to trading on a regulated market,
- 25 (b) whose securities (or whose receipts in respect of those securities) are registered with the Securities and Exchange Commission of the United States of America, or which is otherwise subject to reporting to that Commission, under the laws of the United States of
30 America, and
- (c) which, prior to the commencement of this section, has not made and was not required to make an annual return to the registrar of companies to which accounts were required to have been annexed;

35 “US generally accepted accounting principles” means the standards and interpretations, in relation to accounting and financial statements, issued by any of the following bodies constituted under the

laws of the United States of America or of a territorial unit of the United States of America:

- (a) the Financial Accounting Standards Board;
- (b) the American Institute of Certified Public Accountants;
- (c) the Securities and Exchange Commission. 5

(2) This section applies to the accounts of a relevant parent undertaking that are prepared for such of its first 4 financial years after it is incorporated in the State as end or ends not later than 31 December 2015.

(3) To the extent that the use of US generally accepted accounting principles does not contravene any provision of the Companies Acts or of any regulations made thereunder— 10

- (a) a true and fair view of the state of affairs and profit or loss of a relevant parent undertaking may be given by the use by that undertaking of those principles in the preparation of its Companies Act individual accounts, and 15
- (b) a true and fair view of the state of affairs and profit or loss of a relevant parent undertaking and its subsidiary undertakings as a whole may be given by the use by that relevant parent undertaking of those principles in the preparation of its Companies Act group accounts. 20

(4) Where accounts are prepared in accordance with this section, the notes to those accounts shall contain a statement to that effect.

Regulations.

2.—(1) In this section “accounts” means Companies Act individual accounts and Companies Act group accounts. 25

(2) The Minister may make regulations providing for specified categories of parent undertakings which do not have securities admitted to trading on a regulated market and providing that—

- (a) a true and fair view of the state of affairs and profit or loss of a parent undertaking in such a category may be given by the preparation by it of its Companies Act individual accounts for a specified number, not to exceed 4, of its first financial years in accordance with specified accounting standards, and 30
- (b) a true and fair view of the state of affairs and profit or loss of a parent undertaking in such a category and its subsidiary undertakings as a whole may be given by the preparation by that parent undertaking of its Companies Act group accounts for a specified number, not to exceed 4, of its first financial years in accordance with specified accounting standards. 35 40

(3) Regulations made under *subsection (2)* shall—

- (a) specify the accounting standards, which shall be—
 - (i) internationally recognised, and
 - (ii) generally accepted accounting principles or practice of a jurisdiction— 45

(I) to which a majority of the subsidiaries of the parent undertaking have a substantial connection, or

(II) in which the market on which the shares of the parent undertaking are primarily admitted to trading is situated,

(b) specify the number of financial years in respect of which the regulations apply, and the date on which the latest of such financial years shall end, which shall be not later than 31 December 2015, and

(c) provide that the preparation of such accounts shall not contravene any provision of the Companies Acts or of any regulations made thereunder.

(4) Every regulation 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.

(5) Where accounts are prepared in accordance with regulations made under this section, the notes to those accounts shall contain a statement to that effect.

3.—The Companies Act 1990 is amended—

Amendment of
Companies Act
1990.

(a) in section 3(2), by substituting the following for paragraph (a):

“(a) A recognised stock exchange for the purposes of any provision of the Companies Acts is an exchange or a market, whether within or outside the State, prescribed by the Minister for the purposes of that provision.”,

(b) in section 7(3), by deleting “, to an amount not less than £5,000 and not exceeding £250,000,”,

(c) in section 13(1), by substituting “relevant Minister.” for “relevant Minister, provided that no such liability on the part of the applicant or applicants shall exceed in the aggregate £250,000.”,

(d) in section 212—

(i) in subsection (1)(b), by inserting “within the State” after “exchange”,

(ii) by inserting the following subsection after subsection (1):

“(1A) For the purposes of sections 215, 226, 226A and 229, a purchase by a company that issues shares, or by a subsidiary of that company, of the first-mentioned company’s shares, is an ‘overseas market purchase’ if the shares are purchased on a recognised

stock exchange outside the State and are subject to a marketing arrangement.”,

and

- (iii) in subsection (2), by deleting “subsection (1)” and substituting “subsections (1) and (1A)”, 5
- (e) in section 215(1), by inserting “or overseas market purchase” after “market purchase” in each place where it occurs,
- (f) in section 226(1), by inserting “or, in the case of an overseas market purchase, within 3 working days,” after “28 10 days”,
- (g) by inserting the following section after section 226:

“Duty of company to publish particulars of overseas market purchase.

226A.—(1) Whenever shares for which dealing facilities are provided on a recognised stock exchange are the subject of an overseas market purchase either by the company which issued the shares or by a company which is that company’s subsidiary, the company which issued the shares shall publish, on its website for a continuous period of not less than 28 days beginning on the day that next follows the overseas market purchase concerned and is a day on which the recognised stock exchange concerned is open for business, or in any other prescribed manner, the following information for total purchases on the recognised stock market concerned on each such day:

- (a) the date, in the place outside the State where the recognised stock market concerned is located, of the overseas market purchase; 30
- (b) the purchase price at which the shares were purchased, or the highest such price and lowest such price paid by that company or subsidiary; 35
- (c) the number of shares which were purchased; 40
- (d) the recognised stock exchange on which the shares were purchased.

(2) If default is made in complying with this section, the company and every officer of the company who is in default shall be guilty of an offence.” 45

- (h) in section 229(1), by inserting “, other than when the purchase was an overseas market purchase,” after “subsidiary”, 50

(i) in section 256(8), by inserting “, other than a company to which section 256F applies,” after “this Part applies”, and

(j) by inserting the following after section 256E:

“Continuation
of foreign
investment
companies.

256F.—(1) In this section—

‘migrating company’ means a body corporate which is established and registered under the laws of a relevant jurisdiction and which is a collective investment undertaking;

‘registration documents’, in relation to a migrating company, means the following documents and, when the original registration documents are not written in the Irish language or the English language, means a translation into the Irish language or the English language certified as being a correct translation thereof by a person who is competent to so certify:

(a) a copy, certified and authenticated in the prescribed manner, of the certificate of registration or equivalent certificate or document issued with respect to the migrating company under the laws of the relevant jurisdiction;

(b) a copy, certified and authenticated in the prescribed manner, of the memorandum and articles of association of the migrating company or equivalent constitutive document of the migrating company;

(c) a list setting out particulars in relation to the directors and secretary of the migrating company in accordance with the provisions of section 195 of the Principal Act;

(d) a statutory declaration of a director of the migrating company made not more than 28 days prior to the date on which the application is made to the registrar to the effect that—

(i) the migrating company is, as of the date of the declaration, established and registered in the relevant jurisdiction, no petition or other similar proceeding to wind up or liquidate the migrating company has been notified to it and

remains outstanding in any place, and no order has been notified to the migrating company or resolution adopted to wind up or liquidate the migrating company in any place, 5

(ii) the appointment of a receiver, liquidator, examiner or other similar person has not been notified to the migrating company and, at the date of the declaration, no such person is acting in that capacity in any place with respect to the migrating company or its property or any part thereof, 10 15

(iii) the migrating company is not, at the date of the declaration, operating or carrying on business under any scheme, order, compromise or other similar arrangement entered into or made by the migrating company with creditors in any place, 20 25

(iv) at the date of the declaration the migrating company has served notice of the proposed registration on the creditors of the migrating company, 30

(v) any consent or approval to the proposed registration in the State required by any contract entered into or undertaking given by the migrating company has been obtained or waived, as the case may be, and 35 40

(vi) the registration is permitted by and has been approved in accordance with the memorandum and articles of association or equivalent constitutive document of the migrating company; 45

(e) a declaration of solvency prepared in accordance with section 256H; 50

(f) a schedule of the charges or security interests created or granted by the migrating company that would, if such charges 55

5 or security interests had been
created or granted by a company
incorporated under the
Companies Acts, have been
registrable under Part IV of the
Principal Act and such particulars
of those security interests and
charges as are specified in section
103 of the Principal Act;

10 (g) notification of the proposed
name of the migrating company
if different from its existing
name; and

15 (h) a copy of the memorandum and
articles of association of the
migrating company which the
migrating company has resolved
to adopt, which shall be in the
Irish language or the English
language, which shall take effect
on registration under this
section and which the migrating
company undertakes not to
amend before registration with-
out the prior authorisation of
the registrar;

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25
30 'relevant jurisdiction' means the prescribed
place outside the State where the migrating
company is established and registered at
the time of its application under this
section.

35 (2) A migrating company may apply to
the registrar to be registered as a company
in the State by way of continuation.

40 (3) Where an application is made under
subsection (2), the registrar shall not register
the migrating company as a company in
the State unless he or she is satisfied that
all of the requirements of the Companies
Acts in respect of the registration and of
matters precedent and incidental thereto
have been complied with and, in particular,
but without prejudice to the generality of
the foregoing, he or she is satisfied that—

45 (a) the migrating company has delivered
to the registrar an application for the
purpose, in the prescribed form and
signed by a director of the migrating
company, together with the registration
documents,

50 (b) the name or, if relevant, the proposed
new name of the migrating company has
not been determined to be undesirable

pursuant to section 21 of the
Principal Act,

(c) the migrating company has paid
to the registrar such fee as may
be specified from time to time 5
pursuant to section 369 of the
Principal Act,

(d) the migrating company has filed
with the registrar notice of the
address of its proposed regis- 10
tered office in the State,

(e) the migrating company has
applied to the Central Bank to
be authorised to carry on busi- 15
ness as a company under section
256(1) and the Central Bank
has notified the migrating com-
pany and the registrar that it
proposes to authorise the
migrating company to so carry 20
on business.

(4) An application under this section
shall be accompanied by a statutory declar-
ation in the prescribed form made by a sol- 25
icitor engaged for this purpose by the
migrating company, or by a director of the
migrating company, and stating that the
requirements mentioned in subsection (3)
have been complied with. The registrar may
accept such a declaration as sufficient evi- 30
dence of compliance.

(5) The registrar shall, as soon as is prac-
ticable after receipt of the application for
registration, publish notice of it in the Com- 35
panies Registration Office Gazette.

(6) Where the registrar receives a notifi-
cation under subsection (3)(e), the
registrar—

(a) may issue a certificate of regis- 40
tration of the migrating com-
pany by way of continuation of
the migrating company as a
body corporate under the laws
of the State, and

(b) if he or she issues such a certifi- 45
cate, shall enter in the register
maintained for the purpose of
section 103 of the Principal Act,
in relation to charges and secur-
ity interests of the migrating 50
company specified in paragraph
(f) of the definition of 'regis-
tration documents' in subsec-
tion (1), the particulars pre- 55
scribed by section 103 of the

Principal Act which have been supplied by the migrating company.

5 (7) The migrating company shall, as soon as may be after being registered under subsection (6), apply to be de-registered in the relevant jurisdiction.

10 (8) The registrar shall enter in the register of companies the date of registration of the migrating company and shall forthwith publish notice in the Companies Registration Office Gazette of the following matters:

15 (a) the date of the registration of the migrating company under this section;

(b) the relevant jurisdiction; and

20 (c) the previous name of the migrating company if different from the name under which it is being registered.

25 (9) From the date of registration, the migrating company shall be deemed to be a company formed and registered under this Act and shall continue for all purposes under this Act, and the provisions of this Part shall apply to the migrating company, provided always that this section shall not operate—

30 (a) to create a new legal entity,

35 (b) to prejudice or affect the identity or continuity of the migrating company as previously established and registered under the laws of the relevant jurisdiction for the period that the migrating company was established and registered in the relevant jurisdiction,

40 (c) to affect any contract made, resolution passed or any other act or thing done in relation to the migrating company during the period that the migrating company was so established and registered,

45 (d) to affect the rights, powers, authorities, functions and liabilities or obligations of the migrating company or any other person,
50 or

- (e) to render defective any legal proceedings by or against the migrating company.
- (10) Without prejudice to the generality of subsection (9)— 5
- (a) the failure of a migrating company to send to the registrar the particulars of a charge or security interest created prior to the date of registration shall not prejudice any rights which any person in whose favour the charge was made or security interest created may have thereunder, and 10 15
- (b) any legal proceedings that could have been continued or commenced by or against the migrating company before its registration under this section may, notwithstanding the registration, be continued or commenced by or against the migrating company after registration. 20 25
- (11) The migrating company shall notify the registrar in the prescribed form, and notify the Central Bank, within 3 days of its de-registration in the relevant jurisdiction, of that de-registration. 30
- (12) On registration of the migrating company under subsection (6), the Central Bank shall forthwith authorise the migrating company to carry on business under this Part. 35
- (13) If there is any material change in any of the information contained in the statutory declaration mentioned in paragraph (d) of the definition of ‘registration documents’ in subsection (1) after the date of the declaration and before the date of the registration under this section, the director who made that statutory declaration, and any other director who becomes aware of that material change shall forthwith deliver a new statutory declaration to the registrar relating to the change. 40 45
- (14) If the migrating company fails to comply with any provision of this section, the registrar may send to the company by post a registered letter stating that, unless the migrating company rectifies the failure within 1 month of the date of the letter and confirms that it has rectified the failure, a notice may be published in the Companies Registration Office Gazette with a view to 50 55

striking the name of the migrating company off the register.

5 (15) If the failure mentioned in subsection (14) is not rectified within 1 month after the sending of the letter referred to in that subsection, the registrar may publish in the Companies Registration Office Gazette a notice stating that, at the expiration of 1 month from the date of that notice, the name of the migrating company mentioned therein will, unless the matter is resolved, be struck off the register, and the migrating company will be dissolved.

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15 (16) At the expiration of the time mentioned in the notice, the registrar may, unless cause to the contrary is previously shown by the migrating company, strike its name off the register, and shall publish notice thereof in the Companies Registration Office Gazette, and on that publication, the migrating company shall be dissolved.

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25 (17) The Minister may make regulations prescribing places as relevant jurisdictions for the purposes of this section, where he or she is satisfied that the law of the place concerned makes provision for migrating companies to continue under the laws of the State or for companies to continue under the laws of that place in a substantially similar manner to continuations under this section.

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35 (18) Every regulation made by the Minister under subsection (17) 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 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.

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45 De-registration of companies when continued under the law of place outside the State.

256G.—(1) In this section—

‘applicant’ means a company that applies to be de-registered under this section;

‘relevant jurisdiction’ means the prescribed place outside the State in which the company proposes to be registered;

50 ‘transfer documents’, in relation to an applicant, means the following documents:

- (a) a statutory declaration of a director of the applicant made not more than 28 days prior to the

date on which the application is made to the registrar to the effect that—

- (i) the applicant will, upon registration, continue as a body corporate under the laws of the relevant jurisdiction, 5
- (ii) no petition or other similar proceeding to wind up or liquidate the applicant has been notified to the applicant and remains outstanding in any place, and no order has been notified to the applicant or resolution adopted to wind up or liquidate the applicant in any place, 10 15
- (iii) the appointment of a receiver, liquidator, examiner or other similar person has not been notified to the applicant and, at the date of the declaration, no such person is acting in that capacity in any place with respect to the applicant or its property or any part thereof, 20 25 30
- (iv) the applicant is not, at the date of the declaration, operating or carrying on business under any scheme, order, compromise or other similar arrangement entered into or made by the applicant with creditors in any place, 35
- (v) the application for de-registration is not intended to defraud persons who are, at the date of the declaration, creditors of the applicant, 40
- (vi) any consent or approval to the proposed de-registration required by any contract entered into or undertaking given by the applicant has been obtained or waived, as the case may be, and 45 50
- (vii) the de-registration is permitted by the memorandum and articles of association of the applicant; 55

(b) a declaration of solvency prepared in accordance with the provisions of section 256H; and

5 (c) a copy of a special resolution of the applicant that approves the proposed de-registration and the transfer of the applicant to the relevant jurisdiction.

10 (2) An applicant which proposes to be registered in a relevant jurisdiction by way of continuation as a body corporate may apply to the registrar to be de-registered in the State.

15 (3) Where an application is made under subsection (2), the registrar shall not de-register the applicant as a company in the State unless he or she is satisfied that all of the requirements of the Companies Acts in respect of the de-registration and of matters precedent and incidental thereto have been complied with and, in particular, but without prejudice to the generality of the foregoing, he or she is satisfied that—

25 (a) the applicant has delivered to the registrar an application for the purpose, in the prescribed form and signed by a director of the applicant, together with the transfer documents,

30 (b) the applicant has paid to the registrar such fee as may be specified from time to time pursuant to section 369 of the Principal Act,

35 (c) the applicant has informed the Central Bank of its intention to be de-registered and the Central Bank has notified the registrar that it has no objection to the de-registration, so long as the applicant complies with any conditions that the Central Bank may impose on the applicant, and

45 (d) the applicant has filed with the registrar notice of any proposed change in its name and of its proposed registered office or agent for service of process in the relevant jurisdiction.

50 (4) An application under this section shall be accompanied by a statutory declaration in the prescribed form made by a solicitor engaged for this purpose by the applicant, or by a director of the applicant, and

stating that the requirements mentioned in subsection (3) have been complied with. The registrar may accept such a declaration as sufficient evidence of compliance.

(5) The registrar shall, as soon as is practicable after receipt of the application for de-registration, publish notice of it in the Companies Registration Office Gazette. 5

(6) (a) Where an application is made under subsection (2), a person mentioned in paragraph (b) may apply to the High Court, on notice to the applicant, the Central Bank, the registrar and all creditors of the applicant, not later than 60 days after the publication of the notice under subsection (5), for an order preventing the proposal or passage of a resolution specified in paragraph (c) of the definition of 'transfer documents' in subsection (1) from taking effect in relation to the application. 10 15 20

(b) The following persons may apply for an order under this subsection: 25

(i) the holders of not less than 5 per cent of the issued share capital of the applicant and who have not voted in favour of the resolution, or 30

(ii) any creditor of the applicant.

(c) Notice of an application for an order under this subsection may be given to the creditors concerned by publication in at least one national newspaper in the State. 35

(d) The Central Bank and the applicant concerned shall be entitled to make representations to the High Court before an order under this subsection is made. 40

(7) The High Court may make an order mentioned in subsection (6) only if it is satisfied that— 45

(a) the proposed de-registration of the applicant would contravene the terms of an agreement or arrangement between the applicant and any shareholder or creditor of the applicant; or 50

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(b) the proposed de-registration would be materially prejudicial to any shareholder or creditor of the applicant and the interests of shareholders and creditors or both taken as a whole would be materially prejudiced.

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(8) An order made under subsection (7) shall specify the period in respect of which it shall remain in force.

(9) An order of the High Court under subsection (7) is final and conclusive.

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(10) Unless the High Court orders otherwise, when one or more than one application is made under subsection (6), a resolution specified in paragraph (c) of the definition of ‘transfer documents’ in subsection (1) in relation to a company shall not take effect until—

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(a) where the application or all the applications to the High Court are withdrawn—

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(i) the day on which the resolution is passed,

(ii) the day next following the day on which the last outstanding application is withdrawn, or

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(iii) the 31st day following the publication of the notice on the creditors under subsection (4),

whichever is the latest, and

35

(b) where all applications to the High Court are not withdrawn—

(i) the day on which the resolution is passed,

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(ii) the day specified in the order or, if no date is specified in the order, the day next following the day on which the period for which the order is specified to remain in force expires or otherwise ceases to be in force, or

45

(iii) the day next following the decision of the High Court,

whichever is the latest.

(11) When the applicant is registered as a company under the laws of the relevant jurisdiction, it shall give notice to the registrar of that fact within 3 working days of becoming so registered, including its new name, if any, and, as soon as practicable after receiving that notice, the registrar shall issue a certificate of de-registration of the applicant. 5 10

(12) The registrar shall enter in the register of companies the date of the de-registration of the applicant and shall, within 7 days of the issuance of the certificate under subsection (11), publish in the Companies Registration Office Gazette notice of the following matters: 15

- (a) the date of the de-registration of the applicant under this section; 20
- (b) the relevant jurisdiction; and
- (c) the new name of the applicant if different from the name under which it was registered. 25

(13) From the date of registration of the applicant in the relevant jurisdiction, it shall cease to be a company for all purposes of the Companies Acts and shall continue for all purposes as a body corporate under the laws of the relevant jurisdiction, provided always that this section shall not operate— 30

- (a) to create a new legal entity,
- (b) to prejudice or affect the identity or continuity of the applicant as previously constituted under the laws of the State for the period that the applicant was so constituted, 35
- (c) to affect any contract made, resolution passed or any other act or thing done in relation to the applicant during the period that the applicant was constituted under the laws of the State, 40 45
- (d) to affect the rights, powers, authorities, functions and liabilities or obligations of the applicant or any other person, or

(e) to render defective any legal proceedings by or against the applicant.

5 (14) Without prejudice to the generality of subsection (13), any legal proceedings that could have been continued or commenced by or against the applicant before its de-registration under this section may, notwithstanding the de-registration, be continued or commenced by or against the applicant after registration.

10 (15) The Minister may make regulations prescribing places as relevant jurisdictions for the purposes of this section, where he or she is satisfied that the law of the place concerned makes provision for bodies corporate that are substantially similar to applicants under this section to continue under the laws of the State in a substantially similar manner to continuations under section 256F or for companies to continue under the laws of that place.

15 (16) Every regulation made by the Minister under subsection (15) 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 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.

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35 Statutory declarations.

256H.—(1) Where an application is made under section 256F or 256G, a director of the migrating company or applicant, as the case may be, making the application shall make a statutory declaration stating that he or she has made a full inquiry into its affairs and has formed the opinion that it is able to pay its debts as they fall due.

40 (2) A declaration under subsection (1) shall have no effect for the purposes of this section unless—

45 (a) it is made not more than 28 days prior to the date on which the application is made to the registrar,

50 (b) it contains a statement of the migrating company's or applicant's assets and liabilities as at the latest practicable date before the making of the declaration, and, in any case as at a date that is not more than 3

months before the making of
the declaration, and

- (c) a report made by an independent person under subsection (3) is attached to the declaration, along with a statement by the independent person that he or she has given and has not withdrawn consent to the making of the declaration with the report attached to it.

(3) The report mentioned in subsection (2)(c) shall state whether, in the independent person's opinion, based on the information and explanations given to him or her, the opinion of the director mentioned in subsection (1) and the statement of the migrating company's or applicant's assets and liabilities referred to in subsection (2)(b), are reasonable.

(4) For the purposes of subsection (3), the independent person shall be a person who, at the time the report is made, is qualified to be the auditor of the company or applicant, or of bodies corporate—

- (a) in the case of an application under section 256F, under the laws of the relevant jurisdiction, and

- (b) in the case of an application under section 256G, under the laws of the State.

(5) A director who makes a declaration under this section without having reasonable grounds for the opinion that the migrating company or applicant is able to pay its debts as they fall due commits an offence and is liable—

- (a) on summary conviction to a fine not exceeding €5,000, or imprisonment for a term not exceeding 12 months, or to both, or

- (b) on conviction on indictment to a fine not exceeding €50,000, or imprisonment for a term not exceeding 5 years, or to both.

(6) Where the migrating company or applicant is wound up within 1 year of the date on which the application is made to the registrar and its debts are not paid or provided for in full within that year, it shall be presumed, unless the contrary is shown,

that the director did not have reasonable grounds for his or her opinion.”.

4.—(1) Section 27 of the Companies (Auditing and Accounting) Act 2003 is amended—

Amendment of Companies (Auditing and Accounting) Act 2003.

5 (a) by substituting the following for subsection (1):

“(1) The Supervisory Authority may delegate some or all of its functions and powers under sections 23 to 26 to a committee established for that purpose and consisting of persons from one or more of the following categories of persons:

(a) persons who are, at the time the committee is established, directors of the Authority,

(b) other persons that the Authority considers appropriate.”,

15 and

(b) by inserting in subsection (4) “, including the determination of whether a matter should be referred to a committee established for a purpose referred to in subsection (1)” after “behalf”.

20 (2) For the avoidance of doubt, a committee that was established under subsection (1) of section 27 of the Companies (Auditing and Accounting) Act 2003 prior to the commencement of *section 4* of the *Companies (Miscellaneous Provisions) Act 2009* shall be deemed to have been properly constituted, and shall be deemed to have and to have had all the powers necessary to perform its functions notwithstanding that any of its members was a director when he or she was appointed to the committee but ceased to be such a director before the completion of the enquiry, investigation or review for which it was established.

30 5.—(1) The UCITS Regulations are amended by inserting the following after Regulation 36F (inserted by section 77 of and the Schedule to the Investment Funds, Companies and Miscellaneous Provisions Act 2005):

Amendment of UCITS Regulations.

35 “Application of jurisdiction transfer provisions to investment companies established as UCITS. 36G.—The provisions of sections 256F to 256H of the Companies Act 1990 (inserted by *section 3* of the *Companies (Miscellaneous Provisions) Act 2009*) shall apply to any investment company authorised pursuant to these Regulations and for this purpose the references to authorisation shall be read as referring to authorisation pursuant to these Regulations.”.

(2) In this section “UCITS Regulations” means the European Communities (Undertakings for Collective Investment in Transferable Securities) Regulations 2003 (S.I. No. 211 of 2003) as amended.

45 6.—(1) This Act may be cited as the Companies (Miscellaneous Provisions) Act 2009.

Short title, commencement and construction.

(2) This Act (other than *sections 1* and *2*, *paragraphs (a) to (h)* of *section 3*, and *section 4*) shall come into operation on such day or days as may be appointed by order or orders of the Minister for Enterprise, Trade and Employment, either generally or with reference to a particular purpose or provision, and different days may be so appointed for different purposes and different provisions. 5

(3) The Companies Acts and this Act are to be read together as one.