

---

# Part B7 – External Companies

## Contents of Part B7

---

### **Chapter 1 – Preliminary and Definitions**

1. Defined Terms
2. Application of this Part and of Pillar A to External Companies

### **Chapter 2 – Filing Obligations of External Companies**

3. Filing Obligations of EU Companies
4. Accounting Documents Required to be Filed by EU Companies
5. Filing Obligations of Non-EU Companies
6. Accounting Documents Required to be Filed by Non-EU Companies

### **Chapter 3 – Disclosure and Translation**

7. Disclosure on Letter and Order Forms
8. Translations

### **Chapter 4 – Statement in Lieu of Full Filing**

9. Statement in Lieu of Full Filing under Head 3 or Head 5

### **Chapter 5 – Service of Process or Notice**

10. Service of Process or Notice
11. Notice to be given when company to which this Part applies ceases to carry on business in the state

### **Chapter 6 – Compliance and Enforcement**

12. Duty of Securing Compliance with this Part.

---

# Part B7 - External Companies

---

## **Explanatory Note**

*This Part seeks to re-enact Part XI of the Companies Act, 1963 (the Established Place of Business law) and S.I. 393/1993, the Branch Disclosure Regulations. It is proposed to repeal Section 354 of the 1963 Act and replace this with Heads 3 (EU Companies) and 5 (Non-EU Companies).*

*Regulation 9 of SI 395/1993 which would require an External Company to cause to be published in the Companies Registration Office Gazette, notice of the delivery to the Registrar of the documents and particulars referred to in this Part, as appropriate, within 21 days of such delivery has been omitted. This is because it is provided in A14 that the Registrar is obliged to publish notice of certain documents that have been delivered to the CRO in the CRO Gazette. Regulation 14 is considered redundant. Regulation 19 is no longer needed as each specific offence has been identified and categorised in accordance with the new categorisation of offences.*

## **Chapter 1** Preliminary and Definitions

---

### **Head 1      Defined Terms**

---

(1) In this Part, unless the context otherwise requires—

**“accounting documents”** means, in relation to a financial year of an External Company,—

- (a) its accounts for the period, including, if it has one or more subsidiaries, any consolidated accounts of the group;
- (b) any annual report of the directors for the period;
- (c) the report of the auditors on the accounts mentioned in sub-paragraph (a); and
- (d) any report of the auditors on the report mentioned in sub-paragraph (b).

**“certified”** means certified by –

- (a) a director or secretary of the External Company before any of the persons or bodies specified in paragraphs (b),(c) and (d);
- (b) any person authorised to take statutory declarations;
- (c) any notary or notary public;
- (d) a court;

in the prescribed manner to be a true copy or a correct translation;

**“constitutive documents”**, in relation to an External Company, means its memorandum and articles of association or its charter, statutes or other instrument constituting or defining its constitution;

**“establishment”**, means a place where, with the intention or fact of permanency, business is transacted under delegated management and includes a branch within the meaning of the 1989 Directive;

**“financial year”** in relation to an External Company, means the period for which the External Company draws up its accounts in accordance with the law of the state in which it is incorporated;

**“EU Company”** means a body corporate whose members' liability in respect of such body corporate is limited, which is incorporated in a state (other than the State) that is a contracting party to the EEA Agreement;

**“External Company”** means an EU Company or a Non-EU Company;

**“Non-EU Company”** means a body corporate whose members' liability in respect of such body corporate is limited, incorporated in a state that is not a member of the European Union or a state that is a contracting party to the EEA Agreement;

**“the 1968 Directive”** means Council Directive No. 68/151/EEC of 9 March 1968;

**“the 1989 Directive”** means Council Directive No. 89/666/EEC of 21 December, 1989.

(2) A word or expression that is used in this Part and is also used in the 1989 Directive or the 1968 Directive shall, unless the contrary intention appears, have the same meaning in this Part as it has in the Directive concerned.

### **Explanatory Note**

*“External Company” is defined to mean either an EU company or a non-EU company.*

*“Establishment” is defined to mean a place where business is transacted with any person and includes a branch within the meaning of the 1989 Directive. In this regard, the new law would be moving away from the “Branch” and a “place of business” tests and moving to a new test which is intended to include both.*

*This definition would seek to define ‘Establishment’ on the same basis as the ECJ has sought to define ‘branch’ in Establisements Somafer v Saar Ferngus Ag Case 33/78 [1979] 1 CMLR 490.*

*Note: this definition will relieve some existing external companies that currently file under ‘place of business’ provisions from any obligation.*

*“EEA Agreement” should be defined in Part B1, definitions, to mean: “means the Agreement on the European Economic Area signed at Oporto on 2 May 1992, as amended for the time being.”*

## **Head 2 Application of this Part and of Pillar A to External Companies**

- (1) This Part shall apply to all External Companies which, after the operative date, set up an establishment in the State, and to External Companies which have, before the operative date, an establishment in the State and continue to have an establishment in the State on the operative date.
- (2) The following provisions in Pillar A shall apply to external companies -
  - (a) Part A4, Head 6 [equivalent of Section 183 of the Companies Act, 1963]; Head 20 (equivalent of Section 196 of the Companies Act, 1963).
  - (b) The provisions of Part A7 shall extend to charges on property in the State which are created on or after the operative date and to charges on property in the State which is acquired on or after the operative date by an external company and to judgment mortgages created on or after the operative date and affecting property in the State of an external company;
  - (c) Chapter 6 of Part A13. [i.e. Heads 52-60]
  - (d) Part A13, Head 2 (equivalent of Section 7 of the Companies Act, 1990) other than paragraphs (a), (b) and (c) of Subhead (1), and paragraph (d) only in so far as it relates to creditors of the External Company who are creditors with reference to liabilities which have arisen under and by virtue of business carried on by the External Company within the State.

(e) Part A13, Head 3 [equivalent of Section 8 of the Companies Act, 1990]; Head 4 [equivalent of Sections 7(4) and 8(2)(a) of the Companies Act, 1990]; Head 5 [equivalent of Section 9 of the Companies Act, 1990]; Head 7 [equivalent of Section 10 of the Companies Act, 1990]; Head 8 [equivalent of Section 11 of the Companies Act, 1990]; Head 9 [equivalent of Section 12 of the Companies Act, 1990]; Head 10 [equivalent of Section 13 of the Companies Act, 1990]; Head 11 [equivalent of Section 14 of the Companies Act, 1990]; Head 12 [equivalent of Section 15 of the Companies Act, 1990]; Head 13 [equivalent of Section 16 of the Companies Act, 1990]; Head 14 [equivalent of Section 19 of the Companies Act, 1990]; Head 15 [equivalent of Section 20 of the Companies Act, 1990]; Head 16 [equivalent of Section 21 of the Companies Act, 1990]; Head 17 [equivalent of Section 19A of the Companies Act, 1990]; Head 18 [equivalent of Section 384 of the Companies Act, 1963]; Head 19 [equivalent of Section 23 of the Companies Act, 1990]; Head 20 [equivalent of Section 23A of the Companies Act, 1990]; Head 21 [equivalent of Section 24 of the Companies Act, 1990]; Heads 31 to 40 [equivalent of Sections 149 to 158 of the Companies Act, 1990].

(f) Chapter 4 of Part A13.

- (3) A Non-EU Company shall not, within the State, make an invitation or offer of securities to the public unless it complies with Irish prospectus law and the provisions of Chapter 13 of Part B2.
- (4) If a Non-EU Company acts in contravention of Subhead (3), the Non-EU Company and every officer who is in default shall be guilty of a category 2 offence.

*Subhead (2) expressly applies certain provisions in Pillar A to external companies – (a) applies Part A4, Head 6 to external companies and effectively re-enacts Section 183 (3) of the Companies Act, 1963; (b) applies Part A7 dealing with charges and re-enacts Section 111 of the Companies Act, 1963; (c) Chapters 6 of A13 deal with prosecution of companies and includes in Head 60 the prosecution of companies on indictment, which re-enacts Section 382(7) of the Companies Act, 1963.*

*Subhead (3) prohibits Non-EU Companies from making invitations or offers of securities to the public in Ireland unless they comply with Irish prospectus law. It is not necessary to legislate for EU Companies since these are already governed by the Prospectus Directive. Subhead (4) makes it a category 2 offence to contravene Subhead (3).*

### **Explanatory Note**

*Subhead (1) re-enacts Section 351 of the 1963 Act amended to include a new definition of External Company and the new definition of place of business which has been expressed in Head 1 to include a branch.*

## Chapter 2

### Filing Obligations of External Companies

#### Head 3 Filing Obligations of EU Companies

- (1) An EU Company shall, within one month of the date of the setting up of an establishment in the State, deliver to the Registrar for registration a certified copy of its constitutive documents.
- (2) An EU Company shall, within one month of the date of the setting up of an establishment in the State, notify the Registrar in the prescribed form of or otherwise furnish the following matters -
- (a) its name and legal form and the name of the establishment if that is different from its name;
  - (b) its certificate of incorporation;
  - (c) the address of its establishment;
  - (d) its activities at the establishment;
  - (e) its place of registration and the number with which it is registered;
  - (f) a list of its directors and secretary and any other persons who are authorised to represent the company in dealings with third parties and in legal proceedings together with the following details relating to each such person:
    - (i) present forename and surname and any former forename and surname,
    - (ii) date of birth,
    - (iii) usual residential address,
    - (iv) nationality,
    - (v) business occupation, if any,
    - (vi) particulars of any other directorships of bodies corporate, whether incorporated in the State or elsewhere, held by that person, and
    - (vii) the extent of that person's powers in relation to the activities of the establishment;
- (g) the name and addresses of some one or more persons resident in the State who is or are:
- (i) authorised to accept service of proceedings and any notices required to be served on the EU Company, and
  - (ii) authorised to ensure compliance with the provisions of this Part together with a consent signed by each such person to act in this capacity;
- (h) copies of its latest accounting documents as described in Head 4.
- (3) An EU Company shall also deliver to the Registrar for registration, under cover of the prescribed form, the following documents and notices within one month of the occurrence of the event concerned, namely—
- (a) any document making or evidencing an alteration in its constitutive documents;
  - (b) every amended text of its constitutive documents;
  - (c) notice of a change among the persons referred to in Subhead (2) (f) or (g) or in any of the particulars relating to such persons specifying the date of the change;
  - (d) notice of a change in the address referred to in Subhead (2) (c) together with the new address of the establishment;
  - (e) notice of its winding-up, the appointment of liquidators, particulars concerning them and their powers and the termination of the liquidation in accordance with disclosure by the company as provided for in Article 2 (1) (h), (j) and (k) of the 1968 Directive and particulars concerning insolvency proceedings, arrangements, compositions or any analogous proceedings to which the company is subject;
  - (f) the closure of the establishment.
- (4) Head 19 (16) of Part A4 [equivalent to Section 195(15) of the CA, 1963] shall apply for the purposes of Subhead (2) (f).
- (5) If Subheads (1), (2) or (3) are not complied with, the EU Company and every officer who is in default shall be guilty of a category 3 offence.

### **Explanatory Note**

*This replaces Regulation 4 of S.I. 395/1993. The language is changed but it is thought all changes are permissible within the confines of EU Directive 89/666. This head also replaces (for EU Companies) Sections 352 and 353 of the 1963 Act.*

*Subhead (3) uses the terms "director" and "secretary" and this is in line with the UK's transposition of the Directive 89/666.*

---

## **Head 4 Accounting Documents Required to be Filed by EU Companies**

---

- (1) In each year, an EU Company that has set up an establishment in the State shall deliver to the Registrar, under cover of the prescribed form, such accounting documents as it is required to make public in accordance with the laws of the Member State in which it is incorporated.
- (2) The accounting documents referred to in Subhead (1) shall be delivered to the Registrar not later than one month following the last date upon which the EU Company was required to make public such accounting documents in accordance with the law of the Member State in which it is incorporated.
- (3) If Subhead (1) is not complied with, the EU Company and every officer who is in default shall be guilty of a category 3 offence.

### **Explanatory Note**

*This is a revised provision to that in S.I. 395/1993. This provision seeks to create an obligation on EU companies that establish a branch or place of business in Ireland to disclose their accounting documents (by registration with the Registrar) to no more or no less the extent to which they are so required to disclose their accounts to the public in their home member state. Moreover, it is proposed that the obligation to file in Ireland will be not later than one month following the date the obligation to file arises in the company's home member state.*

---

## **Head 5 Filing Obligations of Non-EU Companies**

---

- (1) A Non-EU Company shall, within one month of the date of the setting up of an establishment in the State, deliver to the Registrar for registration a certified copy of its constitutive documents.

- (2) A Non-EU Company shall, within one month of the date of the setting up of an establishment in the State, notify the Registrar in the prescribed form of or otherwise furnish the following matters-

- (a) its name and legal form and the name of the establishment if that is different from its name;
- (b) its certificate of incorporation;
- (c) the address of its establishment;
- (d) its activities at its establishment;
- (e) its place of registration and the number with which it is registered;
- (f) a list of its directors and secretary and any other persons who are authorised to represent the company in dealings with third parties and in legal proceedings together with the following details relating to each such person:
  - (i) present forename and surname and any former forename and surname,
  - (ii) date of birth,
  - (iii) usual residential address,
  - (iv) nationality,
  - (v) business occupation, if any,
  - (vi) particulars of any other directorships of bodies corporate, whether incorporated in the State or elsewhere, held by that person, and
  - (vii) the extent of that person's powers in relation to the activities of the establishment;
- (g) the name and addresses of some one or more persons resident in the State who is or are:
  - (i) authorised to accept service of proceedings and any notices required to be served on the Non-EU Company, and
  - (ii) authorised to ensure compliance with the provisions of this Part together with a consent signed by each such person to act in this capacity;

- (h) copies of its latest accounting documents as described in Head 6.
  - (i) its principal establishment;
  - (j) its objects;
  - (k) the place where it is incorporated;
  - (l) its called-up share capital.
- (3) A Non-EU Company shall also deliver to the Registrar for registration, under cover of the prescribed form, the following documents and notices within one month of the occurrence of the event concerned, namely—
- (a) any document making or evidencing an alteration in its constitutive documents;
  - (b) every amended text of its constitutive documents;
  - (c) notice of a change among the persons referred to in Subhead (2) (f) or (g) or in any of the particulars relating to such persons specifying the date of the change;
  - (d) notice of a change in the address referred to in Subhead (2) (c), together with the new address of the establishment;
  - (e) notice of its winding-up, the appointment of liquidators, particulars concerning them and their powers and the termination of the liquidation, insolvency proceedings, arrangements, compositions or any analogous proceedings to which it is subject;
  - (f) the closure of the establishment.
- (4) Head 19 (16) of Part A4 [equivalent to Section 195(15) of the CA, 1963] shall apply for the purposes of Subhead (2) (f).
- (5) If Subhead (1), (2) or (3) are not complied with, the Non-EU Company and every officer who is in default shall be guilty of a category 3 offence.

### **Explanatory Note**

*In Head 5(2), paragraphs (i) – (l) are additions to the list of matters required in the case of EU Companies.*

*This head also replaces Regulation 6 of S.I. 395/1993. The language is changed but it is thought all changes are permissible within the confines of EU Directive 89/666. This head also replaces (for Non-EU Companies), sections 352 and 353 of the 1963 Act.*

*Subhead (3) uses the terms “director” and “secretary” and this is in line with the UK’s transposition of the Directive 89/666.*

## **Head 6 Accounting Documents Required to be Filed by Non-EU Companies**

- (1) In each year, a Non-EU Company that has set up an establishment in the State shall deliver to the Registrar under cover of the prescribed form, such accounting documents as it is required to make public in accordance with the laws of the state in which it is incorporated.
- (2) The accounting documents referred to in Subhead (1) shall be delivered to the Registrar not later than one month following the last date upon which the Non-EU Company was required to make public such accounting documents in accordance with the law of the state in which it is incorporated.
- (3) Where –
  - (a) the law of the state in which a Non-EU Company is incorporated does not require it to have accounting documents drawn-up and audited in accordance with Council Directives 78/660/EEC and 83/349/EEC or International Accounting Standards and such Non-EU Company does not in fact have its accounting documents so drawn-up and audited; and
  - (b) the state in which the Non-EU Company is incorporated has been prescribed by regulations made by the Minister as not having an otherwise acceptable standard,
 then any such Non-EU Company must deliver to the Registrar accounting documents drawn-up and audited in accordance with Council Directives 78/660/EEC and 83/349/EEC or International Accounting Standards.
- (4) If Subhead (1) is not complied with, the Non-EU Company and every officer who is in default shall be guilty of a category 3 offence.

### **Explanatory Note**

*This provision seeks to address the essential difficulties with the current law, whereby some non-EU states seek to avoid registration as the branch of an External Company because to do so means that they must file accounts in circumstances where their home country does not require them to be filed. This provision seeks to distinguish between non-EU states that have no filing requirements at all and may be simply jurisdictions of convenience to avoid disclosure and other non-EU states that do have.*

## Chapter 3

### Disclosure and Translation

#### Head 7 Disclosure on Letter and Order Forms

- (1) In the case of an EU Company, that sets up an establishment in the State, every letter and order form that issues from or in respect of its establishment in the State shall bear the following particulars—
- (a) the EU Company's place of registration and the number with which it is registered;
  - (b) the EU Company's name (if different to the name of its establishment), legal form and the address of its registered office;
  - (c) in the case of an EU Company which is being wound up, the fact that that is so;
  - (d) the EU Company's place of registration of its establishment and the number with which it is registered;
  - (e) if on any letters or order forms of the establishment there is reference to the share capital of the EU Company, the reference shall be to the paid-up share capital.
- (2) In the case of a Non-EU Company that sets up an establishment in the State, every letter and order form that issues from or in respect of its establishment in the State shall bear the following particulars—
- (a) the Non- EU Company's name (if different to the name of its establishment), place of registration of its establishment and the number with which it is registered;
  - (b) if the law of the state in which the Non-EU Company is incorporated requires entry in a register, the place of registration of the Non-EU Company and the number with which it is registered;
  - (c) if on any letters or order forms of the establishment there is reference to the share capital of the Non-EU Company, the reference shall be to the paid-up share capital.

- (3) If Subhead (1) is not complied with, the EU Company and every officer who is in default shall be guilty of a category 3 offence.
- (4) If Subhead (2) is not complied with, the non-EU Company and every officer who is in default shall be guilty of a category 3 offence.

#### **Explanatory Note**

*This re-enacts Regulations 4 and 7 of S.I. 395/1993, with some modifications.*

*The term "used by a branch" has been replaced with "that issues from or in respect of its place of business".*

#### Head 8 Translations

Every document required to be delivered or notified to the Registrar under Heads 3, 4, 5 or 6 shall, if they are not written in the Irish or the English language, have annexed to them a certified translation thereof.

#### **Explanatory Note**

*This re-enacts Regulation 12 of S.I. 395/1993*

## Chapter 4

### Statement in Lieu of Full Filing

#### Head 9 Statement in Lieu of Full Filing under Head 3 or Head 5

(1) Where, prior to the date referred to in Head 3 or 5 as appropriate, an External Company which had -

(a) established a branch in the State, in complying with the European Communities (Branch Disclosures) Regulations, 1993; or

(b) established a place of business in the State, in complying with Part XI of the Companies Act, 1963,

in respect of an establishment in the State, had returned to the Registrar, documents which are the same in all respects as the documents required by Heads 3(1) or 5(1), as appropriate, and it has no outstanding obligation to make a return to the Registrar so far as concerns any alterations to those documents, then the External Company may return, in lieu of the documents required by Heads 3(1) or 5(1), a statement in the prescribed form that this information has already been returned to the Registrar.

(2) Where, prior to the date referred to in Head 3 or 5 as appropriate, an External Company which had -

(a) established a branch in the State, in complying with the European Communities (Branch Disclosures) Regulations, 1993; or

(b) established a place of business in the State, in complying with Part XI of the Companies Act, 1963,

in respect of an establishment in the State, had returned to the Registrar particulars which are the same in all respects as the corresponding particulars required by Head 3(2) (f) and (g) or Regulation 5(2) (f) and (g), as appropriate, and it has no outstanding obligation to make a return to the Registrar so far as concerns any alterations to those particulars, then the company may return, in lieu of the corresponding particulars required by Head 3(2) (f) and (g) or Head 5(2) (f) and (g), as appropriate, a statement in the prescribed form that this information has already been returned to the Registrar.

(3) Where paragraph (1) applies, a reference to the delivery of the matter referred to in Head 3(1) or Head 5(1) shall be construed as a reference to the return of the statement referred to in Subhead (1).

#### **Explanatory Note**

*This re-enacts Regulation 15 and 16 of S.I. 395/1993.*

---

## Chapter 5

### Service of Process or Notice

---

#### **Explanatory Note**

*This head re-enacts Section 357 of the Companies Act, 1963.*

---

#### **Head 10 Service of Process or Notice**

---

- (1) Subject to Subhead (2), any process, notice or summons required to be served on a External Company to which this Part applies shall be sufficiently served if addressed to any person whose name has been delivered to the Registrar under Head 3(2)(g) or Head 5(2)(g) (or any changes notified thereto) and left at or sent by post to the address which has been so delivered.
- (2) A document may be served on any External Company by leaving it at or sending it by post to any establishment established in the State—
  - (a) where the External Company makes default in delivering to the Registrar, the name and address of a person resident in the State who is authorised to accept, on behalf of the External Company, service of process; or
  - (b) if at any time all the persons whose names and addresses have been so delivered are dead or have ceased to so reside, or refuse to accept service on behalf of the External Company, or for any reason it cannot be served.
- (3) This head shall cease to apply to a company on the expiration of two years after it has given the notice referred to in Head 11 of this Part [equivalent of Section 357 of the Companies Act, 1963].

#### **Explanatory Note**

*This re-enacts Section 356 of the 1963 Act and Regulation 17 of S.I. 395/1993.*

---

#### **Head 11 Notice to be given when company to which this part applies ceases to carry on business in the state.**

---

If any company to which this Part applies ceases to have a place of business in the State, it shall forthwith give notice of the fact to the Registrar, and as from the date on which notice is so given, the obligation of the company to deliver any document to the Registrar shall cease.

## Chapter 6

### Compliance

---

#### Head 12 Duty of Securing Compliance with this Part

---

The duty of securing compliance by an External Company with this Part shall, without prejudice to the duty of the External Company concerned, also lie upon the persons appointed by a External Company to ensure compliance with this Part.

***Explanatory Note***

*This re-enacts Regulation 18 of S.I. 395/1993.*