
Part B8 – Unregistered Companies and Joint Stock Companies

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Chapter 1

Preliminary and Definitions

Head 1 Defined Terms

“registration resolution” has the meaning assigned to it in Head 6;

“registration date” has the meaning assigned to it in Head 8.

Note

Each draft Part B includes a head which provides that “the provisions of Parts A1 to A14 apply to [PLC/DAC/CLG/ULC] subject to such amendments thereto, or exclusions therefrom, as are contained in this Part. In relation to unregistered companies, the opposite applies in that Parts A do not apply unless expressly stated, see Head 4 below.

Chapter 2

Application of this Bill to Unregistered Companies

Head 2 Application of certain provisions of this Bill to unregistered companies

- (1) The provisions specified in Part B8, Head 4/ Schedule X [the equivalent of the Ninth Schedule to the Companies Act, 1963] shall apply to all unregistered companies incorporated in and having a principal place of business in the State, other than those mentioned in Subhead (2), as if they were companies registered under this Bill and subject to such adaptations and modifications (if any) as may be prescribed.
- (2) The said provisions shall not apply by virtue of this head to any of the following bodies-
 - (a) an unregistered company incorporated by or registered under any public general statute; and
 - (b) an unregistered company not formed for the purpose of carrying on a business which has for its objects the acquisition of gain by the body or by the individual members thereof; and
 - (c) an unregistered company which is prohibited by statute or otherwise from making any distribution of its income or property among its members while it is a going concern or when it is in liquidation; and
 - (d) an unregistered company for the time being exempted by direction of the Minister.
- (3) The said provisions shall apply also in like manner in relation to any unincorporated body of persons entitled by virtue of letters patent to any of the privileges conferred by the Chartered Companies Act, 1837, and not registered under any other public general statute but subject to the like exceptions as are provided for in the case of bodies corporate by paragraphs (b), (c) and (d) of Subhead(2).

- (4) This head shall not repeal or revoke, in whole or in part, any enactment, charter or other instrument constituting or regulating any body in relation to which the said provisions are applied by virtue of this head, or restrict the power of the Government to grant a charter in lieu of or supplementary to any such charter as aforesaid, but in relation to any such body, the operation of any such enactment, charter or instrument shall be suspended in so far as it is inconsistent with any of the said provisions as they apply for the time being to that body.
- (5) Every body to which this head applies and which has not already done so, shall forthwith deliver to the Registrar for registration, a certified copy of the charter, statutes, memorandum and articles or other instrument constitution or defining the constitution of the body.
- (6) Every body to which this head applies and which comes into existence on or after the operative date shall, within three months after coming into existence, deliver to the Registrar of companies for registration a certified copy of the charter, statutes, memorandum and articles or other instrument constituting or defining the constitution of the body
- (7) If default is made in complying with Subheads (5) or (6), the body and every officer of the body who is in default shall be guilty of a category three offence.

Explanatory Notes

This head is a re-enactment of Section 377 of the Companies Act, 1963 as amended by section 250 of the Companies Act, 1990, Section 15 of the Companies (Amendment) Act, 1982 and Section 57 and Schedule 2 of the Companies (Auditing and Accounting) Act, 2003.

Section 377 of the CA, 1963 applied the provisions of the Companies Acts that are listed in CA 1963, Schedule 9 to "all bodies corporate incorporated in and having a principal place of business in the State", other than those set out in subsection (2) of Section 377.

Subhead (1) is a re-enactment of Section 377(1) of the Companies Act, 1963 as amended by section 250(1) of the Companies Act, 1990. The cross-references have been updated in accordance with the structure of the Bill.

Subheads (2) to (6) are a re-enactment of Sections 377(2) to (6) respectively.

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Subhead (7) is a re-enactment of Section 377(7) Companies Act, 1963 as amended by section 15 of the Companies (Amendment) Act, 1982 (which increased the penalty for the offence) and Section 57 and Schedule 2 of the Companies (Auditing and Accounting) Act, 2003.

Subhead (2) is a re-enactment of Section 250(3) There may be a need to have a specific head which provides for the making of Regulations generally under this Part. If so, Subhead (2) may be removed as it would be provided for under the general Head.

Section 250(1), which amended the Subsection (1) of Section 377 of the Companies Act, 1963, has been incorporated into the previous Head [equivalent of Section 377 of the Companies Act, 1963]

Head 3 Minister's power to make regulations

- (1) The Minister may, if he considers it necessary to do so in the interests of the orderly and proper regulation of the business of unregistered companies, make regulations adding to or subtracting from, the list of the provisions of the Companies Acts specified in the Part B8, Head 4/Schedule X [equivalent to the Ninth Schedule to the Companies Act, 1963].
- (2) Every regulation made by the Minister under this head 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.

Explanatory Note

This head is a re-enactment of Section 250 of the Companies Act, 1990.

Subhead (1) is a re-enactment of Section 250(2). All cross-references have been updated in accordance with the structure of the Bill.

Head 4 Schedule X Provisions applied to unregistered companies [equivalent of Ninth Schedule to Companies Act 1963]

- (1) Subject to the modifications set out in Subhead (2) the head/heads contained in the following table shall apply to an unregistered company to which this Part applies -

Subject Matter	Provisions Applied
Acts done by a company (ultra vires rule)	[Equivalent of s 8 Companies Act 1963] <ul style="list-style-type: none"> • Part B2, Head 9
Pre-incorporation contracts	[Equivalent of ss 37(1)&(2) Companies Act 1963] <ul style="list-style-type: none"> • Part A2, Head 28
Prospectuses and allotments	[Equivalent of s 43 to 52, 56, 57, 61 Companies Act 1963 and the Third Schedule] <ul style="list-style-type: none"> • Sections 43-47, 49-52, 56, and 61 of CA 1963, repealed by section 40 of the Investment Funds, Companies and Miscellaneous Provisions Act 2005. • Section 48 repealed by section 3 Companies (Amendment) Act 1983 • Provisions of Part 5 Investment Funds Act 2005 and the Prospectus (Directive 2003/6/EC) Regulations 2005 apply to unregistered companies as they would fall within the definition of 'bodies corporate or other legal entity' eg see s 38(1) Investment Funds Act defn of 'offeror'
Validation of invalid issue, redemption or purchase of shares	[Equivalent of s 89 Companies Act 1963] <ul style="list-style-type: none"> • Part A3, Head 34
Registered office	[Equivalent of s 113 Companies Act 1963 as inserted by the Companies (Amendment) Act 1982] <ul style="list-style-type: none"> • Part A2, Head 33

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Subject Matter	Provisions Applied
Alteration of constitution by special resolution	Part A2, Head 15(3)
Registered person	Part A2, Head 21
Persons or bodies of persons authorised to bind a company	Part A2, Head 22(1)
Particulars to be shown on all business letters of the company	Part A4, Head 20(2)-(3)
Annual return	[Equivalent of s 125 to 129 Companies Act 1963 and the Fifth Schedule] <ul style="list-style-type: none"> • S125 – Part A6, Head 52 • S126 – repealed by s 59 Company Law Enforcement Act, 2001 • S127 – Part A6, Head 52 • S128 – <i>Documents to be annexed to Annual Return. S 128 does not apply to private companies therefore is it to be re-enacted within Part B2.</i> • S129 – <i>Certificates to be sent by private company with annual return</i> • Fifth Schedule repealed by s 63(2) Company Law Enforcement Act, 2001
Accounts and Audit	[Equivalent of s 148 to 153, 155 to 161, 191 and the Sixth Schedule (except subparagraphs (c) to (e) of paragraph 3 and subparagraph (d) of paragraph 8 as amended by the Companies (Amendment) Act, 1986) of the Companies Act, 1963] <ul style="list-style-type: none"> • S148 – Part A6, Heads 12 – 14, 23, 51. • S149 – substituted for Reg 4 EC (IFRS and Miscellaneous Amendments) Regulations 2005 S.I. No 116 of 2005; s 149 (5)&(6) > Part A6, Head 13, 49. • S150 – Part A6, Head 15, 49, 51. • S151 – ‘replaced’ by Regulation 13 European Communities (Company Group Accounts) Regulations 1992; Part A6 Sch 2 Part I 2 • S152 – ‘replaced’ by Regulation 14 European Communities (Company Group Accounts) Regulations 1992; Part A6, Head 10, 16 • S153 – <i>Financial year of holding company and subsidiary</i> Part A6, Head 10, 54 • S155 – Part A1, Head 6 • S156 – Part A6, Head 36 • S157 – Part A6, Head 36 • S158 – Part A6, Head 37 • S159 – Part A6, Head 48, 49 • S160 – Part A6, Head 83 - 86, 98 • S161 – Part A6, Head 95 – 96 • <i>Sixth Schedule to Companies Act 1963 -</i>
Validity of acts of directors	[Equivalent of s 178 Companies Act, 1963] <ul style="list-style-type: none"> • Part A4, Head 9
Register of directors and secretaries. Particulars relating to directors to be shown on all business letters of the company.	[Equivalent of s 195 (inserted by Companies Act, 1990) and section 196 Companies Act, 1963 – s 195 = Part A4 Heads 19 – 21] <ul style="list-style-type: none"> • S195 – Part A4, Head 18 • S196 – <i>Particulars relating to directors to be shown on all business letters of the company</i>
Registration of documents, enforcement and other supplemental matters	[Equivalent of s 2, 193, 369 to 371, 378, 379, 383, 384, 386, 387, 395(1) and the Eighth Schedule of the Companies Act 1963] <ul style="list-style-type: none"> • S2 – interpretation provision • S193 – <i>not re-enacted (general duty of directors to disclose etc)</i> • S369 – Part A14, Head 8; Part 1, Head 18 • S370 – Part A14, Head 9 • S371 – Part A13, Head 22 • S378 – <i>Form of registers, minute books and books of account</i> Part A4 Head 73 • S379 – Part A2, Head 34 • S383 – Part A5, Head 5(1), (2), (3) & (5) • S384 – Part A13, Head 18 • S386 – Part A13, Head 63 • S395(1) – <i>Ministers power to alter Tables & Forms</i> Part 14 Head 6 • <i>Eighth Schedule – s 369 re-stated in Part A14, Head-8</i>

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Subject Matter	Provisions Applied
Liability of officers and others for negligence etc	[Equivalent of s 200 and 391 Companies Act, 1963] <ul style="list-style-type: none"> • S200 - Part A5, Head 15 • S391 - Part A5, Head 14
Share certificates	[Equivalent of s 2 and 3 Companies (Amendment) Act, 1977] <ul style="list-style-type: none"> • S2 – Part B2, Head 27(2) • S3 – Part B2, Head 27
Company records	[Equivalent of s 4 Companies (Amendment) Act 1977] <ul style="list-style-type: none"> • S4 – Part A4, Head 74
Maintenance of capital. Restrictions on distribution of profits and assets.	[Equivalent of s 40 to 42, 45, 45A (inserted by Companies (Amendment) Act 1986) and 49 to 51 Companies (Amendment) Act 1983] [Equivalent of s 43, 43A, 44, 46 and 47 Companies (Amendment) Act 1983 with the modification that those sections shall apply to all bodies corporate to which (Head 2(1)) - equivalent of s 377(1) CA 1963) applies other than those which, if they were registered, would be private companies.] <ul style="list-style-type: none"> • S40 – Part B2, Head 67 • S41 – Part A3, Head 36 • S42 – Part A3, Head 37 • S43 – Part B2, Head 31 • S44 – Part B2, Head 32 • S45 – Part A3, Head 49 • S45A – Part A3, Head 50 • S46 – Part B2, Head 57 • S47 – Part B9, Head 40
	[Equivalent of all the Regulations of the European Communities (Stock Exchange) Regulations 1984 (S.I. No 282 of 1984)] <ul style="list-style-type: none"> • Regulations amended by Schedule 3 of the Prospectus (Directive 2003/6/EC) Regulations 2005 – see attached Schedule
	[Equivalent of all of the Regulations of the European Communities (Mergers and Divisions of Companies) Regulations 1987 (S.I No 137 of 1987)] <ul style="list-style-type: none"> • Part A9, • Part B2, Heads 21(16), 69(2) and (3)
	[Equivalent of all provisions of Companies (Amendment) Act, 1990] <ul style="list-style-type: none"> • Part A10, Heads 1 to 37, and 39.
	[Equivalent of Parts I to III, V, VII, IX, X, XI and XII of Companies Act, 1990.] [Equivalent of Part IV Companies Act, 1990 with the modification that Chapter 2 of that Part shall apply to all bodies corporate to which [equivalent of s 377(1) Companies Act, 1963] applies other than those which, if they were registered, would be private companies and Chapter 3 of that Part apply to all such bodies corporate which, if they were registered, would be private companies] [Equivalent of Part VI Companies Act, 1990 except sections 122, 128 to 131 and 133] <ul style="list-style-type: none"> • Parts I to II – Part A13, Heads 2 to 21 • Part III to section 40 – Part A5, Heads 1 to 3 and 15 to 26 • Part III section 41 to 46 – Part A6, Heads 000 • S50 – Part A4, Head 20 • Part IV section 53 to 62 – Part A5, Heads 33, to 37 • S63 – Part A6, Head 000 • Part IV sections 98 to 104 – Part A13, Heads 2 to 8
	[Equivalent of all of the Regulations of the European Communities (Public Limited Companies Subsidiaries) Regulations 1997 (S.I. No 67 of 1997)] <ul style="list-style-type: none"> • Reg 5(2)-(8) – Part A3, Heads 15(3) and 36(3)-(8)

- (2) Any reference in Part A13, Head 28 [equivalent of Section 102 of the Companies Act, 1990] to the registered office of a company shall, in the case of an unregistered company be construed as a reference to the principal office of the company.

Explanatory Note

This head is an amended re-enactment of the Ninth Schedule to the Companies Act, 1963.

Subhead (1) is a work in progress, and it is intended to go through the list of provisions in the Table/Schedule above to determine the appropriateness of their applicability or otherwise to unregistered companies. The list is therefore at this stage not conclusive.

Subhead (2) provides for the re-enactment of Section 102(5) of the Companies Act, 1990 which applies exclusively to unregistered companies and therefore cannot be included in Pillar A. Section 102 imposes an obligation to give notice of a court ordered disclosure order upon the applicant for said order. Part A13 Head 28, equivalent to Section 102, will need to be included.

Chapter 3

Registration of an Unregistered Company

Head 5 Registration of an unregistered company as a company

With the exception contained in Subhead (2) and subject to the provisions of this Part, an unregistered company of the type specified in Part B8, Head 2(1) [equivalent of Section 377(1) of the Companies Act, 1963] may apply to be registered under [this Chapter] as a private company, designated activity company, guarantee company or unlimited company where it satisfies the appropriate requirements under the applicable Part of this Bill.

Explanatory Note

This head and the heads that follow, are new. They are based, however, on the procedure in Part IX of the Companies Act, 1963 under which unregistered companies may register as limited companies under the Companies Acts. The procedure includes the possibility of registering as a PLC subject to compliance with the additional conditions and formalities set out in Section 18 of the Companies (Amendment) Act, 1983.

The wording follows, with modification, the wording of Section 328 of the Companies Act, 1963.

Head 6 Requirements for registration of an unregistered company

- (1) An unregistered company shall not be registered under Part B8, Head 5 without the assent (a “**registration resolution**”) of a majority of such of its members as, being entitled so to do, vote in person or, where proxies are allowed, by proxy at a general meeting summoned for the purpose. In computing any majority under this head when a poll is demanded, regard shall be had to the number of votes to which the member is entitled according to the regulations of the unregistered company.
- (2) Before a registration resolution is moved, a statement in accordance with Subhead (3) shall be sent by the unregistered company to every member entitled to notice of the meeting of the unregistered company at which the registration resolution is to be moved.

- (3) Every statement required by Subhead (2) shall—
 - (a) state the name with which the unregistered company is proposed to be registered;
 - (b) state the reasons for the proposal to register;
 - (c) summarise the principal implications for members of the registration;
 - (d) indicate where the memorandum and articles of association of the proposed unregistered company that comply with the requirements of this Bill may be obtained or inspected (which may include on the body corporate’s website).
- (4) An application by an unregistered company that has duly approved a registration resolution in accordance with this head shall be made to the Registrar within 30 days of the meeting at which the unregistered company approved the registration, by delivery to the Registrar of the following documents -
 - (a) a copy of the statement required by Subhead (2) and of the registration resolution under Subhead (1), each certified by a director or other officer of the unregistered company;
 - (b) a list showing the names and addresses of all persons who, on a day named in the list (not more than 28 clear days before the day of registration), were members of the unregistered company, with the addition of the shares or stock held by them respectively (distinguishing, in cases where the shares are numbered, each share by its number);
 - (c) the nominal share capital of the company and the number of shares into which it is divided, or the amount of stock of which it consists;
 - (d) the number of shares taken and the amount paid on each share; and
 - (e) the memorandum and articles of association of the proposed company.

- (5) On compliance with the requirements of this Part with respect to registration, and on payment of such fees, if any, as are payable under the provisions of this Bill, the Registrar shall certify under his hand that the company applying for registration is incorporated as a limited company under this Bill and thereupon the company shall be so incorporated.
- (6) A certificate given under this head in respect of a company shall be conclusive evidence that the requirements of this Part in respect of registration and of matters precedent and incidental thereto have been complied with.

Explanatory Notes

Subhead (1) draws upon Section 328(6) and (9) of the Companies Act, 1963 (and see also Bye-law 49 of the Bank's Bye-laws)

Subheads (2) & (3) are new.

Requirements in Subheads (4) are largely drawn from those in Section 330 of the Companies Act, 1963.

Subhead (5) is a re-enactment of Section 336(1) of the Companies Act, 1963 (section 336 of the Companies Act was inserted by Schedule 1 of the Companies (Amendment) Act, 1983).

*Subhead (6) is an amended re-enactment of Section 336(2) Companies Act, 1963, which has been modified to take account of constitutional issues raised by *Maher v Attorney General* [1973] IR 146.*

Head 7 Registration of an unregistered company as a public limited company

An unregistered company applying to be registered under Part B8, Head 5 as a PLC may apply to be so registered as a PLC, subject to it complying with the requirements of [equivalent of Section 18 of the Companies (Amendment) Act, 1983] as if the unregistered company were a joint stock company (within the meaning of Head 22 of this part [equivalent of Section 329 of the Companies Act, 1963]) applying to be registered in pursuance of Chapter 5 of this Part [equivalent of Part IX of the 1963 Act] and [equivalent of section 18 Companies (Amendment) Act, 1983] as a PLC. In the application of [equivalent of Section 18 of the Companies (Amendment) Act, 1983] to an unregistered company applying to be registered under Head 5 at this Part as a PLC, any reference to a resolution in [equivalent of sub-sections (2) and (4)(a) of section 18 Companies (Amendment) Act, 1983] shall be taken to be a reference to the registration resolution referred to in Part B8, Head 6.

Explanatory Note

This head is new.

Section 18 of the Companies (Amendment) Act, 1983 allows a company not formed under the Companies Acts, which is using the Part IX registration procedure to register as a limited company, to be so registered as a public limited company. Section 18 modifies the 1963 Act's requirements for re-registration of private companies as public companies for this purpose. As a consequence, a joint stock company registering as a plc must prepare a re-registration balance sheet, and provide to the Registrar, an auditor's statement as to its net asset position and a statutory declaration of the directors as to the net asset position between the balance sheet date and the date of re-registration etc. In contrast, the procedure for conversion of a building society into a public limited company set out in the Building Societies Act, 1989 (as amended) has no such requirements.

Head 8 Effect of registration

- (1) On the date (the “registration date”) shown in the certificate of incorporation as a company, the body corporate shall be a company limited by shares incorporated under this Bill and this Bill shall apply to it accordingly, subject to, as follows—
 - (a) the provisions of this Bill relating to the numbering of shares shall not apply to any body corporate which has issued stock or whose shares are not numbered;
 - (b) for the purposes of any provision of this Bill which requires delivery of a document or return to the Registrar, the company shall not, after the registration date be obliged to so deliver any document or return which relates to the period prior to the registration date, if it would not have been required to deliver such document or return had it not registered as a company;
 - (c) in the event of the company being wound up, every person shall be a contributory, in respect of the debts and liabilities of the company contracted before resignation, who is liable to pay or contribute to the payment of any debt or liability of the company contracted before registration or to pay or contribute to the payment of any sum for the adjustment of the rights of the members among themselves in respect of any such debt or liability, or to pay or contribute to the payment of the costs and expenses of winding up the company, so far as relates to such debts or liabilities as aforesaid;
 - (d) in the event of the company being wound up, every contributory shall be liable to contribute to the assets of the company, in the course of the winding-up, all sums due from him in respect of any such liability as aforesaid, and, in the event of the death or bankruptcy of any contributory, the provisions of this Bill relating to the personal representatives of deceased contributories and to the assignees of bankrupt contributories shall apply;
 - (e) Head 23, Part B2 [equivalent of Section 32 of the Companies (Amendment) Act, 1983] shall not apply to the company;
 - (f) Part A3 Head 6 and Part B2 Heads 19 to 21 [equivalent of Sections 26 and Sections 28 to 31 respectively of the Companies (Amendment) Act, 1983] shall not apply to the allotment of shares by the company where the contract or other obligation for their allotment was entered into or incurred before the date on which the registration resolution is passed, and the provisions of Part B6 Head 9(2) [equivalent of Section 37(1)(c) of the Companies (Amendment) Act, 1983] shall be modified accordingly;
 - (g) Part A3 Head 5 [equivalent of Section 20 of the Companies (Amendment) Act, 1983] shall not apply to the allotment of relevant securities (within the meaning of Subsection [10] of the said Section [20]) by the company where the contract or other obligation for their allotment was entered into or incurred before the registration date or where the relevant securities are allotted in pursuance of an offer made by the body corporate before the registration date;
 - (h) Part A3 Head 5 [equivalent of Section 20 of the Companies (Amendment) Act, 1983] shall not apply to the allotment of equity securities (within the meaning of Subsection [10] of the said Section [20]) to the company where the contract or other obligation for their allotment was entered into or incurred before the registration date or where the relevant equity securities are allotted in pursuance of an offer made by the body corporate before the registration date.
- (2) All property, real and personal (including things in action), belonging to or vested in a body corporate at the date of its registration in pursuance of this Part, shall, on registration, pass to and vest in the company as incorporated under this Bill for all the estate and interest of the body corporate therein.
- (3) Registration of a company in pursuance of this Part shall not affect the rights or liabilities of the body corporate in respect of any debt or obligation incurred, or any contract entered into by, to, with or on behalf of, the company before registration, or the priority of any mortgage, charge, pledge or other security or encumbrance created by the company before registration.

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- (4) All actions and other legal proceedings which, at the time of the registration of a company in pursuance of this Part, are pending by or against the company, or the public officer or any member thereof, may be continued in the same manner as if the registration had not taken place.
- (5) Without prejudice to the generality of Subheads (2) to (4), the following provisions shall have effect where a body corporate registers as a company pursuant to this Part, that is to say -
- (a) a reference (express or implied) to the body corporate in any instrument made, given, passed, or executed before the registration date shall be read and construed as a reference to the company;
 - (b) all contracts, agreements, conveyances, mortgages, deeds, leases, licences, other instruments, undertakings and notices (whether or not in writing) entered into by, made with, given to or by, or addressed to the body corporate (whether alone or with any other person) before the registration date and subsisting immediately before the registration date shall, to the extent that they were previously binding on and enforceable by, against, or in favour of the body corporate, be binding on and enforceable by, against, or in favour of the company as fully and effectually in every respect as if, instead of the body corporate, the company had been the person by whom they were entered into, with whom they were made, or to or by whom they were given or addressed as the case may be;
 - (c) an instruction, order, direction, mandate, or authority given to the body corporate and subsisting immediately before the registration date shall be deemed to have been given to the company;
 - (d) a security held by the body corporate as security for a debt or other liability to the body corporate incurred before the registration date shall be available to the company as security for the discharge of that debt or liability and, where the security extends to future or prospective debts or liabilities, shall be available as security for the discharge of debts or liabilities to the company incurred on or after the registration date, and, in relation to a security, the company, shall be entitled to all the rights and priorities (howsoever arising) and shall be subject to all liabilities to which the body corporate would have been entitled or subject if the body corporate had not become registered as a company;
 - (e) all the rights and liabilities of the body corporate as bailor or bailee of documents or chattels shall be vested in and assumed by the company;
 - (f) a negotiable instrument or order for payment of money which, before the registration date is drawn on or given to or accepted or endorsed by the body corporate or payable at a place of business of the body corporate shall, unless the context otherwise requires, have the same effect on and after the registration date as if it had been drawn on or given to or accepted or endorsed by the company instead of the body corporate or was payable at the place of business of the company;
 - (g) nothing effected or authorised by this Part—
 - (i) shall be regarded as placing the body corporate, or the company, or any other person, in breach of contract or confidence or as otherwise making any of them guilty of a civil wrong, or
 - (ii) shall be regarded as giving rise to a right to any person to terminate or cancel any contract or arrangement or to accelerate the performance of any obligation, or

- (iii) shall be regarded as placing the body corporate or the company, or any other person in breach of any enactment or rule of law or contractual provision prohibiting, restricting or regulating the assignment or transfer of any property or the disclosure of any information or
- (iv) shall release any surety, wholly or in part, from any obligation or
- (v) shall invalidate or discharge any contract or security.

Explanatory Note

This head is new. The head's constituent parts, however, are drawn from the Companies Act, 1963 and Section 107 of the Building Societies Act, 1989. Subhead 1(a) represents an edited version of Section 340 of the Companies Act, 1963.

Subhead (1)(b) is new.

Subhead 1(e): Broadly speaking Section 32 of the Companies (Amendment) Act, 1983, which applies also to an entity registered as a plc under Section 18 of the 1983 Act, requires the prior valuation by an independent expert of non-cash asset acquisition transactions entered into by the plc in the two year period following registration as a plc with anyone who was a member on the date of registration. While this requirement is manageable in the case of a private limited company (where the 50 member limit applies) reregistering as a plc, it would not be appropriate to apply the provision to the Bank, which is already in substance a fully fledged listed plc with a very large and dispersed membership. The requirements could become applicable in a wide range of circumstances, e.g. a purchase of any sort of property by the Bank, simply because the seller happened to be a shareholder on its registration as a plc, a takeover offer or a buyback of shares by the Bank where a target shareholder or, as the case may be, Bank shareholder happened to be a shareholder on the date of registration. It would, in practice, be impossible for the Bank to police compliance with the provision.

Subhead 1(f): None of Sections 26 or 28 to 31 of the 1983 Act (laying down various rules applicable to issues of shares by public limited companies, e.g., compulsory valuation provisions for non-cash issues) currently applies to the Bank. The purpose of Subhead 1(f) is to disapply those provisions in respect of share issues arising from commitments undertaken by the Bank before the passing of the registration resolution. The disapplication does not include Section 27 of the 1983 Act (no share issues at a discount), even though the Bank is not currently subject to Section 27. We are assuming that the Bank does not and will not have any commitments to issue shares at a discount.

Subhead 1(g): Section 20 of the 1983 Act does not currently apply to the Bank. The purpose of Subhead 1(g) is to disapply Section 20 in respect of pre-registration commitments undertaken by the Bank (e.g., any outstanding convertible shares or loans, warrants, options etc).

Subhead 1(h): Section 23 of the 1983 Act (shareholder pre-emption rights on new equity issues for cash) does not currently apply to the Bank. The purpose of Subhead 1(h) is to disapply Section 23 in respect of pre-registration commitments undertaken by the Bank (e.g., any outstanding convertible shares or loans, warrants, options etc).

Subhead 2 is a re-enactment of Section 337 of the Companies Act, 1963.

Subhead 3 is a re-enactment of Section 338 of the Companies Act, 1963.

Subhead 4 is a re-enactment of Section 339 of the Companies Act, 1963.

Subhead 5 is an adaptation of Section 107 of the Building Societies Act, 1989

Head 9 Consequent repeals

- (1) The enactments mentioned in column (2) of Part 1 of the Schedule are repealed to the extent mentioned in column (3) of that Part.(2).
- (2) The statutory instruments mentioned in column (2) of Part 2 of the Schedule are revoked to the extent mentioned in column (3) of that Part.

Explanatory Note

This head is new. It sets out a proposed mechanism that will synchronise repeals of existing law with the registration of an unregistered company as a PLC under this Part. The Head is subject to review

Head 10 Commencement and power to make supplementary regulations

This Part shall come into operation on such day or days as, by order or orders made by the Minister under this head, may be fixed therefore either generally or with reference to any particular purpose or provision, and different days may be so fixed for different purposes and different provisions (including the application of Part B8, Head 9 to different enactments and statutory instruments specified in the Schedule and to different provisions of those enactments and instruments).

Explanatory Notes

This head is new.

The wording of this head is based on Section 13(2) of the ACC Bank Act, 2001.

Chapter 4

Winding Up of Unregistered Company

Head 11 Meaning of unregistered companies.

For the purposes of this Part “unregistered company” shall include any trustee savings bank certified under the Trustee Savings Banks Acts, 1863 to 1958, any partnership whether limited or not any association and any company with the following exceptions—

- (a) a company as defined by Part A1, Head 2 [equivalent of Section 2 of the Companies Act, 1963];
- (b) a partnership association or company which consists of less than eight members and is not formed outside the State.

Explanatory Note

Re-enactment of Section 344 of the Companies Act, 1963.

Head 12 Winding-up of unregistered companies

- (1) Subject to the provisions of this Part, any unregistered company may be wound up under Part A11 and all the provisions of Part A11 relating to winding-up shall apply to an unregistered company with the exceptions and additions mentioned in this head.
- (2) The principal place of business in the State of an unregistered company shall, for all the purposes of the winding-up, be deemed to be the registered office of the company.
- (3) No unregistered company shall be wound up under this Bill voluntarily.
- (4) The circumstances in which an unregistered company may be wound up are as follows—
 - (a) if the company is dissolved or has ceased to carry on business or is carrying on business only for the purpose of winding-up its affairs;
 - (b) if the company is unable to pay its debts;
 - (c) if the court is of the opinion that it is just and equitable that the company should be wound up.
- (5) An unregistered company shall, for the purposes of this Bill, be deemed to be unable to pay its debts—
 - (a) if a creditor, by assignment or otherwise, to whom the company is indebted in a sum exceeding [£1000] then due has served on the company, by leaving at its principal place of business in the State or by delivering to the secretary or some director or principal officer of the company or by serving otherwise in such manner as the court may approve or direct, a demand in writing requiring the company to pay the sum so due and the company has, for 3 weeks after the service of the demand, neglected to pay the amount or to secure or compound for it to the satisfaction of the creditor;
 - (b) if any action or other proceeding has been instituted against any member for any debt or demand due, or claimed to be due, from the company or from him in his character of member and notice in writing of the institution of the action or proceeding having been served on the company by leaving the same at its principal place of business in the State or by delivering it to the secretary or some director or principal officer of the company or by otherwise serving the same in such manner as the court may approve or direct, the company has not, within 10 days after service of the notice, paid, secured or compounded for the debt or demand or procured the action or proceeding to be stayed or indemnified, the defendant to his reasonable satisfaction against the action or proceeding and against all costs damages and expenses to be incurred by him by reason of the same;
 - (c) if in the State or in any country recognised by the Minister for the purposes of Part A11, Head 137 [equivalent of Section 250 of the Companies Act, 1963] execution or other process issued on a judgement decree or order obtained in any court in favour of a creditor against the company or any member thereof as such or any person authorised to be sued as nominal defendant on behalf of the company is returned unsatisfied;

- (d) if it is otherwise proved to the satisfaction of the court that the company is unable to pay its debts.

- (6) A petition for winding up a trustee savings bank may be presented by the Minister for Finance as well as by any person authorised under the other provisions of this Bill to present a petition for winding up a company.
- (7) Where a company incorporated outside the State which has been carrying on business in the State ceases to carry on business in the State it may be wound up as an unregistered company under this Part notwithstanding that it has been dissolved or otherwise ceased to exist as a company under or by virtue of the laws of the country under which it was incorporated.

Explanatory Note

This head is a re-enactment of Section 345 of the Companies Act, 1963.

The cross-references have been updated in accordance with the structure of the Bill. The reference to £50 in paragraph (5)(a) will be revised at a later date (this reference to £50 was changed to £1000 in Companies Act, 1990).

Head 13 Contributories in winding up of unregistered company.

- (1) In the event of an unregistered company being wound up, every person shall be deemed to be a contributory who is liable to pay or contribute to the payment of any debt or liability of the company or to pay or contribute to the payment of any sum for the adjustment of the rights of the members among themselves or to pay or contribute to the payment of the costs and expenses of winding up the company and every contributory shall be liable to contribute to the assets of the company, all sums due from him in respect of any such liability as aforesaid.
- (2) In the event of the death or bankruptcy of any contributory, the provisions of this Bill relating to the personal representatives of deceased contributories and to the assignees of bankrupt contributories respectively shall apply.

Explanatory Notes

Re-enactment of Section 346 of the Companies Act, 1963.

Head 14 Power of court to stay or restrain proceedings.

The provisions of this Bill relating to staying and restraining actions and proceedings against a company at any time after the presentation of a petition for winding-up and before the making of a winding-up order shall, in the case of an unregistered company where the application to stay or restrain is by a creditor, extend to actions and proceedings against any contributory of the company.

Explanatory Note

Re-enactment of Section 347 of the Companies Act, 1963

Head 15 Actions stayed on winding-up order.

Where an order has been made for winding up an unregistered company, no action or proceeding shall be proceeded with or commenced against any contributory of the company in respect of any debt of the company, except by leave of the court and subject to such terms as the court may impose.

Explanatory Note

Re-enactment of Section 348 of the Companies Act, 1963

Head 16 Provisions of [this Chapter] to be cumulative.

The provisions of this Chapter relating to unregistered companies shall be in addition to and not in restriction of any provisions hereinbefore contained in Part A11 relating to winding up companies by the court and the court or liquidator may exercise any powers or do any act in the case of unregistered companies which might be exercised or done by it or him in winding up companies formed and registered under this Bill.

Explanatory Note

Re-enactment of Section 349 of the Companies Act, 1963

Chapter 5

Application of Bill to Companies Formed or Registered under Former Acts

Note: *This Chapter restates verbatim the provisions of Part VIII of the 1963 Act. It may be necessary to modify the Heads of this Chapter after further consideration.*

Head 17 Application of Bill to companies formed and registered under former Companies Acts

- (1) Subject to Subhead (2), in the application of this Bill to existing companies, it shall apply in the same manner—
 - (a) in the case of a limited company, other than a company limited by guarantee, as if the company had been formed and registered under this Bill as a company limited by shares;
 - (b) in the case of a company limited by guarantee, as if the company had been formed and registered under this Bill as a company limited by guarantee; and
 - (c) in the case of a company other than a limited company, as if the company had been formed and registered under this Bill as an unlimited company.
- (2) Reference, express or implied, to the date of registration shall be construed as a reference to the date at which the company was registered under the Joint Stock Companies Act, 1862, the Companies (Consolidation) Act, 1908 or the Companies Acts, 1963 to 2006, as the case may be.

Explanatory Note

Restatement of Section 324 of the Companies Act, 1963.

Head 18 Application of Bill to companies registered but not formed under former Companies Acts

- (1) Subject to subhead (2), this Bill shall apply to every company registered (in a register kept in the State) but not formed under the Joint Stock Companies Acts, the Companies Act, 1862, the Companies (Consolidation) Act, 1908 or the Companies Acts, 1963 to 2006, in the same manner as it is in Chapter 6 declared to apply to companies registered but not formed under this Bill.
- (2) Reference, express or implied, to the date of registration shall be construed as a reference to the date at which the company was registered under the Joint Stock Companies Acts, the Companies Act, 1862, the Companies (Consolidation) Act, 1908, or the Companies Acts 1963 to 2006, as the case may be.

Explanatory Note

Restatement of Section 325 of the Companies Act, 1963.

Head 19 Application of Bill to unlimited companies re-registered as limited companies under former Companies Acts

- (1) Subject to Subhead (2), this Bill shall apply to every unlimited company registered (in a register kept in the State) as a limited company in pursuance of the Companies Act, 1879, or Section 57 of the Companies (Consolidation) Act, 1908, in the same manner as it applies to an unlimited company registered in pursuance of this Bill as a limited company.
- (2) Reference, express or implied, to the date of registration shall be construed as a reference to the date at which the company was registered as a limited company under the said Act of 1879 or the said Section 57 of the Companies (Consolidation) Act, 1908, as the case may be.

Explanatory Note

Restatement of Section 326 of the Companies Act, 1963.

Head 20 Provisions as to companies registered under Joint Stock Companies Acts

- (1) A company registered under the Joint Stock Companies Acts may cause its shares to be transferred in manner hitherto in use, or in such other manner as the company may direct.

- (2) The power of altering articles under Part B2, Head 12 [equivalent of Section 15 of the Companies Act, 1963] shall, in the case of an unlimited company formed and registered under the Joint Stock Companies Acts, extend to altering any regulations relating to the amount of capital or to its distribution into shares, notwithstanding that those regulations are contained in the memorandum.

Explanatory Note

Restatement of Section 327 of the Companies Act, 1963. This provision may be more appropriate to be included in Chapter 6 below, and may be moved there after further consideration.

Chapter 6

Registration of Joint Stock Companies under this Bill

Note: *This Chapter broadly restates the provisions of Part IX of the Companies Act 1963, but has been amended slightly so as to apply primarily to joint stock companies, as it is intended that other unregistered companies will be covered by the preceding Chapters of this Part.*

Head 21 Companies capable of being registered

- (1) With the exceptions and subject to the provisions contained in this head, any company registered under the Joint Stock Companies Acts may at any time register under this Bill as an unlimited company, or as a company limited by shares, or as a company limited by guarantee, and the registration shall not be invalid by reason that it has taken place with a view to the company's being wound up.
- (2) This head shall not apply to a company registered under the Companies Act, 1862, or the Companies (Consolidation) Act, 1908, or to a company which has not its registered office or principal place of business in the State.
- (3) A company having the liability of its members limited by statute or letters patent, and not being a joint stock company as hereinafter defined, shall not register in pursuance of this head.
- (4) A company, having the liability of its members limited by statute or letters patent, shall not register in pursuance of this head as an unlimited company or as a company limited by guarantee.
- (5) A company that is not a joint stock company as hereinafter defined, shall not register in pursuance of this head as a company limited by shares.
- (6) A company shall not register in pursuance of this head without the assent of a majority of such of its members as are present in person or by proxy at a general meeting summoned for the purpose.
- (7) Where a company, not having the liability of its members limited by statute or letters patent, is about to register as a limited company, the majority required to assent as aforesaid shall consist of not less than three-fourths of the members present in person or by proxy at the meeting.
- (8) Where a company is about to register as a company limited by guarantee, the assent to its being so registered shall be accompanied by a resolution declaring that each member undertakes to contribute to the assets of the company, in the event of its being wound up while he is a member, or within one year after he ceases to be a member, for payment of the debts and liabilities of the company contracted before he ceased to be a member, and of the costs and expenses of winding-up and for the adjustment of the rights of the contributories among themselves, such amount as may be required, not exceeding a specified amount.
- (9) In computing any majority under this head when a poll is demanded, regard shall be had to the number of votes to which each member is entitled according to the regulations of the company.

Explanatory Note

Restatement of Section 328 of the Companies Act, 1963

Head 22 Definition of joint stock company

For the purposes of this Chapter, as far as relates to registration of companies as companies limited by shares, a joint stock company means a company having a permanent paid up or nominal share capital of fixed amount divided into shares, also of fixed amount, or held and transferable as stock, or divided and held partly in one way and partly in the other, and formed on the principle of having for its members the holders of those shares or that stock, and no other persons, and such a company when registered with limited liability under this Bill shall be deemed to be a company limited by shares.

Explanatory Note

Restatement of Section 329 of the Companies Act, 1963.

Head 23 Requirements for registration of joint stock companies

Before the registration in pursuance of this Chapter of a joint stock company, there shall be delivered to the Registrar the following documents—

- (a) a list showing the names, addresses and occupations of all persons who on a day named in the list, not being more than 6 clear days before the day of registration, were members of the company, with the addition of the shares or stock held by them respectively, distinguishing in cases where the shares are numbered, each share by its number;
- (b) a copy of any statute, charter, letters patent, deed of settlement, contract of co-partnership or other instrument constituting or regulating the company; and
- (c) if the company is intended to be registered as a limited company, a statement specifying the following particulars—
 - (i) the nominal share capital of the company and the number of shares into which it is divided, or the amount of stock of which it consists,
 - (ii) the number of shares taken and the amount paid on each share,
 - (iii) the name of the company with the addition of the word “limited” or “teoranta” as the last word thereof, and
 - (iv) in the case of a company intended to be registered as a company limited by guarantee, the resolution declaring the amount of the guarantee.

Explanatory Note

Restatement of Section 330 of the Companies Act, 1963

Note: Section 331 of 1963 has not been restated here as it deals with companies which are not joint stock companies.

Head 24 Verifications of lists of members and directors of company for purposes of registration

The lists of members and directors and any other particulars relating to the company required to be delivered to the Registrar shall be verified by a statutory declaration of any two or more directors or other principal officers of the company.

Explanatory Note

Restatement of Section 332 of the Companies Act, 1963.

Head 25 Registrar may require evidence as to nature of company

The Registrar may require such evidence as he thinks necessary for the purpose of satisfying himself whether any company proposing to be registered is or is not a joint stock company as hereinbefore defined.

Explanatory Note

Restatement of Section 333 of the Companies Act, 1963

Head 26 Change of name for purposes of Registration

- (1) Subject to Subhead (2), where the name of a company seeking registration under this Chapter is one by which it may not be so registered by reason of the name being, in the opinion of the Minister, undesirable, it may, with the approval of the Minister signified in writing, change its name with effect from its registration as aforesaid.
- (2) The like assent of the members of the company shall be required to the change of name as is by Part B8, Head 21 [equivalent of Section 328 of the Companies Act, 1963] required to the registration under this Bill.

Explanatory Note

Restatement of Section 334 of the Companies Act, 1963.

Head 27 Addition of “limited” or “teoranta” to name

- (1) Subject to Subhead (2), when a company registers in pursuance of this Chapter with limited liability, the word “limited” or “teoranta” shall form and be registered as part of its name.
- (2) Subhead (1) shall not be taken as excluding the operation of Part B3 Head7 or Part B4 Head, 8 [the equivalent of Section 24 of the Companies Act, 1963]

Explanatory Note

Restatement of Section 335 of the Companies, Act 1963.

Head 28 Certificate of registration of existing companies

On compliance with the requirements of this Chapter relating to registration, and on payment of such fees, if any, as are payable under the following provisions of this Bill, the Registrar shall certify under his hand that the company applying for registration is incorporated as a company under this Bill, and in the case of a limited company, that it is limited and thereupon the company shall be so incorporated.

Explanatory Note

Restatement of Section 336 of the Companies Act, 1963.

Head 29 Vesting of property on registration

All property, real and personal (including things in action) belonging to or vested in a company at the date of its registration in pursuance of this Chapter, shall on registration pass to and vest in the company as incorporated under this Bill for all the estate and interest of the company therein.

Explanatory Note

Restatement of Section 337 of the Companies Act, 1963.

Head 30 Saving for existing liabilities

Registration of a company in pursuance of this Chapter shall not affect the rights or liabilities of the company in respect of any debt or obligation incurred, or any contract entered into by, to, with or on behalf of the company before registration.

Explanatory Note

Restatement of section 338 of Companies Act 1963.

Head 31 Continuation of existing actions

- (1) Subject to Subhead (2), all actions and other legal proceedings which at the time of the registration of a company in pursuance of this Chapter are pending by or against the company, or the public officer or any member thereof, may be continued in the same manner as if the registration had not taken place.
- (2) Execution shall not issue against the effects of any individual member of the company on any judgement, decree or order obtained in any such action or proceeding, but in the event of the property and effects of the company being insufficient to satisfy the judgement, decree or order, an order may be obtained for winding up the company.

Explanatory Note

Restatement of Section 339 of the Companies Act, 1963.

Head 32 Effects of registration under this Part

- (1) When a company is registered in pursuance of this Part, Subheads (2) to (7) shall have effect.
 - (2) All provisions contained in any statute or instrument constituting or regulating the company, including, in the case of a company registered as a company limited by guarantee, the resolution declaring the amount of the guarantee, shall be deemed to be conditions and regulations of the company, in the same manner and with the same incidents as if so much thereof as would, if the company had been formed under this Bill, have been required to be inserted in the memorandum, were contained in a registered memorandum, and the residue thereof were contained in registered articles.
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Part B8 - Unregistered Companies and Joint Stock Companies

- (3) All the provisions of this Bill shall apply to the company and the members, contributories and creditors thereof, in the same manner in all respects as if it had been formed under this Bill, subject as follows—
- (a) Table A or Tábla A shall not apply unless adopted by special resolution;
 - (b) the provisions of this Bill relating to the numbering of shares shall not apply to any joint stock company whose shares are not numbered;
 - (c) subject to the provisions of this head, the company shall not have power to alter any provision contained in any statute relating to the company;
 - (d) subject to the provisions of this head, the company shall not have power without the sanction of the Minister, to alter any provision contained in any letters patent relating to the company;
 - (e) the company shall not have power to alter any provision contained in a charter or letters patent relating to the objects of the company;
 - (f) in the event of the company being wound up, every person shall be a contributory, in respect of the debts and liabilities of the company contracted before registration, who is liable to pay or contribute to the payment of any debt or liability of the company contracted before registration or to pay or contribute to the payment of any sum for the adjustment of the rights of the members among themselves in respect of any such debt or liability, or to pay or contribute to the payment of the costs and expenses of winding up the company, so far as relates to such debts or liabilities as aforesaid;
 - (g) in the event of the company being wound up, every contributory shall be liable to contribute to the assets of the company, in the course of the winding-up, all sums due from him in respect of any such liability as aforesaid, and in the event of the death or bankruptcy of any contributory, the provisions of this Bill relating to the personal representatives of deceased contributories and to the assignees of bankrupt contributories shall apply.
- (4) The provisions of this Bill relating to—
- (a) the registration of an unlimited company as limited,
 - (b) the powers of an unlimited company on registration as a limited company to increase the nominal amount of its share capital and to provide that a portion of its share capital shall not be capable of being called up except in the event of winding-up;
 - (c) the power of a limited company to determine that a portion of its share capital shall not be capable of being called up except in the event of winding-up;
- shall apply notwithstanding any provisions contained in any statute, charter or other instrument constituting or regulating the company.
- (5) Nothing in this head shall authorise the company to alter any such provisions contained in any instrument constituting or regulating the company as would, if the company had originally been formed under this Bill, have been required to be contained in the memorandum and are not authorised to be altered by this Bill.
- (6) None of the provisions of this Bill (apart from those of Part A4, Head 72(4) and Part B4 39(4) [equivalent of Subsection (4) of Section 205 of the Companies Act, 1963]) shall derogate from any power of altering its constitution or regulations which may, by virtue of any statute or other instrument constituting or regulating the company, be vested in the company.
- (7) In this head, “instrument” includes deed of settlement, contract of co-partnership and letters patent.

Explanatory Note

Restatement of Section 340 of the Companies Act, 1963.

Head 33 Power to substitute memorandum and articles for deed of settlement

- (1) Subject to Subheads (2) to (4), a company registered in pursuance of this Chapter may, by special resolution, alter the form of its constitution by substituting a memorandum and articles for a deed of settlement.
- (2) The provisions of Part B2, Head 11 [equivalent of Section 10 of the Companies Act, 1963] relating to applications to the court for cancellation of alterations of the objects of a company and matters consequential on the passing of resolutions for such alterations shall, so far as applicable, apply to an alteration under this head with the following modifications—
 - (a) there shall be substituted for the printed copy of the altered memorandum, required to be delivered to the Registrar, a printed copy of the substituted memorandum and articles; and
 - (b) on the delivery to the Registrar of a printed copy of the substituted memorandum and articles or on the date when the alteration is no longer liable to be cancelled by order of the court, whichever last occurs, the substituted memorandum and articles shall apply to the company in the same manner as if it were a company registered under this Bill, with that memorandum and those articles, and the company's deed of settlement shall cease to apply to the company.
- (3) An alteration under this head may be made either with or without any alteration of the objects of the company under this Bill.
- (4) In this head, "deed of settlement" includes any contract of co-partnership or other instrument constituting or regulating the company, not being a statute, charter or letters patent.

Explanatory Note

Restatement of Section 341 of the Companies Act, 1963.

Head 34 Power of court to stay or restrain proceedings

The provisions of this Bill relating to staying and restraining actions and proceedings against a company at any time after the presentation of a petition for winding-up and before the making of a winding-up order shall, in the case of a company registered in pursuance of this Chapter, where the application to stay or restrain is by a creditor, extend to actions and proceedings against any contributory of the company.

Explanatory Note

Restatement of Section 342 of the Companies Act, 1963.

Head 35 Actions stayed on winding-up order

Where an order has been made for winding-up a company registered in pursuance of this Chapter, no action or proceeding shall be commenced or proceeded with against the company or any contributory of the company, in respect of any debt of the company except by leave of the court and subject to such terms as the court may impose.

Explanatory Note

Restatement of Section 343 of the Companies Act, 1963.