

# General Scheme of the Migration of Participating Securities Bill 2019

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## Head 1 - Citation and Commencement

### **Provide that:**

1. This Act may be cited as the Migration of Participating Securities Act 2019.
2. This Act shall come into operation on such day or days as the Minister may appoint by order or orders either generally or with reference to any particular purpose or provision and different days may be so appointed for different purposes or different provisions.

### **Explanatory Note**

This Head is a standard provision.

## Head 2 – Interpretation

### **Provide that:**

“Belgian Law Rights” means the intangible co-ownership rights governed by Belgian law over a pool of book-entry interests which the members of Participating Issuers will receive upon migration, the details of which are set out in the Circular;

“Companies Act” means the Companies Act 2014, (No. 38 of 2014);

“Circular” means the circular required to be sent to members of a Participating Issuer as required by Section 4;

“CREST” means the securities settlement system operated by Euroclear UK and Ireland, and recognised by the Minister for Business, Enterprise and Innovation pursuant to the Uncertificated Securities Regulations;

“CSD Regulation” means Regulation 909/2014 of the European Parliament and of the Council of 23 July 2014;

“Deadline Date” means a date which is specified in the Circular and which shall not be less than 15 days before the Live Date;

“Euroclear Bank” means [Euroclear SA/NV, a Central Securities Depository registered in Belgium and authorised by the National Bank of Belgium for the purposes of the CSD Regulation];

“Euroclear Nominees Limited” means Euroclear Nominees Limited, a company registered in England and Wales, registration number 02369969 and whose registered office is at 33 Cannon Street, London EC4M 5SB;

“Extraordinary General Meeting” has the meaning given to it in the Companies Act 2014;

“Live Date” means a date or dates prescribed by the Minister pursuant to section 10;

“Migrate” or “Migration” means the transfer by operation of law of title to issued securities of the Participating Issuer, which are as at the Deadline Date, Participating Securities, to [Euroclear Nominees Limited] holding on trust for Euroclear Bank Participants, with effect from the Live Date in accordance with section 11;

“The Minister” means the Minister for Finance;

“Participating Security” has the meaning given to it in the Uncertificated Securities Regulations;

“Prescribed” means prescribed by regulations made by the Minister pursuant to section 3 and 10;

“Securities” means transferable securities as defined by Directive 2004/39/EC of the European Parliament and the Council of 21 April 2004;

“Security Holder” a member of a Participating Issuer who holds Participating Securities and who has not requested recertification of his holding of securities as at the Deadline Date;

“Special Resolution” has the meaning given to it in section 191 of the Companies Act 2014;

“Title” includes any legal or equitable interest in the Participating Securities;

“The Uncertificated Securities Regulations” means the Companies Act 1990 (Uncertified Securities) Regulations 1996, (S.I. No. 68 of 1996)

Words and expressions defined in the Companies Act shall, unless the context requires otherwise, have the same meaning in this Act.

### **Explanatory note**

This is a standard provision.

This Head provides for the meaning of certain words or phrases used in the Bill. Further definitions may become necessary during the drafting process.

## Head 3 – Regulations

### **Provide that:**

- (1) The Minister may make regulations prescribing anything referred to in this Act as prescribed or to be prescribed.
- (2) A regulation made under this Act shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the order or regulation is passed by either such House within the next 21 days on which that House has sat after the order or regulation is laid before it, the order or regulation shall be annulled accordingly, but without prejudice to the validity of anything previously done thereunder.

### **Explanatory note**

This is a standard provision and will apply to any Regulations made by the Minister under this Act.

## Head 4 - Migration of Securities

### Provide that:

- (1) Subject to the provisions of subsection (2) and notwithstanding the provisions of section 94(4) of the Companies Act, or anything to the contrary in its Constitution, a Participating Issuer may migrate its Participating Securities.
- (2) The conditions referred to in subsection (1) are: -
  - (i) The issue of the Circular to the members of the Participating Issuer with the notice of Extraordinary General Meeting at which the Special Resolution shall be proposed;
  - (ii) The publication of a notice in a daily national newspaper circulating in the district in which the Participating Issuer has its registered office, and on the Participating Issuer's website, on the date on which the notice of Extraordinary General Meeting is sent to members, of the intention of the Participating Issuer to propose the Migration and that further information is available on its website.
  - (iii) The passing of a Special Resolution of the members of the Participating Issuer in general meeting by the Deadline Date to approve the Migration;
  - (iv) Those Security Holders who do not wish their Participating Securities to Migrate, having been given the opportunity, by the Deadline Date, to instruct the Participating Issuer to convert their securities into certificated form;
  - (v) Those Security Holders who wish to hold their securities in uncertificated form being given the opportunity to instruct the Participating Issuer accordingly by the Deadline Date so that their Securities may be transferred by Migration with effect from the Live Date;

### Explanatory Note

This sets out the arrangements and conditions to be complied with to facilitate the transfer of title. Further issues may emerge in the course of drafting which will need to be resolved with the AGO. It will need to be clarified also whether there is a need to make express provision to certain provisions in the Companies Act such as section 1095 and 1096 in relation to the determination of who is entitled to receive notice and determination of voting rights.

## Head 5 - Quorum

### **Provide that:**

Notwithstanding anything contained in the Participating Issuer's Constitution to the contrary:

- (l) the quorum for the Extraordinary General Meeting at which the Special Resolution will be proposed shall be at least 3 members present in person or by proxy, representing at least one third in nominal value of the issued Securities of the Participating Issuer and section 182 of the Companies Act 2014 shall be read accordingly; and
- (i) any holder of Securities who is present in person or by proxy, may demand a poll and section 189 of the Companies Act 2014 shall be read accordingly.

### **Explanatory Note**

This section is based on section 182 of Companies Act 2014; the number of members constituting a quorum has been increased by one to 3. The condition in relation to the nominal value of securities is based on section 88 of the Companies Act (Variation of Rights).

## Head 6 - Information to be contained in Circular

### Provide that:

- (1) The Circular referred to in section 4(1) shall contain at least the following details, in addition to any details which may be required under the rules of the regulated market of which the Participating Issuer is a member: -
- (i) The text of the special resolution which will be proposed at the Extraordinary General Meeting;
  - (ii) An explanation of the Migration and how it will impact on the rights of Security Holders;
  - (iii) The options for Security Holders who do not wish their Participating Securities to be subject to Migration and the steps they must follow;
  - (iv) A summary of the Belgian Law Rights and Royal Decree 92;
  - (v) A list of the documentation relating to the Migration and where it can be accessed or inspected until the Deadline Date;
  - (vi) A recommendation from the directors on the merits of the Migration for Security Holders;
  - (vii) A timetable relating to Migration and important dates for the members leading up to the Live Date; and
  - (viii) Any further information which the directors believe is necessary in order to allow members to fully understand and consider Migration.
- (2) If a Participating Issuer, or any officer of it makes default in complying with the requirements of this section, the issuer and such person shall be guilty of an offence and shall be liable on summary conviction to a Class A fine or imprisonment for a term not exceeding 6 months or both.

### Explanatory Note

This sets out the indicative information to be provided in the Circular to be given to members in advance of the Extraordinary General Meeting to consider migration. The information may be subject to amendment during drafting. The level of penalty proposed is consistent with that applicable to a category 3 offence under the Companies Act 2014.

## Head 7 - Registration of Filing of Special Resolution

**Provide that:**

- (1) The provisions of section 198 of the Companies Act shall apply to the registration of the Special Resolution referred in section 4.

**Explanatory Note**

This will require the special resolution to be filed with the Registrar of Companies within 15 days of its passing.

## Head 8 - Modification of section 94 and 99 of Companies Act

### **Provide that:**

- (1) Notwithstanding section 94(4) of the Companies Act or section 2(1) of the Stock Transfer Act 1963 following Migration, a written instrument of transfer shall not be necessary to transfer title to Participating Securities from the settlement system operated by Euroclear Bank (or its Nominee) to the holders of the equivalent Belgian Law Rights or to transfer title to Euroclear Bank or its nominee by a Security Holder or holder of Belgian Law Rights.
- (2) Notwithstanding section 99(2) of the Companies Act, a participating Issuer shall not be obliged to issue share certificates to Euroclear Bank (or Euroclear Nominees Limited as appropriate) when the Migration takes effect on the Live Date and Euroclear Bank's title to the Participating Securities shall be evidenced by the recording of the name and address of the Nominee in the register of members of the Participating Issuer.

### **Explanatory Note**

The purpose of these modifications is to provide that following migration it will not be necessary for share certificates to be issued to Euroclear Bank nor will an instrument of transfer be required.

## Head 9 – Further Conditions

### **Provide that:**

- (1) A participating issuer shall submit, in advance of the Live Date, a statement in the prescribed form to the Registrar of Companies confirming that the provisions of sections 4, 6 and 7 have been complied with in respect of the participating securities.
- (2) The statement shall be verified by affidavit of one or more directors of the participating issuer.
- (3) If the issuer or any officer of it, or a person to whom subsection (2) applies, makes default in complying with the requirements of this section, the issuer and such person shall be guilty of an offence and shall be liable on summary conviction to a Class A fine or imprisonment for a term not exceeding 6 months or both.
- (4) A participating issuer shall provide a copy of the statement referred to in subsection (1) to the Listing Authority as set out in S.I. 286 of 2007 (European Communities (Admissions to Listing and Miscellaneous Provisions) Regulations, 2007) in advance of the Live Date who shall make a list of such issuers available publicly on its website.

### **Explanatory Note:**

This Head requires a participating issuer to file a statement verified by affidavit of a director that the conditions in sections 4, 6 and 7 have been complied with. The level of penalty proposed is consistent with that applicable to a category 3 offence under the Companies Act 2014 which is the level of penalty applicable to breaches of filing obligations under the Act.

## Head 10 - Live Date

### **Provide that:**

The Minister may by regulation under this Section prescribe a Live Date and different live dates may be prescribed for different issuers or different classes of participating securities and may make provision by regulations for such supplementary, incidental or transitional provisions as appear to the Minister to be necessary or expedient to facilitate Migration.

### **Explanatory Note**

This allows the Minister to prescribe a live date on which the transfer of title to Euroclear Bank will occur by operation of law. We will need to explore with the AGO whether this wording would allow the prescription of a further Live Date(s) in the event that Participating Issuers have not met the Live Date and wish to transfer.

## Head 11 - Vesting of Title

**Provide that:**

On each Live Date, the legal title to:

(a) participating securities in respect of participating issuers for which that live date has been prescribed, and

(b) in respect of which the conditions set out in sections 4, 6 and 7 have been met

shall be vested in Euroclear Bank Nominees.

**Explanatory Note**

This Head provides that on the Live Date the legal title to Participating securities will vest in Euroclear Bank (EB) by operation of law. We will need to consider and consult further with the Office of the Attorney General.

## Head 12 – Cessation of Act

### Provide that:

(1) This Act (other than 6(2), 7, 8, 9(3) and 11) ceases to have effect on 30 March 2021 or a later date substituted by resolution of both Houses of the Oireachtas.

(2) Notwithstanding the cessation in effect of this Act, any order or requirement made under it continues to have effect according to its terms.

(3) Notwithstanding the cessation in effect of this Act in accordance with *subsection (1)*, the provisions of this Act shall be taken to continue in effect to any extent necessary—

(a) to enforce any order or requirement continued in effect by *subsection (2)*, and

(b) to vary, terminate or revoke any such order or requirement.

### Explanatory Note

The intention is that the Act will cease to have effect when the European Commission's Equivalence Decision in respect of the U.K. and Euroclear U.K. and Ireland (EUI) lapses. After that date, EUI will no longer be able to settle Irish securities in CREST and the migration to Euroclear Bank Belgium should have been effected. Certain sections should be saved e.g. the section relating to the vesting of title, the modification of section 94 and 99 of the Companies Act and offences.

It may also become necessary to consider whether provision needs to be made for any prolongation of the duration of the Act by Order to allow for possible contingencies that may emerge.

This section borrows from the Credit Institutions (Stabilisation) Act 2010.