

Ирландия

Company act 2014

Statutory declaration made in foreign place

886. (1) A statutory declaration made in a foreign place (in pursuance of, or for the purposes of, this Act) shall be deemed to have been validly made (in pursuance of, or for the purposes of, this Act) if—

(a) it is made in that place before a person entitled under the Solicitor's Act 1954 to practise as a solicitor in the State, or

(b) it is made before a person authorised under the law of that place to administer oaths in that place and subsection (3), (4) or (5), whichever applies, is complied with.

(2) Subsection (1) is—

(a) without prejudice to the circumstances set out in the Statutory Declarations Act 1938 in which a statutory declaration may be made, and

(b) in addition to, and not in substitution for, the circumstances provided under the Diplomatic and Consular Officers (Provision of Services) Act 1993 or any other enactment in which a statutory declaration made by a person outside the State is regarded as a statutory declaration validly made (whether for purposes generally or any specific purpose).

(3) In a case falling within subsection (1)(b), and if the foreign place in question is situate in a state that is a contracting party to the EC Convention, then (unless that Convention does not extend to that particular place), the provisions of the EC Convention with regard to authentication shall apply in relation to the statutory declaration concerned, including the procedures for verification of any matter in circumstances where serious doubts, with good reason, arise in respect of that matter.

(4) In a case falling within subsection (1)(b), and if the foreign place in question is situate in a state that is a contracting party to the Hague Convention but is not a contracting party to the EC Convention, then (unless the Hague Convention does not extend to that particular place), the provisions of the Hague Convention with regard to authentication shall apply in relation to the statutory declaration concerned, including the procedures for verification of any matter in circumstances where serious doubts, with good reason, arise in respect of that matter.

(5) In a case falling within subsection (1)(b) to which neither subsection (3) nor (4) applies, the following shall be authenticated in accordance with the law of the foreign place in question:

(a) the signature of the person making the declaration (the “declarer”); and

(b) to the extent that that law requires either or both of the following to be authenticated —

(i) the capacity in which the declarer has acted in making the declaration;

(ii) the seal or stamp of the person who has administered the oath to the declarer.

(6) The Registrar may, in respect of a statutory declaration that purports to have been authenticated in the manner specified in subsection (5) and to be made in pursuance of or for the purposes of this Act, require such proof as the Registrar considers appropriate of any particular requirements of the law referred to in subsection (5). (7) In this section—

“EC Convention” means the Convention Abolishing the Legalisation of Documents in the Member States of the European Communities of 25 May 1987;

“foreign place” means a place outside the State;

“Hague Convention” means the Convention Abolishing the Requirement of Legalisation for Foreign Public Documents done at the Hague on 5 October 1961;

“statutory declaration”, in addition to the meaning assigned to it by the Interpretation Act 2005, means a declaration that conforms with the requirements of the Statutory Declarations Act 1938, except for any requirements contained in section 1 of that Act or any other provision of it, expressly or impliedly limiting—

(a) the class of persons who may take and receive a declaration; or (b) the places in which a declaration may be taken or received.

(8) A statutory declaration made— (a) before 24 December 2006, (b) in a place outside the State, (c) before—

(i) if the place is not a place in England and Wales, Northern Ireland or Scotland, a person authorised under the law of that place to administer oaths or a person entitled under the Solicitor's Act 1954 to practise as a solicitor in the State, or

(ii) if the place is a place in England and Wales, Northern Ireland or Scotland—

(I) a person entitled under the law of England and Wales, Northern Ireland or Scotland, as the case may be, to practise as a solicitor in England and Wales, Northern Ireland or Scotland, as the case may be, or to administer oaths there, or

(II) a person entitled under the Solicitor's Act 1954 to practise as a solicitor in the State,

and

(d) purporting to be made in pursuance of or for the purposes of the Companies Acts (being the collective citation, with respect to enactments concerning companies, as stood provided, for the time being, by statute),

shall, if the declaration was delivered to the Registrar before 24 December 2006, be valid and deemed always to have been valid notwithstanding anything in the Diplomatic and Consular Officers (Provision of Services) Act 1993 or any other enactment and anything done on foot of that declaration's delivery to the Registrar, including any subsequent registration of that declaration by the Registrar, shall be valid and be deemed always to have been valid notwithstanding anything in that Act or any other enactment.

(9) Nothing in subsection (8) affects any proceedings commenced before 24 December 2006.

PART 25 MISCELLANEOUS

CHAPTER 1

Provisions concerning foreign insolvency proceedings (including those covered by the Insolvency Regulation)

Preliminary and interpretation (Chapter 1)

1416. (1) In addition to their application to Part 11, sections 1419 to 1428 shall apply to

insolvency proceedings dealt with in Part 10.

(2) Save as provided in section 1422 and except where the context otherwise requires, references in this Chapter to numbered Articles without qualification are references to Articles so numbered of the Insolvency Regulation.

Recognition of winding up orders of non-European Union states and Denmark

1417. (1) Any order made by a court of any state recognised for the purposes of this section and made for, or in the course of, winding up a company may be enforced by the High Court in the same manner in all respects as if the order has been made by the High Court.

(2) When an application has been made to the High Court under this section, an office copy of any order sought to be enforced shall be sufficient evidence of the order.

(3) In this section—
“company” means a body corporate incorporated outside the State;

“recognised” means recognised by order made by the Minister for the purposes of this section and no such order may be made in relation to a state that is a Member State (other than Denmark).

Purpose of sections 1419 to 1428

1418. The purpose of sections 1419 to 1428 is to re-enact the European Communities (Corporate Insolvency) Regulations 2002 (S.I. No. 333 of 2002), apart from their provisions in so far as they relate to insolvency proceedings.

Registration of judgments given in insolvency proceedings

1419. (1) Without prejudice to Article 16(1) of the Insolvency Regulation, a liquidator

appointed in insolvency proceedings who intends—

(a) to request under Article 21 of the Insolvency Regulation that notice of the judgment opening the proceedings and, where appropriate, the decision appointing him or her be published in the State; or

(b) to take any other action in the State under the Insolvency Regulation;

shall deliver to the Registrar a certified copy of the judgment and, where appropriate, of the decision appointing the liquidator.

(2) Registration under subsection (1) may also be effected by the Registrar on application by a liquidator who does not intend to take any action in the State under the Insolvency Regulation.

(3) The certified copy or copies mentioned in subsection (1) shall be accompanied by—

(a) if the judgment or decision is not expressed in the Irish or the English language, a translation, certified to be correct by a person competent to do so, into either of those languages;

(b) the prescribed form; and

(c) the prescribed fee.

(4) The Registrar shall issue a certificate of registration to the liquidator. (5) In any proceedings a document purporting to be—

(a) a certified copy of a judgment opening insolvency proceedings or a decision appointing a liquidator in such proceedings, or

(b) a translation of such a document which is certified as correct by a person competent to do so,

shall, without further proof, be admissible as evidence of the judgment, the liquidator's appointment or the translation, unless the contrary is shown.

Publication in relation to insolvency proceedings outside State 1420. Section 711 shall apply to insolvency proceedings (as defined in section 2 (1)) as it

applies to insolvency proceedings (as defined in section 710).

Registration of insolvency judgments

1421. A request by a liquidator under Article 22 of the Insolvency Regulation that the judgment opening the insolvency proceedings be registered in a public register shall be made to the Registrar.

Enforcement in State of insolvency judgments 1422. (1) In this section—

“Brussels 1 Regulation” means Council Regulation (EC) No. 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters;

“insolvency judgment” means a judgment referred to in Article 25 of the Insolvency Regulation;

“Master” means the Master of the High Court.

(2) Except where the context otherwise requires, references in this section to numbered Articles without qualification are references to Articles so numbered of the Brussels 1 Regulation.

(3) Having regard to Article 68, references in Article 25 of the Insolvency Regulation to enforcement of insolvency judgments in accordance with certain Articles of the Brussels Convention are to be read as references to enforcement of those judgments in accordance with Articles 38 to 58.

(4) An application under the Brussels 1 Regulation for the enforcement in the State of an insolvency judgment shall be made to the Master.

(5) The Master shall determine the application by order in accordance with the Brussels 1 Regulation.

(6) The Master shall declare the insolvency judgment enforceable immediately on completion of the formalities provided for in Article 53 without any review under Articles 34 and 35 and shall make an enforcement order in relation to the judgment.

(7) An order under subsection (5) may provide for the enforcement of part only of the insolvency judgment concerned.

(8) An application to the Master under Article 39 for an enforcement order in respect of an insolvency judgment may include an application for any preservation measures the High Court has power to grant in proceedings that, apart from the provisions of this Chapter, are within its jurisdiction.

(9) Where an enforcement order is made, the Master shall grant any such preservation measures so applied for.

(10) For the purposes of this Chapter, references in Articles 42, 43, 45, 47, 48, 52, 53 and 57 to a declaration of enforceability are to be treated as references to an enforcement order under this section.

(11) Subject to the restrictions on enforcement contained in Article 47(3), if an enforcement order has been made respecting an insolvency judgment, the judgment—

(a) shall, to the extent to which its enforcement is authorised by the enforcement order, be of the same force and effect as a judgment of the High Court; and

(b) may be enforced by the High Court, and proceedings taken on it, as if it were a judgment of that Court.

Interest on insolvency judgments and payment of costs
1423. (1) Where, on application for an enforcement order respecting an insolvency judgment,

it is shown—

(a) that the judgment provides for the payment of a sum of money; and

(b) that, in accordance with the law of the Member State in which the judgment was given, interest on the sum is recoverable under the judgment at a particular rate or rates and from a particular date or time;

the enforcement order, if made, shall provide that the person liable to pay the sum shall also be liable to pay the interest, apart from any interest on costs recoverable under subsection (2), in accordance with the particulars noted in the order, and the interest shall be recoverable by the applicant as though it were part of the sum.

(2) An enforcement order may provide for the payment to the applicant by the respondent of the reasonable costs of or incidental to the application for the enforcement order.

(3) A person required by an enforcement order to pay costs shall be liable to pay interest on the costs as if they were the subject of an order for the payment of costs made by the High Court on the date on which the enforcement order was made.

(4) Interest shall be payable on a sum referred to in subsection (1)(a) only as provided for in this section.

Currency of payments under enforceable insolvency judgments

1424. (1) An amount payable in the State under an insolvency judgment by virtue of an enforcement order shall be payable in the currency of the State.

(2) If the amount is stated in the insolvency judgment in any currency except the currency of the State, payment shall be made on the basis of the exchange rate prevailing, on the date the enforcement order is made, between the currency of the State and any such currency.

(3) For the purposes of this section a certificate purporting to be signed by an officer of an authorised institution and to state the exchange rate prevailing on a specified date between a specified currency and the currency of the State shall be admissible as evidence of the facts stated in the certificate.

(4) In this section “authorised institution” means—

(a) a credit institution;

(b) a building society within the meaning of the Building Societies Act 1989 ;

(c) a trustee savings bank licensed under the Trustee Savings Banks Act 1989 ; or

(d) An Post.

Preservation

measures

1425. (1) A request under Article 38 for measures to secure and preserve any of the debtor's assets in the State shall be made to the High Court. (2) On such a request, the High Court—

(a) may grant any such measures that the court has power to grant in proceedings that, apart from the provisions of this Chapter, are within its jurisdiction; and

(b) may refuse to grant the measures sought if, in its opinion, the fact that, apart from this section, the court does not have jurisdiction in relation to the subject matter of the proceedings makes it inexpedient for it to grant the measures.

Venue

1426. The jurisdiction of the Circuit Court or District Court in proceedings that may be instituted in the State by a liquidator in exercise of his or her powers under Article 18 of the Insolvency Regulation may be exercised by the judge for the time being assigned—

(a) in the case of the Circuit Court, to the circuit, and

(b) in the case of the District Court, to the district court district,

in which the defendant ordinarily resides or carries on any profession, business or occupation.

Language of claims in relation to insolvency proceedings outside State

1427. Section 714 shall apply to insolvency proceedings (as defined in section 2 (1)) as it

applies to insolvency proceedings (as defined in section 710).

Non-recognition or non-enforcement of judgments

1428. It shall be for the High Court to determine whether judgments referred to in Article 25(1), or insolvency proceedings or judgments referred to in Article 26, should not be recognised or enforced on grounds mentioned in those provisions.

CHAPTER 1 Preliminary and definitions

Interpretation and application (Part 5)

219. (1) In this Part—
“credit transaction” has the meaning given to it by subsection (3); “guarantee” includes an indemnity;

“quasi-loan” has the meaning given to it by subsection (2).

(2) For the purposes of this Part—

(a) a quasi-loan is a transaction under which one party (the “creditor”) agrees to pay, or pays otherwise than in pursuance of an agreement, a sum for another (the “borrower”) or agrees to reimburse or reimburses otherwise than in pursuance of an agreement, expenditure incurred by another party for another (the “borrower”)—

(i) on terms that the borrower (or a person on his behalf) will reimburse the creditor; or

(ii) in circumstances giving rise to a liability on the borrower to reimburse the creditor;

(b) any reference to the person to whom a quasi-loan is made is a reference to the borrower; and

(c) the liabilities of a borrower under a quasi-loan include the liabilities of any person who has agreed to reimburse the creditor on behalf of the borrower.

(3) For the purposes of this Part a credit transaction is, subject to subsection (4), a transaction under which one party (the “creditor”)—

(a) supplies any goods or sells any land under, as the case may be, a hire-purchase agreement or conditional sale agreement;

(b) leases or licenses the use of land or hires goods in return for periodical payments;

(c) otherwise disposes of land or supplies goods or services, on the understanding that payment (whether in a lump sum or instalments or by way of periodical payments or otherwise) is to be deferred.

(4) For the purposes of this Part a lease of land which reserves a nominal annual rent of not more than €100 is not a credit transaction where a company grants the lease in return for a premium or capital payment which represents the open market value of the land thereby disposed of by the company.

(5) For the purposes of this Part the value of a transaction or arrangement is—

(a) in the case of a loan, the principal of the loan;

(b) in the case of a quasi-loan, the amount or maximum amount which the person to whom the quasi-loan is made is liable to reimburse the creditor;

(c) in the case of a transaction or arrangement other than a loan or quasi-loan or a transaction or arrangement falling within paragraph (d) or (e), the price which it is reasonable to expect could be obtained for the goods, land or services to which the transaction or arrangement relates if they had been supplied at the time the transaction or arrangement is entered into in the ordinary course of business and on the same terms (apart from price) as they have been supplied or are to be supplied under the transaction or arrangement in question;

(d) in the case of a guarantee or security, the amount guaranteed or secured;

(e) in the case of an arrangement to which section 239 (2) or (3) applies, the value of the transaction to which the arrangement relates less any amount by which the liabilities under the arrangement or transaction of the person for whom the transaction was made have been reduced.

(6) For the purposes of subsection (5), the value of a transaction or arrangement (or, as the case may be, of a transaction to which an arrangement relates) which is not capable of being expressed as a specific sum of money, whether because the amount of any liability arising under the transaction or arrangement is unascertainable or for any other reason, shall be deemed to exceed €65,000, and this subsection applies irrespective of whether any liability under the transaction or arrangement has been reduced.

(7) For the purposes of this Part, a transaction or arrangement is made for a person if—

(a) in the case of a loan or quasi-loan, it is made to him or her;

(b) in the case of a credit transaction, he or she is the person to whom goods or services are supplied, or land is sold or otherwise disposed of, under the transaction;

(c) in the case of a guarantee or security, it is entered into or provided in connection with a loan or quasi-loan made to him or her or a credit transaction made for him or her;

(d) in the case of an arrangement to which section 239 (2) or (3) applies, the transaction to which the arrangement relates was made for him or her; and

(e) in the case of any other transaction or arrangement for the supply or transfer of goods, land or services (or any interest therein), he or she is the person to whom the goods, land or services (or the interest) are supplied or transferred.

(8) This Part does not apply to arrangements or transactions entered into before 1 February 1991 but, for the purposes of determining whether an arrangement is one to which section 239 (2) or (3) applies, the transaction to which the arrangement relates shall, if it was entered into before 1 February 1991, be deemed to have been entered into after that date.

(9) This Part shall have effect in relation to an arrangement or transaction whether governed by the law of the State or of another country.

Any provision exempting officers of company from liability void (subject to exceptions)

235. (1) Subject to the provisions of this section, the following provision shall be void, namely,

any _____ provision:

(a) purporting to exempt any officer of a company from; or (b) purporting to indemnify such an officer against;

any liability which by virtue of any enactment or rule of law would otherwise attach to him or her in respect of any negligence, default, breach of duty or breach of trust of which he or she may be guilty in relation to the company.

(2) Subsection (1) applies whether the provision concerned is contained in the constitution of a company or a contract with a company or otherwise.

(3) Notwithstanding subsection (1), a company may, in pursuance of any such provision as is mentioned in that subsection, indemnify any officer of the company against any liability incurred by him or her—

(a) in defending proceedings, whether civil or criminal, in which judgment is given in his or her favour or in which he or she is acquitted; or

(b) in connection with any proceedings or application referred to in, or under, section 233 or 234 in which relief is granted to him or her by the court.

(4) Notwithstanding subsection (1), a company may purchase and maintain for any of its officers insurance in respect of any liability referred to in that subsection.

(5) Notwithstanding any provision contained in any enactment, the constitution of a company or otherwise, a director may be counted in the quorum and may vote on any resolution to purchase or maintain any insurance under which the director might benefit.

(6) For the avoidance of doubt, if—

(a) any business, trade or activity has been carried on by means of a company, or other body corporate, registered or formed under the laws of another country,

(b) the period for which that business, trade or activity was so carried on was not less than 12 months preceding the date on which this subsection falls to be applied,

(c) a provision of the kind referred to in subsection (1)(a) or (b) in relation to officers of the company or other body corporate was in being and valid under the laws of that country, and

(d) a private company limited by shares is formed and registered to carry on that business, trade or activity,

then nothing in this section invalidates the operation of the provision referred to in paragraph (c) in respect of any negligence, default, breach of duty or breach of trust occurring before that private company limited by shares is formed and registered.

(7) Any directors' and officers' insurance purchased or maintained by a company before 6 April 2004 is as valid and effective as it would have been if this section had been in operation when that insurance was purchased or maintained.

CHAPTER 2 Registration of charges and priority

Registration of charges created by companies

(7) Where a charge comprises property outside the State, the prescribed particulars, in the prescribed form (and, as the case may be, the notice under subsection (4)(b)) may be sent for registration under this section, notwithstanding that further proceedings may be necessary to make the charge valid or effectual according to the law of the country in which the property is situate.

CHAPTER 9 Evidential matters

Proof of certificate as to overseas incorporation

879. (1) This section applies where in any proceedings under, or for any other purpose of, this Part or Parts 1 to 13 or Part 15, the existence of a body corporate or undertaking outside the State is alleged or is otherwise in issue.

(2) In subsection (3) “relevant certificate” means a certificate that—

(a) is signed by any person purporting to hold the office of registrar of companies or assistant registrar of companies or any similar office in any country prescribed for the purposes of this section, and

(b) certifies that the body corporate or undertaking named in the certificate has been incorporated or registered in that country.

(3) A relevant certificate shall be prima facie evidence of the incorporation or registration of the named body corporate or undertaking in the country concerned without proof of the signature of the person signing the certificate and without proof that the person signing the certificate holds the office purported to be held.

Proof of incorporation under overseas legislation

880. (1) This section applies where in any proceedings under, or for the purposes of, this Part or Parts 1 to 13 or Part 15 the incorporation, by virtue of any Act passed in any country, not being the State, of a corporation is alleged or is otherwise in issue.

(2) A copy of any Act by which a corporation is incorporated purporting—
(a) to be passed in any country prescribed for the purposes of this section, and (b) to be published by the Government publishers of that country,

shall, without further proof, be prima facie evidence of the incorporation of the corporation.

CHAPTER

3

Winding up of unregistered company

Winding up of unregistered companies

1328. (1) Subject to the provisions of this Chapter, any unregistered company may be wound up under Part 11 and all the provisions of Part 11 relating to winding up shall apply to an unregistered company with the exceptions and additions mentioned in this section.

(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 Act 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) A petition for winding up a trustee savings bank licensed under the Trustee Savings Banks Act 1989 may be presented by the Minister for Finance as well as by any person authorised under the other provisions of this Act to present a petition for winding up a company.

(6) 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.