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*Number 2 of 2019*

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**Hallmarking (Amendment) Act 2019**

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CONTENTS

Section

1. Definitions
2. Amendment of section 1 of Principal Act
3. Amendment of section 2 of Principal Act
4. Amendment of section 3 of Principal Act
5. Amendment of section 4 of Principal Act
6. Amendment of Principal Act
7. Amendment of section 5 of Principal Act
8. Amendment of section 6 of Principal Act
9. Amendment of Principal Act
10. Amendment of section 8 of Principal Act
11. Amendment of section 9 of Principal Act
12. Amendment of section 12 of Principal Act
13. Forged hallmarks
14. Offences by body corporate
15. Charges by Company
16. Repeals
17. Short title and commencement

ACTS REFERRED TO

Companies Act 2014 (No. 38)

Competition and Consumer Protection Act 2014 (No. 29)

Consumer Protection Act 2007 (No. 19)

Hallmarking Act 1981 (No. 18)

Plate Assay (Ireland) Act 1807 (47 Geo. 3) c. 15



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*Number 2 of 2019*

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## **HALLMARKING (AMENDMENT) ACT 2019**

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An Act to amend and extend the law relating to the assaying and hallmarking of articles of precious metal; to make provision for the assaying and hallmarking in certain circumstances of articles of precious metal outside the State; and, for those purposes, to amend the Hallmarking Act 1981; and to provide for related matters.

[14th February, 2019]

**Be it enacted by the Oireachtas as follows:**

### **Definitions**

1. In this Act—

“Act of 2007” means the Consumer Protection Act 2007;

“Principal Act” means the Hallmarking Act 1981.

### **Amendment of section 1 of Principal Act**

2. Section 1 of the Principal Act is amended—

(a) by the insertion of the following definitions:

“ ‘authorised assay office’ means—

(a) an assay office situate outside the State established by the Company in accordance with section 4A, or

(b) an assay office situate outside the State that is party to an agreement with the Company under section 4B;

‘forged hallmark’ means a hallmark, stamp or other mark struck on or otherwise applied to an article of precious metal that—

(a) purports to be—

(i) an approved hallmark and is not an approved hallmark, or

(ii) a mark referred to in Regulation 3(d) of the Regulations of 2001 and is not such a mark,

or

(b) falsely represents the standard of fineness of the article of precious metal;

‘multi-metal article’ means an article comprised of 2 separate metals, one of which is precious metal or an alloy of precious metal, and the other of which is non-precious metal;

‘non-precious metal’ means any metal other than—

- (a) gold, silver, palladium or platinum, or
- (b) alloys of gold, silver, palladium or platinum;

‘offshore hallmark’ has the meaning assigned to it by section 2(1)(aa);

‘precious metal’ means gold, silver, palladium or platinum;

‘Regulations of 2001’ means the European Communities (Hallmarking of Articles Imported from Other Member States) Regulations 2001 (No. 579 of 2001);”,

- (b) in the definition of “articles of precious metal”, by the substitution of “a single precious metal or alloy of precious metal or 2 or more separate precious metals or alloys of precious metal” for “gold, silver or platinum or alloys of gold, silver or platinum”, and
- (c) by the deletion of the definitions of “the Act of 1913” and “forgery”.

#### **Amendment of section 2 of Principal Act**

3. Section 2(1) of the Principal Act is amended by the insertion, after paragraph (a), of the following paragraph:

“(aa) a mark (in this Act referred to as an ‘offshore hallmark’) lawfully struck by or on behalf of the Company in an authorised assay office, in accordance with regulations made under section 3.”.

#### **Amendment of section 3 of Principal Act**

4. Section 3 of the Principal Act is amended by the substitution of the following subsection for subsection (2):

“(2) Regulations under this section may prescribe different marks for—  
(a) a mark referred to in section 2(1)(a), and  
(b) an offshore hallmark.”.

#### **Amendment of section 4 of Principal Act**

5. Section 4 of the Principal Act is amended, in subsection (3), by the substitution of “detect forged hallmarks” for “detect forgery”.

#### **Amendment of Principal Act**

6. The Principal Act is amended by the insertion of the following sections after section 4:

**“Power to establish assay offices outside State**

- 4A.** (1) The Company may, with the consent of the Minister, establish one or more assay offices outside the State for the performance by such office of functions in relation to—
- (a) the assaying of articles of precious metal manufactured outside the State, and
  - (b) the striking, with an offshore hallmark, of such articles of precious metal which conform to the Irish standards of fineness.
- (2) The Company shall give to the Minister such information as the Minister may reasonably require for the purposes of determining whether to give his or her consent under subsection (1), including information relating to—
- (a) the staffing or other resources that would ordinarily be required by an assay office for the performance of functions in relation to the assaying and hallmarking of articles of precious metal outside the State in accordance with the requirements of this Act,
  - (b) the corporate governance, administration and management of the assay office proposed to be established,
  - (c) the terms and conditions of employment of members of staff to be employed in the assay office, and
  - (d) the costs likely to be incurred in establishing the assay office.
- (3) An assay office established under subsection (1) shall not strike or otherwise apply an offshore hallmark to an article of precious metal submitted to it for hallmarking unless it is satisfied that the article conforms to the Irish standards of fineness.

**Arrangements with other assay offices**

- 4B.** (1) Subject to subsections (2) and (4), the Company may, with the consent of the Minister, enter into an agreement, on such terms and conditions as it considers appropriate, with another assay office situate outside the State for—
- (a) the assaying, by that office on behalf of the Company, of articles of precious metal manufactured outside the State, and
  - (b) the striking, with an offshore hallmark, by that office on behalf of the Company, of such articles of precious metal which conform to the Irish standards of fineness.
- (2) The Company shall not enter into an agreement referred to in subsection (1) with an assay office unless the office concerned is an assay office of a Contracting State to the Convention on the Control and Marking of Articles of Precious Metals done at Vienna on 15 November 1972.

- (3) The Company shall give to the Minister such information as the Minister may reasonably require for the purposes of determining whether to give his or her consent under subsection (1), including information relating to—
  - (a) the corporate governance, administration and management of the assay office with whom it is proposed to enter into an agreement,
  - (b) the terms and conditions on which it is proposed to enter into an agreement with that assay office, including terms and conditions of a financial nature, and
  - (c) the charges to be imposed in respect of the assaying and hallmarking of articles of precious metal by that assay office on behalf of the Company.
- (4) It shall be a condition of an agreement referred to in subsection (1) that the authorised assay office concerned shall not strike or otherwise apply an offshore hallmark to an article of precious metal submitted to it for hallmarking on behalf of the Company unless that assay office is satisfied that the article conforms to the Irish standards of fineness.

**Certain powers of the Company for purposes of sections 4A and 4B**

- 4C.** (1) The Company shall have all such powers as are necessary or expedient for the performance of its functions under sections 4A and 4B.
- (2) Without prejudice to the generality of subsection (1), the Company may, for the purposes of section 4A or 4B, by writing under its common seal, authorise any person as being a person entitled to bind the Company.
  - (3) An authorisation under this section may—
    - (a) relate to a particular transaction or class of transactions,
    - (b) be subject to such terms and conditions (including duration of period of authorisation) as shall be specified in the authorisation, and
    - (c) be revoked in writing under the common seal of the Company.
  - (4) A reference in this section to a person's entitlement to bind the Company shall, subject to the terms of his or her authorisation, include a reference to his or her authority to exercise any power of the Company and to authorise others to do so.
  - (5) The Company may have for use in any place abroad an official seal which shall resemble the common seal of the Company with the addition on its face of the name of every place abroad where it is to be used.
  - (6) Subsections (3) to (6) of section 44 of the Companies Act 2014 shall apply with any necessary modifications to the Company as if it were a

company authorised by its constitution to have for use in any place abroad an official seal.

(7) In this section—

‘official seal’, in relation to the Company, means the official seal referred to in subsection (5);

‘place abroad’ means any territory, district or place not situate in the State.”.

#### **Amendment of section 5 of Principal Act**

7. Section 5(1) (amended by section 99 of the Act of 2007) of the Principal Act is amended by the substitution of “gold, silver, palladium or platinum” for “gold, silver or platinum”.

#### **Amendment of section 6 of Principal Act**

8. Section 6(2) (amended by section 99 of the Act of 2007) of the Principal Act is amended by the substitution of the following paragraph for paragraph (c):

“(c) if it consists of or includes the word ‘silver’, ‘palladium’ or ‘platinum’, that the word concerned is qualified by the word ‘plated’;”.

#### **Amendment of Principal Act**

9. The Principal Act is amended by the insertion of the following sections after section 6A (inserted by section 99 of the Act of 2007):

##### **“Multi-metal articles**

**6B.** (1) Subject to subsection (2), the following requirements shall apply to a multi-metal article:

- (a) both the precious metal, or alloy of precious metal, and non-precious metal of the article shall be clearly visible;
- (b) the precious metal, or alloy of precious metal, of the article shall be marked with an approved hallmark;
- (c) the non-precious metal of the article shall be—
  - (i) clearly distinguishable from the precious metal, or alloy of precious metal, of the article by its colour,
  - (ii) neither coated nor treated to give the appearance of a precious metal or alloy of precious metal, and
  - (iii) marked with the word ‘METAL’.

(2) Paragraphs (a) and (c) of subsection (1) shall not apply to any non-precious metal of a multi-metal article where that non-precious metal performs a mechanical function for which the precious metal, or alloy

of precious metal, of the multi-metal article is unsuitable either for reasons of strength or durability.

- (3) The provisions of this Act, the enactments specified in subsection (2) of section 8, and any regulations made thereunder, shall, with any necessary modifications, apply to the precious metal, or alloy of precious metal, of a multi-metal article as if that precious metal or alloy of precious metal were an article of precious metal and, for that purpose, a reference to articles of precious metal shall include a reference to the precious metal, or alloy of precious metal, of a multi-metal article.

**Offence relating to supply of multi-metal articles**

- 6C.** (1) It shall be an offence for a trader to supply a multi-metal article that does not comply with the requirements specified in subsection (1) of section 6B.
- (2) A person guilty of an offence under this section shall be liable on summary conviction—
    - (a) in the case of a first offence, to a class B fine or to imprisonment for a term not exceeding 6 months or to both, and
    - (b) in the case of any subsequent offence, to a class A fine or to imprisonment for a term not exceeding 12 months or to both.
  - (3) Sections 78, 80 and 84 of the Act of 2007 shall apply to an offence under this section as they apply to an offence under that Act and, for that purpose, references in those sections to an offence under that Act shall be construed as including references to an offence under this section.
  - (4) Sections 10(1), 24, 35 and 36 of the Competition and Consumer Protection Act 2014 shall apply for the purposes of this section and section 6B, subject to the modification that references in those sections to the relevant statutory provisions shall be construed as a reference to this section and section 6B.
  - (5) In this section—

‘Act of 2007’ means the Consumer Protection Act 2007;

‘trader’ and ‘supply’ have the same meanings respectively as they have in section 2 of the Act of 2007.”.

**Amendment of section 8 of Principal Act**

**10.** Section 8 of the Principal Act is amended—

- (a) by the substitution of the following subsection for subsection (1):

- “(1) (a) Every reference to ‘gold or silver’ in an enactment specified in subsection (2) shall be construed as a reference to ‘gold, silver, palladium or platinum’.
- (b) Every reference to ‘gold and silver’ in an enactment specified in subsection (2) shall be construed as a reference to ‘gold, silver, palladium and platinum’.
- (c) Every reference to ‘gold’ in an enactment specified in subsection (2) shall be construed as a reference to ‘gold, silver, palladium and platinum’.”,

and

- (b) in subsection (2)—
- (i) by the substitution, in paragraph (e), of “1883, and” for “1883,”,
- (ii) by the substitution, in paragraph (f), of “1904.” for “1904,”, and
- (iii) by the deletion of paragraph (g).

#### **Amendment of section 9 of Principal Act**

##### **11.** Section 9 of the Principal Act is amended—

- (a) by the substitution, in subsection (1), of “to the Assay Master or an authorised assay office” for “to the Assay Master”,
- (b) by the substitution of the following subsection for subsection (2):
- “(2) Notwithstanding subsection (1), the Company and a sponsor may make arrangements for the sponsor’s mark to be struck by the Assay Master or an authorised assay office as soon as practicable after the submission of the article for the striking of an approved hallmark.”,

and

- (c) by the substitution, in subsection (3), of “Assay Master or an authorised assay office” for “Assay Master” in each place that it occurs.

#### **Amendment of section 12 of Principal Act**

##### **12.** Section 12 of the Principal Act is amended—

- (a) in subsection (4)—
- (i) by the substitution of the following paragraph for paragraph (b):
- “(b) the addition is of the same precious metal or alloy of precious metal, as the case may be, as the precious metal or alloy of precious metal of the article concerned;”,
- (ii) by the substitution, in paragraph (c), of “prescribed for the time being for the article”, for “for the time being of the article”, and

(iii) by the substitution, in paragraph (d)(i), of “silver, 1 gram of palladium” for “silver”,

(b) by the substitution of the following subsection for subsection (5):

“(5) It shall not be an offence under this section to add a coating of a thickness not exceeding 2 micrometres at any point to the whole or any part of—

- (a) an article of gold, if the coating is of gold of a fineness not less than the Irish standard of fineness prescribed for the time being for the article,
- (b) an article of silver, if the coating is of silver of a fineness not less than the Irish standard of fineness prescribed for the time being for the article,
- (c) an article of silver, if the coating is of gold of a fineness not less than the minimum Irish standard of fineness prescribed for the time being for an article of gold,
- (d) an article of silver, if the coating is of palladium of a fineness not less than the minimum Irish standard of fineness prescribed for the time being for an article of palladium,
- (e) an article of palladium, if the coating is of palladium of a fineness not less than the Irish standard of fineness prescribed for the time being for the article,
- (f) an article of palladium, if the coating is of gold of a fineness not less than the minimum Irish standard of fineness prescribed for the time being for an article of gold,
- (g) an article of platinum, if the coating is of platinum of a fineness not less than the Irish standard of fineness prescribed for the time being for the article,
- (h) an article of gold, silver or palladium if the coating is of platinum of a fineness not less than the minimum Irish standard of fineness prescribed for the time being for an article of platinum,
- (i) an article of gold, silver, palladium or platinum, if the coating is of rhodium, or
- (j) an article of gold, silver, palladium or platinum, if the coating is of ruthenium.”,

and

(c) by the substitution of the following subsection for subsection (7):

“(7) A person guilty of an offence under this section shall be liable on summary conviction to a class A fine or to imprisonment for a term not exceeding 12 months or to both.”.

**Forged hallmarks**

**13.** The Principal Act is amended by the insertion of the following section after section 12:

“**12A.**(1) It shall be an offence for a person to—

- (a) strike a hallmark, stamp or other mark on, or
  - (b) otherwise cause a hallmark, stamp or other mark to be applied to,  
an article of precious metal where that hallmark, stamp or other mark is a forged hallmark and he or she knows or believes such hallmark, stamp or other mark to be a forged hallmark.
- (2) It shall be an offence for a person to sell an article of precious metal that bears a hallmark, stamp or other mark where that hallmark, stamp or other mark is a forged hallmark and he or she knows or believes such hallmark, stamp or other mark to be a forged hallmark.
- (3) A person guilty of an offence under this section shall be liable—
- (a) on summary conviction, to a class A fine or to imprisonment for a term not exceeding 12 months or to both, or
  - (b) on conviction on indictment, to a fine not exceeding €10,000 or to imprisonment for a term not exceeding 5 years or to both.
- (4) For the purposes of subsection (1), a person shall be treated as striking a forged hallmark on an article of precious metal if he or she alters an approved hallmark or a mark referred to in Regulation 3(d) of the Regulations of 2001 so as to make the hallmark or mark concerned false in any respect in relation to that article (whether or not it is false in some other respect apart from that alteration).
- (5) In this section, ‘sell’, in relation to an article of precious metal, means sell by wholesale or retail and includes—
- (a) offer or expose for sale,
  - (b) invite the making by a person of an offer to purchase,
  - (c) distribute free of charge, and
  - (d) supply for any of these purposes (whether or not for profit).”.

**Offences by body corporate**

**14.** The Principal Act is amended by the insertion of the following section after section 12A (inserted by *section 13* of the *Hallmarking (Amendment) Act 2019*):

“**12B.** (1) Where an offence under this Act is committed by a body corporate and it is proved that the offence was committed with the consent or connivance, or was attributable to any wilful neglect, of a person who was a director, manager, secretary or other officer of the body corporate, or a person purporting to act in that capacity, that person, as

well as the body corporate, shall be guilty of an offence and may be proceeded against and punished as if he or she were guilty of the first-mentioned offence.

- (2) Where the affairs of a body corporate are managed by its members, subsection (1) applies in relation to the acts and defaults of a member in connection with his or her functions of management as if he or she were a director or manager of the body corporate.”.

### **Charges by Company**

15. The Principal Act is amended by the substitution of the following section for section 14:

“14. The Company may, with the approval of the Minister, make such charges in respect of—

- (a) the assaying and striking, with approved hallmarks, of articles of precious metal submitted for that purpose to the Assay Master, and
- (b) the assaying and striking, with offshore hallmarks, of articles of precious metal submitted for that purpose to an authorised assay office established by the Company in accordance with section 4A,

as it considers appropriate for the purpose of defraying the cost of the provision of that service by the Assay Master or the authorised assay office, as the case may be.”.

### **Repeals**

16. The following provisions are repealed:

- (a) sections 14, 15, 16 and 17 of the Plate Assay (Ireland) Act 1807;
- (b) section 13 of the Principal Act.

### **Short title and commencement**

17. (1) This Act may be cited as the Hallmarking (Amendment) Act 2019.

- (2) This Act shall come into operation on such day or days as the Minister for Business, Enterprise and Innovation may by order or orders appoint either generally or with reference to any particular purpose or provision and different days may be so appointed for different purposes or different provisions.