



STATUTORY INSTRUMENTS.

S.I. No. 208 of 2010



RULES OF THE SUPERIOR COURTS (ORDER 75) 2010

(Prn. A10/0654)

RULES OF THE SUPERIOR COURTS (ORDER 75) 2010

We, the Superior Courts Rules Committee, constituted pursuant to the provisions of the Courts of Justice Act 1936, section 67, and reconstituted pursuant to the provisions of the Courts of Justice Act 1953, section 15, by virtue of the powers conferred upon us by the Courts of Justice Act 1924, section 36, and the Courts of Justice Act, 1936, section 68 (as applied by the Courts (Supplemental Provisions) Act 1961, section 48), and the Courts (Supplemental Provisions) Act 1961, section 14, and of all other powers enabling us in this behalf, do hereby make the following Rules of Court.

Dated this 3rd day of December, 2009.

John L. Murray

Nicholas Kearns

William McKechnie

Elizabeth Dunne

Patrick O'Connor

Paul McGarry

Noel Rubotham

Maeve Kane

I concur in the making of the following Rules of Court.

Dated this 12th day of May, 2010.

DERMOT AHERN,

Minister for Justice, Equality, Equality and Law Reform.

*Notice of the making of this Statutory Instrument was published in
"Iris Oifigiúil" of 21st May, 2010.*

S.I. No. 208 of 2010

RULES OF THE SUPERIOR COURTS (ORDER 75) 2010

1. These Rules shall come into operation on the 9th day of June 2010.
2. These Rules shall be construed together with the Rules of the Superior Courts 1986 to 2010 and may be cited as the Rules of the Superior Courts (Order 75) 2010.
3. The Rules of the Superior Courts are hereby amended:
 - (i) by the substitution for the title of Order 75 of the following:

“Proceedings under Companies Legislation (Various) not relating to Winding-Up”;
 - (ii) by the insertion, immediately following rule 24 of Order 75, of the following:

“XI. Applications under the European Communities (Cross-Border Mergers) Regulations 2008

25. (1) In this Part:

the “2008 Regulations” means the European Communities (Cross-Border Mergers) Regulations 2008 (SI No 157 of 2008);

reference to a “Regulation” is to a Regulation of the 2008 Regulations;

words and expressions have the same meaning as in the 2008 Regulations.

(2) An application to the Court by an Irish merging company under Regulation 13 for a certificate of the Court that the company has completed properly the pre-merger requirements shall be commenced by way of originating notice of motion. The originating notice of motion shall be entitled in the matter of an application under Regulation 13 of the 2008 Regulations and in the matter of the applicant company. The originating notice of motion shall specify each of the pre-merger requirements in the 2008 Regulations of which the Court is asked to certify proper completion.

(3) The originating notice of motion referred to in sub-rule (2) shall be grounded upon an affidavit sworn on behalf of the Irish merging company, which shall:

- (a) set out the steps taken by the Irish merging company to complete the pre-merger requirements;

- (b) include evidence of the manner in which the report referred to in Regulation 6 and the report referred to in Regulation 7, if any, were made available;
- (c) contain an averment confirming the delivery by the applicant company to the Registrar of Companies of the documents referred to in Regulation 8(1), and the publication by
 - (i) the Registrar of Companies and
 - (ii) the applicant companyof notice of such delivery in accordance with Regulation 8(2) and (3);
- (d) include evidence of the places at which and times during which the documents referred to in Regulation 9(1) were made available in accordance with that Regulation, and
- (e) exhibit the original or a true copy of, and verify, any document relied on in support of the application, which shall, without limitation, include:
 - (i) the common draft terms referred to in Regulation 5 adopted by the board of any Irish merging company;
 - (ii) the resolution of the board of any Irish merging company adopting the common draft terms;
 - (iii) the directors' explanatory report referred to in Regulation 6;
 - (iv) the expert's report to the members referred to in Regulation 7 or evidence as to why such a report was not required including, if applicable, any resolution or other document recording the agreement of the shareholders concerned that such a report is not necessary;
 - (v) the notice delivered by the applicant company to the Registrar of Companies referred to in Regulation 8(1)(b);
 - (vi) copies of the CRO Gazette containing the notice published by the Registrar of Companies and of the editions of the two national daily newspapers containing the notice published by the applicant company in accordance with Regulation 8(2) and (3);
 - (vii) any special resolution approved in accordance with Regulation 10 and evidence of the satisfaction of any

condition to which it is subject pursuant to Regulation 10(2);

- (viii) any written request by any minority shareholder pursuant to Regulation 12.

(4) An application for the appointment by the Court of an expert under Regulation 7(2)(b) shall be by originating notice of motion entitled in the matter of an application under Regulation 7 of the Regulations and in the matter of the Irish merging company, which originating notice of motion shall be grounded upon an affidavit setting out particulars of the cross-border merger concerned and proposing a qualified person or persons to be appointed.

(5) A notice given to the Court under Regulation 7(7)(b) by a person appointed under Regulation 7(2)(b) who has ceased to be a qualified person shall cite the title and record number of any proceedings relating to the cross-border merger concerned and shall—

- (a) be delivered to, or sent by pre-paid registered post to, the Registrar, Central Office, and
- (b) be delivered to the applicant company,

within the period mentioned in Regulation 7(7)(b).

(6) Where a notice referred to in sub-rule (5) has been received—

- (a) the Irish merging company may apply to the Court *ex parte* for any further order or directions as may be appropriate.
- (b) the Court of its own motion may list the proceedings before it on notice to that company and such other person as it may direct.

(7) On the date first fixed for the hearing of an originating notice of motion referred to in sub-rule (2), the Court may, if not giving the certificate sought, make such orders or give such directions, including for the service of copies of the originating notice of motion, grounding affidavit and exhibits on any person, or for any adjournment, as appear just.

(8) A certificate issued by the Court in accordance with Regulation 13 shall be in the Form No. 11 in Appendix N.

26. (1) An application to the Court by all the merging companies under Regulation 14 for an order confirming scrutiny of the legality of the cross-border merger as regards that part of the procedure which concerns the completion of the cross-border merger and, where appropriate, the formation of an Irish successor company, shall be commenced by way of originating notice of motion, which shall be entitled

in the matter of an application under Regulation 14 of the 2008 Regulations and in the matter of each of the merging companies.

(2) On the date first fixed for the hearing of an originating notice of motion referred to in sub-rule (1), or on any adjournment from that date, the Court may make such orders or give such directions for the further conduct of the proceedings as appear convenient for the determination of the proceedings, including:

- (a) for the publication of notice of the application;
- (b) for the service of copies of the originating notice of motion, grounding affidavit and exhibits on any person, and fixing time limits within which any such person is at liberty to deliver and file any affidavit, and any replying affidavit may be delivered and filed on behalf of the applicants;
- (c) for the purpose of establishing the creditors of an Irish merging company entitled to be heard in accordance with Regulation 15, an order for an inquiry as to the debts or claims against that company, and for the proceedings to be taken for settling the list of creditors, which shall, unless the Court otherwise orders, be in accordance with rules 7 to 12, and references in those rules to a “petition” shall for that purpose be read as references to the originating notice of motion;
- (d) orders for the filing or giving of further evidence, in particular as to compliance with any applicable requirement of Regulation 16, and for the adjournment of the application or the mention of the application from time to time for that purpose.

(3) The application shall be grounded upon an affidavit sworn on behalf of the applicants, which shall:

- (a) verify that the successor company is an Irish company;
- (b) exhibit the original of the certificate issued under Regulation 13 in relation to each Irish merging company;
- (c) exhibit the original or a true copy of a certificate to the same effect as a certificate issued under Regulation 13 issued by the competent authority of the EEA State under the law of which each other merging company which is an EEA company is governed;
- (d) verify that the application is made not more than six months after the issuing of any certificate referred to in subparagraph (b) or (c);

- (e) verify that the common draft terms to which each certificate, referred to in subparagraphs (b) and (c), relates are the same terms;
- (f) provide details of any arrangements for employee participation in the successor company required by Part 3 of the 2008 Regulations and verify that those arrangements (where required) have been determined;
- (g) include evidence as to the effect, if any, of the cross-border merger on any creditor of any Irish merging company;
- (h) provide details of any provision made or proposed to be made for any creditor of any of the merging companies who has notified any of the merging companies of an objection on the grounds that that creditor would be unfairly prejudiced by an order under Regulation 14;
- (i) contain a statement as to whether any shareholder has made a request referred to in Regulation 14(2) and, where such a request has been made, provide details of the measures taken or proposed to comply with each such request and those details or that statement shall be provided or made up to a date as near as practicable to the date on which the application is to be heard;
- (j) either:
 - (i) confirm that the cross-border merger is not a merger or acquisition which is referred to in section 16 of the Competition Act 2002 and to which paragraph (a) or (b) of section 18(1) of that Act applies or which is referred to in section 18(3) of that Act and which has been notified to the Competition Authority in accordance with that subsection, or
 - (ii) where the cross-border merger is such a merger or acquisition confirm, and where appropriate exhibit the original or a true copy of any document evidencing:
 - (I) that the Competition Authority has determined under section 21 or 22 of that Act that the merger may be put into effect, or
 - (II) that the Competition Authority has made a conditional determination (within the meaning of that Act) in relation to the merger, or
 - (III) that the period specified in section 21(2) of that Act has elapsed without the Competition Authority having informed the undertakings which made the notification concerned of the determination (if any) it

has made under paragraph (a) or (b) of section 21(2) aforementioned in relation to the merger, or

(IV) that a period of four months has elapsed since the appropriate date (within the meaning of that Act) without the Competition Authority having made a determination under section 22 of that Act in relation to the merger;

(k) either:

(i) confirm that the cross-border merger is not a concentration with a Community dimension (within the meaning of the Merger Control Regulation), or

(ii) where the cross-border merger is such a concentration confirm, and where appropriate exhibit the original or a true copy of any document evidencing:

(I) that the European Commission has issued a decision under Article 8 of that Regulation declaring the concentration compatible with the common market, or

(II) that the concentration is deemed to have been declared compatible with the common market pursuant to Article 10(6) of the Merger Control Regulation, and specify the basis on which it is so deemed or

(III) that, after a referral by the European Commission to the Competition Authority under Article 9 of the Merger Control Regulation, one of the events specified in subparagraphs (I) to (IV) of paragraph (j)(ii), has occurred, and

(l) provide details of any requirement under any enactment for any other authorisation, approval, consent, waiver, licence, permission or agreement that affects the cross-border merger and confirm, and exhibit the original or a true copy of any document evidencing, that each such requirement has been satisfied.

(4) Where the Court makes an order under Regulation 14 approving the merger, the Court shall specify the date on which the merger is to take effect.

(5) The Registrar of the Court shall send an attested copy of any order of the Court under Regulation 14 to the Registrar of Companies by pre-paid registered post or by any other means directed by the Court.

(6) Notwithstanding sub-rule (1), where an Irish merging company intends to seek a certificate under Regulation 13 and to join in an application under Regulation 14 in respect of the same merger, it shall be permissible for all of the merging companies intending to seek relief under Regulation 14 in respect of that merger to issue a single originating notice of motion, in which is sought both the relief sought by the Irish merging company under Regulation 13 and, contingently on that relief being given, the relief sought by all of the merging companies under Regulation 14. In such case, the Irish merging company may seek relief under Regulation 13 on the date first fixed for the hearing of that originating notice of motion and the Court may, on that date, give such directions for the further conduct of the proceedings and adjourn the application for other relief as it thinks appropriate.

27. (1) The Court may direct that all proceedings in relation to the same cross-border merger (including any appeal under Regulation 40(9) or any reference to the Court under Regulation 40(10)) be listed together for hearing in such sequence as the Court may direct.

(2) Where, in any proceedings under this Part, a document exhibited to any affidavit or produced to the Court is not in one of the official languages of the State, a translation thereof into the Irish or English language, certified by a person competent and qualified for the purpose, shall be admissible as evidence of same. The competence and qualification of the translator shall be verified by affidavit.

XII. Applications under the European Communities (Mergers and Divisions of Companies) Regulations 1987

28. (1) In this Part:

the “1987 Regulations” means the European Communities (Mergers and Divisions of Companies) Regulations 1987 (SI No 137 of 1987);

reference to a “Regulation” is to a Regulation of the 1987 Regulations;

words and expressions have the same meaning as in the 1987 Regulations.

(2) An application to the Court:

(a) by all the merging companies for an order confirming a merger under Regulation 16, or

(b) by all the companies involved in a division for an order confirming a division under Regulation 35

shall be commenced by way of originating notice of motion, which shall be entitled in the matter of an application under Regulation 16 or, as the case may be, Regulation 35 of the 1987 Regulations and in

the matter of each of the merging companies or, as the case may be, in the matter of each of the companies involved in the division.

(3) On the date first fixed for the hearing of an originating notice of motion referred to in sub-rule (1), or on any adjournment from that date, the Court may make such orders or give such directions for the further conduct of the proceedings as appear just and convenient for the determination of the proceedings, including:

- (a) an order fixing a date for the hearing of the application for an order under Regulation 16 or, as the case may be, Regulation 35 and for the publication of notice of the application and of the date fixed for the hearing;
- (b) for the service of copies of the originating notice of motion, grounding affidavit and exhibits on any person, and fixing time limits within which any such person is at liberty to deliver and file any affidavit, and any replying affidavit may be delivered and filed on behalf of the applicants;
- (c) a direction that Regulation 17(2) or, as the case may be, Regulation 36(2), shall not apply as regards any class of creditors;
- (d) for the purpose of determining a list of the creditors entitled to object in accordance with Regulation 17(2) or, as the case may be, Regulation 36(2), an order for an inquiry as to the debts or claims against any of the merging companies or any of the companies concerned, and unless the Court otherwise orders, the proceedings to be taken for settling the list of creditors shall be as far as possible in accordance with rules 7 to 12, and references in those rules to a “petition” shall for that purpose be read as references to the originating notice of motion.

(4) The originating notice of motion referred to in sub-rule (1) shall be grounded upon an affidavit sworn on behalf of each of the merging companies or, as the case may be, each of the companies involved in the division, which shall:

- (a) exhibit and verify:
 - (i) the draft terms of merger signed and dated on behalf of each of the merging companies in accordance with Regulation 6(4),
 - (ii) a copy of the explanatory report referred to in Regulation 7(1),
 - (iii) the independent person’s report referred to in Regulation 8(1), and

- (iv) any accounting statement referred to in Regulation 9(1) or where no such accounting statement is required for any company concerned, a copy of that company's latest annual accounts

or, as the case may be,

- (i) the draft terms of division signed and dated on behalf of each of the companies involved in the division in accordance with Regulation 26(4),
 - (ii) the explanatory report referred to in Regulation 27(1),
 - (iii) the independent person's report referred to in Regulation 28(1), and
 - (iv) any accounting statement referred to in Regulation 29(1) or where no such accounting statement is required for any company concerned, a copy of that company's latest annual accounts;
- (b) contain an averment confirming the delivery by the applicant companies to the Registrar of Companies of the document referred to in Regulation 11(1)(a) or, as the case may be, Regulation 30(1)(a), and the publication by the applicant companies of notice of such delivery in accordance with Regulation 11(1)(b) or, as the case may be, Regulation 30(1)(b);
 - (c) include evidence of the times during which the documents referred to in Regulation 12(1) or, as the case may be, Regulation 31(1), were made available for inspection at the registered office of each company concerned in accordance with that Regulation;
 - (d) exhibit a copy of every notice convening a general meeting referred to in Regulation 13 or, as the case may be, Regulation 32, and include evidence of the passing of every special resolution referred to in Regulation 13 or, as the case may be, Regulation 32;
 - (e) exhibit any written request by any shareholder pursuant to Regulation 15(1) or, as the case may be, Regulation 34(1), and
 - (f) exhibit the original or a true copy of and verify any other document relied upon in support of the application.

(5) The application for an order under Regulation 16 or, as the case may be, Regulation 35 shall additionally be grounded upon an affidavit sworn on behalf of each of the applicants, which shall:

- (a) contain, or exhibit and verify, the statement referred to in Regulation 16(2) or as the case may be, Regulation 35(2), made up to a date as near as practicable to the date on which the application is to be heard, or a statement that no shareholder has made a request referred to in that Regulation;
- (b) contain a statement as to whether any shareholder has made a request referred to in Regulation 14(1) or as the case may be, Regulation 34(1), and, where such a request has been made, provide details of the measures taken or proposed to comply with each such request and those details or that statement shall be provided or made up to a date as near as practicable to the date on which the application is to be heard;
- (c) where necessary, include evidence as to the effect, if any, of the merger on creditors of any of the merging companies or, as the case may be, of the division on creditors of any of the companies involved in the division;
- (d) provide details of any provision made or proposed to be made for any creditor of any of the merging companies or, as the case may be, any creditor of any of the companies involved in the division, who has notified any of those companies of an objection on the grounds that that creditor would be unfairly prejudiced by an order under Regulation 19 or, as the case may be, Regulation 38;
- (e) include evidence of the rights in the acquiring company or acquiring companies which will be given to holders of securities other than shares in any of the companies being acquired to which special rights are attached for the purposes of Regulation 18(1) or, as the case may be, Regulation 37(1);
- (f) either:
 - (i) confirm that the merger or division is not a merger or acquisition which is referred to in section 16 of the Competition Act 2002 and to which paragraph (a) or (b) of section 18(1) of that Act applies or which is referred to in section 18(3) of that Act and which has been notified to the Competition Authority in accordance with that subsection, or
 - (ii) where the merger or division is such a merger or acquisition, confirm, and where appropriate exhibit the original or a true copy of any document evidencing:

- (I) that the Competition Authority has determined under section 21 or 22 of that Act that the merger or division may be put into effect, or
 - (II) that the Competition Authority has made a conditional determination (within the meaning of that Act) in relation to the merger or division, or
 - (III) confirm that the period specified in section 21(2) of that Act has elapsed without the Competition Authority having informed the undertakings which made the notification concerned of the determination (if any) it has made under paragraph (a) or (b) of section 21(2) aforementioned in relation to the merger or division, or
 - (IV) confirm that a period of four months has elapsed since the appropriate date (within the meaning of that Act) without the Competition Authority having made a determination under section 22 of that Act in relation to the merger or division;
- (g) either:
- (i) confirm that the merger or division is not a concentration with a Community dimension (within the meaning of Council Regulation (EC) No. 139/2004 of 20 January 2004 on the control of concentrations between undertakings (in this rule, the “Merger Control Regulation”)), or
 - (ii) where the merger or division is such a concentration, confirm, and where appropriate exhibit the original or a true copy of any document evidencing:
 - (I) that the European Commission has issued a decision under Article 8 of the Merger Control Regulation declaring the concentration compatible with the common market, or
 - (II) that the concentration is deemed to have been declared compatible with the common market pursuant to Article 10(6) of the Merger Control Regulation, and specify the basis on which it is so deemed, or
 - (III) that after a referral by the European Commission to the Competition Authority under Article 9 of the Merger Control Regulation, one of the events specified in subparagraphs (I) to (IV) of paragraph (f)(ii), has occurred,

- (h) provide details of any requirement under any enactment for any other authorisation, approval, consent, waiver, licence, permission or agreement that affects the merger or division and confirm, and exhibit the original or a true copy of any document evidencing, that each such requirement has been satisfied, and
- (i) exhibit the original or a true copy of, and verify, any document evidencing any other matter mentioned in Regulation 19(1) and, if applicable, include evidence of compliance with Regulation 20 or as the case may be, exhibit the original or a true copy of, and verify, any document evidencing any other matter mentioned in Regulation 38(1) and, if applicable, include evidence of compliance with Regulation 39.

(6) The Registrar of the Court shall send an attested copy of any order of the Court under Regulation 16 or Regulation 35 to the Registrar of Companies by pre-paid registered post or by any other means directed by the Court.

XIII. Applications under the European Communities (European Public Limited-Liability Company) Regulations 2007

29. (1) In this Part:

the “1987 Regulations” means the European Communities (Mergers and Divisions of Companies) Regulations 1987 (SI No 137 of 1987);

the “2001 Council Regulation” means Council Regulation (EC) No 2157/2001 of 8 October 2001 on the Statute for a European company (SE);

the “2007 Regulations” means the European Communities (European Public Limited-Liability Company) Regulations 2007 (SI No 21 of 2007);

reference to a “Regulation” is to a Regulation of the 2007 Regulations;

“SE” means a European public limited-liability company (Societas Europaea or SE) as provided for by Council Regulation (EC) No. 2157/2001 of 8 October 2001, on the Statute for a European company (SE);

words and expressions have the same meaning as in the 2007 Regulations.

(2) An application to the Court by a member or members of an SE for relief under Regulation 12(1) or Regulation 12(3) shall be commenced by way of originating notice of motion, which shall be entitled in the matter of an application under Regulation 12 of the 2007 Regulations and in the matter of the SE, on the application of the applicant,

and shall be grounded upon an affidavit sworn by or on behalf of the applicant.

(3) On the date first fixed for the hearing of an originating notice of motion referred to in sub-rule (2), or on any adjournment from that date, the Court may make such orders or give such directions for the further conduct of the proceedings as appear convenient for the determination of the proceedings.

(4) An application to the Court by the Director for an order under Regulation 25(3) shall be commenced by way of originating notice of motion and conducted in accordance with Order 84B.

(5) An appeal to the Court by an SE or a public limited company under Regulation 26(2) against a decision of the Director referred to in Regulation 26(1) shall be commenced by way of originating notice of motion and conducted in accordance with Order 84C.

30. (1) An application to the Court by an Irish merging company for a certificate under Article 25(2) of the 2001 Council Regulation that the company has completed properly the pre-merger acts and formalities shall be commenced by way of originating notice of motion. The originating notice of motion shall be entitled in the matter of an application under Article 25(2) of the 2001 Council Regulation and in the matter of the applicant company. The originating notice of motion shall specify each of the pre-merger acts and formalities in the 2001 Council Regulation of which the Court is asked to certify completion.

(2) The originating notice of motion shall be grounded upon an affidavit sworn on behalf of the Irish merging company, which shall comply with the requirements of rule 28(4), in the case of a merger carried out in accordance with the 1987 Regulations, and shall:

(a) exhibit and verify:

- (i) the draft terms of merger drawn up by each of the merging companies in accordance with Article 20 of the 2001 Council Regulation and in accordance with Regulation 6(4) of the 1987 Regulations,
- (ii) a copy of the explanatory report referred to in Regulation 7(1) of the 1987 Regulations,
- (iii) the independent person's report referred to in Regulation 8(1) of the 1987 Regulations, or evidence as to why such a report was not required including, if applicable, any resolution or other document recording the agreement of the persons mentioned in Regulation 8(11) of the 1987 Regulations that Regulation 8(1) of the 1987 Regulations shall not apply, and

- (iv) any accounting statement referred to in Regulation 9(1) of the 1987 Regulations or where no such accounting statement is required for any company concerned, a copy of that company's latest annual accounts;
- (b) contain an averment confirming the delivery by the applicant companies to the Registrar of Companies of the documents referred to in Regulation 11(1)(a) of the 1987 Regulations, and the publication by the applicant companies of notice of such delivery in accordance with Regulation 11(1)(b) of the 1987 Regulations;
- (c) contain an averment confirming the publication in accordance with Article 21 of the 2001 Council Regulation in the CRO Gazette of:
 - (i) the type, name and registered office of every merging company;
 - (ii) the register in which the documents referred to in Article 3(2) of Directive 68/151/EEC are filed in respect of each merging company, and the number of the entry in that register;
 - (iii) an indication of the arrangements made in accordance with Article 24 of the 2001 Council Regulation for the exercise of the rights of the creditors of the company in question and the address at which complete information on those arrangements may be obtained free of charge;
 - (iv) an indication of the arrangements made in accordance with Article 24 of the 2001 Council Regulation for the exercise of the rights of minority shareholders of the company in question and the address at which complete information on those arrangements may be obtained free of charge;
 - (v) the name and registered office proposed for the SE.
- (d) include evidence of the times during which the documents referred to in Regulation 12(1) of the 1987 Regulations were made available at the registered office of each company concerned in accordance with that Regulation;
- (e) exhibit a copy of every notice convening a general meeting referred to in Regulation 13 of the 1987 Regulations and include evidence of the passing of every special resolution referred to in Regulation 13 of the 1987 Regulations;
- (f) exhibit any written request by any shareholder pursuant to Regulation 15(1) of the 1987 Regulations, and

(g) exhibit the original or a true copy of and verify any other document relied upon in support of the application.

(3) The Court may, on the application jointly of two or more Irish merging companies appoint one or more experts for the purposes of Article 22 of the 2001 Council Regulation and such application shall, if any proceedings referred to in sub-rule (1) are in being, be by motion in those proceedings, or otherwise by originating notice of motion entitled in the matter of an application under Article 22 of the 2001 Council Regulation and in the matter of the Irish merging companies concerned, which originating notice of motion shall be grounded upon an affidavit setting out particulars of the merger concerned and proposing a qualified person or persons to be appointed.

(4) On the date first fixed for the hearing of an originating notice of motion referred to in sub-rule (2), the Court may, if not giving the certificate sought, make such order or give such directions, including for the service of copies of the originating notice of motion, grounding affidavit and exhibits on any person (including the Director as competent authority in respect of Article 19 of the 2001 Council Regulation), or for any adjournment, as appear just.

(5) A certificate issued by the Court in accordance with Article 25 of the 2001 Council Regulation shall be in the Form No. 12 in Appendix N.

31. (1) An application to the Court by all the merging companies for an order in accordance with Article 26 of the 2001 Council Regulation confirming scrutiny of the legality of the merger as regards that part of the procedure which concerns the completion of the merger and the formation of the SE, shall be commenced by way of originating notice of motion, which shall be entitled in the matter of an application under Article 26 of the 2001 Council Regulation and in the matter of each of the merging companies.

(2) On the date first fixed for the hearing of an originating notice of motion referred to in sub-rule (1), or on any adjournment from that date, the Court may make such orders or give such directions for the further conduct of the proceedings as appear convenient for the determination of the proceedings, including:

- (a) for the publication of notice of the application;
- (b) for the service of copies of the originating notice of motion and, grounding affidavit and exhibits on any person, and fixing time limits within which any such person is at liberty to deliver and file any affidavit, and any replying affidavit may be delivered and filed on behalf of the applicants;
- (c) for the purpose of establishing the creditors of an Irish merging company entitled to be heard for the purposes of Article

24 of the 2001 Council Regulation, an order for an inquiry as to the debts or claims against that company, and for the proceedings to be taken for settling the list of creditors, which shall, unless the Court otherwise orders, be in accordance with rules 7 to 12, and references in those rules to a “petition” shall for that purpose be read as references to the originating notice of motion;

(d) orders for the filing or giving of further evidence, in particular as to any matter referred to in Articles 23, 24 and 26 of the 2001 Council Regulation, and for the adjournment of the application or the mention of the application from time to time for that purpose.

(3) The application shall be grounded upon an affidavit sworn on behalf of the applicants, which shall:

(a) verify the steps taken for the formation of the SE and that the registered office proposed for the SE is in the State;

(b) exhibit the original of the certificate issued under Article 25 of the 2001 Council Regulation in relation to each Irish merging company;

(c) exhibit the original or a true copy of a certificate under Article 25 of the 2001 Council Regulation issued by the competent authority of the Member State under the law of which each other merging company is governed;

(d) verify that the application is made not more than six months after the issuing of any certificate referred to in subparagraph (b) or (c);

(e) verify that the common draft terms to which each certificate, referred to in subparagraphs (b) and (c), relates are the same terms;

(f) provide details of, and verify, any arrangements for employee involvement determined pursuant to Directive 2001/86/EC and Article 26(3) of the 2001 Council Regulation;

(g) in accordance with Article 24 of the 2001 Council Regulation, include evidence as to the effect, if any, of the merger on:

(i) creditors of any of the merging companies;

(ii) holders of bonds of any of the merging companies;

(iii) holders of securities, other than shares, which carry special rights in any of the merging companies;

- (h) provide details of any provision made or proposed to be made for any creditor, holder of bonds or holder of securities, other than shares, which carry special rights, of any of the merging companies who has notified any of the merging companies of an objection on the grounds that that person would be unfairly prejudiced by an order under Article 26 of the 2001 Council Regulation;
- (i) contain a statement as to whether any minority shareholder has made a request referred to in Regulation 15(1) of the 1987 Regulations or has expressed opposition to the merger to any of the merging companies and, where such a request has been made or opposition expressed, provide details of the measures taken or proposed to comply with each such request or details of such expression of opposition and those details shall be provided or made up to a date as near as practicable to the date on which the application is to be heard;
- (j) where the law of a Member State to which a merging company is subject provides for a procedure to scrutinise and amend the share-exchange ratio, or a procedure to compensate minority shareholders, without preventing the registration of the merger, include evidence that the other merging companies situated in Member States which do not provide for such a procedure explicitly accepted, when approving the draft terms of the merger in accordance with Article 23(1) of the 2001 Council Regulation, the possibility for the shareholders of that merging company to have recourse to such a procedure, and include details of the conduct and (if known) outcome of that procedure;
- (k) either:
 - (i) confirm that the merger is not a merger or acquisition which is referred to in section 16 of the Competition Act 2002 and to which paragraph (a) or (b) of section 18(1) of that Act applies or which is referred to in section 18(3) of that Act and which has been notified to the Competition Authority in accordance with that subsection, or
 - (ii) where the merger is such a merger or acquisition, confirm, and exhibit the original or a true copy of any document evidencing:
 - (I) that the Competition Authority has determined under section 21 or 22 of that Act that the merger may be put into effect, or

- (II) that the Competition Authority has made a conditional determination (within the meaning of that Act) in relation to the merger, or
 - (III) confirm that the period specified in section 21(2) of that Act has elapsed without the Competition Authority having informed the undertakings which made the notification concerned of the determination (if any) it has made under paragraph (a) or (b) of section 21(2) aforesaid in relation to the merger, or
 - (IV) confirm that a period of four months has elapsed since the appropriate date (within the meaning of that Act) without the Competition Authority having made a determination under section 22 of that Act in relation to the merger;
- (l) either:
- (i) confirm that the merger is not a concentration with a Community dimension (within the meaning of Council Regulation (EC) No. 139/2004 of 20 January 2004 on the control of concentrations between undertakings (in this rule, the “Merger Control Regulation”)), or
 - (ii) where the merger is such a concentration, confirm, and exhibit the original or a true copy of any document evidencing:
 - (I) that the European Commission has issued a decision under Article 8 of the Merger Control Regulation declaring the concentration compatible with the common market, or
 - (II) that the concentration is deemed to have been declared compatible with the common market pursuant to Article 10(6) of the Merger Control Regulation and specify the basis on which it is so deemed, or
 - (III) that after a referral by the European Commission to the Competition Authority under Article 9 of the Merger Control Regulation, one of the events specified in subparagraphs (I) to (IV) of paragraph (k)(ii), has occurred, and
- (m) provide details of any requirement under any enactment for any other authorisation, approval, consent, waiver, licence, permission or agreement that affects the merger and confirm, and exhibit the original or a true copy of any document evidencing, that each such requirement has been satisfied.

(4) The Registrar of the Court shall send an attested copy of any order of the Court under Article 26 of the 2001 Council Regulation to the Registrar of Companies by pre-paid registered post or by any other means directed by the Court.

(5) Notwithstanding sub-rule (1), where an Irish merging company intends to seek a certificate under Article 25 of the 2001 Council Regulation and to join in an application under Article 26 of the 2001 Council Regulation in respect of the same merger, it shall be permissible for all of the merging companies intending to seek relief under Article 26 of the 2001 Council Regulation in respect of that merger to issue a single originating notice of motion in which is sought both the relief sought by the Irish merging company under Article 25 and, contingently on that relief being given, the relief sought by all of the merging companies under Article 26. In such case, the Irish merging company may seek relief under Article 25 on the date first fixed for the hearing of that originating notice of motion, and the Court may, on that date, give such directions for the further conduct of the proceedings and adjourn the application for other relief as it thinks appropriate.

32. (1) The Court may direct that all proceedings in relation to the same merger (including any proceedings under Regulation 12 or Regulation 26) be listed together for hearing in such sequence as the Court may direct.

(2) Where, in any proceedings under this Part, a document exhibited to any affidavit or produced to the Court is not in one of the official languages of the State, a translation thereof into the Irish or English language, certified by a person competent and qualified for the purpose, shall be admissible as evidence of same. The competence and qualification of the translator shall be verified by affidavit. ”, and

(iii) by the insertion in Appendix N, immediately following Form No. 10 of the forms in the Schedule.

SCHEDULE

O. 75, r. 25(8)

No. 11

PRE-MERGER CERTIFICATE

THE HIGH COURT

20... No....

In the matter of Directive 2005/56/EC of the European Parliament and of the Council of 26 October 2005 on cross-border mergers of limited liability companies

and Regulation 13 of the European Communities (Cross-Border Mergers) Regulations 2008

On the application of

having its registered office at

.....

an Irish merging company (hereinafter referred to as “the Applicant”), under the above-mentioned Regulation in respect of a proposed merger with

.....

.....

THE COURT HEREBY CERTIFIES that the Applicant has completed properly the pre-merger requirements in respect of such merger.

Dated this day of 20..

Signed.....

Registrar

O. 75, r. 30(5)

No. 12

PRE-MERGER CERTIFICATE

(FORMATION OF EUROPEAN PUBLIC LIMITED LIABILITY COMPANY BY MERGER)

THE HIGH COURT

20.... No.....

In the matter of Article 25(2) of Council Regulation (EC) No 2157/2001 of 8 October 2001 on the Statute for a European company (SE)

On the application of

having its registered office at

.....

an Irish merging company (hereinafter referred to as “the Applicant”), under the above-mentioned Regulation in respect of a proposed merger with

.....

.....

THE COURT HEREBY CERTIFIES that the Applicant has completed properly the pre-merger acts and formalities in respect of such merger.

Dated this day of 20..

Signed.....

Registrar

EXPLANATORY NOTE

(This does not form part of the Instrument and does not purport to be a legal interpretation.)

These rules amend Order 75 of the Rules of the Superior Courts by the insertion therein of new Parts XI, XII, and XIII regulating, respectively, the procedure in respect of proceedings under the European Communities (Cross-Border Mergers) Regulations 2008 (S.I. No 157 of 2008), the European Communities (Mergers and Divisions of Companies) Regulations 1987 (S.I. No 137 of 1987) and the European Communities (European Public Limited-Liability Company) Regulations 2007 (S.I. No 21 of 2007).

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 ARNA FHOILSIÚ AG OIFIG AN tSOLÁTHAIR
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 OIFIG DHÍOLTA FOILSEACHÁN RIALTAIS,
 TEACH SUN ALLIANCE, SRÁID THEACH LAIGHEAN, BAILE ÁTHA CLIATH 2,
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 (Teil: 01 - 6476834 nó 1890 213434; Fax: 094 - 9378964 nó 01 - 6476843)
 nó trí aon díoltóir leabhar.

DUBLIN
 PUBLISHED BY THE STATIONERY OFFICE
 To be purchased directly from the
 GOVERNMENT PUBLICATIONS SALE OFFICE
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€4.57

