



STATUTORY INSTRUMENTS

S.I. No. 89 of 2008

EUROPEAN COMMUNITIES (PUBLIC LIMITED
COMPANIES — DIRECTIVE 2006/68/EC) REGULATIONS 2008

(Prn. A8/0429)

EUROPEAN COMMUNITIES (PUBLIC LIMITED
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I, MICHEÁL MARTIN, Minister for Enterprise, Trade and Employment, in exercise of the powers conferred on me by section 3 (amended by section 2 of the European Communities Act 2007 (No. 18 of 2007)) of the European Communities Act 1972 (No. 27 of 1972) and for the purpose of giving effect to Directive 2006/68/EC¹ of the European Parliament and of the Council of 6 September 2006 amending Council Directive 77/91/EEC, as regards the formation of public limited liability companies and the maintenance and alteration of their capital, hereby make the following regulations:

Citation, commencement and construction.

1. (1) These Regulations may be cited as the European Communities (Public Limited Companies — Directive 2006/68/EC) Regulations 2008.

(2) These Regulations shall come into operation on 15 April 2008.

Interpretation.

2. (1) In these Regulations—

“Act of 1963” means the Companies Act 1963 (No. 33 of 1963);

“Act of 1990” means the Companies Act 1990 (No. 33 of 1990);

(2) A word or expression that is used in the amendments to the Act of 1963 or the Act of 1990, effected by these Regulations, and that is also used in the Directive has, in those amendments, the same meaning as it has in the Directive.

Amendment of Act of 1963.

3. The Act of 1963 is amended—

(a) in section 73(2), by—

(i) substituting the following paragraphs for paragraphs (a) and (b):

“(a) in the case of a public limited company—

(i) every creditor of the company who—

(I) at the date fixed by the court, is entitled to a debt or claim that, if that date were the commencement of the winding up of the company, would be admissible in proof against the company, and

¹OJ L264, 25.9.2006, p.64.

(II) can credibly demonstrate that the proposed reduction in the share capital would be likely to put the satisfaction of that debt or claim at risk, and that no adequate safeguards have been obtained from the company, is entitled to object to the reduction, and

(ii) the court shall settle a list of creditors entitled to object, and for that purpose may publish notices fixing a day or days within which creditors are to claim to be entered on the list or are to be excluded from the right of objecting to the reduction of capital;

(b) in the case of any other company—

(i) every creditor of the company who, at the date fixed by the court, is entitled to any debt or claim that, if that date were the commencement of the winding up of the company, would be admissible in proof against the company is entitled to object to the reduction;

(ii) the court shall settle a list of creditors so entitled to object, and for that purpose shall ascertain, as far as possible without requiring an application from any creditor, the names of those creditors and the nature and amount of their debts or claims, and may publish notices fixing a day or days within which creditors not entered on the list are to claim to be so entered or are to be excluded from the right of objecting to the reduction;”, and

(ii) by inserting “in either case,” before “where” in paragraph (c), and

(b) in section 77, by substituting “a company (other than a public limited company) the subject of an application under section 73” for “the company”.

Amendment of Act of 1990.

4. The Act of 1990 is amended—

(a) in section 207(2)(d), by substituting the following subparagraph for subparagraph (i):

“(i) Subject to subparagraph (ii), no such shares shall be redeemed otherwise than—

(I) out of profits available for distribution, and

(II) if the company is a public limited company, in accordance with the restriction on the distribution of assets specified in section 46 of the Companies (Amendment) Act 1983.”, and

(b) in section 211—

(i) by inserting “subsection (4) and ” after “Subject to” in subsection (1), and

(ii) by inserting the following subsection after subsection (3):

“(4) This section has effect without prejudice to—

(a) the principle of equal treatment of all shareholders who are in the same position,

(b) the Market Abuse (Directive 2003/6/EC) Regulations 2005 (S.I. No. 342 of 2005), and

(c) Part 4 of the Investment Funds, Companies and Miscellaneous Provisions Act 2005.”.



GIVEN under my Official Seal,
3 April 2008

MICHEÁL MARTIN.
Minister for Enterprise, Trade and Employment

EXPLANATORY NOTE

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

These Regulations give effect to certain provisions of Directive 2006/68/EC of the European Parliament and the Council of 6 September 2006 which amended Council Directive 77/91/EEC as regards the formation of public limited liability companies and the maintenance and alteration of their capital. The areas covered by the Regulations are matters relating to creditor protection in cases of capital reduction and purchase by a company of its own shares.

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