LAW SOCIETY SUBMISSION

LAW SOCIETY OF IRELAND

SUBMISSION TO THE JOINT COMMITTEE ON ENTERPRISE, TRADE AND EMPLOYMENT ON THE GENERAL SCHEME OF THE COMPANIES (CORPORATE ENFORCEMENT AUTHORITY) BILL

December 2020

ABOUT THE LAW SOCIETY OF IRELAND

The Law Society of Ireland is the educational, representative and regulatory body of the solicitors' profession in Ireland.

The Law Society exercises statutory functions under the Solicitors Acts 1954 to 2011 in relation to the education, admission, enrolment, discipline and regulation of the solicitors' profession. It is the professional body for its solicitor members, to whom it also provides services and support.

The headquarters of the organisation are in Blackhall Place, Dublin 7.

1. INTRODUCTION

1.1 The Law Society of Ireland (the "**Society**") welcomes the opportunity to provide comments to the Joint Committee on Enterprise, Trade and Employment (the "**Committee**") on the General Scheme of the Companies (Corporate Enforcement Authority) Bill (the "**General Scheme**").

1.2 Since enactment of the Companies Act 2014 (the "**Act**"), the Society has provided feedback and recommendations on the operation of a number of its provisions for further consideration. The Society welcomes the opportunity to engage with the continuing implementation of the Act, and as such has included within this submission some matters of priority which the Committee may wish to consider for inclusion within the General Scheme.

2. EXECUTIVE SUMMARY

2.1 We have provided summaries and copies of submissions previously made on matters of company law. They have been presented as set out below in a manner which we hope will enable the Committee to easily rank them in terms of urgency so that they can be addressed in the General Scheme and the forthcoming Bill or in subsequent company law legislation.

2.2 Matters identified for consideration include:

(a) the common seal;

(b) mergers under Chapter 3 of Part 9 of the Act;

(c) proxies for traded plcs with listed subsidiaries; and

(d) various issues in relation to share capital highlighted in previous reports of the Company Law Review Group (the "**CLRG**") and the submissions from the Society.

2.3 In one respect only, the Society urges the Committee to recommend the enactment of a measure which is outside the intended ambit of the General Scheme. That measure is the amendment of Section 8(a) of the Migration of Participating Securities Act 2019 (the "**Migration Act**") for reasons set out in paragraphs 6.2 to 6.4 below.

3. GENERAL SCHEME

3.1 The Society notes that several of the issues previously identified on matters of company law have been addressed in the General Scheme, however several matters previously identified have not been addressed. In this regard we attach a table setting out the:

(a) technical issues previously identified on matters of company law, in particular in relation to the Act, which are highlighted in reports of the CLRG and previous submissions from the Society, specifying how many of these issues have been effectively dealt with in the General Scheme (coloured green in the table);

(b) additional issues identified which were not included in the General Scheme and are discussed in more detail at paragraphs 4, 5.1, 5.2, 6, 7, 8.2 and 9 below (coloured yellow in the table); and

(c) issues which have previously formed the subject matter of submissions by the Society and/or the CLRG, but which are not currently addressed in the General Scheme, summarised in paragraphs 5.3, 5.4, 5.5, 5.6, 8.1 and 10 to 20 below (coloured amber in the table).

3.2 We also attach, for ease of reference, copies of the following submissions which were previously made on matters of company law and which are referenced in this submission:

(a) Recommendations of The Company Law Review Group relating to Shares and Share Capital in the Companies Act 2014, dated March 2017 (the "**CLRG Share Capital Report"**);

(b) Recommendations of The Company Law Review Group relating to Corporate Governance in the Companies Act 2014, dated November 2017 (the "**CLRG Corporate Governance Report**");

(c) Submission from the Society to the Department Of Business, Enterprise and Innovation, dated March 2016 (the "**March 2016 Submission**");

(d) Submission from the Society to the Department Of Business, Enterprise and Innovation, dated June 2016 (the "**June 2016 Submission**");

(e) Submission from the Society to the Department Of Business, Enterprise and Innovation, dated October 2016 (the "**October 2016 Submission**");

(f) Submission from the Society to the Department Of Business, Enterprise and Innovation, dated October 2017 (the "**October 2017 Submission**"); and

(g) Submission to the Department Of Enterprise, Trade and Employment from the legal drafting group assembled by Euronext Dublin in relation to the Migration of Participating Securities Act 2019 (the "**2019 Act**"), dated November 2020 (the "**2020 Submission**").

4. COMMON SEAL

4.1 Background

(a) It is the Society's view that the requirements under the Act in relation to affixing the common seal are no longer appropriate in modern commercial transactions and are at odds with an increasingly digital environment.

(b) Virtual closings and the use of electronic signatures are now well-established in Irish legal practice. More recently, restrictions on travel and in-person meetings as a result of the Covid-19 pandemic,

together with advances in technology, have led to a significant increase in transactions being completed remotely. However, broader adoption of virtual signing solutions continues to be constrained by obligations on companies in relation to the common seal.

4.2 Affixing the Common Seal

(a) When an Irish company executes a deed, it generally does so under its common seal in accordance with Section 64 of the Land and Conveyancing Law Reform Act 2009. The common seal is also used to execute stock transfer forms where the company is the transferor and is affixed to share certificates issued by the company. In addition, a company may elect to use its common seal to execute other documents.

(b) Section 43 of the Act requires that all companies must have a common seal that states the company's name, engraved in legible characters. This requirement for a physical seal means that it is not possible for a company to electronically affix its common seal on a document. Even if the engraving requirement were removed, the Act does not contemplate an electronic version of the seal. For the avoidance of doubt, the intended function of the "electronic seal" provided for in the eIDAS Regulation[1] does not appear to equate to that of a company seal under the Act. Accordingly, documents executed 'under seal' are required to be executed in hard copy.

(c) Section 43 of the Act provides that, unless a company's constitution provides otherwise, any instrument to which the company's seal is affixed must be signed by a director and countersigned by a second director or the company secretary or another person appointed by the directors, and those signatures must be on the same physical page as the imprint of the common seal. The Companies (Miscellaneous Provisions (Covid–19) Act 2020 amended the Act by the insertion of Section 43A, so that for the duration of the "interim period" (due to expire on 31 December 2020), the common seal and the necessary signatures are permitted to be on several documents in like form and together regarded as a "one document".

(d) As an alternative to affixing the common seal, a company may grant a power of attorney (which is not a deed and does not need to be executed under the common seal) to one or more individuals to execute documents (including deeds) on its behalf. The attorney may execute the document on the company's behalf without any requirement for the common seal to be affixed.

(e) While the options of appointing an attorney or affixing the common seal in accordance with Section 43A of the Act permit practical solutions to logistical difficulties in complying with the statutory obligations regarding documents under seal, these alternatives are not without challenges. Where a power of attorney is relied upon to execute a deed, the attorney's signature must be witnessed, and the witness must be physically present at the time of the attorney's

[1] Regulation (EU) No 910/2014

signature. While Section 43A has proven helpful, it still does not facilitate a fully electronic transaction, as the common seal must be affixed. In addition, it can be difficult for multi-national clients and counterparties to comprehend the additional complexities for Irish companies in signing such documents.

(f) The Society is concerned that the obligations regarding the common seal result in additional and unnecessary complexity, time and cost in commercial transactions, which jeopardise Ireland's attractiveness as a jurisdiction in which to do business. The Society notes that many other common law jurisdictions have already abolished the requirement for a common seal. The current requirements put Ireland at a competitive disadvantage in an increasingly digital environment.

(g) The Society notes that in its 1998 Report on Land Law and Conveyancing Law, the Law Reform Commission considered the abolition of sealing as a requirement for the execution of deeds (and recommended its abolition in respect of the execution of deeds by individuals). It also considered the company common seal and while ultimately, it did not recommend a change to the "*requirement for countersigning of the impression of the company's seal under Table A of the Companies Acts of 1908 and 1963, or under the company's Articles of Association*", this report was published over two decades ago, and legal and commercial practices and technology have developed significantly since then. The Society recommends that the matter of the common seal now be reconsidered.

(h) The Society notes that an Irish Collective Asset-management Vehicle ("**ICAV**") established under the Irish Collective Asset-Management Vehicles Act 2015 may provide itself with a common seal, but that there is no requirement to do so. A document expressed to be executed by the ICAV and signed on its behalf, either by two authorised signatories, or by a director of the ICAV in the presence of a witness who attests the signature, has the same effect as if executed under the common seal of the ICAV.

4.3 **Recommendation**

(a) The Society recommends that Section 43(1) of the Act be amended to include wording similar to that of Section 45(1) of the UK Companies Act 2006 so that a company may have a common seal, but is not required to have one.

(i) Section 43(1) could be amended as follows, expressed as notwithstanding any provision in the company's constitution:

"(1)(a) A company may have a common seal, but need not have one.

(1)(b) A company that has a common seal or seals shall have its name engraved in legible characters on the seal."

(ii) Section 43(2) could be amended to provide that, for a company which does not have a common seal, a document executed either:

(A) by signature and countersignature of the persons set out in Section 43(2)(b); or

(B) in accordance with the company's constitution,

and expressed to be executed by the company, shall have the same effect as if executed under the common seal of the company.

(b) If the obligation to have a common seal were to be optional, any such amendment to the Act would have consequences for other circumstances where the common seal is required, including in relation to:

(i) Section 64(2)(b)(ii) of the Land and Conveyancing Law Reform Act 2009, in relation to the execution of deeds by companies;

(ii) the execution by a company of a stock transfer form in accordance with the form set out in Schedule 1 of the Stock Transfer Act 1963[2]; and

(iii) Section 99(1) of the Companies Act 2014 in relation to the issue of share certificates.

Accordingly, the Society recommends that any legislation amending Section 43 of the Act should be expressed to have primacy, such that other legislation would be interpreted in accordance with that revised statutory provision.

5. MERGERS UNDER CHAPTER 3 OF PART 9

5.1 Section 471(1)(b): Audited statutory financial statements for 3 preceding financial years

(a) Background

Section 471(1)(b) of the Act requires a merging company to make available for inspection by its members "*the statutory financial statements for the preceding 3 financial years of each company (audited, where required by that Part, in accordance with Part 6)*".

[2] Notwithstanding the form set out in Schedule 1 of the Stock Transfer Act 1963 which provides for a company seal to be affixed to the stock transfer form, Section 2(1) of the Stock Transfer Act provides that shares 'may be transferred by means of an instrument under hand in the form set out in the First Schedule to the Act.' Therefore, companies may sign under hand and the shares will still be valid, however this is not the general practice among practitioners, and the preferred practice is to affix the common seal.

Section 471(1)(b), as currently drafted, is open to interpretation, either:

(i) literally, as requiring the audited financial statements for the 3 preceding financial years (meaning that a company would be unlikely to be in a position to comply with this obligation for at least the first 6 months of each financial year); or

(ii) more broadly, as requiring the audited statutory financial statements from the 3 preceding financial years which are available at that time (i.e. if the 2020 financial statements are not yet available then the audited financial statements from 2019, 2018 and 2017 would be used).

Many practitioners take the narrower interpretation of this provision, meaning that mergers under Chapter 3 of Part 9 of the Act are typically not carried out until later in a company's financial year.

The Society understands that there was no apparent legislative intention to impose a "black-out period" on carrying out such a merger until the most recent financial statements have been audited.

(b) **Recommendation**

The Society recommends an amendment to Section 471(1)(b) in order to clarify that, in circumstances where the statutory financial statements for the immediately preceding financial year (although requiring to be audited) have not yet been audited, inspection of those unaudited financial statements will satisfy the requirement under Section 471(1)(b).

5.2 **Sections 472(2), 480(3)(c) and 202(5): "Effective Date" of dissolution of transferor company**

(a) **Background**

Where a merger under Chapter 3 of Part 9 is effected under the Summary Approval Procedure ("**SAP**"), Section 472(2) of the Act provides that on the passing of the unanimous resolution, the merger is effective from the date specified in the common draft terms or any supplemental document. There is no statutory obligation to file a copy of the common draft terms of merger with the Registrar as part of the SAP, however the "supplemental document" (prepared by the directors pursuant to Section 209 of the Act) is required to be filed.

The "effective date" of the merger is the date upon which the two (or more) entities which are undertaking the merger will be registered as merged, with the transferor company (or companies) being dissolved with effect from this "effective date" (Section 480(3)(c) as applied by Section 472(2)).

In a merger carried out under the SAP the directors' Section 206 declaration must be delivered to the Registrar within 21 days "after the date on which the carrying on of the restricted activity concerned

is commenced" (Section 206(2)). Section 202(5) of the Act provides that on the delivery of such declaration to the Registrar, "the Registrar shall register the dissolution of the transferor company or companies concerned".

The Companies Registration Office (the "**CRO**") is currently treating the "effective date" of the dissolution of the transferor company (or companies) as the date upon which the directors' Section 206 declaration and the unanimous resolution approving the merger are received by the Registrar, rather than the effective date as set out in the common draft terms and/or supplemental document. Accordingly, entities are being registered as merged, or dissolved (as appropriate) with effect from the date the filings are lodged, rather than with effect from the legal effective date as set out in the common draft terms and/or supplemental document.

The CRO has indicated its objection to registering the dissolution from the register of the transferor company (or companies) to a date prior to the date on which the section 206 declaration is delivered to the Registrar and is, in effect, seeking to distinguish between the effective date of the merger and the effective date of the dissolution of the transferor company or companies. This practice has potentially serious consequences for companies which have structured their transaction around a contractually agreed "effective date" as permitted by Section 472(2) of the Act. In some instances, the contractually agreed "effective date" and the registered CRO "effective date" may differ to such an extent that the merger is registered as having taken effect in a different financial year to the actual date set out in the common draft terms.

(b) **Recommendation**

The Society is of the view that the current CRO practice of distinguishing between the effective date of the merger and the date of dissolution of the transferor company (or companies) has no statutory basis under the Act and is, in fact, contrary to the provisions of Sections 472(2) and 480(3)(c) which clearly require that the transferor be dissolved with effect from the effective date of the merger. Notwithstanding the clear statutory position, the Society has sympathy for the CRO's point of view, namely that: (1) the CRO is not privy to the information contained in the common draft terms of merger; and (2) the public is not on notice of the dissolution of the transferor company prior to its dissolution.

The Society recommends an amendment to the Act to clarify that the Registrar shall register the dissolution of the transferor company (or companies) concerned with effect from the date on which the merger takes effect as specified in the common draft terms of merger and any supplemental document and as notified to the Registrar.

The Society is happy to further discuss the means by which such clarification could potentially be achieved, and set out some suggested amendments below for the Committee's consideration:

(A) **Section 202(5)** - the inclusion of wording to the effect that the Registrar shall register the dissolution of the transferor company or companies concerned with effect from the date on which the merger takes effect as specified in the common draft terms of merger and any supplemental document and as notified to the Registrar; and

(B) **Section 472(2)** – an amendment to provide that the effective date is required to be specified in the "supplemental document" (which is filed with the Registrar).

5.3 **Section 462(b): Clarification that a merger between two DACs is permitted**

This issue was previously raised by the Society.

We refer to the analysis and recommendation set out at paragraph 4 of the October 2016 Submission and at paragraph 2 of the October 2017 Submission.

5.4 **Section 463(2): Merger by Absorption**

This issue was previously raised by the Society.

We refer to the analysis and recommendation set out at paragraph 3 of the October 2017 Submission.

5.5 **Section 471 – The Inspection of Documents**

This issue was previously raised by the Society.

We refer to the analysis and recommendation set out at paragraph 10 of the October 2016 Submission.

5.6 **Sections 480(5) – (8): Registers in the State**

This issue was previously raised by the Society.

We refer to the analysis and recommendation set out at paragraph 5 of the October 2016 Submission.

6. MIGRATION OF PARTICIPATING SECURITIES - RIGHTS OF MEMBERS

6.1 As referred to in the 2020 Submission, the legal drafting group assembled by Euronext Dublin to assist in the proposed migration of participating securities from the Central Securities Depository operated by Euroclear UK & Ireland Limited known as CREST to a Central Securities Depository operated by Euroclear Bank NV ("**Migration**") has recommended that certain amendments be made to the Act in order to improve the ability of shareholders in Irish traded plcs to exercise their rights following the Migration.

6.2 The Migration envisaged by the Migration Act involves a move to an intermediated model which disimproves this ability, as explained in the 2020 Submission. In addition, as indicated in the 2020 Submission, consideration of such measures would be consistent with the recent scoping paper published by the Law Commission in the UK on 11 November 2020[3]. The Society urges the Committee to continue its consideration of this matter.

6.3 An urgent matter which arises from the terms of the Migration Act which merits immediate consideration in the context of the General Scheme is where Section 6(1) of that Act provides that the quorum for the special resolution required to approve migration by relevant companies is "*at least 3 persons holding or representing by proxy at least one-third in nominal value of the issued shares in the participating issuer*". While this quorum is consistent with the requirements for a share class resolution approving rights (which we understand may have been the reason for its inclusion), the Society believes that it is of limited value in the context of Migration and may be of significant detriment. In this context, it is important to emphasise that failure to satisfy all the requirements of the Migration Act, including passing the necessary special resolution with this quorum, will result in relevant issuers no longer being able to sustain their listing or trading facility on Euronext Dublin or the London Stock Exchange.

6.4 The circumstances of a shareholder vote on Migration are however, uniquely differentiated from the analogy of a class rights resolution in that the rights of a shareholder who chooses to vote against it are not in any way prejudiced – shareholders may freely choose to retain their shares in certificated form[4] and to suffer the potential disadvantages in terms of easy liquidity (as a shareholding would have to be dematerialised in order to be traded both before and after Migration) and the improvement of the ability of other shareholders to trade their shares is of no detriment.

6.5 The Society is aware that concerns have been raised by certain traded plcs (which may not benefit from an active and concentrated shareholder base) that they may not be able to guarantee the participation of shareholders sufficient to discharge the quorum requirement of the Migration Act. No valuable shareholder right or public policy objective is protected by the quorum requirement, and the risk that it creates - that any traded plc may find itself ineligible for the continuation of trading on its shares on a market of Euronext Dublin or the London Stock Exchange - is not acceptable. The Society urges the amendment of Section 8(a) of the Migration Act by the removal of the requirement for a quorum of members holding, or

[3] Available here: https://www.lawcom.gov.uk/law-commission-says-improvements-are-required-to-the-way-shares-are-held/

[4] It is however a requirement of the Article 3(1) Regulation (EU) No. 909/2014 of the European Parliament and of the Council of 23 July, 2014 on improving securities settlement in the European Union, and on central securities depositaries and amending Directives 98/26/EC and 2014/65/EU and Regulation (EU) No 236/2012, that Irish listed PLCs must arrange for their securities to be represented in book-entry form. This obligation will apply from 1 January 2023 with respect to new issues of shares. From 1 January 2025, this requirement will apply to all transferable securities. The effect of these provisions, when implemented, will be that the option of holding shares in certificated form will no longer be available in the case of new issues from 1 January 2023, and in the case of existing issued shares from 1 January, 2025.

representing by proxy, at least one-third in nominal value of the issued shares in the participating issue.

7. SECTION 121 - RELEVANT FINANCIAL STATEMENTS

7.1 Background

(a) Section 121 of the Act is broadly similar to its predecessor, Section 49 of the Companies (Amendment) Act 1983 (the "**1983 Act**"), both provisions state that the board must first look to the last set of annual statutory financial statements that have been "laid". Only if those financial statements do not show sufficient distributable reserves do the directors requisition interim financial statements for the board to consider.

(b) The interpretation provision in Section 121(7) has been conflated with the definition of "unqualified report" – there should have been a line break inserted before "*and for the purposes of this section, financial statements are laid [...]*".

(c) Section 121(7) states that "*for the purposes of this section, financial statements are laid if Section 290 has been complied with in relation to those statements*." Section 290 does not contain any obligation to lay annual statutory financial statements before shareholders at AGM, rather it merely requires the preparation of annual financial statements in accordance with either the provisions of the 2014 Act or alternatively IFRS. It would appear that the cross-reference should have been to Section 341 rather than to Section 290.

(d) As a consequence, Section 121 has changed the standard for private companies limited by shares (when compared with the 1983 Act) such that the board is to look to the last set of annual statutory financial statements to have been prepared, rather than the last set to have been laid before shareholders at AGM. The Society understands that this does not represent an intentional change.

7.2 Recommendation

The Society recommends that Section 121 be amended in order to correct the cross-reference and to insert a line-break before "*and for the purposes of this section, financial statements are laid […]*".

8. SECTION 82 – FINANCIAL ASSISTANCE FOR ACQUISITION OF SHARES

8.1 Section 82(6)

The Society recommends that the Department consider the amendments to Section 82 recommended in the CLRG Share Capital Report and by the Society in paragraph 6 of the June 2016 Submission.

8.2 Section 82(7) - private limited subsidiary of a PLC

The Society recommends that Section 82(7) be amended so that the test for a private limited subsidiary of a PLC is applied when the assistance is given

and not when the acquisition of shares occurs (comparable with the previous legislation).

9. SECTION 279 – US ACCOUNTING STANDARDS MAY, IN LIMITED CASES, BE AVAILED OF FOR PARTICULAR TRANSITIONAL PERIOD

9.1 Background

(a) Section 279 of the Act allows Irish companies that:

(i) were registered with, or otherwise subject to the reporting requirements of, the Securities and Exchange Commission; and

(ii) prior to 4 July 2012, had not made and were not required to make an annual return to the Registrar to which accounts were required to have been annexed, or on or after 23 December 2009 but prior to 4 July 2012, used US accounting standards in the preparation of its Companies Act individual accounts or its Companies Act group accounts;

to prepare their financial statements in Ireland using US GAAP.

(b) Section 279 was a temporary measure which was due to end on 31 December 2020. However, Section 279 of the Companies Act 2014 was amended, which effect from 18 July 2017 under the Companies (Amendment) Act 2017, to extend the deadline by a further 10 years, to end on 31 December 2030. A limitation was placed on this measure such that, in order to avail of Section 279, a company must have been incorporated in Ireland before 18 July 2017 (i.e. the commencement date of the Companies (Amendment) Act 2017).

(c) The purpose of Section 279 is that it permits a period of transition to US companies which, prior to establishing in Ireland, had prepared their financial statements in accordance with US GAAP. It permits such companies to continue the preparation of statutory financial statements using US GAAP for a limited period instead of using Irish GAAP or IFRS which they would otherwise be required to use. The benefit to such companies is the relief from having to prepare two sets of accounts and the obvious time and expense that such companies would incur in doing so.

9.2 Recommendation

The Society recommends that the expiry of the transitional period be extended from 31 December 2030 to 31 December 2040.

10. SECTION 83 - VARIATION OF COMPANY CAPITAL

The Society recommends the insertion of a new Section 31(2A) and the amendment of Section 83 of the Act to facilitate automatic conversion of shares to redeemable shares in accordance with the provisions contained in a company's constitution or added to it by special resolution as proposed by the CLRG Share Capital Report.

11. **SECTION 86 – REGISTRATION OF ORDER AND MINUTE OF REDUCTION**

The Society recommends an amendment to Section 86 of the Act to allow a different reference date for the identification of a company's share capital in an application to reduce company capital as proposed by the CLRG Share Capital Report.

12. **SECTION 118 - PROHIBITION ON PRE-ACQUISITION PROFITS OR LOSSES BEING TREATED IN HOLDING COMPANY'S FINANCIAL STATEMENTS AS PROFITS AVAILABLE FOR DISTRIBUTION**

The Society recommends that Section 118 of the Act be amended in order to provide that the restriction on the distribution of pre-acquisition profits applies where Sections 72, 73 and 75 are applicable notwithstanding that there is no share premium in the shares of the acquiring company as proposed by the CLRG Share Capital Report.

The Society also supports the recommendation by the CLRG that Section 118(4) of the Act be amended to make it clear that a transaction may fall to be treated as one to which Sections 72, 73 or 75 of the Act applies (and therefore there is no pre-acquisition restriction by virtue of Section 118(4)) even when no share premium arises on foot of the relevant transaction.

13. **SECTION 126 – BONUS ISSUE**

The Society supported the recommendation proposed in the CLRG Share Capital Report that Section 126 of the Act be amended in order to clarify that the definition of "relevant sum" be expanded to include any of the company's distributable reserves.

This issue was also previously raised by the Society in the analysis and recommendation set out in paragraph 6 of the October 2017 Submission.

14. **SECTION 150 – DISCLOSURE OF DIRECTORS' HOME ADDRESSES**

This issue was raised previously by the Society.

We refer to the analysis and recommendation set out in paragraph 4 of the March 2016 Submission.

15. **SECTION 1103 – ADDITIONAL PROVISIONS CONCERNING NOTICE UNDER SECTION 181 BY A TRADED PLC**

The Society supports the recommendations proposed in the CLRG Corporate Governance Report around the insertion of the following as a new Section in Part 17 of the Act:

1103A. Proxies for PLCs with listed securities

"(1) In the case of listed PLCs, section 183 shall apply as if the following subsection were inserted after subsection (12):

"(13) Subsections (4), (5), (6), (8), (9), (10) and section 184 apply save to the extent that the company's constitution provides otherwise."

(2) For the purposes of subsection (1), the reference to a listed PLC shall include a traded PLC and a PLC whose securities (or whose receipts in respect of those securities) are listed on any stock exchange."

This issue was raised previously by the Society. We refer to the analysis and recommendation set out in paragraph 2 of the October 2016 Submission.

16. **SECTION 184 – FORM OF PROXY**

This issue was raised previously by the Society. We refer to the analysis and recommendation set out in paragraph 3 of the October 2016 Submission.

17. **SECTION 1047 – PUBLIC LIMITED COMPANIES**

The Society supports the CLRG's recommendation that a narrow exclusion from the obligation to notify an interest should be accommodated and suggest that Section 1047 be amended by the insertion of two new sections, a new subsection (4) and (5) as set out in paragraph 17 of the CLRG Share Capital Report.

18. **SECTION 1059 – INTEREST SHARES THAT ARE NOTIFIABLE INTERESTS FOR PURPOSES OF CHAPTER**

This issue was raised previously by the Society.

We refer to the analysis and recommendation set out in paragraph 8 of the October 2016 Submission

19. **SECTION 1072 – "MARKET PURCHASE', 'OVERSEAS MARKET PURCHASE" AND "OFF – MARKET PURCHASE"**

The Society supports the CLRG recommendation that the Minister would draft a new statutory instrument to specifically recognise the AIM under Section 1072(2)(a)(ii) of the Act.

20. **THE EC (PUBLIC LIMITED COMPANIES SUBSIDIARIES) REGULATION 1997**

This issue was raised previously by the Society.

We refer to the analysis and recommendation set out in paragraph 9 of the October 2016 Submission.

Conclusion

We hope that the Committee will find these comments and suggestions to be constructive and the Society will be glad to engage further on any of the matters raised.

For further information please contact:

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