
STATUTORY INSTRUMENTS

2004 No. 2326

**The European Public Limited-
Liability Company Regulations 2004**

PART 6

**PROVISIONS RELATING TO THE EFFECTIVE
APPLICATION OF THE EC REGULATION**

Competent authorities

- 75.** The competent authorities designated under Article 68(2) are—
- (a) in respect of Articles 8, 54, 55 and 64, the Secretary of State;
 - (b) in respect of Article 25, the High Court in relation to a public company whose registered office is in England and Wales, and, in relation to a public company whose registered office is in Scotland, the Court of Session; and
 - (c) in respect of Article 26, the High Court in relation to an SE where the registered office is proposed to be in England and Wales, and, in relation to an SE where the registered office is proposed to be in Scotland, the Court of Session.

Enforcement of obligation to amend Statutes in conflict with Arrangements for Employee Involvement

- 76.—**(1) If it appears to the Secretary of State that—
- (a) the statutes of an SE are in conflict with the arrangements for employee involvement determined in accordance with Part 3 of these Regulations; and
 - (b) the statutes have not, to the necessary extent, been amended she may direct the SE to amend the statutes to that extent within such period as she may specify in the direction.
- (2) A direction under this regulation is enforceable on the application of the Secretary of State—
- (a) in respect of an SE with its registered office in England and Wales, to the High Court by injunction; and
 - (b) in respect of an SE with its registered office in Scotland, to the Court of Session by an order under section 45 of the Court of Session Act 1988.

Records of an SE transferred under Article 8(11) or a public company ceasing to exist under Article 29(1) and (2)

- 77.—**(1) Where—
- (a) the registration of an SE is deleted under Article 8(11) pursuant to a transfer of its registered office to another Member State; or

- (b) a public company ceases to exist under Article 29(1)(c) or (2)(c), the records of that SE or public company, as the case may be, kept by the registrar shall continue to be kept by her for a period of twenty years following such a deletion or cessation of existence.

(2) Where the registration of an SE is deleted, the Form, and the documents accompanying it, delivered to the Secretary of State under regulation 11, together with a copy of the certificate issued under Article 8(8) shall be deemed to be documents to be retained by the registrar under regulation 13 and the provisions of these Regulations apply accordingly.

Application of enactments to members of supervisory, management and administrative organs

78.—(1) This regulation applies to enactments relating to public companies to the extent that they are required, by the EC Regulation, in the manner described in paragraph 2, to be applied in relation to SEs.

(2) Enactments are required to be applied for the purposes of paragraph (1) where—

- (a) any provision of the EC Regulation, other than Article 9, requires the application of any enactment relating to public companies to determine any question or matter; or
- (b) in the case of any matter not regulated by the EC Regulation or, where matters are partly regulated by it, of those aspects not covered by it, Article 9 requires the application of any enactment relating to public companies.

(3) Subject to paragraphs (4), (5) and (6) references to “directors” or “board of directors” in any enactment to which this regulation applies shall have effect as if they were references—

- (a) in a one-tier system, to the members of the administrative organ; and
- (b) in a two-tier system, to the members of the supervisory and management organs.

(4) Any enactment so applied in relation to a two-tier system shall be applied separately in respect of the members of the supervisory organ and the members of the management organ in relation to the functions of the organ, and in respect of the acts and omissions of the members of those organs.

(5) Where, in a two-tier system, any function relates to the management of the SE and, by virtue of Articles 39(1) or 40(1), is a function that cannot be carried out by the supervisory organ, nothing in paragraph (3) has the effect of permitting or requiring the members of the supervisory organ to carry out any such functions.

(6) Where, by virtue of any provision in the EC Regulation or in the statutes, any transaction or function carried out by the management organ in a two-tier system requires the authorisation of the supervisory organ, nothing in paragraph (3) affects, or removes, the requirement for such authorisation.

Register of members of supervisory organ

79.—(1) Every SE which has adopted the form of a two-tier system in its statutes shall keep at its registered office a register of the members of its supervisory organ (“the members”); and the register shall, with respect to the particulars to be contained in it of those persons, comply with the paragraphs below.

(2) The SE shall, within the period of 14 days from the occurrence of—

- (a) any change among the members, or
- (b) any change in the particulars contained in the register,

send to the registrar a notification in the Form SE79A, SE79B or SE79C, as may be appropriate, and, if applicable, Form SE(SR) or Form SE(SR) change, set out in Schedule 1, of the change and of

the date on which it occurred; and a notification of a person having become a member shall contain a consent, signed by that person, to act in the relevant capacity.

(3) The register shall be open to the inspection of any shareholder of the SE without charge and of any other person on payment of a fee of £2.50 for each hour or part of an hour during which the right of inspection is exercised.

(4) If an inspection required under this section is refused, or if default is made in complying with paragraph (1) or (2), the SE is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(5) In the case of a refusal of inspection of the register, the court may by order compel an immediate inspection of it.

(6) Where a confidentiality order, made under section 723B of the 1985 Act, or under that section to the extent that that enactment is applied by any provision of the EC Regulation, is in force in respect of a member, subsections (3) and (5) of that section shall not apply in relation to that part of the register of the SE as contains particulars of the usual residential address of that individual.

(7) For purposes of this and the next regulation, where, to the extent that the application of section 741(2) of the 1985 Act under any provision of the EC Regulation requires it, a shadow director of an SE, by virtue of the members of the supervisory organ acting in accordance with his directions or instructions, is deemed a member of that organ.

(8) Where an SE is required to keep a register of members of the supervisory organ by this regulation, the application of regulation 78 to that SE shall not require that particulars of members of the supervisory organ to be kept on any register required be kept under section 288 of the 1985 Act.

Particulars of members to be registered under regulation 79

80.—(1) Subject to the provisions of this regulation, the register kept by an SE under regulation 79 shall contain the following particulars with respect to each member—

- (a) in the case of an individual—
 - (i) his present name,
 - (ii) any former name,
 - (iii) his usual residential address,
 - (iv) his nationality,
 - (v) his business occupation (if any),
 - (vi) particulars of any other directorships held by him or which have been held by him, and
 - (vii) the date of his birth;
- (b) in the case of a corporation or Scottish firm, its corporate or firm name and registered or principal office.

(2) Where a confidentiality order made under section 723B of the 1985 Act or under that section to the extent that is applicable by any provision of the EC Regulation is in force in respect of a member, the register shall contain, in addition to the particulars specified in paragraph (1)(a), such address as is for the time being notified by the member to the company under regulations made under sections 723B to 723F of the 1985 Act.

(3) In paragraph (1)(a)—

- (a) “name” means a person’s Christian name (or other forenames) and surname, except that in the case of a peer, or an individual usually known by a title, the title may be stated instead of his Christian name (or other forename) and surname, or in addition to either or both of them; and

- (b) the reference to a former name does not include—
 - (i) in the case of a peer, or an individual normally known by a British title, the name by which he was known previous to the adoption of or succession to the title, or
 - (ii) in the case of any person, a former name which was changed or disused before he attained the age of 18 years or which has been changed or disused for 20 years or more, or
 - (iii) in the case of a married woman, the name by which she was known previous to the marriage.
- (4) It is not necessary for the register to contain on any day particulars of a directorship of a company—
 - (a) which has not been held by a director at any time during the 5 years preceding that day,
 - (b) which is held by a director in a company which—
 - (i) is dormant or grouped with the SE keeping the register, and
 - (ii) if he also held that directorship for any period during those 5 years, was for the whole of that period either dormant or so grouped,
 - (c) which was held by a member for any period during those 5 years in a company which for the whole of that period was either dormant or grouped with the SE keeping the register.
- (5) For purposes of paragraph (4), “company” has the meaning given it in section 735(1) of the 1985 Act and includes any body corporate incorporated in Great Britain; and—
 - (a) section 249AA(3) of the 1985 Act applies as regards whether and when a company is or has been dormant,
 - (b) section 249AA(3) of the 1985 Act, to the extent that enactment is applied by any provision of the EC Regulation, applies as regards whether and when an SE is or has been dormant, and
 - (c) a company or SE is to be regarded as being, or having been, grouped with another at any time if at that time it is or was a company or SE of which the other is or was a wholly-owned subsidiary, or if it is or was a wholly-owned subsidiary of the other or of another company or SE of which that other is or was a wholly-owned subsidiary.

The SE as a body corporate

81.—(1) Where—

- (a) any enactment is applied in the manner described in regulation 78(2); or
 - (b) any enactment applies to an SE otherwise than in the manner described in regulation 78(2)
- and those enactments are expressed to apply to, or in respect of, a body corporate, an SE, whether or not registered in Great Britain, shall be treated for the purposes of the application of those enactments as if it were a body corporate.

(2) Nothing in this regulation has the effect of constituting an SE as a body corporate incorporated in, or formed under the law of, Great Britain.

Notification of Amendments to Statutes and Insolvency Events (Articles 59(3) and 65)

82.—(1) Where, under Articles 59(3) and 65, publication by the registrar in the Gazette of the events described in those Articles is required by regulation 71(1)—

- (a) in the case of Article 59(3), the amendments to the statutes shall be delivered to the registrar by the SE accompanied by Form SE82(1)(a) in Schedule 1 within 14 days of the adoption of those amendments; and

(b) in the case of Article 65, notice of the relevant event set out in Form SE82(1)(b) in Schedule 1 shall be delivered to the registrar by the SE within 14 days of the occurrence of the event.

(2) If default is made in complying with paragraph (1)(a) or (b) the SE is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Accounting Reference Period and Financial Year of Transferring SE

83.—(1) Where an SE transfers its registered office to Great Britain under Article 8—

(a) its first accounting reference period, for the purposes of section 224 of the 1985 Act, is the period of twelve months beginning with its last balance sheet date before the registration of the transfer and the date on which that period ends is its accounting reference date for those purposes; and

(b) its first financial year for the purposes of section 223 of the 1985 Act begins with the first day of its first accounting reference period and ends with the last day of that period or such other date, not more than seven days before or after the end of that period as the SE may determine.

(2) For purposes of this regulation “the last balance sheet date” is the date as at which the balance sheet of the transferring SE was required to be drawn up under the provisions of the law of the Member State in which it had its registered office, where the balance sheet was the last one required to be drawn up before the registration of the transfer in Great Britain.

(3) Where the transferring SE has not been required to draw up a balance sheet under the provisions of the law of the Member State where it had its registered office, or, if different, of the Member State where it was first registered, before the registration of the transfer in Great Britain, its accounting reference date for the purposes of section 224 of the 1985 Act is the last day of the month in which the anniversary of its registration on formation falls and its first accounting reference period is the period beginning with its date of registration on formation and ending with its accounting reference date; and paragraph (1)(b) above applies in respect of its first financial year accordingly.

Penalties for Breach of Article 11 (use of SE in name)

84. Where:

(a) an SE fails to comply with Article 11(1); or

(b) any person fails to comply with Article 11(2)

the SE or that person is liable on summary conviction to a fine not exceeding level 3 on the standard scale.