
STATUTORY INSTRUMENTS

2004 No. 2326

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

PART 5

PROVISIONS REQUIRED BY THE EC REGULATION

Publication of terms of transfer, formation and conversion (Articles 8(2), 32(3) and 37(5))

- 68.**—(1) Where a transfer proposal is drawn up under Article 8(2)—
- (a) a copy of the proposal shall be delivered to the registrar together with Form SE68(1)(a), and
 - (b) the registrar shall cause notice of the receipt of the copy of the proposal to be published in the Gazette.
- (2) Where draft terms for the formation of a holding SE, whether or not its registered office is to be in Great Britain, are drawn up under Article 32(2)—
- (a) a copy of the draft terms shall be delivered to the registrar together with Form SE68(2)(a), and
 - (b) the registrar shall cause notice of the receipt of the copy of the draft terms to be published in the Gazette.
- (3) Where draft terms for the conversion of a public limited-liability company into an SE are drawn up under Article 37(4)—
- (a) a copy of the draft terms shall be delivered to the registrar together with Form SE68(3)(a), and
 - (b) the registrar shall cause notice of the receipt of the copy of the draft terms to be published in the Gazette.
- (4) The Forms referred to in paragraphs (1) to (3) are those set out in Schedule 1.

Publication of completion of merger (Article 28)

69. Where an SE is formed by merger, whether its registered office is in Great Britain or not, and a public company has taken part in that procedure, the registrar shall cause to be published in the Gazette notice that the merger has been completed.

Publication of fulfilment of conditions for the formation of a holding SE (Article 33(3))

70.—(1) Where, in respect of a company of a type specified in relation to the United Kingdom in Annex II to the EC Regulation, the conditions for the formation of a holding SE, whether or not it is to be registered in Great Britain, are fulfilled, the company shall deliver to the registrar within 14 days of such fulfilment notice of that event in the Form SE70(1) set out in Schedule 1 and the registrar shall cause to be published in the Gazette notice that these conditions have been fulfilled.

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

Publication of other documents or information (Articles 8(12), 15(2), 59(3) and 65)

71.—(1) Where, under the Articles of the EC Regulation listed in paragraph (2), the occurrence of an event is required to be publicised, the registrar shall cause to be published in the Gazette notice of receipt of the particulars of that event described in those Articles.

(2) The Articles referred to in paragraph (1) above are:

Article 59(3)

Article 65.

(3) Where, under the Articles listed in paragraph (4), the registration of an SE, whether on formation under Title II of the EC Regulation, or on the transfer of the registered office of an SE under Article 8 or the deletion of a registration under that Article is required to be publicised, the registrar shall cause to be published in the Gazette notice of that registration or the deletion of that registration and of the receipt of the documents and particulars related to that registration or deletion required to be delivered to the registrar by the EC Regulation or these Regulations.

(4) The Articles referred to in paragraph (3) are:

Article 8(12)

Article 15(2).

Protection of creditors and others on a transfer (Article 8(7))

72.—(1) Where an SE proposes to transfer its registered office to another Member State under Article 8 the SE shall satisfy the Secretary of State that the interests of creditors and holders of other rights in respect of the SE (including those of public bodies) have been adequately protected in respect of any liabilities arising (or that may arise) prior to the transfer by the making of a statement of solvency in the terms set out in paragraphs (4) and (5).

(2) The statement of solvency must be made by all the members of the administrative organ in the case of an SE within the one-tier system and by all the members of the management organ in the case of an SE within the two-tier system.

(3) In the case of an SE within the two-tier system the statement of solvency may not be made unless authorised by the supervisory organ.

(4) The statement shall state that the members of the administrative or management organ, as the case may be, have formed the opinion—

(a) as regards its financial situation immediately following the date on which the transfer is proposed to be made, that there will be no grounds on which the SE could then be found to be unable to pay its debts, and

(b) as regards its prospects for the year immediately following that date, that, having regard to their intentions with respect to the management of the SE's business during that year and to the amount and character of the financial resources which will in their view be available to the SE during that year, the SE will be able to carry on business as a going concern (and will accordingly be able to pay its debts as they fall due throughout that year).

(5) In forming their opinion for the purposes of paragraph (4)(a), the members of the administrative or the management organ, as the case may be, shall take into account the same liabilities (including prospective and contingent liabilities) as would be relevant under section 122 of

the Insolvency Act 1986(1) (winding up by the court) to the question whether a company is unable to pay its debts.

(6) The statement required by this regulation shall be in the Form SE72(6) set out in Schedule 1.

(7) A member of an administrative or management organ who makes a statement under this regulation without having reasonable grounds for the opinion expressed in the statement is liable, on conviction on indictment, to imprisonment not exceeding two years, or to a fine, or to both, and on summary conviction to imprisonment not exceeding three months, or to a fine not exceeding the statutory maximum, or to both.

Power of Secretary of State where an SE no longer complies with the requirements of Article 7

73.—(1) If it appears that an SE no longer complies with the requirements laid down in Article 7, the Secretary of State may direct the SE to regularise its position in accordance with Article 64(1) (a) or (b) within such period as may be specified in the direction.

(2) A direction under paragraph (1) is enforceable by the Secretary of State—

(a) in the case of an SE whose registered office is in England and Wales, by an application to the High Court for an injunction; or

(b) in the case of an SE whose registered office is in Scotland, by an application to the Court of Session for an order under section 45 of the Court of Session Act 1988(2).

(3) After section 124A of the Insolvency Act 1986 insert—

“Petition for winding up of SE

124B.—(1) Where—

(a) an SE whose registered office is in Great Britain is not in compliance with Article 7 of Council Regulation (EC) No 2157/2001 on the Statute for a European company (the “EC Regulation”) (location of head office and registered office), and

(b) it appears to the Secretary of State that the SE should be wound up, he may present a petition for it to be wound up if the court thinks it is just and equitable for it to be so.

(2) This section does not apply if the SE is already being wound up by the court.

(3) In this section “SE” has the same meaning as in the EC Regulation.”

(4) The Insolvency Act 1986 is consequentially amended as follows—

(a) in section 124 (application for winding up), in subsection (4)(b) after “124A” insert “or 124B”;

(b) in Schedule A1 (moratorium where directors propose voluntary arrangement), in paragraph 12(5)(a), after “124A” insert “or 124B”;

(c) in Schedule B1 (administration), in paragraphs 40(2)(a), 42(4)(a) and 82(1)(a) after “124A (public interest),” insert

“(aa) section 124B (SEs),”.

Review of decisions of a competent authority (Articles 8(14) and 19)

74.—(1) Where any competent authority or competent authorities oppose—

(a) the transfer of the registered office of an SE under Article 8(14); or

(1) 1986 c. 45.

(2) 1988 c. 36.

- (b) the taking part by a company of the type specified in relation to the United Kingdom in Annex 1 to the EC Regulation in the formation of an SE by merger under Article 19 whether or not its registered office is to be in Great Britain,

the provisions of paragraphs (2) to (5) shall apply.

(2) An SE, the transfer of whose registered office is opposed by a competent authority or authorities under Article 8(14) or a company whose taking part in the formation of an SE by merger, whether or not its registered office is to be in Great Britain, is opposed by a competent authority or competent authorities under Article 19, may appeal to the relevant court on the grounds that the opposition:

- (a) is unlawful; or
- (b) is irrational or unreasonable; or
- (c) has been made on the basis of a procedural impropriety or otherwise contravenes the rules of natural justice.

(3) For the purposes of this regulation the “relevant court” is in the case of—

- (a) an SE, or a company, whose registered office is in England or Wales, the High Court; and
- (b) an SE, or a company, whose registered office is in Scotland, the Court of Session.

(4) An appeal may only be brought under this regulation with the permission of the court.

(5) The court determining an appeal may—

- (a) dismiss the appeal; or
- (b) quash the opposition, and where the court quashes an opposition it may refer the matter to the opposing competent authority or authorities with a direction to reconsider it and to make a determination in accordance with the findings of the court.