

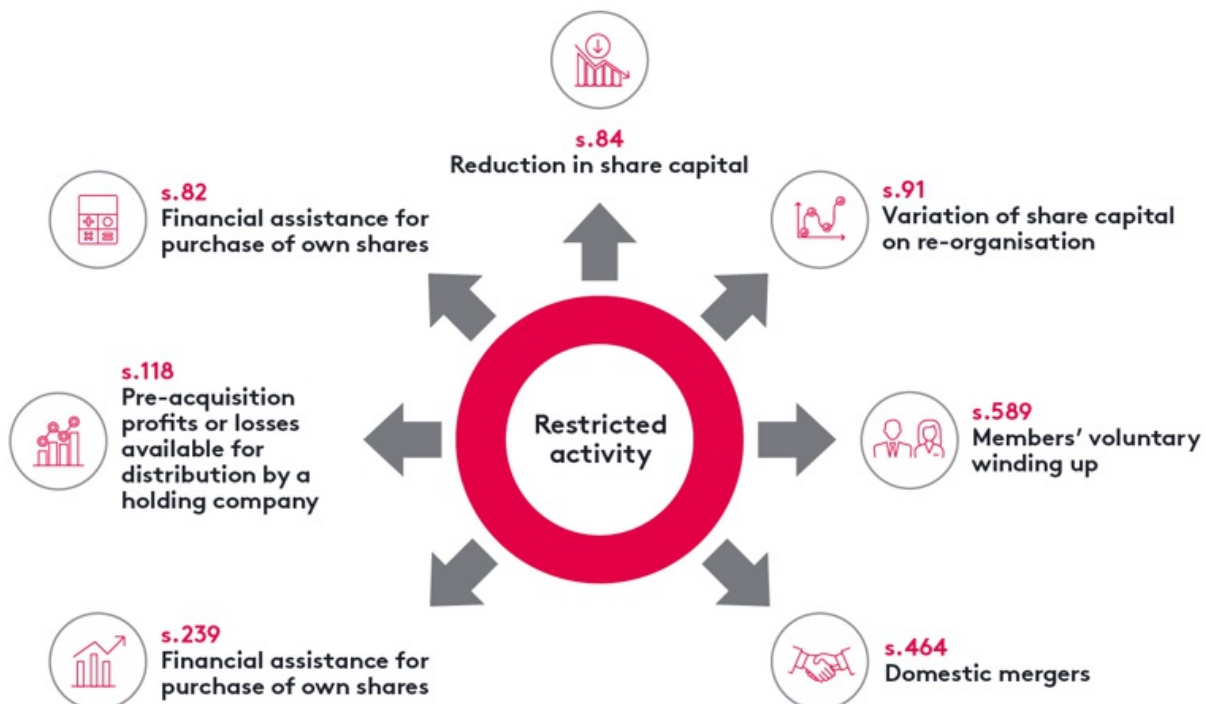
## Navigating the Summary Approval Procedure under the Companies Act 2014

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Governed by chapter 7, part 4 of the Companies Act 2014 (the Act) in Ireland, the Summary Approval Procedure (SAP) is a streamlined process used to authorise activities which are otherwise prohibited under the Act. Previously, these procedures were only able to be authorised with consent of the High Court of Ireland. This article highlights the various steps involved in the SAP, directors' liability and the statutory filings required by the Companies Registration Office.

### What is the Summary Approval Procedure?

The purpose of the SAP is to authorise the following restricted activities:



In the case of sections 4, 91 and 464 of the Act, a company may use a court-approved process instead of SAP. However, the SAP is a more cost-effective manner to approve the restricted activity.

## What does the procedure consist of?

The process of approval of the restricted activity is as follows:

- a declaration made in writing by the directors as to the solvency of the company is required. The declaration must be made by all or a majority of the directors of the company at a board meeting, held no earlier than 30 days before the passing of the shareholder resolutions
- the directors' declaration is sent to the members with notice of the extraordinary general meeting or the written resolution
- the resolution must be passed by members holding not less than 75% of the votes or a unanimous resolution in the case of a merger. This must not be passed more than twelve months prior to the commencement of the restricted activity
- a report made by an independent person who is qualified to be the statutory auditor of the company is required for each of section 84, 91, 118 and 579 of the Act. The report must confirm the directors' declaration of solvency is not unreasonable

## Directors' declaration

The directors' declaration will vary depending on the restricted activity. However, in all cases the declaration should set out the following:

- nature of the benefit that will accrue to the company
- circumstances of the transaction
- confirmation the company will be able to pay / discharge its debts as they fall due during the 12-month period following the transaction

## Directors' liability

Director's must have reasonable grounds to make the declaration as to the solvency of the company. When a director makes a declaration without having reasonable grounds, the High Court may declare each director who made the declaration personally liable for all debts and liabilities of the company.

Should the company be wound up within 12 months following the date of the declaration and its

debts are not paid within twelve months after the commencement of the winding up, it is presumed that the director made the declaration without reasonable grounds.

## Which companies can use SAP?

- Private limited companies
- Designated activity companies
- Companies limited by guarantees
- Unlimited companies

When filing in the Companies Registration Office, a copy of the declaration must be delivered to the Companies Registration Office (the **CRO**) within 21 days after the commencement of the restricted activity. If the 21-day deadline is not met, the restricted activity is invalidated. An application must then be made to the High Court to validate the carrying out of the restricted activity.

A copy of the special resolution must also be delivered to the CRO within 15 days from the date it was passed.

## How Ogier can help

Should you have any questions regarding the information presented in this article, reach out to the Irish Banking and Finance team via their details below.

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### Meet the Author



Laura Holtham

Partner

Ireland

E: [laura.holtham@ogier.com](mailto:laura.holtham@ogier.com)

T: + 353 1 639 3000

## Key Contacts



Eimear Walsh

Associate

Ireland

E: [eimear.walsh@ogier.com](mailto:eimear.walsh@ogier.com)

T: +353 1 232 1079

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