
Part B2 – Public Limited Companies

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Part B2 - Public Limited Companies

Chapter 1 Preliminary and Definitions

Head 1 Defined terms

(1) In this Part:

“authorised minimum” means €25,000 or such greater sum as may be specified by order made by the Minister under Subhead (3);

“authorised share capital” shall have the meaning assigned to it in Head 4 (2)(d) of this Part;

“constitution” has the meaning assigned to it in Head 4 of this Part;

“Directive company” means a company whose relevant share capital is admitted to trading on a regulated market;

“major shareholder” means a person who, together with any other person or persons with whom he is acting in concert, has a disclosable interest equal to or in excess of the specified percentage of the relevant share capital of a PLC;

“notifiable interest” has the meaning ascribed in accordance with head 36 -

“percentage” in relation to level of disclosable interest of a person in the relevant share capital of a PLC, means the percentage figure found by expressing the aggregate nominal value of all the shares comprised in the share capital concerned in which the person has a disclosable interest, relevant immediately before or (as the case may be) immediately after the relevant time as a percentage of the nominal value of that share capital and rounding that figure down, if it is not a whole number, to the next whole number, provided that where the nominal value of the share capital is greater immediately after the relevant time than it was immediately before, the percentage level of the person’s interest immediately before (as well as immediately after) that time is determined by reference to the larger amount;

“percentage point” means of the whole number percentages from 1 percent to 100 percent;

“public limited company” or **“PLC”** is a company limited by shares or a company limited by guarantee and having a share capital, being a company—

- (a) the constitution of which states that the company is to be a public limited company; and
- (b) in relation to which the provisions of this Bill as to the registration or re-registration of a company as a public limited company have been complied with;

“Regulated market” has the meaning given to it by Article 1(13) of Directive 93/22/EEC;

“relevant share capital” means, the PLC’s issued share capital of a class carrying rights to vote in all circumstances at general meetings of the PLC provided that —

- (a) where a PLC’s relevant share capital is divided into different classes of shares, references in this Part to a percentage of the nominal value of its relevant share capital are to a percentage of the nominal value of the issued shares comprised in each of the classes taken separately; and
- (b) the temporary suspension of voting rights in respect of shares comprised in issued share capital of a PLC of any such class, does not affect the application of this Part in relation to interests in those or any other shares comprised in that class;

“section 35 agreement” means an agreement described in Head 38 (1);

“securities” means transferable securities as defined by Article 1(4) of Directive 93/22/EEC, with the exception of money market instruments as defined by Article 1(5) 93/22/EEC, having a maturity of less than 12 months;

“specified percentage” means 3 percent or such other percentage as may be specified by order made by the Minister under Subhead (3).

- (2) The Minister may, by order, specify that the authorised minimum for the purposes of this Bill shall be an amount other than €25,000 and such an order may—

- (a) require any PLC, having an allotted share capital of which the nominal value is less than the amount specified in the order as the authorised minimum, to increase that value to not less than that amount or make an application to be re-registered as another form of company;
- (b) make, in connection with any such requirement, provision for any of the matters for which provision is made by any enactment in the Companies Acts relating to a PLC's registration, re-registration or change of name, payment for any share comprised in a company's capital and offers of shares in or debentures of a company to the public, including provision as to the consequences (whether in criminal law or otherwise) of a failure to comply with any requirement of the order; and
- (c) contain such supplemental and transitional provision as the Minister thinks appropriate, make different provision for different cases and, in particular, provide for any provision of the order to come into operation on different days for different purposes.
- (3) The Minister may prescribe the specified percentage, and different specified percentages may be prescribed in relation to PLCs of different classes or descriptions.

Explanatory Note

The definition of authorised minimum is an amended restatement of Sections 2(1) and 19(1) of the Companies (Amendment) Act, 1983. The amount has been set at €25,000 as it is appropriate under the Second Company Law Directive.

"Majority Shareholder" has been newly defined.

"Percentage" is taken from existing law.

The definition of public limited company is a restatement from Section 2(1) Companies (Amendment) Act, 1983.

"Relevant Share Capital" is taken from the existing definition.

Subhead (2) is a restatement of Section 19(2) of the Companies (Amendment) Act, 1983, with amended amounts.

Note: Transparency Directive will effect disclosure provisions and definition. May need to be taken into account at a later date i.e. the definitions of 'disclosable interest' and 'notifiable interest' will require amendment when the Transparency Directive is finalised.

Head 2 Interpretation of this Part

- (1) The provisions of Parts A1 to A14 apply to a PLC except to the extent that they are disapplied or modified by this Part.

Part	Head	Title
A2	2	Way of forming a company limited by shares
A2	3	The form of the constitution
A2	8(3)	Effect of registration
A2	9(1) – (3)	Provisions as to names of companies
A2	10	Trading under a misleading name
A2	15	Alteration of constitution by special resolution
A2	20	Capacity of a private company limited by shares
A2	22	Persons or bodies of persons authorised to bind a company
A2	37-43	All of A2 Chapter 6 – Conversion of an existing company to a company limited by shares
A3	4	Limitation on offer of securities to the public
A3	5(5)(b)	Allotment of shares [where const provides otherwise]
A3	15(2)(a)	Allotment of shares [financial assistance / validation proc]
A3	17(2)(a) & (3)	Variation in capital [reduction in capital / validation proc]

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- (2) The provisions contained in the following table shall not apply to a PLC to which this Part applies:

A3	21	Variation of rights attached to special classes of shares
A3	24(2)(a) & (4)	Variation of capital on reorganisations [validation proc]
A3	51	Relevant accounts [distributions]
A3	56	Trustees of designated investment funds required to enter into specified agreement prior to investing moneys of fund in companies
A4	2	Directors
A4	3(4)	Secretary
A4	17(2)	Removal of directors
A4	43	Transfer of shares in management companies
A4	66	General meetings of single-member companies
A5	32	Contracts with sole members
A5	7(5)	Directors' compliance statement [exemption re bal sheet/turnover]
A6	35	Disclosure of an independent auditor's remuneration
A6	60-63	Provisions relating to small and medium sized companies
A6	66-69	Exemption from requirements to have accounts audited
A9	6	Power to acquire shares of dissenting minority [disapplied for Directive company only]

- (3) A Societas Europae ("SE") which is registered with the Registrar shall be considered to be a PLC for the purposes of this Part.

Explanatory Note

This is a new head.

Part A3, Head 4 prohibits a company from making an offer of securities to the public in circumstances where a prospectus must be prepared under Regulation 12 of the Prospectus (Directive 2003/71/EC) Regulations 2005. The disapplication of Part A3, Head 4 in this Part removes the prohibition on PLCs offering securities. Subhead (3) is new. It has the effect of applying this Part to an SE as though it were a PLC. It is intended that the provisions contained in the new draft regulations on SEs will be included in Part B2 upon their release.

Chapter 2

Incorporation and Consequential Matters

Head 3 Way of forming a PLC

- (1) A PLC may be formed for any lawful purpose by any person subscribing to a constitution and complying with the registration requirements in this Bill.
- (2) A company may be registered as a PLC following -
 - (a) the reregistration as a PLC of a body corporate pursuant to Part B6, Head 7;
 - (b) the reregistration as a PLC of an SE pursuant to [Part B6, Head 000];
 - (c) the merger of two or more PLCs pursuant to Part B2, Chapter 10;
 - (d) the division of two or more PLCs pursuant to Part B2, Chapter 10;
 - (e) the merger of one or more PLCs with one or more bodies corporate registered immediately before such continuance as a body corporate in another EU Member State pursuant to Part B2, Chapter 10.
- (3) The liability of its member or members shall be limited to the amount, if any, unpaid on the shares respectively held by him or them.
- (4) A public limited company formed or registered as such on incorporation or reregistered under the Companies (Amendment) Act, 1983 shall be a PLC.
- (5) No company shall be formed as, or become, a public company limited by guarantee and having a share capital.
- (6) A PLC shall not be formed and registered unless it appears to the Registrar that the company, when registered, will carry on an activity in the State.
- (7) The certificate of incorporation issued under Head 7 (1) of Part A2 shall state that the company is a public limited company (PLC).

Explanatory Note

Paragraph (1)(a) is a restatement of Section 5(1) of the Companies Act, 1963.

Subhead (2) is new.

Subhead (3) is a restatement of section 5(2)(a) Companies Act 1963.

Subhead (4) is new.

Subhead (5) is a restatement of Section 7 of the Companies (Amendment) Act, 1983

Subhead (7) re-enacts Section 5(3) of Companies (Amendment) Act, 1983.

Head 4 The form of a PLC's constitution

- (1) Subject to Subhead (4) the constitution of a PLC shall be in the form of a memorandum and articles of association which together shall be referred to in this Part as a constitution.
- (2) The memorandum of association of a PLC shall state—
 - (a) its name;
 - (b) that it is a public limited company, registered under this Part;
 - (c) its objects;
 - (d) its authorised share capital, being the amount of share capital with which the PLC proposes to be registered which shall not be less than the authorised minimum, and the division thereof into shares of a fixed amount.
- (3) If the PLC adopts supplemental regulations, those regulations shall be in the form of the articles of association.
- (4) The constitution of a PLC shall—
 - (a) be in accordance with the form set out in the First Schedule to this Part or as near thereto as circumstances permit;
 - (b) be printed in an entire format;
 - (c) be signed by each subscriber in the presence of at least one witness who must attest the signature.

- (5) Where the constitution is delivered to the Registrar otherwise than in legible form and is authenticated by each subscriber in such manner as is directed by the Registrar, the requirements in Subhead (4) for signature by each subscriber in the presence of at least one witness and for attestation of such signature shall not apply.

Explanatory Note

Subhead (1) is new.

Paragraphs (2)(a)-(c) are an amended restatement of Section 6(1)(a) Companies Act, 1963.

Paragraph 2(d) is a restatement of Section 6(4) of the Companies Act 1963.

The 2nd EU Company Law Directive requires that the constitution of a PLC must contain an objects clause. It is necessary to retain the requirement to state the share capital and division thereof into shares as a result of the 2nd EU Company Law Directive.

Subheads (3) to (5) are new.

Head 5 Provisions as to names of PLCs

- (1) The name of a PLC shall end with one of the following:
- (public limited company);
 - (cuideachta phoiblí theoranta).
- (2) The words “public limited company” may be abbreviated to “(p.l.c.)”/ “(P.L.C.)” or “(PLC)”/ “(plc)” in any usage after its registration by any person including the PLC.
- (3) The words “(cuideachta phoiblí theoranta)” may be abbreviated to “(c.p.t.)”/ “(C.P.T.)” or “(CPT)”/ “(cpt)” in any usage after its registration by any person including the PLC.
- (4) Every PLC carrying on business under a name other than its corporate name shall register in the manner directed by law for the registration of business names but the use of the abbreviations in Subheads (2) and (3) shall not of itself render such registration necessary.

Explanatory Note

Subheads (1)-(3) replace Section 4(1) of the Companies (Amendment) Act, 1983.

Subhead (4) is a restatement of section 22 Companies Act, 1963.

Head 6 Trading under a misleading name

- (1) A person who is not a PLC and, if that person is a company, any officer of the company who is in default shall be guilty of a category three offence if he or she carries on any trade, profession or business under a name which includes, as its last part, the words “ public limited company”, or “cuideachta phoiblí theoranta” or abbreviations of those words.
- (2) A PLC and any officer of the PLC who is in default shall be guilty of a category three offence if, in circumstances in which the fact that it is a PLC is likely to be material to any person, it uses a name which may reasonably be expected to give the impression that it is a company other than a PLC.
- (3) Subhead (1) shall not apply to any company-
- (a) to which Part B7 [equivalent of Part XI of the Companies Act 1963] applies; and
 - (b) which has provisions in its constitution that would entitle it to rank as a PLC if it had been registered in the State.

Explanatory Note

A re-enactment of sections 56(1), (2) and (4) of the Companies (Amendment) Act 1983.

Head 7 Restriction on commencement of business by a PLC

- (1) A company registered as a PLC on its original incorporation, re-registration or pursuant to merger or division shall not do business or exercise any borrowing powers unless the Registrar has issued it with a certificate under this head or the PLC is re-registered as another form of company.
- (2) The Registrar shall issue a PLC with a certificate under this head if, on an application made to him in the prescribed form by the PLC, he is satisfied that the nominal value of the PLC’s allotted share capital is not less than the authorised minimum and there is delivered to him a declaration complying with Subhead (3).
- (3) The declaration shall be in the prescribed form and signed by a director or secretary of the PLC and shall state—

- (a) that the nominal value of the PLC's company capital is not less than the authorised minimum;
 - (b) the amount paid up, at the time of the application, on the PLC's company capital, which shall be not less than one quarter of the nominal value of the share and the whole of any premium on the share;
 - (c) the amount, or estimated amount, of the preliminary expenses of the PLC and the persons by whom any of those expenses have been paid or are payable; and
 - (d) any amount or benefit paid or given or intended to be paid or given to any promoter of the PLC, and the consideration for the payment or benefit.
- (4) For the purposes of Subhead (2), a share allotted in pursuance of an employees' share scheme may not be taken into account in determining the PLC's company capital unless it is paid up at least as to one-quarter of the nominal value of the share and the whole of any premium on the share.
- (5) The Registrar may accept a declaration delivered to him under Subhead (2) as sufficient evidence of the matters stated therein.
- (6) A certificate under this head in respect of any public limited company shall be conclusive evidence that the PLC is entitled to do business and exercise any borrowing powers.
- (7) If a PLC does business or exercises borrowing powers in contravention of this head, the PLC and any officer of the company who is in default shall be guilty of a category three offence.
- (8) The provisions of this head are without prejudice to the validity of any transaction entered into by a PLC, but if a PLC enters into a transaction in contravention of those provisions and fails to comply with its obligations in connection therewith within 21 days from being called upon to do so, the directors of the PLC shall be jointly and severally liable to indemnify the other party to the transaction in respect of any loss or damage suffered by him by reason of the failure of the PLC to comply with those obligations.

Explanatory Note

Amended restatement of Section 6 Companies (Amendment) Act, 1983.

Head 8 Corporate Capacity of a PLC

A PLC shall have the capacity to do any act or thing stated in the objects set out in its constitution.

Explanatory Note

This head states that a PLC has capacity to do that which is in its objects in its constitution. The provisions in Group A that provide for unlimited capacity are disapplied in Head 2 of this Part.

Head 9 Corporate Capacity Not Limited by a PLC's Constitution

- (1) The validity of an act done by a PLC shall not be called into question on the ground of lack of capacity by reason of anything contained in the PLC's objects.
- (2) A member of a PLC may bring proceedings to restrain the doing of an act which, but for Subhead (1), would be beyond the PLC's capacity) but no such proceedings shall lie in respect of any act to be done in fulfilment of a legal obligation arising from a previous act of the PLC.
- (3) It remains the duty of the directors to observe any limitations on their powers flowing from the PLC's objects and action by the directors which, but for Subhead (1), would be beyond the PLC's capacity may only be ratified by the company by special resolution.
- (4) A resolution ratifying such action shall not affect any liability incurred by the directors or any other person, relief from any such liability must be agreed to separately by special resolution.
- (5) A party to a transaction with a PLC is not bound to enquire as to whether it is permitted by the PLC's objects.

Explanatory Note

This head mitigates the effect of a PLC having an objects clause whilst contemporaneously furthering Creditor (Subhead 1) and shareholder (Subhead 2) protection. The mitigation of the doctrine of ultra vires in Section 8 of the Companies Act, 1963 has been abandoned in favour of this formulation which is based on Section 35 of the UK's Companies Act, 1985. Whilst persons dealing with a PLC that is acting ultra vires will not be prejudiced, the directors of a PLC can be held to account for causing a PLC to take such action. This will be in the form of an in personam action against the directors and not an in rem action that would set aside the validity of the ultra vires transaction. Furthermore, UK law is mirrored in Subhead (5) which ousts the doctrine of constructive notice by providing that a person is not bound to enquire as to whether an activity is intra vires.

*Provision is also made for the ratification of an act beyond the capacity of the company by special resolution. This reverses the common law position stated in *Ashbury Railway & Iron Co. v Riche (1875) LR 7 HLC 653* where not even a unanimous agreement of the shareholders would suffice.*

*Such ratification offers the other party greater assurance. Ratification validates the transaction whilst a separate special resolution is required to absolve the directors or any registered persons from any liability arising. The second special resolution absolves directors and registered persons. It also applies to "... any other persons" – this includes any third party who may be liable as a constructive trustee on the basis of either providing knowing assistance in a breach of trust [see *Royal Brunei Airlines V Tan (1995) 3 ALL ER 97*] or knowing receipt of trust funds applied in breach of duty [see *BCCI v Akindele (2000) 4 All ER 221*].*

Head 10 Corporate Authority and the Power of Directors to Bind a PLC

- (1) In favour of a person dealing with a PLC in good faith, the power of the board of directors to bind the PLC, or authorise others to do so, or of any person registered with the Registrar for the purposes of Part A2, Head 21 [equivalent of Reg.6(3) S.I. 173 of 1973] as a person authorised to bind the PLC, shall be deemed to be free of any limitation under the PLC's constitution.
- (2) For the purposes of Subhead (1)—
 - (a) a person "deals with" a PLC if he is a party to any transaction or other act to which the PLC is a party;

- (b) a person shall not be regarded as acting in bad faith by reason only of his knowing that an act is beyond the powers of the persons referred to in Subhead (1) under the PLC's constitution; and
 - (c) a person shall be presumed to have acted in good faith unless the contrary is proved.
- (3) The references in Subheads (1) and (2) to limitations on the directors' powers or those of a person registered with the Registrar for the purposes of Part A2, Head 21 as a person authorised to bind the PLC under the PLC's constitution include limitations deriving—
 - (a) from a resolution of the PLC in general meeting or a meeting of any class of shareholders; or
 - (b) from any agreement between the members of the PLC or of any class of shareholders.
- (4) Subhead (1) does not affect any right of a member of the PLC to bring proceedings to restrain the doing of an act which is beyond the powers of the directors or of a person registered with the Registrar for the purposes of Part A2, Head 21 as a person authorised to bind the PLC, but no such proceedings shall lie in respect of an act to be done in fulfilment of a legal obligation arising from a previous act of the PLC.
- (5) Subhead (1) does not affect any liability incurred by the directors, or any other person including a person registered with the Registrar for the purposes of Part A2, Head 21 as a person authorised to bind the PLC, by reason of such person or persons, exceeding their powers.
- (6) A party to a transaction with a PLC is not bound to enquire as to whether there is any limitation on the powers of the board of directors to bind the PLC or authorise others to do so or on the powers of a person registered with the Registrar for the purposes of Part A2, Head 21 as a person authorised to bind the PLC.

Explanatory Note

This new head seeks to protect persons dealing with a company who may be faced with the defence that the persons with whom they dealt did not have the authority to conclude such a transaction. Again, shareholders are protected and may injunct transactions which are beyond the powers of directors. As in the case of corporate capacity in Head 9, the doctrine of constructive notice is again displaced and persons are expressly stated to be under no duty to enquire as to limitations on the powers of directors or others.

Notwithstanding the difficulties that can be associated with the formulation “in favour of a person dealing with a PLC in good faith”, the notion of good faith has been retained.

[The provision for registering a person authorised to bind the company previously contained in Section 8 has been subsumed into Part A2, Head 21 with cross-references incorporated into this head. Section 35 also refers to the board authorizing other persons to do so.]

Head 11 Alteration of objects clause by special resolution

- (1) Subject to Subhead (2), a company may, by special resolution, alter the provisions of its memorandum by abandoning, restricting or amending any existing object or by adopting a new object and any alteration so made shall be as valid as if originally contained therein, and be subject to alteration in like manner.
- (2) If an application is made to the court in accordance with this head for the alteration to be cancelled, it shall not have effect except in so far as it is confirmed by the court.
- (3) Subject to Subhead (4), an application under this head may be made—
 - (a) by the holders of not less in the aggregate, than 15 percent in nominal value of the company’s issued share capital or any class thereof or, if the company is not limited by shares, not less than 15% of the company’s members; or
 - (b) by the holders of not less than 15 percent of the company’s debentures, entitling the holders to object to alterations of its objects.
- (4) An application shall not be made under this head by any person who has consented to or voted in favour of the alteration.
- (5) An application under this head must be made within 21 days after the date on which the resolution altering the company’s objects was passed and may be made on behalf of the persons entitled to make the application by such one or more of their number as they may appoint in writing for the purpose.
- (6) On an application under this head, the court may make an order cancelling the alteration or confirming the alteration, either wholly or in part, and on such terms and conditions as it thinks fit and may, if it thinks fit, adjourn the proceedings in order that an arrangement may be made to the satisfaction of the court for the purchase of the interests of dissenting members and may give such directions and make such orders as it may think expedient for facilitating or carrying into effect any such arrangement.
- (7) An order under this head may, if the court thinks fit, provide for the purchase by the company of the shares of any members of the company and for the reduction accordingly of the company’s capital and may make such alterations in the constitution of the company as may be required in consequence of that provision.
- (8) Where an order under this head requires the company not to make any, or any specified, alteration in its constitution, then, notwithstanding anything in this Bill, the company shall not have power without the leave of the court to make any such alteration in breach of that requirement.
- (9) Any alteration in the constitution of a company made by virtue of an order under this head, other than one made by resolution of the company, shall be of the same effect as if duly made by resolution of the company and the provisions of this Bill shall apply to the constitution altered accordingly.
- (10) The debentures entitling the holders to object to alterations of a company’s objects shall be any debentures secured by a floating charge which were issued or first issued before the operative date or form part of the same series as any debentures so issued and a special resolution altering a company’s objects shall require the same notice to the holders of any such debentures as to members of the company, so however that not less than 10 days’ notice shall be given to the holders of any such debentures.

In default of any provisions regulating the giving of notice to any such debenture holders, the provisions of the company's articles regulating the giving of notice to members shall apply.

- (11) Where a company passes a resolution altering its objects—
- (a) if no application is made with respect thereto under this head, it shall, within 15 days from the end of the period for making such an application, deliver to the Registrar a printed copy of its memorandum as altered; and
 - (b) if such an application is made, it shall—
 - (i) forthwith give notice of that fact to the Registrar; and
 - (ii) within 15 days from the date of any order cancelling or confirming the alteration, deliver to the Registrar an office copy of the order and, in the case of an order confirming the alteration, a printed copy of the memorandum as altered.

The court may by order at any time extend the time for delivery of documents to the Registrar under paragraph (b) for such period as the court may think proper.

- (12) If a company makes default in giving notice or delivering any document to the registrar as required by Subhead (8), the company and every officer of the company who is in default shall be liable to a fine.
- (13) In relation to a resolution for altering the provisions of a company's constitution relating to the objects of the company passed before the operative date, this head shall have effect as if, in lieu of Subheads (3) to (13), there had been enacted Subheads (2) to (10) of Section 10 of the Companies Act 1963, as amended by the Companies Acts 1963-2006.

Explanatory Note

Newly inserted head.

The head draws upon Sections 9 and 10 of the Companies Act, 1963.

Head 12 Alteration of articles by special resolution

- (1) Subject to the provisions of this Bill and to the conditions contained in its memorandum, a company may, by special resolution, alter or add to its articles.
- (2) Any alteration or addition so made in the articles shall, subject to the provisions of this Bill, be as valid as if originally contained therein and be subject in like manner to alteration by special resolution.

Explanatory Note

Restatement of Section 15 Companies Act 1963.

Head 13 Power to alter provisions in memorandum which could have been contained in articles

- (1) Subject to Subhead (2) of this head, Subheads (4) and (5) of Head 15 of Part A2 and Head 72 of Part A4, any provision contained in a company's memorandum which could lawfully have been contained in articles of association instead of in the memorandum may, subject to the provisions of this head, be altered by the company by special resolution.
- (2) If an application is made to the court for the alteration to be cancelled, it shall not have effect except in so far as it is confirmed by the court.
- (3) This head shall not apply where the memorandum itself provides for or prohibits the alteration of all or any of the said provisions, and shall not authorise any variation or abrogation of the special rights of any class of members.
- (4) Subheads (3), (4), (5), (6), (7), (8), (9), (11) and (12) of Head 11 of this Part (except paragraph (b) of the said Subhead (3)) shall apply in relation to any alteration and to any application made under this head as they apply in relation to alterations and to applications made under that head.
- (5) This head shall apply to a company's memorandum whether registered before, on or after the operative date.

Explanatory Note

This head is based on Section 28 of the Companies Act, 1963.

Chapter 3

Share Capital

Head 14 Power to allot and pre-emption rights

- (1) A PLC may not allot any shares that do not form part of its authorised but unissued share capital.
- (2) An authority to allot shares in a PLC pursuant to Part A3, Head 5 (1) shall not exceed a period of 5 years but (whether or not it has been previously renewed under this subhead) may be renewed for a further period not exceeding 5 years.
- (3) The directors may allot relevant securities, notwithstanding that any authority for the purposes of this head has expired, if the relevant securities are allotted in pursuance of an offer or agreement made by the PLC before the authority expired and the authority allowed it to make an offer or agreement which would or might require relevant securities to be allotted after the authority expired.
- (4) A resolution of a company to give, vary, revoke or renew such an authority may, notwithstanding that it alters the articles of the company, be an ordinary resolution but Head 68 of Part A4 [equivalent of Section 143 of the Companies Act, 1963] shall apply to it.
- (5) Save to the extent prohibited by its constitution, a PLC shall have the capacity to offer, allot and issue securities (as defined in Part A3) to the public subject to compliance, where applicable, with Chapter 13 of this Part.
- (6) A power conferred by a PLC to allot securities as if Part A3, Head 5 (5) [equivalent of Section 23(1) of the Companies (Amendment) Act, 1983] did not apply in full to an allotment shall cease to have effect when the authority to which it relates is revoked or would, if not renewed, expire, but if that authority is renewed, the power or, as the case may be, the resolution may also be renewed for a period not longer than that for which the authority is renewed, by a special resolution of the company.
- (7) Any director who knowingly and wilfully contravenes, or permits or authorises a contravention of, this head shall be guilty of a category three offence.

Explanatory Note

Newly inserted head concerning the authority of the directors.

The net effect of the disapplication of Part A3, Head 5 (5) (b), under Head 2 of this Part, is that a PLC may not provide in its constitution that pre-emption rights do not exist.

Subhead (2) is an amended re-enactment of Section 20(4) of the Companies (Amendment) Act, 1983.

Subhead (3) is a re-enactment of Section 20(5) of the Companies (Amendment) Act, 1983.

Subhead (4) is a re-enactment of Section 20(6) of the Companies (Amendment) Act, 1983.

Subhead (6) is a re-enactment of Section 24(3) of the Companies (Amendment) Act, 1983.

Subhead (7) is a re-enactment of Section 20(7) of the Companies (Amendment) Act, 1983.

Head 15 Further provisions relating to pre-emption rights

A special resolution under Part A3, Head 5 [equivalent of Section 24(2) of the Companies (Amendment) Act 1983], or a special resolution to renew such a resolution, shall not be proposed unless it is recommended by the directors and there has been circulated, with the notice of the meeting at which the resolution is proposed, to the members entitled to have that notice, a written statement by the directors setting out—

- (a) their reasons for making the recommendation;
- (b) the amount to be paid to the PLC in respect of the equity securities to be allotted; and
- (c) the directors' justification of that amount.

Explanatory Note

Restatement of Section 24(5) Companies (Amendment) Act, 1983.

Head 16 Authority to allot

Any authority of directors to allot shares under Part A3, Head 5 [equivalent of Section 24 of the Companies (Amendment) Act, 1983] conferred by special resolution passed by a PLC prior to its reregistration as a PLC will lapse at the conclusion of the first AGM after the re-registration of the company as a PLC.

Explanatory Note

Newly inserted provision.

This head replaces Section 25 of the Companies (Amendment) Act, 1983.

Head 17 Subscription of share capital

- (1) A PLC shall not accept at any time, in payment up of its shares or any premium on them, an undertaking given by any person that he or another should do work or perform services for the company or any other person.
- (2) Where a PLC accepts such an undertaking as payment up of its shares or any premium payable on them, the holder of the shares when they or the premium are treated as paid up, in whole or in part, by the undertaking—
 - (a) shall be liable to pay the PLC in respect of those shares, an amount equal to their nominal value, together with the whole of any premium or, if the case so requires, such proportion of that amount as is treated as paid up by the undertaking; and
 - (b) shall be liable to pay interest at the appropriate rate on the amount payable under paragraph (a).
- (3) Where any person becomes a holder of any shares in respect of which—
 - (a) there has been a contravention of this head; and
 - (b) by virtue of that contravention, another is liable to pay any amount under this head,

that person also shall be liable to pay that amount (jointly and severally with any other person so liable) unless either he is a purchaser for value and at the time of the purchase he did not have actual notice of the contravention or he derived title to the shares (directly or indirectly) from a person who became a holder of them after the contravention and was not so liable.

- (5) References in this head to a holder, in relation to any shares in a PLC, include references to any person who has an unconditional right to be included in the PLC's register of members in respect of those shares or to have an instrument of transfer of the shares executed in his favour.
- (6) Where a company contravenes any of the provisions of this head, the PLC and any officer of the PLC who is in default shall be guilty of a category three offence.

Explanatory Note

Restatement of Sections 26(2)-(4) and (6) of the Companies (Amendment) Act, 1983.

Head 18 Prohibition on allotment of shares at a discount.

Head 17 (3) of this Part [equivalent of Section 26(4) Companies (Amendment) Act, 1983] shall apply for the purposes of Head 6 of Part A3 as it applies for the purposes of that head.

Explanatory Note

Restatement of Section 27 Companies (Amendment) Act 1983. Section 27(4) has been deleted as it was seen as no longer relevant:

- (4) *The repeal of Section 63 of the Principal Act effected by Section 3 (2) shall not affect an application for an order sanctioning the issue of shares at a discount which has been made to the court under that section and which has not been withdrawn or disposed of before the appointed day, or an order made on or after that day in pursuance of any such application, and—*
 - (a) *any such application may be proceeded with and any such order, if not made before the appointed day, may be made as if that section had not been repealed; and*
 - (b) *shares may be allotted at a discount in accordance with any such order (whether made, before, on or after the appointed day) accordingly.*

Head 19 Payment for allotted shares

- (1) Subject to Subhead (4), a PLC shall not allot a share except as paid up at least as to one-quarter of the nominal value of the share and the whole of any premium on it.
- (2) Where a PLC allots a share in contravention of Subhead (1), the share shall be treated as if one-quarter of its nominal value together with the whole of any premium had been received, but the allottee shall be liable to pay the PLC the minimum amount which should have been received in respect of the share under that subhead less the value of any consideration actually applied in payment up (to any extent) of the share and any premium on it, and interest at the appropriate rate on the amount payable under this subhead.
- (3) Subhead (2) shall not apply in relation to the allotment of a bonus share in contravention of Subhead (1) unless the allottee knew or ought to have known the share was so allotted.
- (4) Subheads (1) to (3) shall not apply to shares allotted in pursuance of an employees' share scheme.
- (5) Part B2, Head 17 (3) [equivalent of Section 26(4) Companies (Amendment) Act, 1983] shall apply for the purposes of this head as it applies for the purposes of that head.
- (6) Where a company contravenes any of the provisions of this head, the PLC and any officer of the PLC who is in default shall be guilty of a category three offence.

Explanatory Note

Restatement of Section 28 Companies (Amendment) Act, 1983.

The word "par" in the previous draft of Subheads (1) and (2) has been replaced by "nominal" in order to conform with the existing language in Section 28 of Companies (Amendment) Act, 1983.

Head 20 Payment of non-cash consideration

- (1) A PLC shall not allot shares as fully or partly paid up (as to their nominal value or any premium payable on them) otherwise than in cash if the consideration for the allotment is or includes an undertaking which is to be or may be performed more than five years after the date of the allotment.
- (2) Where a PLC allots shares in contravention of Subhead (1), the allottee of the shares shall be liable to pay the PLC an amount equal to their nominal value, together with the whole of any premium, or if the case so requires, such proportion of that amount as is treated as paid up by the undertaking and shall be liable to pay interest at the appropriate rate on the amount payable under this subhead.
- (3) Where a contract for the allotment of shares does not contravene Subhead (1), any variation of the contract which has the effect that the contract would have contravened that subhead if the terms of the contract as varied had been its original terms shall be void.
- (4) Subhead (3) shall apply to the variation by a PLC of the terms of a contract entered into before the company was registered or re-registered as a PLC.
- (5) Where a PLC allots shares for a consideration which consists of or includes (in accordance with Subhead (1)) an undertaking which is to be performed within five years of the allotment but that undertaking is not performed within the period allowed by the contract for the allotment of the shares, the allottee of the shares in question shall be liable to pay the PLC at the end of that period an amount equal to the nominal value of the shares, together with the whole of any premium, or if the case so requires, such proportion of that amount as is treated as paid up by the undertaking, together with interest at the appropriate rate on the amount payable under this subhead.
- (6) Part B2, Head 17 (3) [equivalent of Section 26(4) Companies (Amendment) Act, 1983] shall apply in relation to a contravention of this head and to a failure to carry out a term of a contract as mentioned in Subhead (5) as it applies in relation to a contravention of that head.

- (7) Any reference in this head to a contract for the allotment of shares includes a reference to an ancillary contract relating to payment in respect of those shares.
- (8) Where a company contravenes any of the provisions of this head, the PLC and any officer of the PLC who is in default shall be guilty of a category three offence.

Explanatory Note

Restatement of Section 29 Companies (Amendment) Act, 1983.

Head 21 Experts' reports on non-cash consideration before allotment of shares

- (1) Subject to Subhead (2), a PLC shall not allot shares as fully or partly paid up (as to their nominal value or any premium payable on them) otherwise than in cash unless—
- (a) the consideration for the allotment has been valued in accordance with the following provisions of this head;
 - (b) a report with respect to its value has been made to the PLC by a person appointed by the PLC in accordance with those provisions during the six months immediately preceding the allotment of the shares; and
 - (c) a copy of the report has been sent to the proposed allottee of the shares.
- (2) Subject to Subhead (3), Subhead (1) shall not apply to the allotment of shares by a PLC in connection with—
- (a) an arrangement providing for the allotment of shares in that PLC on terms that the whole or part of the consideration for the shares allotted is to be provided by the transfer to that PLC or the cancellation of all or some of the shares, or of all or some of the shares of a particular class, in another company (with or without the issue to that company of shares, or of shares of any particular class, in that other company); or
 - (b) a proposed merger of that PLC with another company.
- (3) Subhead (2)(a) does not exclude the application of Subhead (1) to the allotment of shares by a PLC in connection with any such arrangement as is there mentioned unless it is open to all the holders of the shares in the PLC in question or, where the arrangement applies only to shares of a particular class, to all the holders of shares in that other company of that class, to take part in the arrangement. In determining whether that is the case, shares held by or by a nominee of the PLC proposing to allot the shares in connection with the arrangement, or by or by a nominee of a PLC which is that PLC's holding company or subsidiary or a company which is a subsidiary of its holding company, shall be disregarded.
- (4) For the purposes of Subhead (2)(b) there is a proposed merger of a PLC with a company when one of them proposes to acquire all the assets and liabilities of the other in exchange for the issue of shares or other securities in that one to shareholders of the other, with or without any cash payment to those shareholders.
- (5) The valuation and report required by Subhead (1) shall be made by an independent person, that is to say, a person qualified at the time of the report to be appointed or to continue to be auditor of the PLC, except that where it appears to him to be reasonable for the valuation of the consideration, or a valuation of part of the consideration, to be made, or to accept such a valuation made, by any person who—
- (a) appears to him to have the requisite knowledge and experience to value the consideration or that part of the consideration; and
 - (b) is not an officer or servant of the PLC or any other body corporate which is that PLC's subsidiary or holding company or a subsidiary of that PLC's holding company or a partner or employee of such an officer or servant,
- that independent person may arrange for or accept such a valuation, together with a report which will enable him to make his own report under that subhead and provide a note in accordance with Subhead (8).
- (6) The independent person's report under Subhead (1) shall state—
- (a) the nominal value of the shares to be wholly or partly paid for by the consideration in question;

- (b) the amount of any premium payable on those shares;
- (c) the description of the consideration and, as respects so much of the consideration as he himself has valued, a description of that part of the consideration, the method used to value it and the date of the valuation; and
- (d) the extent to which the nominal value of the shares and any premium are to be treated as paid up—
- (i) by the consideration;
 - (ii) in cash.
- (7) Where any consideration is valued under this head by a person other than the independent person, the latter's report under Subhead (1) shall state that fact and shall also—
- (a) state the former's name and what knowledge and experience he has to carry out the valuation; and
 - (b) describe so much of the consideration as was valued by that other person, the method used to value it and state the date of valuation.
- (8) The report of the independent person made under Subhead (1) shall contain or be accompanied by a note by him—
- (a) in the case of a valuation made by another person, that it appeared to the independent person reasonable to arrange for it to be so made, or to accept a valuation so made;
 - (b) whoever made the valuation, that the method of valuation was reasonable in all the circumstances;
 - (c) that it appears to the independent person that there has been no material change in the value of the consideration in question since the valuation; and
 - (d) that on the basis of the valuation the value of the consideration, together with any cash by which the nominal value of the shares or any premium payable on them is to be paid up, is not less than so much of the aggregate of the nominal value and the whole of any such premium as is treated as paid up by the consideration and any such cash.
- (9) Subhead (10) applies where a PLC allots any share in contravention of Subhead (1) and either—
- (a) the allottee has not received a report under this head; or
 - (b) there has been some other contravention of this head and the allottee knew or ought to have known that it amounted to a contravention.
- (10) Where this subhead applies, the allottee shall be liable to pay the PLC an amount equal to the nominal value of the shares, together with the whole of any premium or if the case so requires, such proportion of that amount as is treated as paid up by the consideration, and shall be liable to pay interest at the appropriate rate on the amount payable under this subhead.
- (11) Part B2, Head 17 (3) [equivalent of Section 26(4) Companies (Amendment) Act, 1983] shall apply for the purposes of this head as it applies for the purposes of that head.
- (12) Where the consideration is accepted partly in payment up of the nominal value of the shares and any premium and partly for some other consideration given by the company, the provisions of this head shall apply as if references to the consideration accepted by the PLC included references to the proportion of that consideration which is properly attributable to the payment up of that value and any premium and -
- (a) the independent person shall carry out or arrange for such other valuations as will enable him to determine that proportion; and
 - (b) his report under Subhead (1) shall state what valuations have been made by virtue of this subhead and also the reason for and method and date of any such valuation and any other matters which may be relevant to that determination.
- (13) It is hereby declared for the avoidance of doubt that Subhead (1) does not apply by reference to the application of an amount for the time being standing to the credit of any of the PLC's reserve accounts or to the credit of its profit and loss account in paying up (to any extent) any shares allotted to members of the PLC or any premiums on any shares so allotted; and in relation to any such allotment references in this head to the consideration for the allotment do not include any such amount so applied.

- (14) In this head—
- (a) “arrangement” means any agreement, scheme or arrangement (including an arrangement sanctioned in accordance with Part A9, Head 2 [equivalent of Section 201 Companies Act 1963], Part A10, Head 29 [equivalent of Section 24 Companies (Amendment) Act, 1990] or Part A11, Head 40 [equivalent of Section 260 of the Companies Act, 1963];
 - (b) any reference to a company, except where it is or is to be construed as a reference to a PLC, includes a reference to any body corporate and any body to which letters patent have been issued under the Chartered Companies Act, 1837; and
 - (c) any reference to an officer or servant shall not include a reference to an auditor.
- (15) Where a company contravenes any of the provisions of this head, the PLC and any officer of the PLC who is in default shall be guilty of a category three offence.
- (16) This head shall not apply to the issue of shares by any company formed for the purposes of a merger by formation of a new company.

Explanatory Note

Restatement of Section 30 Companies (Amendment) Act, 1983.

Subhead (16) re-enacts Regulation 10 of the European Communities (Mergers and Divisions of Companies) Regulations, 1987.

May require further amendment in the future given that the 2nd Directive disapplies this provision in certain circumstances.

Head 22 Experts’ reports: supplementary

- (1) Any person carrying out a valuation or making a report under Part B2, Head 21 [equivalent of Section 30 Companies (Amendment) Act, 1983] with respect to any consideration proposed to be accepted or given by a PLC shall be entitled to require from the officers of the PLC such information and explanation as he thinks necessary to enable him to carry out the valuation or to make the report and provide a note under that head.

- (2) A PLC to which such a report is made as to the value of any consideration for which, or partly for which, it proposes to allot shares shall deliver a copy of the report to the Registrar for registration at the same time that it files the return of the allotments of those shares under Part A3, Head 5 (12) [equivalent of section 58 of the Companies Act 1963], and Part A3 Head 5 (14) [equivalent of section 58(3) and 58(4) of the Companies Act 1963] shall apply to a default in complying with this subhead as they apply to a default in complying with that head.
- (3) Any person who knowingly or recklessly makes a statement which—
- (a) is misleading, false or deceptive in a material particular, and
 - (b) is a statement to which this subhead applies,

shall be guilty of a category two offence.

- (4) Subhead (3) applies to any statement made (whether orally or in writing) to any person carrying out a valuation or making a report under Part B2, Head 21 [equivalent of Section 30 Companies (Amendment) Act, 1983], being a statement which conveys or purports to convey any information or explanation which that person requires, or is entitled to require, under Subhead (1).

Explanatory Note

Restatement of Section 31 Companies (Amendment) Act, 1983.

Head 23 Experts’ reports on non-cash assets acquired from subscribers, etc.

- (1) A PLC shall not, unless the conditions mentioned in Subhead (3) have been complied with, enter into an agreement with a relevant person for the transfer by him during the initial period, of one or more non-cash assets to the PLC or another for a consideration to be given by the PLC equal in value at the time of the agreement to at least one-tenth of the nominal value of the PLC’s share capital issued at that time.

- (2) In this head—
- (a) in relation to a company formed as a PLC, “relevant person” means any subscriber to the memorandum of the company and “initial period” means the period of two years beginning with the date on which the company is issued with a certificate under Part B2, Head 7 [equivalent of Section 6 of Companies (Amendment) Act, 1983] that it is entitled to do business;
 - (b) in relation to a company re-registered or registered in accordance with Part B6, Head 7 as a PLC, “relevant person” means any person who was a member of the company on the date of the re-registration or registration and “initial period” means the period of two years beginning with that date.
- (3) The conditions referred to in Subhead (1) are that—
- (a) the consideration to be received by the PLC (that is to say, the asset to be transferred to the PLC or the advantage to the PLC of its transfer to another person) and any consideration other than cash to be given by the PLC have been valued under the following provisions of this head (without prejudice to any requirement to value any consideration under Part B2, Head 21 [equivalent of Section 30 Companies (Amendment) Act, 1983]);
 - (b) a report with respect to the consideration to be so received and given has been made to the PLC in accordance with those provisions during the six months immediately preceding the date of the agreement;
 - (c) the terms of the agreement have been approved by an ordinary resolution of the PLC; and
 - (d) not later than the giving of the notice of the meeting at which the resolution is proposed, copies of the resolution and report have been circulated to the members of the PLC entitled to receive that notice and, if the relevant person is not then such a member, to that person.
- (4) Subhead (1) shall not apply to the following agreements for the transfer of an asset for a consideration to be given by the PLC, that is to say—
- (a) where it is part of the ordinary business of the PLC to acquire or arrange for other persons to acquire assets of a particular description, an agreement entered into by the PLC in the ordinary course of its business for the transfer of an asset of that description to it or such a person, as the case may be; or
 - (b) an agreement entered into by the PLC under the supervision of the court or an officer authorised by the court for the purpose, for the transfer of an asset to the PLC or to another.
- (5) Part B2, Head 21 [equivalent of Sections 30(5) and (7) of the Companies (Amendment) Act, 1983] shall apply to a valuation and report of any consideration under this head as those subheads apply to a valuation of and report on any consideration under Subhead (1) of that head.
- (6) The report of the independent person under this head shall—
- (a) state the consideration to be received by the PLC, describing the asset in question, specifying the amount to be received in cash and the consideration to be given by the PLC, specifying the amount to be given in cash;
 - (b) state the method and date of valuation;
 - (c) contain or be accompanied by a note as to the matters mentioned in Part B2, Head 21 [equivalent of Section 30(8) (a) to (c) of Companies (Amendment) Act, 1983]; and
 - (d) contain or be accompanied by a note that on the basis of the valuation, the value of the consideration to be received by the PLC is not less than the value of the consideration to be given by it.
- (7) If a PLC enters into an agreement with any relevant person in contravention of Subhead (1) and either he has not received a report under this head or there has been some other contravention of this head or Part B2, Head 21 [equivalent of Section 30(5) to (7) of the Companies (Amendment) Act, 1983; which he knew or ought to have known amounted to a contravention, then, subject to Subhead (8)—

- (a) the PLC shall be entitled to recover from the relevant person, any consideration given by the PLC under the agreement or an amount equivalent to its value at the time of the agreement; and
 - (b) the agreement, so far as not carried out, shall be void.
- (8) Where a PLC enters into an agreement in contravention of Subhead (1) and that agreement is or includes an agreement for the allotment of shares in that PLC, then whether or not the agreement also contravenes Part B2, Head 21 [equivalent of Section 30 of Companies (Amendment) Act, 1983]-
- (a) Subhead (7) shall not apply to the agreement insofar as it is an agreement for the allotment of shares; and
 - (b) Part B2, Head 17 (3) [equivalent of Section 26(4) of the Companies (Amendment) Act, 1983] and Part B2, Head 21 [equivalent of Section 30(10) of Companies (Amendment) Act, 1983] shall apply in relation to the shares as if they had been allotted in contravention of Part B2, Head 21 [equivalent of Section 30 of Companies (Amendment) Act, 1983].
- (9) Where a company contravenes any of the provisions of this head, the PLC and any officer of the PLC who is in default shall be guilty of a category three offence.

Explanatory Note

Restatement of Section 32 of the Companies (Amendment) Act, 1983.

Head 24 Provisions supplementary to Part B2, Head 23 [equivalent of Section 32 of the Companies (Amendment) Act, 1983]

- (1) Any person carrying out a valuation or making a report under Part B2, Head 23 [equivalent of Section 32 of the Companies (Amendment) Act, 1983] shall be entitled to require from the officers of the PLC such information and explanation as he thinks necessary to enable him to carry out the valuation or make the report and provide the note required by that head; and Part B2, Head 22 [equivalent of Section 31(3) of the Companies (Amendment) Act, 1983] shall apply in relation to any such valuation and report as it applies in relation to a valuation and report under Part B2, Head 21 (1) [equivalent of Section 30(1) of the Companies (Amendment) Act, 1983] with the substitution of a reference to this subhead for the reference in Part B2, Head 22 (4) [equivalent of Section 31(4) of the Companies (Amendment) Act, 1983] to Part B2, Head 22 (1) [equivalent of section 31(1) of the Companies (Amendment) Act, 1983].
- (2) A PLC which has passed a resolution under Part B2, Head 23 [equivalent of section 32 of Companies (Amendment) Act, 1983] with respect to the transfer of an asset shall, within 15 days of the passing of the resolution, deliver to the Registrar a copy of the resolution together with the report required by that head and, if it fails to do so, the PLC and every officer of the PLC who is in default shall be guilty of a category four offence.
- (3) Any reference in Part B2, Head 23 [equivalent of Section 32 of the Companies (Amendment) Act, 1983] or this head to consideration given for the transfer of an asset includes a reference to consideration given partly for its transfer but—
 - (a) the value of any consideration partly so given shall be taken to be the proportion of that consideration properly attributable to its transfer;
 - (b) the independent person shall carry out or arrange for such valuations of anything else as will enable him to determine that proportion; and

- (c) this report under that head shall state what valuation has been made by virtue of this paragraph and also the reason for and method and date of any such valuation and any other matters which may be relevant to that determination.

- (iii) whether the applicant or any other person has performed, in whole or in part, or is likely so to perform any such undertaking or has done or is likely to do any other thing in payment or part payment in respect of those shares;

Explanatory Note

Restatement of Section 33 of the Companies (Amendment) Act, 1983.

- (b) if and to the extent that it appears to the court just and equitable to do so in respect of any interest which he is liable to pay to the PLC any of those heads.

Head 25 Relief

- (1) Where any person is liable to a PLC under Part B2, Head 17 [equivalent of Section 26 of the Companies (Amendment) Act, 1983], Part B2, Head 20 [equivalent of Section 29 of the Companies (Amendment) Act, 1983], Part B2, Head 21 [equivalent of Section 30 of Companies (Amendment) Act 1983] or Part B2, Head 23 [equivalent of section 32 of the Companies (Amendment) Act, 1983] in relation to payment in respect of any shares in the PLC or is liable by virtue of any undertaking given to the PLC in, or in connection with, payment for any such shares, the person so liable may make an application to the court under this subhead to be exempted in whole or in part from that liability.

- (3) Where the liability mentioned in Subhead (1) arises by virtue of an undertaking given to the PLC in or in connection with, payment for any shares in the PLC, the court may, on an application under that subhead, exempt the applicant from that liability only if and to the extent that it appears to the court just and equitable to do so having regard to the following, namely—

- (2) Where the liability mentioned in Subhead (1) arises under any of those heads in relation to payment in respect of any shares, the court may, on an application under that subhead, exempt the applicant from that liability only—

- (a) whether the applicant has paid or is liable to pay any amount in respect of any liability arising in relation to those shares under Part B2, Head 17 [equivalent of Section 26 of the Companies (Amendment) Act, 1983], Part B2, Head 20 [equivalent of Section 29 of the Companies (Amendment) Act, 1983], Part B2, Head 21 [equivalent of Section 30 of the Companies (Amendment) Act, 1983] or Part B2, Head 23 [equivalent of Section 32 of the Companies (Amendment) Act, 1983]; and

- (a) if and to the extent that it appears to the court just and equitable to do so having regard to the following, namely—

- (b) whether any person other than the applicant has paid or is likely to pay (whether in pursuance of an order of the court or otherwise) any such amount.

- (i) whether the applicant has paid, or is liable to pay, any amount in respect of any other liability arising in relation to those shares under any of those heads or of any liability arising by virtue of any undertaking given in or in connection with payment for those shares;

- (4) In determining in pursuance of an application under Subhead (1) whether it should exempt the applicant in whole or in part from any liability, the court shall have regard to the following overriding principles, namely—

- (ii) whether any person other than the applicant has paid or is likely to pay (whether in pursuance of an order of the court or otherwise) any such amount; and

- (a) that a PLC which has allotted shares should receive money or money's worth at least equal in value to the aggregate of the nominal value of those shares and the whole of any premium or, if the case so requires, so much of that aggregate as is treated as paid up; and

- (b) subject to paragraph (a), that where such a PLC would, if the court did not grant that exemption, have more than one remedy against a particular person, it should be for the PLC to decide which remedy it should remain entitled to pursue.
- (5) Where a person brings any proceedings against another (“the contributor”) for a contribution in respect of any liability to a company arising under any of Part B2, Heads 17 to 21 and Head 23 [equivalent of Section 26 to 30 and 32 of the Companies (Amendment) Act, 1983] and it appears to the court that the contributor is liable to make such a contribution, the court may, if and to the extent that it appears to the court, having regard to the respective culpability in respect of the liability to the PLC the contributor and the person bringing the proceedings, that it is just and equitable to do so—
- (a) exempt the contributor in whole or in part from his liability to make such a contribution; or
- (b) order the contributor to make a larger contribution than, but for this subhead, he would be liable to make.
- (6) Where a person is liable to a PLC by virtue of Part B2, Head 23 (7) (a) [equivalent of Section 32 (7) (a) of the Companies (Amendment) Act, 1983] the court may, on an application under this subhead, exempt that person in whole or in part from that liability if and to the extent that it appears to the court just and equitable to do so having regard to any benefit accruing to the PLC by virtue of anything done by that person towards the carrying out of the agreement mentioned in that subhead.

Explanatory Note

Restatement of Section 34 of the Companies (Amendment) Act, 1983

Head 26 Special provisions as to issue of shares to subscribers

- (1) Any shares taken by a subscriber to the constitution of a PLC in pursuance of an undertaking of his in the constitution and any premium on the shares shall be paid up in cash.

- (2) Where a company contravenes any of the provisions of this head, the PLC and any officer of the PLC who is in default shall be guilty of a category three offence.

Explanatory Note

Subhead (1) is a restatement of section 35 of the Companies (Amendment) Act, 1983

Subhead (2) partially re-enacts Section 36(1) of the Companies (Amendment) Act, 1983.

Head 27 Modification of obligation to prepare share certificates etc.

- (1) The expression “stock exchange nominee” for the purpose of this head means a person designated, by regulations made by the Minister, as a nominee of a recognised stock exchange for the purposes of this Bill.
- (2) A PLC of which shares or debentures are allotted or debenture stock is allotted to a stock exchange nominee, or with which a transfer is lodged for transferring any shares, debentures or debenture stock of the company to a stock exchange nominee, shall not be required in consequence of the allotment or the lodging of the transfer to complete and have ready for delivery in pursuance of head 32(2) of Part A3 [equivalent of Section 86 (1) of the Companies Act, 1963] the certificates of the shares or the debentures or the certificates of the debenture stock, as the case may be.

Explanatory Note

Subhead (1) gives the definition of “stock exchange nominee” from Section 1(1) of the Companies (Amendment) Act, 1977.

Subhead (2) is a restatement of Section 2 of the Companies (Amendment) Act, 1977.

Head 28 Acquisition and disposal of securities by trustees and personal representatives

A trustee or personal representative shall not be chargeable with breach of trust or as the case may be, with default in administering the estate by reason only of the fact that—

- (a) he has, for the purpose of acquiring securities which he has power to acquire in connection with the trust or estate, paid for the securities under arrangements which provide for them to be transferred to him from a stock exchange nominee but not to be so transferred until after payment of the price; or
- (b) he has, for the purpose of disposing of securities which he has power to dispose of in connection with the trust or estate, transferred the securities to a stock exchange nominee under arrangements which provide that the price is not to be paid to him until after the transfer is made.
- (iii) such price has not been affected by exceptional circumstances that would significantly change the value of the asset at the effective date of its contribution, including situations where the market for such transferable securities or money-market instruments has become illiquid; or
- (b)
 - (i) the consideration for allotment of the shares consists of assets other than those referred to in paragraph (a);
 - (ii) those assets are valued by reference to:
 - (l) a fair value opinion by a recognised independent expert and where the following conditions are fulfilled:
 - (A) the fair value is determined for a date not more than 6 months before the effective date of the asset contribution;
 - (B) the valuation has been performed in accordance with generally accepted valuation standards and principles in the Member State, which are applicable to the kind of assets to be contributed; or
 - (ll) individual asset values appearing in the statutory accounts of the PLC;
 - (iii) such consideration is approved by ordinary resolution or, following 14 days notice to the members by the directors, by the directors;
 - (iv) no new qualifying circumstances arise that would significantly change the fair value of the asset at the effective date of its contribution;
 - (v) no application to Court is made pursuant to Subhead (2) prior to the date of the the contribution.

Explanatory Note

This head is a re-enactment of Section 7 of the Companies (Amendment) Act, 1977.

Head 29 Dispensation from requirement for an expert's report

- (1) The requirement under Head 21 for an expert's report of the value of non-cash consideration shall not arise where—
 - (a)
 - (i) the consideration for allotment of the shares consists of—
 - (l) transferable securities as defined in point 18 of Article 4(1) of Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments as last amended by Directive 2006/31/EC; and/or
 - (ll) money-market instruments as defined in point 19 of Article 4(1) of that Directive;
 - (ii) those securities and/or money-market instruments are valued at the weighted average price at which they have been traded on one or more regulated market(s) as during five dealing days preceding the effective date of the contribution of the respective consideration other than in cash;

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- (2) Where, in accordance with Subhead (1)(b) an ordinary resolution has been passed or notification made to members and new qualifying circumstances that would significantly change the fair value of the asset proposed to be contributed as consideration for the allotment of shares, one or more members holding an aggregate percentage of at least 5 percent of the PLC's equity share capital on the day of the ordinary resolution or the notification by the directors, as the case may be, may require a valuation in accordance with by an independent expert, in which case Head 21 will apply.
- (3) Where Subhead (1) applies and shares are allotted by a PLC without a report as otherwise required by Head 21—
- (a) the PLC shall no later than the earliest of the following dates:
 - (i) the date of the allotment;
 - (ii) where the allotment is to be approved by ordinary resolution, the earlier of:
 - (I) the date of the notice of the general meeting at which the ordinary resolution is to be passed; and
 - (II) where the ordinary resolution is passed by written resolution, the effective date of that written resolution;
 - (iii) where the allotment is approved by the board of directors only, the date of the notice by the directors to the members of the proposed allotment;
- (b) the PLC shall, no later than one month after the allotment, deliver notice of the allotment to the Registrar for registration in the prescribed form containing
- (a)
 - (i) a description of the consideration other than in cash at issue;
 - (ii) its value, the source of this valuation and, where appropriate, the method of valuation;
 - (iii) a statement whether the value arrived at corresponds at least to the number, to the nominal value or, where there is no nominal value, the accountable par and, where appropriate, to the premium on the shares to be issued for such consideration;which may be by reference to the particulars delivered in accordance with paragraph (a); and
 - (b) a statement that no new qualifying circumstances with regard to the original valuation occurred prior to the allotment.

Explanatory Note:

This head transposes the amending provisions of Directive 2006/68/EC amending the Second PLC Law Directive, Article 1(2), permitting the allotment by PLCs of shares for a non-cash consideration, with the requirement for an expert's report.

deliver notice of the proposed allotment to the Registrar for registration in the prescribed form containing:

- (A) a description of the consideration other than in cash at issue;
- (B) its value, the source of this valuation and, where appropriate, the method of valuation;
- (C) a statement whether the value arrived at corresponds at least to the number, to the nominal value or, where there is no nominal value, the accountable par and, where appropriate, to the premium on the shares to be issued for such consideration;

Head 30 Enforceability of undertakings made in contravention of Heads 17 to 26 [equivalent of Sections 26 to 35 of the Companies (Amendment) Act 1983]

Subject to Part B2, Head 25 [equivalent of section 34 of the Companies (Amendment) Act, 1983] an undertaking given by any person in or in connection with payment for shares in a PLC to do work or perform services or to do any other thing shall, if it is enforceable by the PLC apart from this Bill, be so enforceable notwithstanding that there has been a contravention in relation thereto of Part B2, Heads 17, 20 or 21 [equivalent of Sections 26, 29 or 30 of the Companies (Amendment) Act, 1983] and where such an undertaking is given in contravention of Part B2, Head 23 [equivalent of Section 32 of Companies (Amendment) Act, 1983] in respect of the allotment of any shares it shall be so enforceable notwithstanding that contravention.

Explanatory Note

Amended version of Section 36 of the Companies (Amendment) Act, 1983. Subhead (1) has not been re-enacted here as all the offence provisions have been included in the specific provision to which the offence relates.

Head 31 Treatment of shares held by or on behalf of a public limited company

- (1) Subject to Subhead (12), this head applies to a PLC—
- (a) where shares in the PLC are forfeited, or are surrendered to the PLC in lieu, in pursuance of the constitution for failure to pay any sum payable in respect of those shares;
 - (b) where shares in the PLC are acquired by the PLC otherwise than by any of the methods mentioned in Part A3, Head 36 [equivalent of Section 41 (4) Companies (Amendment) Act, 1983] and the company has a beneficial interest in those shares;
 - (c) where the nominee of the PLC acquires shares in the PLC from a third person without financial assistance being given directly or indirectly by the PLC and the PLC has a beneficial interest in those shares; or
 - (d) where any person acquires shares in the PLC with financial assistance given to him directly or indirectly by the PLC for the purpose of or in connection with the acquisition and the PLC has a beneficial interest in those shares.
- (2) In determining for the purposes of Subhead (1) (b) and (c) whether a PLC has a beneficial interest in any shares, there shall be disregarded, in any case where the PLC is a trustee (whether as personal representative or otherwise), any right of the PLC (as trustee) to recover its expenses or be remunerated out of the trust property.
- (3) Unless the shares or any interest of the PLC in them are previously disposed of, the PLC must not later than the end of the relevant period from their forfeiture or surrender or, in a case to which Subhead (1) (b), (c) or (d) applies, their acquisition—
- (a) cancel them and reduce the amount of the share capital by the nominal value of the shares; and
 - (b) where the effect of cancelling the shares will be that the nominal value of the PLC's allotted share capital is brought below the authorised minimum, apply for re-registration as another form of company, stating the effect of the cancellation, and the directors may take such steps as are requisite to enable the PLC to carry out its obligations under this subhead without complying with Part A3, Heads 17 and 18 [equivalent of Sections 72 and 73 of the Companies Act, 1963], including passing a resolution in accordance with subhead(5).
- (4) The PLC and, in a case falling within Subhead (1) (c) or (d), the PLC's nominee or, as the case may be, the other shareholder, must not exercise any voting rights in respect of the shares and any purported exercise of those rights shall be void.
- (5) The resolution authorised by Subhead (3) may alter the PLC's constitution so that it no longer states that the company is to be a PLC and may make such other alterations in the constitution as are requisite in the circumstances.

- (6) The application for re-registration required by Subhead (3) (b) must be in the prescribed form and signed by a director or secretary of the PLC and must be delivered to the Registrar together with a printed copy of the constitution of the PLC as altered by the resolution.
- (7) If a PLC required to apply to be re-registered as another form of company under this head, fails to do so before the end of the relevant period, Part A3, Head 4 and 5(13) [equivalent of section 21 of the Companies (Amendment) Act, 1983] shall apply to it as if it were a private company such as is mentioned in that head, but, except as aforesaid, the company shall continue to be treated for the purposes of the Companies Acts as a PLC until it is re-registered as another form of company.
- (8) If a PLC when required to do so by Subhead (3) fails to cancel any shares in accordance with paragraph (a) of that subhead or to make an application for re-registration in accordance with paragraph (b) of that subhead, the PLC and every officer of the PLC who is in default shall be guilty of a category three offence .
- (9) If the Registrar is satisfied that a PLC may be re-registered in accordance with this head he shall—
- (a) retain the application and other documents delivered to him under Subhead (6); and
 - (b) issue the company with an appropriate certificate of incorporation.
- (10) Upon the issue of a certificate of incorporation under Subhead (9)—
- (a) the company shall, by virtue of the issue of that certificate, become the form of company stated in the certificate; and
 - (b) the alterations in the constitution set out in the resolution shall take effect accordingly.
- (11) A certificate of incorporation issued to a company under Subhead (9) shall be conclusive evidence—
- (a) that the requirements of this head in respect of re-registration and of matters precedent and incidental thereto have been complied with; and
 - (b) that the company is the form of company stated in the certificate.
- (12) Where, after shares in a company—
- (a) are forfeited in pursuance of the articles of the company or are surrendered to the company in lieu of forfeiture or are otherwise acquired by the company;
 - (b) are acquired by a nominee of the company in the circumstances mentioned in Subhead (1) (c); or
 - (c) are acquired by any person in the circumstances mentioned in Subhead (1) (d),
- the company is re-registered as a PLC, the foregoing provisions of this head shall apply to the company as if it had been a PLC at the time of the forfeiture, surrender or acquisition and as if for any reference to the relevant period from the forfeiture, surrender or acquisition there were substituted a reference to the relevant period from the re-registration of the company as a PLC.
- (13) Head 37 (1) of Part A3 shall not apply to shares acquired otherwise than by subscription by a nominee of a PLC in a case falling within paragraph (1)(d).
- (14) In this head “relevant period”, in relation to any shares, means—
- (a) in the case of shares forfeited or surrendered to the company in lieu of forfeiture or acquired as mentioned in Subhead (1) (b) or (c), three years;
 - (b) in the case of shares acquired as mentioned in Subhead (1) (d), one year.

Explanatory Note

Restatement of Section 43 Companies (Amendment) Act, 1983.

Subsection (15) has been deleted as old public companies will no longer exist.

Subhead (13) is a re-enactment of Section 42(5) of the Companies (Amendment) Act, 1983.

Head 32 Charges taken by PLC on own shares

- (1) A mortgage, charge, lien or pledge of a PLC on its own shares (whether taken expressly or otherwise), except a mortgage or charge permitted by Subhead (2), is void.
- (2) The following are permitted charges, that is to say—

- (a) in the case of every description of PLC, a mortgage or charge on its own shares (not being fully paid) for any amount payable in respect of the shares;
 - (b) in the case of a PLC whose ordinary business includes the lending of money or consists of the provision of credit or the bailment or hiring of goods under a hire-purchase agreement, or both, a mortgage or charge of the PLC on its own shares (whether fully paid or not) which arises in connection with a transaction entered into by the company in the ordinary course of its business;
 - (c) in the case of a company (other than a company in relation to which paragraph (d) applies) which is re-registered or is registered under [equivalent of Section 18 of the Companies (Amendment) Act, 1983] as a public limited company, a mortgage or charge on its own shares which was in existence immediately before its application for re-registration or, as the case may be, registration.
- (ii) where a guarantee or other security is made available to an assisted person, the PLC shall be remunerated in respect of the guarantee or other security at a market rate and such security as is appropriate for such guarantee or other security will be taken by the PLC in respect of such guarantee or other security;
 - (iii) the credit standing of the third party or, in the case of multiparty transactions, of each counterparty thereto, shall have been duly investigated;
- (b) there shall be appended to the statutory declaration required by the validation procedure, a report to the members stating -
 - (i) the reasons for the proposed assistance;
 - (ii) the interest of the PLC in providing the assistance;
 - (iii) the conditions on which the assistance is to be given;
 - (iv) the risks involved in the transaction for the liquidity and solvency of the PLC; and
 - (v) the price at which the assisted person is to acquire the shares;

Explanatory Note

Amended restatement of Section 44 of the Companies (Amendment) Act, 1983. Paragraph (2)(d), a transitional measure applying to pre-1983 charges on shares of old PLCs which have not registered, has been deleted given that (a) it is unlikely such old PLCs still exist and (b) the unlikelihood of pre-1983 charge charges over such companies also existing.

Head 33 Financial Assistance

A PLC may not avail itself of the validation procedure in accordance with Part A3, Head 15 (2) (a) [equivalent of Section 60 of the Companies Act, 1963] unless the following conditions are complied with:

- (a) any financial assistance to be given by the PLC to a person ("the assisted person") with a view to that person's acquisition (made or to be made) of shares in the PLC shall be given by the PLC on an arms length commercial basis, and in particular:
 - (i) where a loan is made to the assisted person the loan will be at a market rate and such security as is appropriate for the loan will be taken by the PLC in respect of such loan;
- (c) the aggregate financial assistance granted to assisted persons shall at no time result in the reduction of the net assets below the amount of the PLC's capital (there being taken into account also, any reduction of the net assets that may have occurred through the acquisition, by the PLC or on behalf of the PLC, of its own shares);
- (d) the PLC shall include, among the liabilities in the balance sheet, a reserve, unavailable for distribution, of the amount of the aggregate financial assistance;
- (e) any acquisition of shares shall be at a fair price; and

- (f) where the assisted persons are directors of the PLC or connected persons of such directors, the assisted persons and such connected persons may be counted in a quorum on the vote on the special resolution required for the validation procedure but they shall not be entitled to vote on the resolution.

Explanatory Note

Amended restatement of Section 60 of the Companies Act, 1963. Head 15 of Part A3 has been modified to restrict the use of the validation procedure.

Head 34 Variation of rights attached to special classes of shares

- (1) This head shall have effect with respect to the variation of the rights attached to any class of shares in a company whose share capital is divided into shares of different classes.
- (2) Where the rights are attached to a class of shares in the company otherwise than by the memorandum, and the articles of the company do not contain provision with respect to the variation of the rights, those rights may be varied if, but only if—
 - (a) the holders of three-quarters in nominal value of the issued shares of that class consent in writing to the variation; or
 - (b) a special resolution passed at a separate general meeting of the holders of that class sanctions the variation; and any requirement (howsoever imposed) in relation to the variation of those rights is complied with to the extent that it is not comprised in paragraphs (a) and (b).
- (3) Where —
 - (a) the rights are attached to a class of shares in the company by the memorandum or otherwise;
 - (b) the memorandum or articles contain provision for the variation of those rights; and
- (4) Where the rights are attached to a class of shares in the company by the memorandum or otherwise and—
 - (a) where they are so attached by the memorandum, the articles contain provision with respect to their variation which had been included in the articles at the time of the company's original incorporation; or
 - (b) where they are so attached otherwise, the articles contain such provision (whenever first so included); and in either case the variation is not connected as mentioned in Subhead (3) (c), those rights may only be varied in accordance with that provision of the articles.
- (5) Where the rights are attached to a class of shares in the company by the memorandum and the memorandum and articles do not contain provision with respect to the variation of the rights, those rights may be varied if all the members of the company agree to the variation.
- (6) The provisions of Part A4, Heads 45 and 52 [equivalent of Sections 133 and 134 of the Companies Act, 1963] and the provisions of the articles relating to general meetings shall, so far as applicable, apply in relation to any meeting of shareholders required by this head or otherwise to take place in connection with the variation of the rights attached to a class of shares and shall so apply with the necessary modifications and subject to the following provisions, namely—
 - (i) the condition mentioned in Subhead (2) (a) or (b) is satisfied; and
 - (ii) any requirement of the memorandum or articles in relation to the variation of rights of that class is complied with to the extent that it is not comprised in the condition in subparagraph (i).
- (c) the variation of those rights is connected with the giving, variation, revocation or renewal of an authority for the purposes of Part A3, Head 5 [equivalent of Section 20 of the Companies (Amendment) Act, 1983] or with a reduction of the company's share capital under Part A3 Head 17 [equivalent of Section 72 of the Companies Act, 1963], those rights shall not be varied unless—

- (a) the necessary quorum at any such meeting other than an adjourned meeting shall be two persons holding or representing by proxy at least one-third in nominal value of the issued shares of the class in question and at an adjourned meeting one person holding shares of the class in question or his proxy;
 - (b) any holder of shares of the class in question present in person or by proxy may demand a poll.
- (7) Any alteration of a provision contained in the articles of a company for the variation of the rights attached to a class of shares or the insertion of any such provision into the company's articles shall itself be treated as a variation of those rights.
- (8) Part A3, Head 22 [equivalent of Section 78 of the Companies Act, 1963] shall apply in relation to Subhead (2) as it applies in relation to a provision of the memorandum or articles of a company to the like effect.
- (9) In this head and except where the context otherwise requires, in any provision for the variation of the rights attached to a class of shares contained in the company's memorandum or articles, references to the variation of those rights shall include references to their abrogation.
- (10) Nothing in Subheads (2) to (5) shall be construed as derogating from the powers of the court under Part B6, Head 4 [equivalent of Section 15 Companies (Amendment) Act, 1983] or any of the following heads, that is to say, Part B2, Head 11 [equivalent of Section 10 of the Companies Act, 1963], Part A4, Head 72 and Part A9 Heads 2-5 [equivalent of sections 201, 203, 204 and 205 of the Companies Act, 1963].

Explanatory Note

Amended restatement of Section 38 of the Companies (Amendment) Act, 1983

Subsection (11) appears to be a transitional measure applying to pre-1983 PLCs. This provision has been removed given the unlikelihood of such old-PLCs being still in existence.

This provision is included here due to the differentiation between the constitution for a private company and the memorandum and articles for a PLC respectively.

Head 35 Restriction on Transfers of Shares

Part A3, Head 22 (2) shall not apply in respect of a transfer of shares in a PLC where those shares are [in CREST].

Explanatory Note

This is a newly inserted head. It removes the discretion of directors to decline recognition of transfer instruments, on certain conditions, where those shares are in CREST.

Head 36 Disclosure obligation

- (1) Where a major shareholder, at the commencement of this Chapter, is aware of—
- (a) his having; or
 - (b) a spouse or minor child of his having;
 - (c) a person with whom he has a [section 35] agreement having;
- a disclosable interest in the relevant share capital of a PLC must notify the PLC in writing of:
- (i) requisite particulars of the disclosable interest including the number of shares and name and address of the registered holders;
 - (ii) the identity of any person or persons with whom he has the [section 35] agreement and the shares in which (other than by reason of the [Section 35] agreement) such person or persons have an interest; and
 - (iii) his address,
- save where the requisite particulars of the disclosable interest appear in the register kept under Part B2, Head 40 [equivalent of Section 80 of the Companies Act, 1990], having been entered in that register within the time specified in this Bill for future notifications under this Chapter of disclosable interests.
- (2) A person—
- (a) who—

- (i) has, acquires or disposes of a disclosable interest in any relevant share capital of a PLC; and
- (ii) becomes aware of—
 - (I) his having acquired or disposed of a disclosable interest in any more of such relevant share capital; or
 - (II) a spouse or minor child of such person having or having acquired or having disposed of a disclosable interest in any more of such relevant share capital; or
 - (III) a person with whom he has a [section 35] agreement having or having acquired a disclosable interest in any such relevant share capital; and
- (b) who, as a consequence of paragraph (a), is a major shareholder; and
- (c) whose percentage disclosable interest increases or reduces through a percentage point;
must notify the PLC in writing of—
 - (i) requisite particulars of the disclosable interest including the number of shares and name and address of the registered holders;
 - (ii) the names of any person or persons with whom he has a [section 35] agreement and the shares in which (other than by reason of the [section 35] agreement) such person or persons have an interest; and
 - (iii) his address.
- (3) A person who enters into a [section 35] agreement, with a major shareholder must notify the company in writing of—
 - (a) such person's identity;
 - (b) the other parties to the relevant section 35 agreement including the major shareholder or shareholders and of any person (including the notifying person) ceasing to be party to such an agreement.
- (4) The obligations in Subheads (1), (2) and (3) must be fulfilled no later than midnight on the fifth day following the event triggering the obligation.

Explanatory Note

This provision corresponds in substance to Sections 53 and 64 of the Companies Act, 1990, amended to insert "his address" in Subheads (1) and (2). Subhead.(4) newly inserted .

Head 37 Enforcement provisions

- (1) Where a person authorises any other person ("the agent") to acquire or dispose of, on his behalf, interests in shares in or debentures of, a PLC, he shall secure that the agent notifies him immediately of acquisitions or disposals of interests in such shares or debentures effected by the agent which will or may give rise to any obligation on his part to make a notification under this Chapter with respect to his interest in those shares or debentures.
- (2) Where a person—
 - (a) fails to fulfil, within the proper period, an obligation to make any notification required by this Chapter; or
 - (b) in purported fulfilment of any such obligation makes to a company a statement which he knows to be false or recklessly makes to a company a statement which is false; or
 - (c) fails to fulfil, within the proper period, an obligation to give any other person any notice required by Head 39 [equivalent of Section 75 of the Companies Act, 1990],
no right or interest of any kind whatsoever in respect of any shares in the company concerned, held by him, shall be enforceable by him, whether directly or indirectly, by action or legal proceeding.
- (3) Where any right or interest is restricted under Subhead (2):
 - (a) any person in default under that subhead or any other person affected by such restriction may apply to the court for relief against a disability imposed by or arising out of Subhead (2);
 - (b) the court on being satisfied that the default was accidental, or due to inadvertence, or some other sufficient cause, or that on other grounds it is just and equitable to grant relief, may grant such relief either generally, or as respects any particular right or interest on such terms and conditions as it sees fit;

- (c) where an applicant for relief under this subhead is a person referred to in Subhead (2), the court may not grant such relief if it appears that the default has arisen as a result of any deliberate act or omission on the part of the applicant.
 - (4) Subhead (2) shall not apply to an obligation relating to a person ceasing to be interested in shares in any company.
 - (5) A person without reasonable excuse who fails to comply with Subhead (1) shall be guilty of a category three offence.
- (b) any interest in the company's shares is in fact acquired by any of the parties in pursuance of the agreement; and in relation to such an agreement references in this head, and in Head 39 of this Part [equivalent of Sections 74 and 75 of the Companies Act, 1990], to the target company are to the company which is the target company for that agreement in accordance with this head.

Explanatory Note

*This is a newly inserted head.
 Subhead (1) corresponds to Section 79(1) of the Companies Act, 1990
 Subhead (2) corresponds to section 79(3) of the Companies Act 1990
 Paragraph (3)(a) corresponds to section 58(4) of the Companies Act 1990
 Paragraph (3)(b) corresponds to section 58(4) of the Companies Act 1990
 Paragraph (3)(c) corresponds to section 58(5) of the Companies Act 1990
 Subhead (4) corresponds to Section 79(6) of the Companies Act 1990
 Subhead (5) corresponds to Section 79(7) of the Companies Act, 1990 .*

- (2) The reference in Subhead (1) (a) to the use of interests in shares in the target company is to the exercise of any rights or of any control or influence arising from those interests (including the right to enter into any agreement for the exercise, or for control of the exercise, of any of those rights by another person).
- (3) Once any interest in shares in the target company has been acquired in pursuance of a [section 35] agreement, this head continues to apply to that agreement irrespective of —
 - (a) whether or not any further acquisitions of interests in the company's shares take place in pursuance of the agreement; and
 - (b) any change in the persons who are for the time being parties to it; and
 - (c) any variation of the agreement, so long as the agreement continues to include provisions of any description mentioned in Subhead (1) (a).

Head 38 Agreement to acquire interests in a PLC

- (1) Subject to the following provisions of this head, an agreement between two or more persons which includes provision for the acquisition by any one or more of the parties to the agreement of interests in shares comprised in relevant share capital of a particular PLC ("the target company") is an agreement to which this head applies if—
 - (a) it also includes provisions imposing obligations or restrictions on any one or more of the parties to the agreement with respect to their use, retention or disposal of interests in that company's shares acquired in pursuance of the agreement (whether or not together with any other interests of theirs in that company's shares to which the agreement relates); and

References in this subhead to the agreement include any agreement having effect (whether directly or indirectly) in substitution for the original agreement.

- (4) In this head, and also in references elsewhere in this Part to an agreement to which this head applies, "agreement" includes any agreement or arrangement; and references in this head to provisions of an agreement—
 - (a) accordingly include undertakings, expectations or under standings operative under any arrangement; and
 - (b) (without prejudice to the above) also include any provisions, whether express or implied and whether absolute or not.

- (5) This head does not apply to an agreement which is not legally binding unless it involves mutuality in the undertakings, expectations or understandings of the parties to it, nor does the head apply to an agreement to underwrite or sub-underwrite any offer of shares in a company, provided the agreement is confined to that purpose and any matters incidental to it.

Explanatory Note

Restatement of Section 73 Companies Act, 1990.

Head 39 Obligation of persons acting together to keep each other informed

- (1) A person who is a party to a Part B2 Head 38 agreement [equivalent of Section 73 of the Companies Act, 1990] shall be subject to the requirements of this head at any time when —
- (a) the target company is a PLC, and he knows it to be so; and
 - (b) the shares in that company to which the Part B2 Head 38 agreement relates consist of or include shares comprised in relevant share capital of the company, and he knows that to be the case; and
 - (c) he knows the facts which make the Part B2 Head 38 agreement apply.
- (2) Such a person shall be under obligation to notify every other party to the agreement, in writing, of the relevant particulars of his interest (if any) apart from the agreement in shares comprised in relevant share capital of the target company—
- (a) on his first becoming subject to the requirements of this head, and
 - (b) on each occurrence after that time while he is still subject to those requirements, of any event or circumstances which trigger a duty to notify the company under Part B2, Head 36, together with a copy of the relevant notification.
- (3) The relevant particulars to be notified under Subhead (2) are—
- (a) the number of shares (if any) comprised in the target company's relevant share capital in which the person giving the notice would be required to state his interest if he were under the obligation of disclosure with respect to that interest (apart from the agreement) immediately after the time when the obligation to give notice under Subhead (2) arose; and
 - (b) the relevant particulars with respect to the registered ownership of those shares, so far as known to him at the date of the notice.
- (4) A person who is for the time being subject to the requirements of this head shall be under obligation to notify every other party to the agreement, in writing—
- (a) of any relevant particulars with respect to the registered ownership of any shares comprised in relevant share capital of the target company in which he is interested, apart from the agreement; and
 - (b) of any change in those particulars, of which in either case he becomes aware at any time after any interest notification date and before the first occasion following that date on which he becomes subject to any further obligation to give notice under subhead (2) with respect to his interest in shares comprised in that share capital.
- (5) The reference in Subhead (4) to an interest notification date, in relation to a person's interest in shares comprised in the target company's relevant share capital, is to either of the following—
- (a) the date of any notice given by him with respect to his interest under Subhead (2), and
 - (b) where he has failed to give that notice, the date on which the period allowed by this head for giving the notice came to an end.
- (6) A person who is a party to an agreement to which Part B2 Head 38 [equivalent of Section 73 of the Companies Act 1990] applies shall be under an obligation to notify each other party to the agreement, in writing, of his current address—
- (a) on his first becoming subject to the requirements of this head; and

- (b) on any change in his address occurring after that time and while he is still subject to those requirements.
- (7) A reference to the relevant particulars with respect to the registered ownership of shares is to such particulars in relation to those shares as are mentioned in Head 36 (2) (i) to (iii) [equivalent of Section 71 (3) (a) or (b) of the Companies Act, 1990].
- (8) A person's obligation to give any notice required by this head to any other person must be performed within the period of 5 days next following the day on which that obligation arose.
- (6) The register must be so made up that the entries against the several names entered in it appear in chronological order.
- (7) Unless the register is in such form as to constitute in itself an index, the company shall keep an index of the names entered in the register which shall, in respect of each name contain a sufficient indication to enable the information entered against it to be readily found; and the company shall, within 10 days after the date on which a name is entered in the register, make any necessary alteration in the index.
- (8) If the PLC ceases to be a PLC it shall continue to keep the register and any associated index until the end of the period of 6 years beginning with the day next following that on which it ceases to be such a PLC.

Explanatory Note

Amended version of Section 75 of the Companies Act, 1990.

Head 40 Register of interests in shares

- (1) Every PLC shall keep a register for purposes of Part B2, Heads 33 and 36 [equivalent of Sections 67 to 71 of the Companies Act, 1990] and whenever the PLC receives information from a person in consequence of the fulfilment of an obligation imposed on him by any of those heads, it is under obligation to note in the register, against that person's name, that information and the date of the inscription.
- (2) Without prejudice to Subhead (1), where a PLC receives a notification under this Part which includes a statement that the person making the notification, or any other person, has ceased to be a party to a Part B2 Head 38 agreement, the PLC shall be under obligation to record that information against the name of that person in every place where his name appears in the register as a party to that agreement (including any entry relating to him made against another person's name).
- (3) An obligation imposed by Subhead (1) or (2) must be fulfilled within the period of 3 days next following the day on which it arises.
- (4) The nature and extent of an interest recorded in the said register of a person in any shares shall, if he so requires, be recorded in the said register.
- (5) The PLC shall not, by virtue of anything done for the purposes of this head, be affected with notice of, or put upon enquiry as to, the rights of any person in relation to any shares.
- (9) The register and any associated index—
 - (a) shall be kept at the place at which the register required to be kept by the company by Part A5, Head 37 [equivalent of section 59 of the Companies Act, 1990] (register of directors' and secretaries' interests) is kept, and
 - (b) shall be available for inspection in accordance with Part B2, Head 49 [equivalent of Section 88 of the Companies Act, 1990].
- (10) If default is made in complying with any of the provisions of this head, the PLC and every officer of it who is in default shall be guilty of a category three offence.

Explanatory Note

Restatement of Section 80 of the Companies Act, 1990

Head 41 Substantial holdings

Where a person is under an obligation pursuant to Irish transparency law, to disclose his interest in the securities of a Directive company, Heads 36 and 37 of this Part shall not apply to such person.

Explanatory Note

*This is a new Head.
The Head is intended to facilitate the application of the Transparency Directive [2004/109/EC].*

Head 42 Company investigations

- (1) A PLC may, by notice in writing, require a person whom the PLC knows or has reasonable cause to believe to be or, at any time during the 3 years immediately preceding the date on which the notice is issued (but excluding any time before the commencement of this head), to have been interested in shares comprised in the PLC's relevant share capital—
 - (a) to confirm that fact or (as the case may be) to indicate whether or not it is the case; and
 - (b) where he holds or has during that time held an interest in shares so comprised, to give such further information as may be required in accordance with the following subhead.
- (2) A notice under this head may require the person to whom it is addressed—
 - (a) to give particulars of his own past or present interest in shares comprised in relevant share capital of the company (held by him at any time during the 3 year period mentioned in Subhead (1));
 - (b) where the interest is a present interest and any other interest in shares subsists or, in any case, where another interest in the shares subsisted during that 3 year period at any time when his own interest subsisted, to give (so far as lies within his knowledge) such particulars with respect to that other interest as may be required by the notice;
 - (c) where his interest is a past interest, to give (so far as lies within his knowledge) particulars of the identity of the person who held that interest immediately upon his ceasing to hold it.
- (3) The particulars referred to in Subhead (2) (a) and (2) (b) include particulars of the identity of persons interested in the shares in question and of whether persons interested in the same shares are or were parties to a [section 35] agreement or to any agreement or arrangement relating to the exercise of any rights conferred by the holding of the shares.
- (4) A notice under this head shall require any information given in response to the notice to be given in writing within such reasonable time as may be specified in the notice.
- (5) Part B2, Head 38 [equivalent of Sections 72 to 74 and 75 of the Companies Act, 1990] applies for the purpose of construing references in this head to persons interested in shares and to interests in shares respectively, as they apply in relation to Part B2, Head 1(1) [equivalent of Sections 67 to 70 of the Companies Act, 1990] (but with the omission of any reference to Part A5, head 32).
- (6) This head applies in relation to a person who has or previously had, or is or was entitled to acquire, a right to subscribe for shares in a PLC which would on issue be comprised in relevant share capital of that PLC as it applies in relation to a person who is or was interested in shares so comprised; and references in this head to an interest in shares so comprised and to shares so comprised are to be read accordingly in any such case as including respectively any such right and shares which would on issue be so comprised.

Explanatory Note

Amended restatement of Section 81 of the Companies Act, 1990.

Head 43 Registration of interest disclosed under Part B2, Head 42 [equivalent of Section 81 of the Companies Act, 1990]

- (1) Whenever, in pursuance of a requirement imposed on a person, a company receives information to which this, under Part B2, Head 42 [equivalent of Section 81 of the Companies Act, 1990] applies relating to shares comprised in its relevant share capital, it is under obligation to enter against the name of the registered holder of those shares, in a separate part of its register of interests in shares—
 - (a) the fact that the requirement was imposed and the date on which it was imposed; and
 - (b) any information to which this head applies received in pursuance of the requirement.
- (2) This head applies to any information received in pursuance of a requirement imposed by Part B2, Head 42 [equivalent of Section 81 of the Companies Act, 1990] which relates to the present interests held by any persons in shares comprised in relevant share capital of the PLC in question.

- (3) Part B2, Head 40 (3) to (10) [equivalent of Section 80(3)-(10) of the Companies Act, 1990] applies in relation to any part of the register maintained in accordance with Subhead (1) of this head, reading references to Subhead (1) of that head to include Subhead (1) of this head.

Explanatory Note

Restatement of Section 82 of the Companies Act, 1990.

- (5) If default is made in complying with Subhead (4), the court may, on the application of the requisitionists, or any of them, and on being satisfied that it is reasonable to do so, require the company to exercise its powers under Part B2, Head 42 [equivalent of Section 81 of the Companies Act, 1990] in a manner specified in the order.

Explanatory Note

Restatement of Section 83 of the Companies Act, 1990.

Head 44 Company investigations on requisition by members

- (1) A PLC may be required to exercise its powers under investigations on requisition by Part B2, Head 42 [equivalent of Section 81 of the Companies Act, 1990] on the requisition of members of the PLC holding at the date of the deposit of the requisition not less than one-tenth of such of the paid-up capital of the company as carries at that date the right of voting at general meetings of the company.
- (2) The requisition must—
- (a) state that the requisitionists are requiring the PLC to exercise its powers under Part B2, Head 42 [equivalent of Section 81 of the Companies Act, 1990];
 - (b) specify the manner in which they require those powers to be exercised; and
 - (c) give reasonable grounds for requiring the company to exercise those powers in the manner specified,

and must be signed by the requisitionists and deposited at the company's registered office.

- (3) The requisition may consist of several documents in like form each signed by one or more requisitionists.
- (4) On the deposit of a requisition complying with this head, the PLC shall exercise its powers under Part B2, Head 42 [equivalent of Section 81 of the Companies Act, 1990] in the manner specified in the requisition.

Head 45 Company report to members

- (1) On the conclusion of an investigation carried out by a company in pursuance of a requisition under Part B2, Head 44 [equivalent of Section 83 of the Companies Act 1990] it is the PLC's duty to cause a report of the information received in pursuance of that investigation to be prepared, and the report shall be made available at the company's registered office within a reasonable period after the conclusion of that investigation.
- (2) Where—
- (a) a PLC undertakes an investigation in pursuance of a requisition under Part B2, Head 44 [equivalent of Section 83 of the Companies Act, 1990] and
 - (b) the investigation is not concluded before the end of 3 months beginning with the date immediately following the date of the deposit of the requisition,

the PLC shall cause to be prepared, in respect of that period and each successive period of 3 months ending before the conclusion of the investigation, an interim report of the information received during that period in pursuance of the investigation. Each such report shall be made available at the company's registered office within a reasonable period after the end of the period to which it relates.

- (3) The period for making any report prepared under this head available as required by Subhead (1) or (2) shall not exceed 15 days.
- (4) The PLC shall, within 3 days of making any report prepared under this head available at its registered office, notify the requisitionists that the report is so available.

- (5) An investigation carried out by a company in pursuance of a requisition under Part B2, Head 44 [equivalent of Section 83 of the Companies Act, 1990] shall be regarded for the purposes of this head as concluded when the PLC has made all such inquiries as are necessary or expedient for the purposes of the requisition and in the case of each such inquiry, either a response has been received by the PLC or the time allowed for a response has elapsed.
- (6) A report prepared under this head—
- (a) shall be kept at the company's registered office from the day on which it is first available there in accordance with Subhead (1) or (2) until the expiration of 6 years beginning with the day next following that day; and
 - (b) shall be available for inspection in accordance with Part B2, Head 49 [equivalent of Section 88 of the Companies Act, 1990] so long as it is so kept.
- (7) If default is made in complying with Subheads (1), (2), (3), (4) or (6) (a), the PLC and every officer of the PLC who is in default shall be guilty of a category three offence .
- (3) Subject to the following subheads, a person who fails to comply with a notice under Part B2, Head 42 [equivalent of Section 81 of the Companies Act, 1990] shall be guilty of a category three offence.
- (4) A person shall not be guilty of an offence by virtue of failing to comply with a notice under Part B2, Head 42 [equivalent of Section 81 of the Companies Act 1990] if he proves that the requirement to give the information was frivolous or vexatious.
- (5) Where an order is made under this head directing that shares shall be subject to restrictions under Part A13, Head 13 [equivalent of Section 16 of the Companies Act, 1990], the PLC or any person aggrieved by the order may apply to the court for an order directing that the shares shall cease to be subject thereto.
- (6) Part A13, Head 13(6) to (16) [equivalent of Subsections (6) to (16) of Section 16 of the Companies Act, 1990] shall apply in relation to any shares subject to the restrictions imposed by that head by virtue of an order under this head but with the omission in Subheads (6) to (15) of any reference to the Director.

Explanatory Note

Restatement of Section 84 of the Companies Act, 1990.

Head 46 Penalty for failure to provide information

- (1) Where notice is served by a PLC under Part B2, Head 42 [equivalent of Section 81 of the Companies Act, 1990] on a person who is or was interested in shares of the PLC and that person fails to give the PLC any information required by the notice within the time specified in it, the PLC may apply to the court for an order directing that the shares in question be subject to restrictions under Part A13, Head 13 [equivalent of Section 16 of the Companies Act, 1990].
- (2) Such an order may be made by the court notwithstanding any power contained in the applicant PLC's constitution enabling the company itself to impose similar restrictions on the shares in question.

Explanatory Note

Restatement of Section 85 of the Companies Act, 1990, as amended by Section 14 of the CLEA, 2001.

Head 47 Removal of entries from register

- (1) A PLC may remove an entry against a person's name from its register of interests in shares if more than 6 years have elapsed since the date of the entry being made, and either—
- (a) that entry recorded the fact that the person in question had ceased to have an interest notifiable under this Chapter in relevant share capital of the PLC; or
 - (b) it has been superseded by a later entry made under Part B2, Head 40 [equivalent of section 80 of the Companies Act, 1990] against the same person's name,
- and in a case within paragraph (a) the PLC may also remove that person's name from the register.

- (2) If a person in pursuance of an obligation imposed on him by any provision of this Chapter gives to a PLC the name and address of another person as being interested in shares in the PLC, the PLC shall, within 15 days of the date on which it was given that information, notify the other person that he has been so named and shall include in that notification—
- (a) particulars of any entry relating to him made, in consequence of its being given that information, by the PLC in its register of interests in shares, and
 - (b) a statement informing him of his right to apply to have the entry removed in accordance with the following provisions of this head.
- (3) A person who has been notified by a PLC in pursuance of Subhead (2) that an entry relating to him has been made in the PLC's register of interests in shares, may apply in writing to the PLC for the removal of that entry from the register, and the PLC shall remove the entry if satisfied that the information in pursuance of which the entry was made was incorrect.
- (4) If a person who is identified in a company's register of interests in shares as being a party to an agreement to which Part B2, Head 38 [equivalent of Section 73 of the Companies Act, 1990] applies (whether by an entry against his own name or by an entry relating to him made against another person's name as mentioned in Subhead (2) (a)) ceases to be a party to that agreement, he may apply in writing to the PLC for the inclusion of that information in the register, and if the PLC is satisfied that he has ceased to be a party to the agreement, it shall record that information (if not already recorded) in every place where his name appears as a party to that agreement in the register.
- (5) If an application under Subhead (3) or (4) is refused (in a case within Subhead (4), otherwise than on the ground that the information has already been recorded) the applicant may apply to the court for an order directing the PLC to remove the entry in question from the register or (as the case may be) to include the information in question in the register; and the court may, if it thinks fit, make such an order.
- (6) Where a name is removed from a PLC's register of interests in shares in pursuance of subhead (1) or (3) or an order under subhead (5), the company shall within 14 days of the date of that removal make any necessary alteration in any associated index.
- (7) If default is made in complying with Subhead (2) or (6), the company and every officer of it who is in default shall be guilty of a category three offence.

Explanatory Note

Restatement of Section 86 Companies of the Act, 1990.

Head 48 Entries, when not to be removed

- (1) Entries in a company's register of interests in shares under this Chapter shall not be deleted except in accordance with Part B2, Head 47 [equivalent of Section 86 of the Companies Act, 1990].
- (2) If an entry is deleted from a PLC's register of interests in shares in contravention of Subhead (1), the PLC shall restore that entry to the register as soon as is reasonably practicable.
- (3) If default is made in complying with Subhead (1) or (2), the company and every officer of it who is in default shall be guilty of a category three offence .

Explanatory Note

Restatement of Section 87 of the Companies Act, 1990.

Head 49 Inspection of register and reports

- (1) Any register of interests in shares and any report which is required by Part B2, Head 45 [equivalent of Section 84 of the Companies Act ,1990] to be available for inspection in accordance with this head shall, during business hours (subject to such reasonable restrictions as the company may in general meeting impose, but so that not less than 2 hours in each day are allowed for inspection) be open to the inspection of any member of the PLC or of any other person without charge.
- (2) The register referred to in Subhead (1) shall also be and remain open and accessible to any person attending the PLC's annual general meeting at least one quarter hour before the appointed time for the commencement of the meeting and during the continuance of the meeting.

- (3) Any such member or other person may require a copy of any such register or report, or any part of it, on payment of [15 pence] or such less sum as the company may prescribe, for every 100 words or fractional part of 100 words required to be copied, and the PLC shall cause any copy so required by a person to be sent to him before the expiration of the period of 10 days beginning with the day next following that on which the requirement is received by the PLC.
- (4) If an inspection required under this head is refused or a copy so required is not sent within the proper period, the PLC and every officer of it who is in default shall be guilty of a category three offence .
- (5) In the case of a refusal of an inspection required under this head of any register or report, the court may, by order, compel an immediate inspection of it, and in the case of failure to send a copy required under this head, the court may by order, direct that the copy required shall be sent to the person requiring it.

Explanatory Note

Restatement of Section 88 of the Companies Act, 1990.

Head 50 Power to alter maximum inspection etc. charges

- (1) The Minister may, by order, alter any of the charges referred to in-
 - (a) Head 85 (1) of this Part [equivalent of Section 92 (1) of the Companies Act, 1963].
 - (b) Head 49 (3), 85 (2) or 85 (3) of this Part [equivalents of Section 88 (3) of the Companies Act, 1990 and Sections 92 (2) and 92 (3) of the Companies Act, 1963].
- (2) The Minister may also, by order, alter the basis of any of the charges referred to in the provisions specified in Subhead (1) (b) from the basis referred to in those provisions to some other basis.
- (3) In making any order under this head, the Minister shall take into account the general costs incurred by a company in facilitating the inspection, or providing copies of the registers or other documents referred to in Subhead (1).

- (4) Every order made under this head shall be laid before each House of the Oireachtas as soon as may be after it is made and if a resolution annulling the order is passed by either House within the next 21 days on which that House has sat after the order is laid before it, the order shall be annulled accordingly but without prejudice to the validity of anything previously done thereunder.

Explanatory Note

This head re-enacts Section 105 of the Companies Act, 1990.

Head 51 Right of recognised stock exchange to require disclosure

Where the relevant share capital of a PLC is admitted to trading on any recognised stock exchange, that recognised stock exchange may require disclosure to it under Part A5, Head 34 [equivalent of Sections 53 and 64 of the Companies Act, 1990].

Explanatory Note

This head is an amended restatement of Section 65 of the Companies Act, 1990.

Head 52 Purchases of own shares

- (1)
 - (a) A PLC shall not make a market purchase of its own shares unless the purchase has first been authorised by the PLC by ordinary resolution and any such authority may be varied, revoked or from time to time renewed by the PLC by ordinary resolution.
 - (b) Paragraph (a) shall not be construed as requiring any particular contract for the market purchase of shares to be authorised by the PLC in general meeting and for the purposes of this Part where a market purchase of shares has been authorised in accordance with this head any contract entered into pursuant to that authority in respect of such a purchase shall be deemed also to be so authorised.
- (2) Head 68 of Part A4 [equivalent of Section 143 of the Companies Act, 1963] shall apply to a resolution under Subhead (1).
- (3) The authority granted under Subhead (1) shall

- (a) specify the maximum number of shares authorised to be acquired;
 - (b) determine both the maximum and minimum prices which may be paid for the shares, either by:
 - (i) specifying a particular sum; or
 - (ii) providing a basis or formula for calculating the amount of the price in question without reference to any person's discretion or opinion;
 - (c) specify the date on which the authority is to expire which shall not be later than five years after the date on which the special resolution or ordinary resolution, as the case may be, granting the authority is passed.
- (4) A public limited PLC may make a purchase after the expiry of any time limit imposed by virtue of Subhead (1) in any case where the contract of purchase was concluded before the authority expired and the terms of the authority permit the PLC to make a contract of purchase which would or might be executed wholly or partly after the authority expired.
- (5) A special resolution authorising a PLC to acquire its own shares off market shall terminate 5 years after it is passed.
- (6) In this head -
- (a) an "off-market purchase" if the shares are purchased either
 - (i) otherwise than on a recognised stock exchange; or
 - (ii) on a recognised stock exchange but are not subject to a marketing arrangement on that stock exchange;
 - (b) a "market purchase" if the shares are purchased on a recognised stock exchange and are subject to a marketing arrangement;
 - (c) a company's shares are subject to a marketing arrangement on a recognised stock exchange; if either
 - (i) they are listed or admitted to trading on that stock exchange, or

- (ii) the company has been afforded facilities for dealings in those shares to take place on that stock exchange without prior permission for individual transactions from the authority governing that stock exchange and without limit as to the time during which those facilities are to be available.

Explanatory Note

This re-enacts the provisions of Part XI of the 1990 Act relating to acquisition of own shares which are applicable to PLCs.

Head 53 Assignment or release of company's right to purchase own shares

- (1) Any purported assignment of the rights of a PLC under any contract authorised under Head 52 of this Part [equivalent of Section 215 of the Companies Act, 1990] shall be void.
- (2) Nothing in Subhead (1) shall prevent a PLC from releasing its right under any contract authorised under Head 52 [equivalent of section 215 of the Companies Act 1990] provided that the release has been authorised by an ordinary resolution of the PLC before the release is entered into, and any such purported release by a company which has not been authorised as aforesaid shall be void.
- (3) Subheads (3) to (7) of Part A3, Head 38 [equivalent of Subsections (2) to (7) of Section 213 of the Companies Act 1990] shall apply to a resolution under Subhead (2).

Explanatory Note:

This head re-enacts Section 217 of the Companies Act, 1990 as it applies to purchases under Head 48.

Head 54 Return to be made to registrar

In addition to the requirements of Head 48 of Part A3 [equivalent of Section 226 of the Companies Act, 1990] the return required to be made by a PLC under that head shall state—

- (a) the aggregate amount paid by the PLC for the shares; and
- (b) the maximum and minimum prices paid in respect of each class purchased.

Explanatory Note:

This head re-enacts Section 226 (2) of the Companies Act, 1990.

Head 55 Duty of company to notify stock exchange

- (1) Whenever shares for which dealing facilities are provided on a recognised stock exchange have been purchased, either by the PLC which issued the shares or by a company which is that PLC's subsidiary, the PLC whose shares have been purchased shall be under an obligation to notify that stock exchange of that matter and the stock exchange may publish, in such manner as it may determine, any information received by it under this subhead.
- (2) An obligation imposed by Subhead (1) shall be fulfilled before the end of the day next following that on which it arises.
- (3) If default is made in complying with this head, the PLC and every officer of the PLC who is in default shall be guilty of a category three offence.

Explanatory Note:

This head re-enacts Section 229 of the Companies Act, 1990.

Head 56 Duty of stock exchange in relation to unlawful purchases

- (1) If it appears to a relevant authority of a recognised stock exchange that a PLC in the case of whose shares dealing facilities have been provided on that stock exchange has committed an offence under Head 55 of this Part or has failed to comply with regulations lawfully made by the Minister governing the purchase by companies of their own shares or of shares in their holding company and the sale by companies of their own shares held as treasury shares, such authority shall forthwith report the matter to the Director of Corporate Enforcement and shall furnish to the Director of Corporate Enforcement such information and give to him such access to and facilities for inspecting and taking copies of any documents, being information or documents in the possession or under the control of such authority and relating to the matter in question, as the Director of Corporate Enforcement may require.

- (2) Where it appears to a member of a recognised stock exchange that any person has committed an offence described in Subhead (1), he or she shall report the matter forthwith to a relevant authority of the recognised stock exchange concerned, who shall thereupon come under the duty referred to in Subhead (1).
- (3) If it appears to a court in any proceedings that any person has committed an offence as aforesaid, and that no report relating to the matter has been made to the Director of Corporate Enforcement under Subhead (1), that court may, on the application of any person interested in the proceedings concerned or of its own motion, direct the relevant authority of the recognised stock exchange concerned to make such a report, and on a report being made accordingly, this head shall have effect as though the report had been made in pursuance of Subhead (1).
- (4) If, where any matter is reported or referred to the Director of Corporate Enforcement under this head, he or she has reasonable grounds for believing that an offence under Subhead (1) has been committed and—
 - (a) institutes proceedings in respect of the offence; or
 - (b) refers the matter to the Director of Public Prosecutions and the Director of Public Prosecutions institutes proceedings in respect of the offence,

it shall be the duty of a relevant authority of the recognised stock exchange concerned, and of every officer of the company whose shares are concerned, and of any other person who appears to the Director of Corporate Enforcement or to the Director of Public Prosecutions, as the case may be, to have relevant information (other than any defendant in the proceedings) to give all assistance in connection with the proceedings which he or they are reasonably able to give.

- (5) If it appears to the Director of Corporate Enforcement, arising from a complaint to a relevant authority of a recognised stock exchange concerning an alleged offence under Subhead (1), that there are circumstances suggesting that -
 - (a) the relevant authority ought to use its powers under this head but has not done so; or

- (b) that a report ought to be made to the Director of Corporate Enforcement under Subhead (1), but that the relevant authority concerned has not so reported,

he or she may request the relevant authority to use such powers or make such a report, and on a report being made accordingly, this head shall have effect as though the report had been made in pursuance of Subhead (1).

- (6) A relevant authority of a recognised stock exchange shall not be liable in damages in respect of anything done or omitted to be done by the authority in connection with the exercise by it of its functions under this head unless the act or omission complained of was done or omitted to be done in bad faith.
- (7) For the purposes of this head, each of the following shall be a “relevant authority” in relation to a recognised stock exchange—
 - (i) its board of directors, committee of management or other management body;
 - (ii) its manager, however described.
- (8) Where the Minister considers it necessary or expedient to do so for the proper and effective administration of this head, he or she may make such regulations as he or she thinks appropriate in relation to—
 - (a) the powers of authorised persons; or
 - (b) the matters in respect of which, or the persons from whom, authorised persons may require information.

Explanatory Note

Restatement of Section 230 of the Companies Act, 1990.

Subhead (1) has been amended to account for the omission of Section 229 of the Companies Act, 1990.

Section 230 (9) has been deleted and Section 230 (10) has been amended to account for the repeal of Sections 117 and 120 of the Companies Act by Section 31 of the Investment Funds, Companies and Miscellaneous Provisions Act, 2005 – though as of this writing the latter repeal has only been commenced insofar as it relates to a regulated market.

Chapter 4

Distribution by a PLC

Head 57 Restriction on distribution of assets

- (1) A PLC may only make a distribution at any time—
 - (a) if at that time the amount of its net assets is not less than the aggregate of the PLC's called-up share capital and its undistributable reserves; and
 - (b) if, and to the extent that, the distribution does not reduce the amount of those assets to less than that aggregate.
- (2) For the purposes of this head the undistributable reserves of a PLC are—
 - (a) the PLC's company capital;
 - (b) the amount by which the PLC's accumulated, unrealised profits, so far as not previously utilised by any capitalisation, exceed its accumulated, unrealised losses, so far as not previously written off in a reduction or reorganisation of capital duly made; and
 - (c) any other reserve which the PLC is prohibited from distributing by any enactment, other than one contained in this Part, or by its constitution.
- (3) Part A3, Head 49 (4) to (8) [equivalent of Section 45 of the Companies (Amendment) Act, 1983] shall apply for the purposes of this head as they apply for the purposes of that head.]
- (4) A PLC shall not include any uncalled share capital as an asset in any account relevant for the purposes of this head.

Explanatory Note

Restatement of Section 46 Companies (Amendment) Act, 1983

Paragraphs (2)(a) & (b) have been replaced by new (a) in line with new definition of company capital.

Head 58 Relevant Accounts

- (1) Subject to the following provisions of this head, the question whether a distribution may be made by a PLC without contravening Part A3, Head 49 [equivalent of Section 45 of the Companies Amendment Act, 1983], Part B2, Head 57 [equivalent of section 46 of the Companies Amendment Act, 1983] or Part B9, Head 40 [equivalent of Section 47 of Companies Amendment Act, 1983] and the amount of any distribution which may be so made shall be determined by reference to the relevant items as stated in the relevant accounts, and the relevant head shall be treated as contravened in the case of a distribution unless the requirements of this head about those accounts are complied with in the case of that distribution.
- (2) The relevant accounts for any company in the case of any particular distribution are—
 - (a) except in a case falling within paragraph (b) or (c), the last annual accounts, that is to say, the accounts prepared in accordance with the requirements of this Bill which were laid in respect of the last preceding financial year in respect of which accounts so prepared were laid;
 - (b) if that distribution would be found to contravene the relevant head if reference were made only to the last annual accounts, such accounts (interim accounts) as are necessary to enable a reasonable judgement to be made as to the amounts of any of the relevant items;
 - (c) if that distribution is proposed to be declared during the company's first financial year or before any accounts are laid in respect of that financial year, such accounts (initial accounts) as are necessary as aforesaid.
- (3) The following requirements apply where the last annual accounts of a PLC constitute the only relevant accounts in the case of any distribution, that is to say—
 - (a) those accounts must have been properly prepared or have been so prepared subject only to matters which are not material for the purpose of determining, by reference to the relevant items as stated in those accounts, whether that distribution would be in contravention of the relevant head;

- (b) save where Part A6, Head 66 (2) [equivalent of Section 32(2) of the Companies Amendment (No.2) Act, 1999] applies, the auditors of the company must have made a report under Part A6, Head 92 [equivalent of Section 193 of the Companies Act, 1990] in respect of those accounts;
- (c) if, by virtue of anything referred to in that report, the report is not an unqualified report, the auditors must also have stated in writing (either at the time the report was made or subsequently) whether, in their opinion, that thing is material for the purpose of determining, by reference to the relevant items as stated in those accounts, whether that distribution would be in contravention of the relevant head; and
- (d) a copy of any such statement must have been laid before the company in general meeting.
- (4) A statement under subhead (3)(c) suffices for the purposes of a particular distribution not only if it relates to a distribution which has been proposed but also if it relates to distributions of any description which include that particular distribution, notwithstanding that at the time of the statement it has not been proposed.
- (5) The following requirements apply to interim accounts prepared for a proposed distribution by a PLC, that is to say—
- (a) the accounts must have been properly prepared or have been so prepared subject only to matters which are not material for the purpose of determining, by reference to the relevant items as stated in those accounts, whether that distribution would be in contravention of the relevant head;
- (b) a copy of those accounts must have been delivered to the Registrar;
- (c) if the accounts are in a language other than the English or Irish language, a translation into English or Irish of the accounts which has been certified in the prescribed manner to be a correct translation, must also have been delivered to the Registrar.
- (6) The following requirements apply to initial accounts prepared for a proposed distribution by a PLC, that is to say—
- (a) those accounts must have been properly prepared or have been so prepared subject only to matters which are not material for the purpose of determining, by reference to the relevant items as stated in those accounts, whether that distribution would be in contravention of the relevant head;
- (b) the auditors of the PLC must have made a report stating whether, in their opinion, the accounts have been properly prepared;
- (c) if, by virtue of anything referred to in that report, the report is not an unqualified report, the auditors must also have stated in writing whether, in their opinion, that thing is material for the purpose of determining, by reference to the relevant items as stated in those accounts, whether that distribution would be in contravention of the relevant head;
- (d) a copy of those accounts, of the report made under paragraph (b) and of any such statement must have been delivered to the Registrar; and
- (e) if the accounts are, or that report or statement is, in a language other than the English or Irish language, a translation into English or Irish of the accounts, the report or statement, as the case may be, which has been certified in the prescribed manner to be a correct translation, must also have been delivered to the Registrar.
- (7) For the purpose of determining by reference to particular accounts whether a proposed distribution may be made by a PLC, this head shall have effect, in any case where one or more distributions have already been made in pursuance of determinations made by reference to those same accounts, as if the amount of the proposed distribution was increased by the amount of the distributions so made.
- (8) Where Subhead (3)(a) applies to the relevant accounts, Part A3, Head 49 (5) [equivalent of Section 45(5) of the Companies (Amendment) Act, 1983] shall not apply for the purposes of determining whether any revaluation of the PLC's fixed assets affecting the amount of the relevant items as stated in those accounts has taken place, unless it is stated in a note to those accounts—

- (a) that the directors have considered the value at any time of any fixed assets of the company without actually revaluing those assets;
 - (b) that they are satisfied that the aggregate value of those assets at the time in question is or was not less than the aggregate amount at which they are or were for the time being stated in the company's accounts; and
 - (c) that the relevant items affected are accordingly stated in the relevant accounts on the basis that a revaluation of the company's fixed assets which by virtue of Part A3, Head 49 (5) [equivalent of Section 45(5) of the Companies Amendment Act, 1983] included the assets in question took place at that time.
- (ii) so much of those accounts as consists of a profit and loss account gives a true and fair view of the company's profit or loss for the period in respect of which the accounts were prepared;

"relevant item" means any of the following, that is to say profits, losses, assets, liabilities, provisions (within the meaning of Schedule to Part A6 [the Sixth Schedule to the Companies Act 1963]), share capital and reserves;

"reserves" includes undistributable reserves within the meaning of Part B2, Head 57 (2) [equivalent of Section 46(2) of the Companies (Amendment) Act, 1983];

"unqualified report" in relation to any accounts of a company, means a report, without qualification, to the effect that in the opinion of the person making the report, the accounts have been properly prepared; and for the purposes of this head, accounts are laid if Part A6, Head 12 [equivalent of Section 148 of the Principal Act] has been complied with in relation to those accounts.

(9) In this head—

"properly prepared" means, in relation to any accounts of a PLC, that the following conditions are satisfied in relation to those accounts, that is to say—

- (a) in the case of annual accounts, that they have been properly prepared in accordance with the provisions of Part A6 [Companies Act 1963];
- (b) in the case of interim or initial accounts, that they comply with the requirements of Part A6, Head 13 [equivalent of Section 149 of the Companies Act, 1963] and any balance sheet comprised in those accounts has been signed in accordance with Part A6, Head 36 (as affected by Part B2, Head 75) [equivalent of Section 156 of the Companies Act, 1963]; and
- (c) in either case, without prejudice to the foregoing, that except where the company is entitled to avail itself, and has availed itself, of any of the provisions of the First Schedule to Part A6 [equivalent of Part III of the Sixth Schedule to the Companies Act 1963] [or where the EC (Credit Institutions: Accounts) Regulations; EC (Insurance Undertakings: Accounts) Regulations] apply—
 - (i) so much of the accounts as consists of a balance sheet gives a true and fair view of the state of the company's affairs as at the balance sheet date; and

- (10) For the purpose of paragraph (b) of the definition of "properly prepared" in subhead (9), Part A6, Head 13 [equivalent of section 149 of the Companies Act, 1963], and the First Schedule to Part A6 [equivalent of the Sixth Schedule to the Companies Act, 1963] shall be deemed to have effect in relation to interim and initial accounts with such modifications as are necessary by reason of the fact that the accounts are prepared otherwise than in respect of a financial year.

Explanatory Note

Sections 49(5) and (6) of the Companies (Amendment) Act 1983 have been reinserted for PLCs.

Head 59 Limitation on reduction by a PLC of its allotted share capital

- (1) Subject to Subsheads (2) and (3), a PLC may not reduce its allotted share capital below the authorised minimum and Part A3, Head 17 [equivalent of Section 72(1) of the Companies Act, 1963] shall be construed accordingly.

- (2) In its application to a PLC that applies to be re-registered as a private company in pursuance of an authority given under Part B6, Head 6 [equivalent of Section 14 of the Companies (Amendment) Act 1983], Part B6, Head 6 [equivalent of Section 14(4) of the Companies (Amendment) Act, 1983] shall have effect with the following modifications—
- (a) references to the special resolution of the PLC shall have effect as references to the order of the court under the said Subhead (4);
 - (b) Part B6, Head 6 (1) (a) and (b) [equivalent of Section 14(1)(a), (c) and (d) and (2) of the Companies (Amendment) Act 1983] shall not apply.

Explanatory Note

Restatement of Section 17 of the Companies (Amendment) Act, 1983.

PLC equivalent of Part A3, Head 17 (Section 72 of the Companies Act, 1963).

*Subsection (2) has been deleted as obsolete.
Subsections (4) & (5) are moved to Chapter 3 of Part B6.*

Chapter 5

Uncertificated Securities

Head 60 Transfer in writing

Section 6 of the Statute of Frauds Act (Ireland), 1695 and Section 28 (6) of the Supreme Court of Judicature (Ireland) Act, 1877 and any other rule of law requiring the execution, under hand or seal, of a document in writing for the transfer of property, shall not apply (if they would otherwise do so) to any transfer of title to securities pursuant to -

- (a) Section 12 of the Electronic Commerce Act, 2000; or
- (b) procedures authorised or required pursuant to Regulations made by the Minister under Head 61 [equivalent of Section 239 of the Companies Act, 1990].

Explanatory Note

Re-enactment of Reg.5 of the Uncertificated Securities Regulations, 1996.

Head 61 Power to make regulations for the transfer of securities

- (1) The Minister may make provision by regulations for enabling or requiring title to securities or any class of securities to be evidenced and transferred without a written instrument.
- (2) Subject to any exceptions that may be specified in the regulations, the regulations may, in respect of—
 - (a) securities of companies admitted to trading on a regulated market,
 - (b) securities of companies admitted to trading on a market other than a regulated market, or
 - (c) securities of public limited companies of a specified class,

provide that the means provided by the regulations for evidencing and transferring title to such securities shall constitute the sole and exclusive means for doing so (and accordingly, that any purported transfer of such securities otherwise than by those means shall be void).

- (3) In this head—
 - (a) “securities” means transferable securities as defined by Article 1(4) of Directive 93/22/EEC, with the exception of money market instruments as defined by Article 1(5) of Directive 93/22/EEC, having a maturity of less than 12 months;
 - (b) references to title to securities include any legal or equitable interest in securities; and
 - (c) references to a transfer of title include a transfer by way of security.
- (4) The regulations may make provision—
 - (a) for procedures for recording and transferring title to securities; and
 - (b) for the regulation of those procedures and the persons responsible for or involved in their operation; and
 - (c) for dispensing with the obligations of a company under Part A3 Head 32 [equivalent of Section 86 of the Companies Act, 1963] to issue certificates and providing for alternative procedures.
- (5) The regulations shall contain such safeguards as appear to the Minister appropriate for the protection of investors and for ensuring that competition is not restricted, distorted or prevented.
- (6)
 - (a) The regulations may, for the purpose of enabling or facilitating the operation of the new procedures, make provision with respect to the rights and obligations of persons in relation to securities dealt with under the procedures;
 - (b) The regulations shall be framed so as to secure that the rights and obligations in relation to securities dealt with under the new procedures correspond, so far as is practicable, with those which would arise apart from any regulations under this head;
 - (c) The regulations may—
 - (i) require the provision of statements by a company to holders of securities (at specified intervals or on specified occasions) of the securities held in their name;

- (ii) make provision removing any requirement for the holders of securities to surrender existing share certificates to issuers; and
 - (iii) make provision that the requirements of the regulations supersede any existing requirements in the articles of association of a company which would be incompatible with the requirements of the regulations.
- (7) Without prejudice to the generality of Subheads (5) and (6), the regulations shall not contain provisions that would result in a person who, but for the regulations, would be entitled—
 - (a) to have his or her name entered in the register of members of a company; or
 - (b) to give instructions in respect of any securities, ceasing to be so entitled.
- (8)
 - (a) The regulations may include such supplementary, incidental and transitional provisions as appear to the Minister to be necessary or expedient.
 - (b) In particular, provision may be made for the purpose of giving effect to—
 - (i) the transmission of title of securities by operation of law;
 - (ii) any restriction on the transfer of title to securities arising by virtue of the provisions of any enactment or instrument, court order or agreement;
 - (iii) any power conferred by any such provision on a person to deal with securities on behalf of the person entitled.
- (9) The regulations may, for the purposes mentioned in this head, make provision with respect to the persons who are to be responsible for the operation of the new procedures and for those purposes may empower the Minister to delegate to any person willing and able to discharge them, any functions of his under the regulations.
- (10) The regulations may make different provision for different cases.
- (11) Every regulation made under this head shall be laid before each House of the Oireachtas as soon as may be after it is made and if a resolution annulling the regulation is passed by either such House within the next twenty-one days on which that House has sat after the regulation is laid before it, the regulation shall be annulled accordingly, but without prejudice to the validity of anything previously done thereunder.

Explanatory Note

Restatement of Section 239 of the Companies Act, 1990.

The definition of "securities" is taken from Regulation 2 (1) of the Prospectus (Directive 2003/71/EC) Regulations 2005.

Chapter 6

Corporate Governance

Head 62 Number of Directors

Every PLC shall have at least two directors.

Explanatory Note

This is a newly inserted head.

Head 63 Restriction on appointment or advertisement of director

Where, prior to the end of the period of 14 days referred to in Part A4 Head 19 (6), a PLC issues a prospectus or a document for the purposes of making a local offer, the PLC must send the notification referred to in Part A4 Head 19 (6) no later than the time of issue of such prospectus or document.

Explanatory Note

Section 179 of the Companies Act, 1963 requires proof of appointment of a director prior to the issue of a prospectus and proof of the taking up of a share qualification. The first of these requirements is accommodated by this new Head. It has been decided to drop the second requirement as it is considered anachronistic.

Head 64 Attendance and Voting at meetings

- (1) For the purposes of determining which persons are entitled to attend or vote at a meeting, and how many votes such persons may cast, a PLC that is a participating issuer may specify in the notice of the meeting a time, not more than 48 hours before the time fixed for the meeting, by which a person must be entered on the relevant register of securities in order to have the right to attend or vote at the meeting.
- (2) Changes to entries on the relevant register of securities after the time specified by virtue of Subhead (1) shall be disregarded in determining the rights of any person to attend or vote at the meeting, notwithstanding any provisions in any enactment, articles of association or other instrument to the contrary.

- (3) For the purposes of this head, "register of securities" has the meaning assigned to it in [equivalent of Reg.3 of Uncertificated Securities Regulations 1996].

Explanatory Note

Re-enactment of Reg.14 of Uncertificated Securities Regulations 1996.

Head 65 Notice of meetings

- (1) For the purposes of serving notices of meetings, whether under Part A4, Head 52 [equivalent of Section 133 (a) of the Companies Act, 1963], any other enactment, a provision in the articles of association or any other instrument, a participating issuer may determine that persons entitled to receive such notices are those persons entered on the relevant register of securities at the close of business on a day determined by the participating issuer.
- (2) The day determined by a participating issuer under Subhead (1) may not be more than 7 days before the day that the notices of the meeting are sent.
- (3) For the purposes of this head, a PLC that is a "participating issuer" has the meaning assigned to it in [equivalent of Reg.3 of Uncertificated Securities Regulations 1996]

Explanatory Note

Re-enactment of Reg.15 of Uncertificated Securities Regulations 1996.

Head 66 Failure to establish an audit committee

- (1) Where the board of directors of a PLC fails to establish an audit committee that is constituted in accordance with Head 34 of Part A4, each director to whom the failure is attributable is guilty of a category three offence.
- (2) This head does not apply to -
 - (a) a public limited company that is a wholly owned subsidiary undertaking of another public limited company; or
 - (b) any company of a class exempted under Part A14, Head 45 [equivalent of Section 48(1)(j) of the Companies (Auditing and Accounting) Act, 2003] from the application of this head.

Explanatory Note

Subhead (1) re-enacts Section 205B (12) of the Companies Act, 1990.

Subhead (2) re-enacts Section 205B (16) of the Companies Act, 1990.

Chapter 7

Duties of Directors and other Officers

Head 67 **Obligation to convene extraordinary general meeting in event of serious loss of capital**

- (1) Where the net assets of a PLC are half or less of the amount of the PLC's called-up share capital, the directors of the PLC shall, not later than 28 days from the earliest day on which that fact is known to a director of the PLC, duly convene an extraordinary general meeting of the PLC for a date not later than the annual general meeting or 56 days from that day for the purpose of considering whether any, and if so what, measures should be taken to deal with the situation.
- (2) If there is a failure to convene an extraordinary general meeting of a PLC as required by Subhead (1), each of the directors of the PLC who—
 - (a) knowingly and wilfully authorises or permits that failure; or
 - (b) after the expiry of the period during which that meeting should have been convened, knowingly and wilfully authorises or permits that failure to continue,

shall be guilty of a category three offence.

- (3) Nothing in this head shall be taken as authorising the consideration, at an extraordinary general meeting convened in pursuance of Subhead (1), of any matter which could not have been considered at that meeting apart from this head.

Explanatory Note

Amended restatement of Section 40 of the Companies (Amendment) Act, 1983. Subsection (4) has been removed.

Head 68 **Disclosure of interest by a director of a PLC that is a Directive Company**

Where a director of a PLC is a person to whom Regulation 12 of the Market Abuse (Directive 2003/6/EC) Regulations 2005 applies by reason of his being a person discharging managerial responsibilities, then Chapter 4 of Part A5 shall not, with respect to any disclosable interest in the securities of a Directive company, apply to such director.

Explanatory Note

This is a new head to excuse directors from the obligation to notify under Head A5, Chapter 4, Heads 34-38 [Companies Act, 1990, Section 53 et seq] where such directors have an obligation as a PDMR (person discharging managerial responsibilities) to make a similar disclosure under the Market Abuse (Directive 2003/6/EC) Regulations 2005.

Head 69 **Qualifications of secretary of public limited company.**

The directors of a PLC shall have a duty to ensure that the person appointed as secretary has the skills necessary to discharge his or her statutory duties and such other duties as may be delegated to the secretary by the directors and who—

- (a) for at least three years of the five years immediately preceding his appointment as secretary of a company; or
- (b) is a member of a body for the time being recognised for the purposes of this head by the Minister; or
- (c) is a person who, by virtue of his holding or having held any other position or his being a member of any other body, appears to the directors to be capable of discharging those functions.

Explanatory Note

Amended Restatement of Section .236 of the Companies Act, 1990 – Wording of opening paragraph changed to that of Part A4, Head 3(4).

Chapter 8

Financial Statements, Annual Return and Audit

Head 70 Exemption from consolidation: size of group

Head 19 of Part A6 shall apply to a PLC subject to the substitution of Subhead (9)(a) thereof with the following subhead (9)(a):

“any shares, debentures or other debt securities of the PLC or of a subsidiary undertaking have been admitted to trading on a regulated market of any EEA state; or”

Head 71 Exemption from consolidation: holding company that is a subsidiary of another EEA registered undertaking

Head 20 of Part A6 shall apply to a PLC with the addition of the following paragraph (f) in Subhead (3):

“(f) the exempted holding company may not have any shares, debentures or other debt securities admitted to trading on a regulated market of any EEA State.”

Head 72 Exemption from Consolidation: holding company that is a subsidiary of a non-EEA undertaking

Head 21 of Part A6 shall apply to a PLC with the addition of the following paragraph (g) in Subhead (3):

“(g) the exempted holding company may not have any shares, debentures or other debt securities admitted to trading on a regulated market of any EEA State.”

Head 73 Information on related undertakings: Exemption from disclosures

Head 28 of Part A6 shall apply to a PLC with the addition of the following paragraph (2):

“(2) This head shall not apply to a parent undertaking any of whose shares, debentures or other debt securities have been admitted to trading on a regulated market of any EEA State.”

Head 74 Information on related undertakings: Provision for certain information to be annexed to annual return

Head 29 of Part A6 shall apply to a PLC with the addition of the following Subhead (5):

“(5) Subhead (1) shall not apply to a parent undertaking any of whose shares, debentures or other debt securities have been admitted to trading on a regulated market of any EEA State.”

Head 75 Approval and signing of statutory financial statements by Board of Directors

Head 36 of Part 6 shall apply to a PLC subject to the substitution of Subhead (1) thereof with the following Subhead (1):

(1) Where the directors of the PLC are satisfied that the statutory financial statements give a true and fair view and otherwise comply with this Bill or, where applicable, with Article 4 of the IAS Regulation, they shall be approved by the board of directors and signed on their behalf by a majority of the directors where there are more than two directors or by the two directors, where there are only two directors.

Head 76 Approval and signing of directors' report

Head 43 of Part 6 shall apply to a PLC subject to the substitution of Subhead (1) thereof with the following Subhead (1):

- “(1) The directors' report and, where applicable, the group directors' report shall be approved by the board of directors and signed on their behalf by a majority of the directors where there are more than two directors or by the two directors, where there are only two directors. “

Head 77 Obligation for a company's statutory financial statements to be audited

The directors of a PLC shall arrange for the statutory financial statements of the PLC for a financial year to be audited by an independent auditor.

Explanatory Note

This is an alternative to Part A6, Head 44.

Head 78 Independent auditors' report on revised financial statements and revised report

Head 73 of Part A6 shall apply to a PLC subject to the substitution of Subhead (1) thereof with the following Subhead (1):

- “(1) Subject to the next subhead, a PLC's current independent auditors shall make a report or, as the case may be, a further report under Head 92 in the form required by Head 46, to the company's members under this head on revised financial statements prepared under Head 71 and Head 93 (assessment of accounting records) and Head 94 (reporting of offences) shall apply mutatis mutandis.”

Head 79 Appointment of independent auditors: by directors

- (1) The first independent auditors of a PLC shall be appointed by the directors at any time before the first annual general meeting.
- (2) Where any casual vacancy in the office of independent auditors arises, it shall be the duty of the directors to appoint independent auditors to the company as soon as may be after that vacancy has arisen.
- (3) Independent auditors appointed pursuant to subheads (1) or (2) shall hold office until the conclusion of the next annual general meeting of the company held after their appointment at which statutory financial statements are required to be laid so however that—
 - (a) the members of the PLC may at any general meeting remove any such independent auditors and appoint in their place any other person (or persons) who have been nominated for appointment by any member of the company and of whose nomination notice has been given to the members of the company not less than 14 days before the date of the meeting; and
 - (b) if the directors fail to exercise their powers under this head the members of the PLC in general meeting may appoint independent auditors and thereupon the said powers of the directors shall cease.

Head 80 Appointment of independent auditors: by members of the company

Head 85 of Part A6 shall apply to a PLC provided that paragraph (d) of Subhead (2) shall not apply.

Head 81 Appointment of independent auditors: failure to appoint

- (1) Where at an annual general meeting no independent auditors are appointed by the members, the Minister / Director of Corporate Enforcement may appoint a person to fill the position of independent auditors.

(2)

- (a) A PLC shall—
- (i) within one week of the Minister / Director of Corporate Enforcement's power under subhead (1) becoming exercisable, give the Minister / Director of Corporate Enforcement notice of that fact; and
 - (ii) where a resolution removing the independent auditors is passed, give notice of that fact in the prescribed form to the Registrar within 14 days of the meeting at which the resolution removing the independent auditors was passed;
- (b) If a PLC fails to give notice as required by paragraph (a) of this Subhead, the PLC and every officer of the PLC who is in default shall be guilty of a category 3 offence.
- (b) in relation to a partnership referred to in Part B5, Head 30 or Part B10, Head 27 [equivalent of Regulation 6 of the European Communities (Accounts) Regulations 1993], work required to fulfill the duties imposed under Part A6, Head 44 [equivalent of Regulation 22 of those Regulations] on an auditor appointed by the partners;
- 'connected undertaking', in relation to a relevant undertaking, means an undertaking that under the [1992 Regulations], or under those Regulations as applied by Part B10 Head 32 [equivalent of Regulation 9 of the European Communities (Accounts) Regulations, 1993], is—
- (a) a subsidiary undertaking of the relevant undertaking;
 - (b) a joint venture of the relevant undertaking proportionally consolidated in accordance with Part A6, Schedule 2, Part II, 18 [equivalent of Regulation 32 of the 1992 Regulations], or
 - (c) an associated undertaking of the relevant undertaking;

Head 82 Disclosure of remuneration for audit, audit related and non-audit work.

(1) In this head—

'affiliate' in relation to an auditor, means a firm, body corporate or partnership considered under Part A6, Head 2(2) [equivalent of Section 182(2) of the Companies Act, 1990] to be an affiliate of the auditor;

'audit committee' means the committee established under Part A4, Head 34 [equivalent of Section 205B of the Companies Act, 1990];

'audit-related work' means work required by any relevant undertaking, body or person to be done by an auditor of the relevant undertaking by virtue of his or her position as auditor of that undertaking, but does not include audit work;

'audit work' means:

- (a) in relation to a relevant undertaking other than a partnership referred to in Part B5, Head 30 or Part B10, Head 27 [equivalent of Regulation 6 of the European Communities (Accounts) Regulations 1993], work required to fulfill the duties imposed under Part A6, Head 92 [equivalent of Section 193 of the Companies Act, 1990] on an auditor of a company; and

'firm' means a firm that qualifies for appointment as auditor of a company or as a public auditor under Part A6, Head 103 [equivalent of Section 187(1A) of the Companies Act, 1990];

'non-audit work' means work other than audit work or audit-related work;

'relevant undertaking' means an undertaking referred to in Part B5, Head 30 or Part B10 Head 27 [equivalent of Regulation 6 of the European Communities (Accounts) Regulations 1993], but does not include a company or an undertaking of a class exempted under Part A14 Head 45 [equivalent of section 48(1)(j) of the Companies (Auditing and Accounting) Act, 2003] from this head;

'remuneration' includes benefits in kind and payments in cash.

- (2) Subject to Subhead (5), a PLC shall disclose in the notes to its annual accounts relating to each reporting period beginning on or after the commencement of this head, the following information:

- (a) the remuneration for all work in each category specified in Subhead (3) that was carried out for the relevant undertaking or a connected undertaking of the relevant undertaking, during that reporting period—
 - (i) by an auditor of the relevant undertaking; and
 - (ii) by any firm or individual that, at any time during the reporting period, was an affiliate of the auditor;
 - (b) the remuneration for all work in each category specified in Subhead (3) that was carried out for the relevant undertaking or a connected undertaking of the relevant undertaking, during the preceding reporting period—
 - (i) by an auditor of the relevant undertaking; and
 - (ii) by any firm or individual that, at any time during the reporting period, was an affiliate of the auditor;
 - (c) where the remuneration referred to in paragraph (a) or (b) is for non-audit work, the nature of the work;
 - (d) where all or part of the remuneration referred to in paragraph (a) or (b) is in the form of a benefit in kind, the nature and estimated monetary value of the benefit.
- (3) Remuneration must be disclosed under Subhead (2) for each of the following categories of work carried out as described in that subhead:
- (a) audit work;
 - (b) audit-related work;
 - (c) non-audit work.
- (4) Where the auditor of a relevant undertaking is a firm, any work carried out by a partner in the firm is considered for the purposes of this head to have been carried out by the auditor.
- (5) The disclosure requirements of this head apply in relation to a reporting period of the relevant undertaking only if—
- (a) the aggregate of the remuneration for all work in each specified category that was carried out as described in Subhead (2)(a) in that reporting period exceeds €1,000; and
 - (b) the aggregate of the remuneration for all work in each specified category that was carried out as described in subhead (2)(b) in the preceding reporting period exceeds €1,000.
- (6) Where the remuneration required to be disclosed by a relevant undertaking in respect of a reporting period for non-audit work exceeds the aggregate of the remuneration required to be disclosed in respect of that year for audit work and audit-related work, the audit committee shall state in its report for that year under Part A4 Head 34 [equivalent of Section 205B(2)(m) of the Companies Act, 1990]—
- (a) whether it has satisfied itself that the carrying out of the non-audit work by the auditor or an affiliate of the auditor has not affected the auditor's independence from the relevant undertaking; and
 - (b) if it has satisfied itself to that effect, the reasons for the decision to have the non-audit work carried out by the auditor or an affiliate of the auditor.
- (7) Subhead (6) applies also where the relevant undertaking has no audit committee, but in that case the required statement shall be made by the directors in their report under Part A6, Heads 37, 38 and 43 [equivalent of Section 158 of the Companies Act 1963].
- (8) Where more than one firm or individual has been appointed as the auditor of a relevant undertaking in a single reporting period, separate disclosure in respect of the remuneration of each of them and of their affiliates must be provided in the notes to the company's annual accounts.
- (9) The auditor of a relevant undertaking shall provide the directors of that undertaking with the information necessary to enable the auditor's affiliates to be identified for the purposes of this head.
- (10) Where a relevant undertaking fails to comply with Subhead (2), (3) or (8), each company or other entity that forms all or part of that undertaking is guilty of a category three offence.
- (11) Where the audit committee of a relevant undertaking fails to comply with Subhead (6) or the directors of a relevant undertaking fail to comply with that subhead as applied by Subhead (7), each member of the committee or each director of the undertaking, as the case may be, to whom the failure is attributable is guilty of a category three offence.

- (12) Where an auditor fails to comply with Subhead (9), the auditor is guilty of a category three offence.
- (13) Part B10, Head 27 (4) [equivalent of Section 205B(14) of the Companies Act, 1990] applies in relation to any reference in this head to the directors of a relevant undertaking and Part B10, Head 27 (5) [Equivalent of Section 205B(15) of the Companies Act, 1990] applies for the purpose of applying this section to a partnership.
- (14) Part A6, Head 114 shall not apply to a PLC.
- (5) A copy of the summary financial statement and, where it includes a qualification, a copy of the auditors' report under Part A6 Head 92 [equivalent of section 193 of the Companies Act, 1990] may, in lieu of the documents specified in Part A6 Head 48(1) and (2) [equivalent of Section 159 of the Companies Act, 1963], not later than 21 days before the date of the annual general meeting at which the annual accounts and directors' report are to be considered, be sent by the PLC to every member who is entitled to notice of the meeting and to the Registrar.
- (6) Every summary financial statement shall also include statements to the effect that-

- (a) it is only a summary of information in the annual financial statements and directors' report;
- (b) in so far as it summarises the information in the annual financial statements, those accounts have been audited; and
- (c) copies of the annual financial statements, auditors' report and directors' report will be available to members upon request.

Explanatory Note

This head is an amended re-enactment of Section 205D of the Companies Act, 1990, as inserted by Section 44 of the Companies (Auditing and Accounting) Act, 2003. All cross-references have been updated in accordance with the new structure of the Bill.

The references removed from Part A6, which were not relevant/appropriate to the provision as it applied to private companies, have been included here.

Head 83 Summary financial statements

- (1) The directors of a PLC may prepare in respect of each reporting period. a summary financial statement for that reporting period. derived from the annual accounts and the directors' report, giving a fair and accurate summary account of the PLC's financial development during that reporting period and financial position at the end of the reporting period.
- (2) The summary financial statement shall be approved by the board of directors and signed on their behalf by a majority of the directors where there are more than two directors or by the two directors where there are only two directors.
- (3) Where the PLC has subsidiaries or other associated bodies, the statement shall (so far as they are dealt with in the group accounts) give an account of the financial development and position of the PLC and its subsidiaries and other associated bodies.
- (4) Every summary financial statement shall include a statement of the auditors' opinion as to its consistency with the annual accounts of the PLC and the directors' report and its conformity with the requirements of this head.

Explanatory Note

This head has been modelled on Section 79 of the Building Societies Act, 1989. Its purpose is to permit PLCs, particularly those with large shareholder bases, to send a summary financial statement to shareholders in place of the full annual accounts, which is the requirement under existing Irish company law. The UK facilitated a similar development a number of years ago. Shareholders who wish to receive the full accounts may still do so by making a request under Head 83(6)(c).

In Subhead (5), a link is made back to Head 48 of Part A6 which requires the full accounts to be circulated to members. Subhead (5) provides that the summary financial statement may be sent to members in lieu of the documents referred to in Head 48 of Part A6.

Chapter 9

Debentures and Registration of Charges

Head 84 Provisions as to register of debenture holders

- (1) Every PLC shall keep a register of holders of debentures of the PLC and enter therein the names and addresses of the debenture holders and the amount of debentures currently held by each. For the purposes of this subhead, debentures do not include any debenture which does not form part of a series ranking *pari passu* nor any debenture which is transferable by delivery.
- (2) A PLC shall keep such register at the registered office of the PLC, any other office of the PLC at which the work of making it up is done, or if the PLC arranges with some other person for the making up of the register to be undertaken on behalf of the PLC, by that other person at the office of that other person at which the work is done.
- (3) Subject to Subhead (4), every PLC shall send notice to the Registrar of the place where the register is kept and of any change in that place.
- (4) A PLC shall not be bound to send notice under Subhead (3) where the register has at all times since it came into existence, or in the case of a company which came into existence after the operative date, at all times since then, been kept at the registered office of the PLC.
- (5) Where a company makes default in complying with Subhead (1) or (2) or makes default for 14 days in complying with Subhead (3), the PLC and every officer of the PLC who is in default shall be guilty of a category four offence.

Explanatory Note

This head is a re-enactment of Section 91 of the Companies Act, 1963.

Head 85 Rights of inspection of register of debenture holders and to copies of register and trust deed

- (1) Every register of holders of debentures of a PLC shall, except when duly closed (but subject to such reasonable restrictions as the company in general meeting may impose so that not less than 2 hours in each day shall be allowed for inspection), be open to the inspection of the registered holder of any such debentures or any holder of shares in the PLC without fee and of any other person on payment of a fee of €10 or such less sum as may be prescribed by the PLC.
- (2) Any such registered holder of debentures or holder of shares as aforesaid or any other person, may require a copy of the register of the holders of debentures of the PLC or any part thereof on payment of [sixpence] for every 100 words required to be copied.
- (3) A copy of any trust deed for securing any issue of debentures shall be forwarded to every holder of any such debentures at his request on payment, in the case of a printed trust deed of the sum of €10 or such less sum as may be prescribed by the PLC, or where the trust deed has not been printed on payment of [sixpence] for every 100 words required to be copied.
- (4) If inspection is refused or a copy is refused or not forwarded, the PLC and every officer of the PLC who is in default shall be guilty of a category three offence.
- (5) Where a PLC is in default as aforesaid, the court may, by order, compel an immediate inspection of the register or direct that the copies required shall be sent to the person requiring them.
- (6) For the purposes of this head, a register shall be deemed to be duly closed if closed in accordance with provisions contained in the articles or in the debentures or in the case of debenture stock, in the stock certificates or in the trust deed or other document securing the debentures or debenture stock during such period or periods not exceeding in the whole 30 days in any year as may be therein specified.

Explanatory Note

This head is a re-enactment of Section 92 of the Companies Act, 1963.

Both Sections 91 and 92 of the Companies Act, 1963 have been repealed for the purpose of private companies in Group A as recommended in the Second Report.

Chapter 10

Reorganisations

Head 86 Notices under Part A9, Head 6 [equivalent of Section 204 of the Companies Act, 1963]

- (1) This head shall apply in relation to any uncertificated units of a security to which a notice given pursuant to Part A9, Head 6 [equivalent of Section 204 (1) of the 1963 Act] relates.
- (2) On receipt of a notice transmitted pursuant to Part A9, Head 6 [equivalent of Section 204 (5) of the 1963 Act], a company which is a participating issuer shall, on the expiration of one month from the date on which this notification was made, enter the transferee company in its register of securities as the holder of the uncertificated units of the security to which the notice relates in place of the system-member who was, immediately prior to such entry registered as the holder of such units as if it had received an operator-instruction requiring it to amend its register of securities in such manner.
- (3) A company which amends its register of securities in accordance with Subhead (2) shall forthwith notify the operator by issuer-instruction of the amendment.
- (4) For the purposes of this head, -

“issuer-instruction” has the meaning assigned to it in Part B2, Head 000 [equivalent of Reg.3 of Uncertificated Securities Regulations 1996];

“operator-instruction” has the meaning assigned to it in Part B2, Head 000 [equivalent of Reg.3 of Uncertificated Securities Regulations 1996];

“participating issuer” has the meaning assigned to it in Part B2, Head 000 [equivalent of Reg.3 of Uncertificated Securities Regulations 1996];

“register of securities” has the meaning assigned to it in Part B2, Head 000 [equivalent of Reg.3 of Uncertificated Securities Regulations 1996];

“transferee company” has the same meaning as Part A9, Head 5 [equivalent of Section 204 (1) of the 1963 Act]; and

“uncertificated units of a security” has the meaning assigned to it in Part B2, Head 000 [equivalent of Reg.3 of Uncertificated Securities Regulations 1996]

Explanatory Note

Reg.36 of Uncertificated Securities Regs.

Head 87 Disapplication of Part A9, Head 6 [equivalent of Section 204 of the Companies Act, 1963] to a Directive company

Part A9, Head 6 [equivalent of Section 204 of the Companies Act, 1963] shall not apply where the target company is a Directive company.

Explanatory Note

This is a new head and facilitates the application of the Takeover Bids Directive.

Chapter 11

Strike-Off and Restoration

Head 88 Power of Registrar to strike public limited company off register

- (1) Where a public limited company, registered as such on its original incorporation, has not been issued with a certificate under Part B2, Head, 7 [equivalent of Section 6 of the Companies (Amendment) Act, 1983] within one year from the date on which it was registered, the Registrar may send to the company by registered post, a letter stating that a notice will be published in CRO Gazette with a view to striking the name of that public limited company off the register unless such a certificate has been issued to the company within one month from the date of that letter.
- (2) Where a certificate referred to in Head 7 has not been issued within one month from the date of the letter referred to in Subhead (1), the Registrar may publish such notice and may proceed to strike the name of the public limited company off the register in accordance with Part A12, Head 6(1) [equivalent of Section 311 (5) of the Companies Act, 1963].
- (3) Part A12, Head 6 (2) and (3) and Head 10 (1) and (2) [equivalent of Section 311 (6), (7) and (8) of the Companies Act, 1963] shall apply to a public limited company the name of which has been struck off the register in accordance with Subhead (2) as those Subheads apply for the purposes of the said Part A12, Head 6 [equivalent of Section 311 of the Companies Act, 1963].
- (4) For the purposes of paragraph (3), the jurisdiction in which -
 - (a) the body corporate is being wound up or is in liquidation;
 - (b) the receiver, manager or administrator has been appointed or the compromise or arrangement has been entered into; or
 - (c) the application before a court is pending, is immaterial.

Explanatory Note

Subheads (1) to (3) are a restatement of Section 8 of the Companies (Amendment) Act, 1983.

Head 89 Reinstatement as PLC

Where a company is dissolved by the court, the court shall not make an order to reinstate it as a PLC unless all the requirements of re-registration as a PLC are complied with

Explanatory Note

This is a newly inserted provision.

Chapter 12

Market Abuse

Head 90 Interpretation

(1) In this Chapter —

“2003 Market Abuse Directive” means Directive 2003/6/EC of the European Parliament and of the Council of 28 January 2003 on insider dealing and market manipulation (market abuse) 2, including that Directive as it stands amended for the time being;

“Irish market abuse law” means—

- (a) the measures adopted for the time being by the State to implement the 2003 Market Abuse Directive and the supplemental Directives (whether an Act of the Oireachtas, regulations under Section 3 of the European Communities Act, 1972, regulations under Section 30 or any other enactment (other than, save where the context otherwise admits, this Chapter);
- (b) any measures directly applicable in the State in consequence of the 2003 Market Abuse Directive and, without prejudice to the generality of this paragraph, includes the Market Abuse Regulation, and
- (c) any supplementary and consequential measures adopted for the time being by the State in respect of the Market Abuse Regulation;

“Market Abuse Regulation” means Commission Regulation 2273/2003 of 22 December 2003 3;

“supplemental Directives” means—

- (a) Commission Directive No. 2003/124/EC of 22 December 2003 4;
- (b) Commission Directive No. 2003/125/EC of 22 December 2003 5; and
- (c) Commission Directive No. 2004/72/EC of 29 April 2004 6.

(2) A word or expression that is used in this Chapter and is also used in the 2003 Market Abuse Directive or the supplemental Directives shall have, in this Chapter, the same meaning as it has in the 2003 Market Abuse Directive or the supplemental Directives, unless—

- (a) the contrary intention appears; or

- (b) Irish market abuse law provides otherwise.

Explanatory Note

Restatement of Section 29 of the Investment Funds, Companies and Miscellaneous Provisions Act, 2005.

Head 91 Regulations (Chapter 12)

(1) The Minister may make regulations for the purposes of—

- (a) giving effect to the 2003 Market Abuse Directive and the supplemental Directives; and
- (b) supplementing and making consequential provision in respect of the Market Abuse Regulation.

(2) Regulations under this head may contain such incidental, supplementary and consequential provisions as appear to the Minister to be necessary or expedient for the purposes of those regulations, including provisions creating offences (but the regulations may only provide penalties in respect of a summary conviction for any such offence).

(3) Regulations under this head may also—

- (a) make, for the purposes of those Regulations, provision analogous to that which was made by Section 3 of the Companies (Amendment) Act, 1999 (repealed by section 31) for the purposes of that Act;
- (b) impose on a market operator a requirement similar to that which is imposed by Article 6(9) of the 2003 Market Abuse Directive on the person referred to in that Article 6(9).

(4) This head is without prejudice to Section 3 of the European Communities Act, 1972.

Explanatory Note

Restatement of Section 30 of the Investment Funds, Companies and Miscellaneous Provisions Act, 2005.

Head 92 Conviction on indictment of offences under Irish market abuse law: penalties

A person who is guilty of an offence created by Irish market abuse law (being an offence expressed by that law to be an offence to which this head applies) shall, without prejudice to any penalties provided by that law in respect of a summary conviction for the offence, be liable, on conviction on indictment, to a fine not exceeding €10,000,000 or imprisonment for a term not exceeding 10 years, or both.

Explanatory Note

Restatement of Section 32 of the Investment Funds, Companies and Miscellaneous Provisions Act, 2005.

Head 93 Civil liability for certain breaches of Irish market abuse law

(1) If a person contravenes a provision of Irish market abuse law (being a provision the purpose of which is expressed by that law to be for the implementation of Article 2, 3 or 4 of the 2003 Market Abuse Directive) the person shall be liable—

- (a) to compensate any other party to the transaction concerned who was not in possession of the relevant information for any loss sustained by that party by reason of any difference between the price at which the financial instruments concerned were acquired or disposed of and the price at which they would have been likely to have been acquired or disposed of in such a transaction at the time when the first-mentioned transaction took place if that information had been generally available; and
- (b) to account to the body corporate or other legal entity which issued the financial instruments concerned for any profit accruing to the first-mentioned person from acquiring or disposing of those instruments.

(2) If a person contravenes a provision of Irish market abuse law (being a provision the purpose of which is expressed by that law to be for the implementation of Article 5 of the 2003 Market Abuse Directive) the person shall be liable—

- (a) to compensate any other party who acquired or disposed of financial instruments by reason of the contravention; and
 - (b) to account to the body corporate or other legal entity which issued the financial instruments concerned for any profit accruing to the first-mentioned person from acquiring or disposing of those instruments.
- (3) Subheads (1) and (2) are without prejudice to any other cause of action which may lie against the person for contravening the provision concerned.
- (4) An action under Subhead (1) or (2) shall not be commenced more than 2 years after the date of the contravention concerned.

Explanatory Note

Restatement of Section 33 of the Investment Funds, Companies and Miscellaneous Provisions Act, 2005.

Head 94 Supplementary rules, etc., by competent authority

- (1) In this head “competent authority” means the competent authority designated under Irish market abuse law.
- (2) The competent authority may make rules imposing or enabling the competent authority to impose requirements on persons on whom an obligation or obligations are imposed by Irish market abuse law, being requirements—
- (a) to do or not to do specified things so as to secure that the provisions of Irish market abuse law are complied with and, in particular (without limiting the generality of this paragraph), to adopt specified procedures and use specified forms in the provision of information to the competent authority,

- (b) to do or not to do, specified things so as to secure the effective supervision by the competent authority, of activities of the kind to which Irish market abuse law relates and, in particular (without limiting the generality of this paragraph), to make such reports or disclose such matters, at such times and in such manner, to the competent authority or other specified persons as are provided for by the rules or specified by the competent authority pursuant to the rules, being reports or a disclosure of matters that is or are required by virtue or in consequence of the operation of Irish market abuse law.
- (3) Rules under this head may include rules providing for the manner in which or the matters by reference to which (or both) a determination is to be made of any issue as to whether a financial interest or interests is or are significant for the purposes of the provisions of Irish market abuse law implementing Article 5(1) of Commission Directive No. 2003/125/EC of 22 December, 2003.
- (4) Rules under this head may contain such consequential, incidental or supplemental provisions as the competent authority considers necessary or expedient.
- (5) Rules under this head shall not contain any provision that is inconsistent with Irish market abuse law or require the provision of information to any person, the provision of which is not reasonably related to the purposes for which the applicable provisions of the 2003 Market Abuse Directive or the supplemental Directives have been adopted.
- (6) The provisions of Irish market abuse law that are expressed by that law to be made for the purpose of enabling the imposition of administrative sanctions shall apply in relation to a contravention of rules under this head as they apply in relation to a contravention of a provision of Irish market abuse law and accordingly, a sanction that may be imposed pursuant to the first-mentioned provisions of Irish market abuse law in respect of a contravention of a provision of that law may, in accordance with that law, be imposed in respect of a contravention of rules under this head.
- (7) The competent authority may issue guidelines in writing as to the steps that may be taken to comply with Irish market abuse law.

Explanatory Note

Restatement of Section 34 of the Investment Funds, Companies and Miscellaneous Provisions Act, 2005.

Head 95 Application of Irish market abuse law to certain markets

- (1) The Minister, after consultation with the competent authority designated under Irish market abuse law, may by provisional order, provide that one or more provisions of Irish market abuse law that apply in relation to a market to which the 2003 Market Abuse Directive applies shall, with such modifications if any, as are specified in the order, apply to a market specified in the order.
- (2) The Minister may, by provisional order, amend or revoke a provisional order under this head (including a provisional order under this subhead).
- (3) A provisional order under this head shall not have effect unless or until it is confirmed by an Act of the Oireachtas.

Explanatory Note

Restatement of Section 37 of Investment Funds, Companies and Miscellaneous Provisions Act, 2005.

Chapter 13

Public Offers Of Securities

Head 96 Interpretation

(1) In this Chapter, unless the context otherwise requires—

“2003 Prospectus Directive” means Directive 2003/71/EC of the European Parliament and of the Council of 4 November 2003, including that Directive as it stands amended for the time being;

“body corporate” includes a company;

“EEA Agreement” means the Agreement on the European Economic Area, signed at Oporto on 2 May 1992, as amended for the time being;

“EU prospectus law” means—

- (a) the measures adopted for the time being by a Member State (including the State) or a Member State of the EEA, to implement the 2003 Prospectus Directive;
- (b) any measures directly applicable in consequence of the 2003 Prospectus Directive and, without prejudice to the generality of this paragraph, includes the Prospectus Regulation; and
- (c) any supplementary and consequential measures adopted for the time being by a Member State (including the State) or a Member State of the EEA in respect of the Prospectus Regulation;

“expert”, save where a different construction in respect of that expression applies for the purposes of this Chapter by virtue of Irish prospectus law, includes engineer, valuer, accountant and any other individual or body (whether incorporated or unincorporated) the profession of whom, or the profession of members, officers or employees of which, gives authority to a statement made by the individual or body;

“Irish prospectus law” means—

- (a) the measures adopted for the time being by the State to implement the 2003 Prospectus Directive (whether an Act of the Oireachtas, regulations under Section 3 of the European Communities Act, 1972, regulations under Section 46 or any other enactment (other than, save where the context otherwise admits, this Chapter);

(b) any measures directly applicable in the State in consequence of the 2003 Prospectus Directive and, without prejudice to the generality of this paragraph, includes the Prospectus Regulation; and

(c) any supplementary and consequential measures adopted for the time being by the State in respect of the Prospectus Regulation;

“issuer” means a body corporate or other legal entity which issues or proposes to issue securities;

“local offer” means an offer of securities to the public in the State where—

- (a) the offer expressly limits the amount of the total consideration for the offer to less than €2,500,000 (and the means by which that limit shall be calculated, in particular in the case of a series of such offers of securities, shall be the same as that provided for by regulations under Head 102 in relation to analogous limits specified by those regulations for any purpose);
- (b) the securities are other than those referred to in any of paragraphs (a) to (g) or paragraph (i) or (j) of Article 1(2) of the 2003 Prospectus Directive; and
- (c) the offer is not of a kind described in Article 3(2) of the 2003 Prospectus Directive;

“Member State of the EEA” means a state that is a contracting party to the EEA Agreement;

“offer of securities to the public” has the same meaning as it has in Irish prospectus law;

“offering document” means a document prepared for a local offer which document, if prepared in connection with an offer to which the 2003 Prospectus Directive applies, would be a prospectus;

“offeror” means a body corporate or other legal entity or an individual which or who, offers securities to the public;

“promoter” means, subject to Subhead (5), a promoter who was a party to the preparation of a prospectus, or of the portion thereof containing an untrue statement;

“prospectus” means a document or documents in such form and containing such information as may be required by or under this Chapter or EU prospectus law, howsoever the document or documents are constituted, but does not include any advertisements in newspapers or journals derived from the foregoing;

“Prospectus Regulation” means Commission Regulation (EC) No. 809/2004 of 29 April 2004, implementing Directive 2003/71/EC of the European Parliament and of the Council as regards information contained in prospectuses as well as the format, incorporation by reference and publication of such prospectuses and dissemination of advertisements;

“securities” has the same meaning as it has in Irish prospectus law and includes shares and debentures of a company.

(2) A word or expression that is used in this Chapter and is also used in the 2003 Prospectus Directive shall have in this Chapter the same meaning as it has in that Directive, unless—

- (a) the contrary intention appears; or
- (b) Irish prospectus law provides otherwise.

(3) For the purposes of this Chapter—

- (a) a statement included in a prospectus shall be deemed to be untrue if it is misleading in the form and context in which it is included; and
- (b) a statement shall be deemed to be included in a prospectus if it is contained therein or in any report or memorandum appearing on the face thereof or by reference incorporated therein.

(4) Without limiting the meaning of that expression in any other context in which it is used in this Part, “statement” in Part B2, Head 101 (2) [equivalent of Section 45(2) of the Investment Funds, Companies and Miscellaneous Provisions Act, 2005] (other than paragraph (b) thereof) and any other Head of this Part that makes provision in respect of an expert, includes a report and a valuation.

(5) Nothing in this Chapter shall limit or diminish any liability which any person may incur under the general law.

(6) For the purposes of Heads 97 and 99, the following persons shall be deemed not to be a promoter or a person who has authorised the issue of the prospectus—

- (a) a professional adviser to any person referred to in Head 41 acting as such;
- (b) an underwriter or professional adviser to an underwriter acting as such.

(7) The person referred to as the “purchaser” in the following case shall be deemed to be an underwriter for the purposes of Subhead (5)(b).

(8) That case is one in which—

- (a) a person (the “offeror”) intends to make an offer of securities to the public; and
- (b) another person (the “purchaser”)—
 - (i) agrees to purchase those securities with the intention of their immediate resale, to give effect to that intention of the offeror, at a profit or subject to payment by the offeror to the purchaser of a commission; and
 - (ii) binds himself or herself to purchase, or procure the purchase of, any of the securities not so resold.

Explanatory Note

Restatement of section 38 of Investment Funds, of the Companies and Miscellaneous Provisions Act, 2005.

Head 97 Civil liability for misstatements in prospectus

(1) Subject to Part B2, Heads 98 and 99 [equivalent of Sections 42 and 43 of the Investment Funds Companies and Miscellaneous Provisions Act, 2005], the following persons shall be liable to pay compensation to all persons who acquire any securities on the faith of a prospectus for the loss or damage they may have sustained by reason of —

- (a) any untrue statement included therein; or
- (b) any omission of information required by EU prospectus law to be contained in the prospectus,

namely —

- (i) the issuer who has issued the prospectus or on whose behalf the prospectus has been issued;

- (ii) the offeror of securities to which the prospectus relates;
 - (iii) every person who has sought the admission of the securities to which the prospectus relates to trading on a regulated market;
 - (iv) the guarantor of the issue of securities to which the prospectus relates;
 - (v) every person who is a director of the issuer at the time of the issue of the prospectus;
 - (vi) every person who has authorised himself or herself to be named and is named in the prospectus as a director of the issuer or as having agreed to become such a director either immediately or after an interval of time;
 - (vii) every person being a promoter of the issuer;
 - (viii) every person who has authorised the issue of the prospectus (not being the competent authority designated under Irish prospectus law).
- (2) In addition to the persons specified in Subhead (1) as being liable in the circumstances there set out, an expert who has given the consent required by Part B2, Head 101 [equivalent of Section 45 of the Investment Funds, Companies and Miscellaneous Provisions Act, 2005] to the inclusion in a prospectus of a statement purporting to be made by him or her shall, subject to Part B2, Heads 98 and 99 [equivalents of Sections 42 and 43 of the Investment Funds, Companies and Miscellaneous Provisions Act, 2005], be liable to pay compensation to all persons who acquire any securities on the faith of the prospectus for the loss or damage they may have sustained by reason of an untrue statement in the prospectus purporting to be made by him or her as an expert.

Explanatory Note

Restatement of section 41 of Investment Funds, Companies and Miscellaneous Provisions Act 2005.

Head 98 Exceptions and exemptions

- (1) A person shall not be liable under Part B2, Head 97 [equivalent of Section 41 of the Investment Funds, Companies and Miscellaneous Provisions Act, 2005] solely on the basis of a summary of a prospectus, including any translation thereof, unless it is misleading, inaccurate or inconsistent when read together with other parts of the prospectus.
- (2) Subject to Subhead (4), a person shall not be liable under Part B2, Head 97 [equivalent of section 41 of the Investment Funds, Companies and Miscellaneous Provisions Act, 2005] if he or she proves—
 - (a) that, having consented to become a director of the issuer, he or she withdrew, in writing, his or her consent before the issue of the prospectus, and that it was issued without his or her authority or consent; or
 - (b) that the prospectus was issued without his or her knowledge or consent and that on becoming aware of its issue, he or she forthwith gave reasonable public notice that it was issued without his or her knowledge or consent; or
 - (c) that after the issue of the prospectus and before the acquisition of securities thereunder by the person referred to in Part B2, Head 97 [equivalent of Section 41 of the Investment Funds, Companies and Miscellaneous Provisions Act, 2005], he or she, on becoming aware of any untrue statement therein or omission of material information required by EU prospectus law to be contained therein, withdrew, in writing, his or her consent thereto and gave reasonable public notice of the withdrawal and of the reason therefor; or
 - (d) that—
 - (i) as regards—
 - (l) every untrue statement not purporting to be made on the authority of an expert or of a public official document or statement

- (II) the omission from the prospectus of any information required by EU prospectus law to be contained therein,

he or she had reasonable grounds to believe, and did up to the time of the issue of the securities believe, that the statement was true or that the matter whose omission caused loss was properly omitted, and

- (ii) as regards every untrue statement purporting to be a statement by an expert or contained in what purports to be a copy of or extract from a report or valuation of an expert, it fairly represented the statement, or was a correct and fair copy of or extract from the report or valuation, and he or she had reasonable grounds to believe and did up to the time of the issue of the prospectus believe, that the person making the statement was competent to make it and, where required by Part B2, Head 101 [equivalent of Section 45 of the Investment Funds, Companies and Miscellaneous Provisions Act, 2005], that that person had given his or her consent to the inclusion of the statement in the prospectus and had not withdrawn, in writing, that consent before the publication of the prospectus or, to the defendant's knowledge, before issue of securities thereunder; and

- (iii) as regards every untrue statement purporting to be a statement made by an official person or contained in what purports to be a copy of or extract from a public official document, it was a correct and fair representation of the statement or copy of or extract from the document.

- (3) In Subheads (4) and (5) "by reason of the relevant consent", in relation to an expert, means by reason of his or her having given the consent required of him or her by Part B2, Head 101 [equivalent of Section 45 of the Investment Funds, Companies and Miscellaneous Provisions Act, 2005] to the inclusion in the prospectus of the statement concerned.
- (4) Subhead (2) shall not apply in the case of an expert, by reason of the relevant consent, in respect of an untrue statement purporting to be made by him or her as an expert.

- (5) An expert who, apart from this subhead, would under Part B2, Head 97 [equivalent of Section 41 of the Investment Funds, Companies and Miscellaneous Provisions Act, 2005] be liable, by reason of the relevant consent, in respect of an untrue statement purporting to be made by him or her as an expert shall not be so liable if he or she proves—

- (a) that having given his or her consent to the inclusion in the prospectus of the statement, he or she withdrew it in writing before publication of the prospectus, or
- (b) that after publication of the prospectus and before the acquisition of securities thereunder by the person referred to in Part B2, Head 97 [equivalent of Section 41 of the Investment Funds, Companies and Miscellaneous Provisions Act, 2005] on becoming aware of the untrue statement, withdrew his or her consent in writing and gave reasonable public notice of the withdrawal and of the reason therefor; or
- (c) that he or she was competent to make the statement and that he or she had reasonable grounds to believe and did up to the time of such acquisition of the securities believe that the statement was true.

Explanatory Note

Restatement of Section 42 of the Investment Funds, Companies and Miscellaneous Provisions Act, 2005.

Head 99 Restriction of liability where non-equity securities solely involved

Where a prospectus is issued solely in respect of non-equity securities—

- (a) only—
 - (i) the offeror or the person who has sought the admission of the securities to which the prospectus relates to trading on a regulated market; and

- (ii) subject to, and to the extent provided in, paragraph (c), the guarantor (if any), and no other person referred to in Head 97 of this Part [equivalent of Section 41 of the Investment Funds, Companies and Miscellaneous Provisions Act, 2005] shall be liable under that head in the circumstances in which that head applies unless—
- (l) the prospectus expressly provides otherwise; or
- (ll) that other such person is convicted on indictment of an offence created by Irish prospectus law or an offence under Head 104 in respect of the issue of that prospectus;
- (b) Head 5 (1) of Part A5 [equivalent of Section 383(3) of the Companies Act, 1963] shall not apply to the directors or secretary of the issuer to the extent that such application would thereby impose a liability under Head 97 of this Part [equivalent of Section 41 of the Investment Funds, Companies and Miscellaneous Provisions Act, 2005] on such directors or secretary, and
- (c) no liability shall attach under Head 97 of this Part [equivalent of Section 41 of the Investment Funds, Companies and Miscellaneous Provisions Act, 2005] to a guarantor of such securities save in respect of statements included in, or information omitted from, the prospectus that relate to the guarantor or the guarantee given by the guarantor.”.

Explanatory Note

Restatement of Section 43 of Investment Funds, Companies and Miscellaneous Provisions Act, 2005 (as amended by the Investment Funds, Companies and Miscellaneous Provisions Act, 2006).

Head 100 Indemnification of certain persons

- (1) This head applies where—
- (a) a prospectus contains the name of a person as a director of the issuer, or as having agreed to become a director thereof, and he or she has not consented to become a director, or has withdrawn in writing, his or her consent before the issue of the prospectus, and has not authorised or consented to the issue thereof; or
- (b) the consent of an expert is required by Part B2, Head 101 [equivalent of Section 45 of the Investment Funds, Companies and Miscellaneous Provisions Act, 2005] to the inclusion in a prospectus of a statement purporting to be made by him or her and he or she either has not given that consent or has withdrawn in writing, that consent before the issue of the prospectus.
- (2) The directors of the issuer, except any without whose knowledge or consent the prospectus was issued, and any other person who authorised the issue thereof shall be liable to indemnify the person named as mentioned in Subhead (1) or whose consent was required as so mentioned, as the case may be, against all damages, costs and expenses to which he or she may be made liable by reason of his or her name having been inserted in the prospectus or of the inclusion therein of a statement purporting to be made by him or her as an expert, as the case may be, or in defending himself or herself against any action or legal proceeding brought against him or her in respect thereof.

Explanatory Note

Restatement of Section 44 of the Investment Funds, Companies and Miscellaneous Provisions Act, 2005.

Head 101 Expert’s consent to issue of prospectus containing statement by him or her

- (1) A prospectus including a statement purporting to be made by an expert shall not be issued unless—

- (a) the expert has given and has not, before publication of the prospectus, withdrawn in writing, his or her consent to the issue thereof with the statement included in the form and context in which it is included; and
 - (b) to the extent that the inclusion in the prospectus of the following is required by EU prospectus law, a statement that the expert has given and has not withdrawn in writing, that consent appears in the prospectus.
- (2) If any prospectus is issued in contravention of this head, the issuer and every person who is knowingly a party to the issue thereof shall be guilty of a category three offence .

Explanatory Note

Restatement of Section 45 of the Investment Funds, Companies and Miscellaneous Provisions Act, 2005.

In keeping with the new schema for categorisation of offences it may be necessary on the enactment of the General Scheme to re-enact the MAD Regulations or at least the offence provisions therein to reflect the new categorisation.

Head 102 Regulations (Chapter 13)

- (1) The Minister may make regulations for the purposes of—
- (a) giving effect to the 2003 Prospectus Directive; and
 - (b) supplementing and making consequential provision in respect of the Prospectus Regulation.
- (2) Regulations under this head may contain such incidental, supplementary and consequential provisions as appear to the Minister to be necessary or expedient for the purposes of those regulations, including—
- (a) provisions creating offences (but the regulations may only provide penalties in respect of a summary conviction for any such offence); and
 - (b) provisions revoking instruments made under other enactments.
- (3) This head is without prejudice to Section 3 of the European Communities Act, 1972.

Explanatory Note

Restatement of Section 46 of the Investment Funds, Companies and Miscellaneous Provisions Act, 2005.

Head 103 Penalties on conviction on indictment and defences in respect of certain offences

- (1) A person who is guilty of an offence created by Irish prospectus law (being an offence expressed by that law to be an offence to which this head applies) shall, without prejudice to any penalties provided by that law in respect of a summary conviction for the offence, be liable on conviction on indictment, to a fine not exceeding €1,000,000 or imprisonment for a term not exceeding 5 years or both.
- (2) In proceedings for an offence created by Irish prospectus law, it shall be a defence for the defendant to prove—
- (a) as regards any matter not disclosed in the prospectus concerned, that he or she did not know it; or
 - (b) the contravention arose from an honest mistake of fact on his or her part; or
 - (c) the contravention was in respect of matters which, having regard to the circumstances of the case, was immaterial or as respects which, having regard to those circumstances, he or she ought otherwise reasonably to be excused.

Explanatory Note

Restatement of Section 47 of the Investment Funds, Companies and Miscellaneous Provisions Act, 2005.

Head 104 Untrue statements and omissions in prospectus: criminal liability

- (1) Where a prospectus is issued and—
- (a) includes any untrue statement; or
 - (b) omits any information required by EU prospectus law to be contained in it,

any person who authorised the issue of the prospectus (not being the competent authority designated under Irish prospectus law) shall be guilty of a category 2 offence unless he or she proves—

- (i) as regards an untrue statement, either that the statement was, having regard to the circumstances of the case, immaterial or that he or she honestly believed and did, up to the time of the issue of the prospectus, believe that the statement was true; or
 - (ii) as regards any information omitted, either that the omission was, having regard to the circumstances of the case, immaterial or that he or she did not know it; or
 - (iii) that the making of the statement or omission was otherwise such as, having regard to the circumstances of the case, ought reasonably to be excused.
- (2) Summary proceedings for an offence under this head may be brought and prosecuted by the competent authority designated under Irish prospectus law.
 - (3) If at a trial for an offence under this head or an offence created by Irish prospectus law, the judge or jury has to consider whether the defendant honestly believed a particular thing or was honestly mistaken in relation to a particular thing, the presence or absence of reasonable grounds for such a belief or for his or her having been so mistaken is a matter to which the judge or jury is to have regard, in conjunction with any other relevant matters, in considering whether the defendant so believed or was so mistaken.

Explanatory Note

Amended restatement of Section 48 of the Investment Funds, Companies and Miscellaneous Provisions Act, 2005.

Head 105 Minimum subscription and amount payable on application

- (1) Where a prospectus states the minimum amount which, in the opinion of the directors, must be raised from an issue of shares and that no allotment shall be made of any of those shares unless that minimum amount has been subscribed and the sum payable on application for the amount so stated has been paid up, then no such allotment shall be made unless that minimum amount has been subscribed and the said sum so payable has been paid up.
- (2) The amount so stated in the prospectus shall be reckoned exclusively of any amount payable otherwise than in cash and is in this Bill referred to as “the minimum subscription”.
- (3) If the conditions aforesaid have not been complied with on the expiration of 40 days after the first issue of the prospectus, all money received from applicants for shares shall be forthwith repaid to them without interest and if any such money is not so repaid within 48 days after the issue of the prospectus, the directors of the company shall be jointly and severally liable to repay that money with interest at the rate of 5 per cent. per annum from the expiration of the forty-eighth day, so however that a director shall not be liable if he proves that the default in the repayment of the money was not due to any misconduct or negligence on his part.
- (4) Any condition requiring or binding any applicant for shares to waive compliance with any requirement of this head shall be void.
- (5) This head, except Subhead (3) thereof, shall not apply to any allotment of shares subsequent to the first allotment of shares offered to the public for subscription.

Explanatory Note

Restatement of Section 53 of the Companies Act, 1963.

Head 106 Document containing offer to state whether shares will be allotted where issue not fully subscribed

- (1) Without prejudice to Part B2, Head 105 [equivalent of Section 53 of the Companies Act, 1963] no allotment shall be made of any share capital of a PLC offered for subscription unless—
 - (a) that capital is subscribed for in full; or
 - (b) the offer states that, even if the capital is not subscribed for in full, the amount of that capital subscribed for may be allotted in any event or in the event of the conditions specified in the offer being satisfied; and where conditions are so specified, no allotment of the capital shall be made by virtue of paragraph (b) unless those conditions are satisfied.
- (2) Part B2, Heads 105 and 107 [equivalent of Section 53(4) and section 55 of the Companies Act, 1963] shall apply where shares are prohibited from being allotted by Subhead (1) as they apply where the conditions mentioned in Subhead (1) of the said Part B2, Head 105 [equivalent of Section 53 of the Companies Act, 1963] are not complied with; and Part B2, Head 105 (4) [equivalent of section 53(5) of the Companies Act, 1963] shall apply to this head as it applies to that head.
- (3) The provisions of this head shall apply in the case of shares offered as wholly or partly payable otherwise than in cash as they apply in the case of shares offered for subscription and—
 - (a) in Subhead (1), the word “subscribed” shall be construed accordingly; and
 - (b) in the said Part B2, Head 105 (3) [equivalent of Section 53(4) of the Companies Act, 1963], as it applies by virtue of Subhead (2) to the former case, references to the repayment of money received from applicants for shares shall include references to the return of any other consideration so received (including, if the case so requires, the release of the applicant from any undertaking) or, if it is not reasonably practicable to return the consideration, the payment of money equal to the value of the consideration at the time it was so received and references to interest shall have effect accordingly.

Explanatory Note

Restatement of Section 22 of the Companies (Amendment) Act, 1983.

Head 107 Effect of irregular allotment

- (1) An allotment made by a company to an applicant in contravention of Part B2, Head 105 [equivalent of Section 53 of the Companies Act, 1963] shall be voidable at the instance of the applicant within one month after the date of the allotment and not later, and shall be so voidable notwithstanding that the company is in the course of being wound up.
- (2) Where an allotment is avoided under this head the company shall within one month thereafter, deliver to the Registrar of companies for registration, a notice to that effect and Head 5(12) of Part A3 shall apply in relation to this subhead as they apply in relation to that head.
- (3) If any director of a company knowingly contravenes, or permits or authorises the contravention of any of the provisions of Part B2, Head 105 [Section 53 of the Companies Act, 1963] with respect to allotment, he shall be liable to compensate the company and the allottee respectively for any loss, damages or costs which the company or allottee may have sustained or incurred thereby, so however that proceedings to recover any such loss, damages or costs shall not be commenced after the expiration of 2 years from the date of the allotment.

Explanatory Note

Restatement of Section 55 of the Companies Act, 1963.

Head 108 Allotment of securities to be dealt in on stock exchange or regulated market

- (1) Where a prospectus, whether issued generally or not, states that application has been or will be made for permission for the [securities] offered thereby to be dealt in on any stock exchange [or regulated market], any allotment made on an application in pursuance of the prospectus shall, whenever made, be void if the permission has not been applied for before the third day after the first issue of the prospectus or if the permission has not been granted within 6 weeks from the date of the closing of the subscription lists.
- (2) Where the permission has not been applied for as aforesaid or has not been granted, the company shall forthwith repay without interest all money received from applicants in pursuance of the prospectus and if any such money is not repaid within 8 days after the company becomes liable to repay it, the directors of the company shall be jointly and severally liable to repay that money with interest at the rate of 5 per cent. per annum from the expiration of the eighth day, so however that a director shall not be liable if he proves that the default in the repayment of the money was not due to any misconduct or negligence on his part.
- (3) All money received as aforesaid shall be kept in a separate bank account so long as the company may become liable to repay it under Subhead (2); and if default is made in complying with this subhead, the company and every officer of the company who is in default shall be guilty of a category three offence.
- (4) Any condition requiring or binding any applicant for [securities] to waive compliance with any requirement of this head shall be void.
- (5) This head shall have effect—
- (a) in relation to any [securities] agreed to be taken by a person underwriting an offer thereof by a prospectus as if he had applied therefor in pursuance of the prospectus; and
 - (b) in relation to a prospectus offering [securities] for sale with the following modifications,—
 - (i) references to sale shall be substituted for references to allotment;
 - (ii) the persons by whom the offer is made, and not the company, shall be liable under Subhead (2) to repay money received from applicants, and references to the company's liability under that subhead shall be construed accordingly; and
 - (iii) for the reference in Subhead (3) to the company and every officer of the company who is in default there shall be substituted a reference to any person by or through whom the offer is made and who knowingly and wilfully authorises or permits the default;
- (6) In reckoning for the purposes of this head, the third day after another day, any intervening day which is a Saturday or Sunday or which is a bank holiday shall be disregarded and if the third day (as so reckoned) is itself a Saturday or Sunday or such a public holiday, there shall for the said purposes be substituted the first day thereafter which is none of them.
- (7) The provisions of this head shall not apply in relation to an allotment of non-equity securities.

Explanatory Note

Restatement of Section 57 of the Companies Act, 1963.

Head 109 Local offers

- (1) An offering document prepared for a local offer shall contain the following statements in print in clearly legible type -
- (a) on the front page or otherwise in a prominent position:

“This document,

—has not been prepared in accordance with Directive 2003/71/EC on prospectuses or any measures made under that Directive or the laws of Ireland or of any EU Member State or EEA treaty adherent state that implement that Directive or those measures,

—has not been reviewed, prior to its being issued, by any regulatory authority in Ireland or in any other EU Member State or EEA treaty adherent state,

and therefore may not contain all the information required where a document is prepared pursuant to that Directive or those laws.”;

(b) elsewhere in the offering document:

- (i) where the offering document contains information on past performance:

“Past performance may not be a reliable guide to future performance.”;

- (ii) where the offering document contains information on simulated performance:

“Simulated performance may not be a reliable guide to future performance.”;

- (iii) “Investments may fall as well as rise in value.”;

- (iv) where securities are described as being likely to yield income or as being suitable for an investor particularly seeking income from his or her investment, and where the income from the securities can fluctuate:

“Income may fluctuate in accordance with market conditions and taxation arrangements.”;

- (v) where the primary market for the securities or the currency of the underlying business is in a currency other than euro:

“Changes in exchange rates may have an adverse effect on the value, price or income of the securities.”;

- (vi) where the securities do not constitute a readily realisable investment:

“It may be difficult for investors to sell or realise the securities and/or obtain reliable information about their value or the extent of the risks to which they are exposed.”.

- (2) Any requirement of Subhead (1) as to the inclusion of a particular statement in an offering document shall be regarded as satisfied if words substantially to the effect of that statement are instead included in that document.
- (3) If an offeror fails to comply with Subhead (1) the offeror shall be guilty of a category three offence.

(4) No offering document prepared for a local offer shall be issued by or on behalf of a company or in relation to an intended company unless, on or before the date of its publication, a copy of the offering document has been delivered to the Registrar for registration.

(5) Summary proceedings for an offence under this head may be brought and prosecuted by the competent authority designated under Irish prospectus law or by the Registrar.

Explanatory Note

Restatement of Section 49 of the Investment Funds, Companies and Miscellaneous Provisions Act, 2005.

Head 110 Exclusion of Investment Intermediaries Act, 1995

(1) Any document issued in connection with an offer of securities by or on behalf of an issuer, offeror or person seeking admission of securities to trading on a regulated market shall not be regarded as constituting an investment advertisement within the meaning of Section 23 of the Investment Intermediaries Act, 1995.

(2) “Document” in Subhead (1) includes, in the case of a local offer, an offering document.

Explanatory Note

Restatement of Section 50 of the Investment Funds, Companies and Miscellaneous Provisions Act, 2005.

Head 111 Power to make certain rules and issue guidelines

(1) In this head “competent authority” means the competent authority designated under Irish prospectus law.

(2) The competent authority may make rules imposing or enabling the competent authority to impose requirements on persons on whom an obligation or obligations are imposed by Irish prospectus law, being requirements—

- (a) to do or not to do specified things so as to secure that the provisions of Irish prospectus law are complied with and, in particular (without limiting the generality of this paragraph), to adopt specified procedures and use specified forms in the provision of information to the competent authority;

- (b) to do or not to do specified things so as to secure the effective supervision by the competent authority of activities of the kind to which Irish prospectus law relates and, in particular (without limiting the generality of this paragraph), to make such reports or disclose such matters, at such times and in such manner, to the competent authority or other specified persons as are provided for by the rules or specified by the competent authority pursuant to the rules, being reports or a disclosure of matters that is or are required by virtue or in consequence of the operation of Irish prospectus law.
- (3) Rules under this head may include rules providing for the manner in which or the matters by reference to which (or both) a determination is to be made of any issue as to whether a transaction or transactions is or are of a significant size for the purposes of the provisions of Irish prospectus law implementing Article 2(2)(a) of the 2003 Prospectus Directive.
- (4) The reference in Subhead (1) to an obligation imposed on a person by Irish prospectus law includes a reference to an obligation imposed on a person by virtue of the person's exercising a right or option provided under Irish prospectus law.
- (5) Rules under this head may contain such consequential, incidental or supplemental provisions as the competent authority considers necessary or expedient.
- (6) Rules under this head shall not contain any provision that is inconsistent with Irish prospectus law or require the provision of information to any person, the provision of which is not reasonably related to the purposes for which the applicable provisions of the 2003 Prospectus Directive have been adopted.
- (7) The provisions of Irish prospectus law that are expressed by that law to be made for the purpose of enabling the imposition of administrative sanctions shall apply in relation to a contravention of rules under this head as they apply in relation to a contravention of a provision of Irish prospectus law and accordingly, a sanction that may be imposed pursuant to the first-mentioned provisions of Irish prospectus law in respect of a contravention of a provision of that law may, in accordance with that law, be imposed in respect of a contravention of rules under this head.
- (8) The competent authority may issue guidelines in writing as to the steps that may be taken to comply with Irish prospectus law.

Explanatory Note

Restatement of Section 51 of the Investment Funds, Companies and Miscellaneous Provisions Act, 2005.

Head 112 Avoidance of certain agreements

A condition—

- (a) requiring or binding an applicant for securities to waive compliance with any requirement of—
- (i) this Chapter; or
 - (ii) EU prospectus law; or
- (b) where EU prospectus law applies, purporting to affect him or her with notice of any contract, document or matter not specifically referred to in the prospectus concerned, shall be void.

Explanatory Note

Restatement of Section 52 of the Investment Funds, Companies and Miscellaneous Provisions Act, 2005.

Chapter 14

Transparency Requirements Regarding Issuers of Securities Admitted to Trading on Certain Markets

Head 113 Interpretation

(1) In this Chapter—

“Transparency (Regulated Markets) Directive” means Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and amending Directive 2001/34/EC, including the first-mentioned Directive as it stands amended for the time being;

“transparency (regulated markets) law” means—

- (a) the measures adopted for the time being by the State to implement the Transparency (Regulated Markets) Directive [and supplemental EU measures] (whether an Act of the Oireachtas, regulations under Section 3 of the European Communities Act, 1972, regulations under section 30 or any other enactment (other than, save where the context otherwise admits, this Chapter));
- (b) any measures directly applicable in the State in consequence of the Transparency (Regulated Markets) Directive and, without prejudice to the generality of this paragraph, includes any Regulation or Decision made by the Commission pursuant to the procedure referred to in Article 27(2) of that Directive; and
- (c) any supplementary and consequential measures adopted for the time being by the State in respect of any Regulation or Decision made by the Commission in consequence of the Transparency (Regulated Markets) Directive pursuant to the foregoing procedure;

“supplemental Directive” means any Directive made by the Commission in consequence of the Transparency (Regulated Markets) Directive pursuant to the procedure referred to in Article 27(2) of that Directive.

- (2) A word or expression that is used in this Chapter and is also used in the Transparency (Regulated Markets) Directive shall have in this Chapter the same meaning as it has in that Directive

Explanatory Note

This head re-enacts section 19 of the Investment Funds, Companies and Miscellaneous Provisions Act, 2006.

Head 114 Power to make certain regulations (Chapter 14)

- (1) The Minister may make regulations for the purposes of—
 - (a) giving effect to the Transparency (Regulated Markets) Directive or any supplemental Directive; and
 - (b) supplementing and making consequential provision in respect of any Regulation or Decision made by the Commission in consequence of the first-mentioned Directive in paragraph (a) pursuant to the procedure referred to in Article 27(2) of that Directive.
- (2) Regulations under this head may contain such incidental, supplementary and consequential provisions as appear to the Minister to be necessary or expedient for the purposes of those regulations, including—
 - (a) provisions creating offences (but the regulations may only provide penalties in respect of a summary conviction for any such offence); and
 - (b) provisions creating civil liability in respect of contraventions of the regulations so as to enable any person suffering loss thereby to recover compensation for that loss.
- (3) Civil liability shall not be created by regulations under Subhead (2) in respect of a contravention of regulations under this head save in respect of such a contravention that involves either—
 - (a) an untrue or misleading statement; or
 - (b) the omission from a statement of any matter required to be included in it, being, in either case, a statement—

- (i) that is contained in a publication made in purported compliance with a provision of transparency (regulated markets) law specified in the regulations; and
 - (ii) in respect of which a person suffers a loss by reason of the person's acquiring or contracting to acquire securities (or an interest in them) in reliance on that publication at a time when, and in circumstances in which, it was reasonable for the person to rely on that publication, and the following condition is fulfilled in respect of that publication.
- (4) That condition is that a person discharging responsibilities within the issuer of the securities referred to in Subhead (3) in relation to that publication (being responsibilities of a kind specified in regulations under this head)—
- (a) knew the statement concerned to be untrue or misleading or was reckless as to whether it was untrue or misleading; or
 - (b) knew the omission concerned to be dishonest concealment of a material fact.
- (5) Regulations under this head may also make, for the purposes of those regulations, provision analogous to that which is made by Part A5, Chapter 4 and Part B2 Heads 36 to 56 [equivalent of Part IV of the Companies Act, 1990].
- (6) This head is without prejudice to section 3 of the European Communities Act 1972.

Explanatory Note

This head re-enacts Section 20 of the Investment Funds, Companies and Miscellaneous Provisions Act, 2006.

Head 115 Conviction on indictment of offences under transparency (regulated markets) law

A person who is guilty of an offence created by transparency (regulated markets) law (being an offence expressed by that law to be an offence to which this head applies) shall, without prejudice to any penalties provided by that law in respect of a summary conviction for the offence, be liable on conviction on indictment, to a fine not exceeding €1,000,000 or imprisonment for a term not exceeding 5 years or both.

Explanatory Note

This head re-enacts Section 21 of the Investment Funds, Companies and Miscellaneous Provisions Act, 2006.

Head 116 Supplementary rules, etc., by competent authority

- (1) In this head "competent authority" means the competent authority designated under transparency (regulated markets) law for the purposes of the provisions of the Transparency (Regulated Markets) Directive (other than Article 24 (4) (h) of that Directive).
- (2) The competent authority may make rules imposing or enabling the competent authority to impose requirements on persons on whom an obligation or obligations are imposed by transparency (regulated markets) law, being requirements—
 - (a) to do or not to do specified things so as to secure that the provisions of transparency (regulated markets) law are complied with and, in particular (without limiting the generality of this paragraph), to adopt specified procedures and use specified forms in the provision of information to the competent authority;

- (b) to do or not to do specified things so as to secure the effective supervision by the competent authority, of activities of the kind to which transparency (regulated markets) law relates and, in particular (without limiting the generality of this paragraph), to make such reports or disclose such matters, at such times and in such manner, to the competent authority or other specified persons, as are provided for by the rules or specified by the competent authority pursuant to the rules, being reports or a disclosure of matters that is or are required by virtue or in consequence of the operation of transparency (regulated markets) law.
- (3) Rules under this head may, in particular, include rules necessary for the performance by the competent authority of the functions under Article 24 of the Transparency (Regulated Markets) Directive, other than paragraph (4) (h) of that Article.
- (4) Rules under this head may contain such consequential, incidental or supplemental provisions as the competent authority considers necessary or expedient.
- (5) Rules under this head shall not contain any provision that is inconsistent with transparency (regulated markets) law or require the provision of information to any person the provision of which is not reasonably related to the purposes for which the applicable provisions of the Transparency (Regulated Markets) Directive have been adopted.
- (6) The provisions of transparency (regulated markets) law that are expressed by that law to be made for the purpose of enabling the imposition of administrative sanctions shall apply in relation to a contravention of—
- (a) rules under this head; and
- (b) rules adopted by the Irish Auditing and Accounting Supervisory Authority under Part A14, Head 22 (3) [equivalent of Section 10(3) of the Companies (Auditing and Accounting) Act, 2003] concerning the matters that relate to its functions under Part A14, Head 21(2)(a) [equivalent of Section 9(2)(a) of the Companies (Auditing and Accounting) Act, 2003], as they apply in relation to a contravention of a provision of transparency (regulated markets) law and, accordingly, a sanction that may be imposed pursuant to the first-mentioned provisions of transparency (regulated markets) law in respect of a contravention of a provision of that law may, in accordance with that law, be imposed in respect of a contravention of rules referred to in either of the foregoing paragraphs.
- (7) The competent authority may issue guidelines in writing as to the steps that may be taken to comply with transparency (regulated markets) law.

Explanatory Note

This head re-enacts Section 22 of the Investment Funds, Companies and Miscellaneous Provisions Act, 2006.

Head 117 Application of transparency (regulated markets) law to certain markets

- (1) The Minister, after consultation with the competent authority designated under Part B2, Head 116 (1) [equivalent of Section 22(1) of the Investment Funds, Companies and Miscellaneous Provisions Act, 2006], may, by provisional order, provide that one or more provisions of transparency (regulated markets) law that apply in relation to a market to which the Transparency (Regulated Markets) Directive applies shall, with such modifications, if any, as are specified in the order, apply to a market specified in the order.
- (2) A provisional order under this head shall not have effect unless or until it is confirmed by an Act of the Oireachtas.

Explanatory Note

This head re-enacts Section 24 of the Investment Funds, Companies and Miscellaneous Provisions Act, 2006.

First Schedule

Part One

Form of Memorandum of Association of a PLC

1. The name of the company is "Northern Mining, public limited company".
2. The company is to be a public limited company.
3. The objects for which the company is established are the mining of minerals of all kinds and the doing of all such other things as are incidental or conducive to the attainment of the above object.
4. The liability of the members is limited.
5. The share capital of the company is €30,000, divided into 30,000 shares of €1 each.

We, the several persons whose names and addresses are subscribed, wish to be formed into a company in pursuance of this memorandum of association, and we agree to take the number of shares in the capital of the company set opposite our respective names.

Names, Addresses and Descriptions of Subscribers		Number of Shares taken by each Subscribers
1.	Jerry O'Donovan of.....	5
2.	Agnieszka Mooney of	375
3.	Cormac Vayner of.....	225
4.	Colleen Parsons of	55
Total Shares taken		660

Dated the . day of . . 20.

Witness to the above signatures:

Name:

Address:

Part Two

Regulations for Management of PLC

Part B3 – Designated Activity Companies

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2. Interpretation of this Part

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4. The form of the constitution
5. Provisions as to names of DACs
6. Trading under a misleading name
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10. Corporate capacity of a DAC
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Chapter 3 - Share Capital

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19. Share or interest qualifications of directors
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Chapter 6 – Financial Statements, Annual Return and Audit

23. Exemption from consolidation: size of group
24. Exemption from consolidation: holding company that is a subsidiary of another EEA registered undertaking
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28. Approval and signing of statutory financial statements by board of directors
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Chapter 8 - Receivers

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Chapter 10 - Examinerships

Chapter 11 - Winding-Up

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Chapter 16 Public Offers Of Securities

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First Schedule **Model Form of Memorandum of Association of a Designated Activity Company (DAC), Being a Private Company Limited By Shares**

Second Schedule **Model Form of Memorandum of Association of a Designated Activity Company (DAC), Being a Private Company Limited By Guarantee and Having a Share Capital**

Part B3 - Designated Activity Companies

Chapter 1

Preliminary and Definitions

Head 1 Defined terms

(1) In this Part—

“**designated activity company**” or “**dac**” or “**DAC**” means

- (a) a private company limited by shares with the capacity, including the power, to do only those acts or things set out in its constitution [memorandum of association], or
- (b) a private company limited by guarantee and having a share capital with the capacity, including the power, to do only those acts or things set out in its constitution;

“**member**” means member of a designated activity company or DAC;

“**constitution**” has the meaning ascribed to it in Head 4 of this Part.

Explanatory Note

The concept of a “designated activity company” is derived from paragraphs 10.9.9 to 10.9.13 of the First Report of the Company Law Review Group. The concept originally came from the recognition that there would be a need to provide for a type of company similar to the existing private company limited by shares, i.e. a private company with an objects clause. On further reflection, the Steering Committee concluded that it would also be appropriate to include private companies limited by guarantee and having a share capital within this type of company.

Part B3 - Designated Activity Companies

Head 2 Interpretation of this Part

(1) The provisions of Parts A1 to A14 of Pillar A apply to DACs subject to such amendments thereto, or exclusions therefrom, as are contained in this Part.

(2)

(a) The provisions contained in the following table shall not apply to a DAC limited by shares to which this Part applies:

Part	Head	Title
A2	2	Way of forming a company limited by shares
A2	3	The form of the constitution
A2	8(3)	Effect of registration
A2	9(1) – (3)	Provisions as to names of companies
A2	10	Trading under a misleading name
A2	20	Capacity of a private company limited by shares
A2	22	Persons or bodies of persons authorised to bind a company
A3	4	Limitation on offer of securities to the public
A3	46	Holding by subsidiary of shares or [an interest/membership by guarantee] in its holding company.
A4	2	Directors
A4	10	Share qualifications of directors
A4	16	Rotation of Directors
A4	28 (o)	Meetings of Directors and Committees of Directors
A4	29	Holding of any other office or place of profit under the company by a director
A4	35	Definition of member
A4	46	Annual General Meeting
A4	64&65	Unanimous and majority written resolutions
A11	86	Liability as contributories of past and present members

Part B3 - Designated Activity Companies

(b) The provisions contained in the following table shall not apply to a DAC limited by guarantee with a share capital to which this Part applies:

Part	Head Intended	Title
A2	2	Way of forming a company limited by shares
A2	3	The form of the constitution
A2	8(3)	Effect of registration
A2	9(1) – (3)	Provisions as to names of companies
A2	10	Trading under a misleading name
A2	20	Capacity of a private company limited by shares
A2	22	Persons or bodies of persons authorised to bind a company
A3	4	Limitation on offer of securities to the public
A3	46	Holding by subsidiary of shares or [an interest/membership by guarantee] in its holding company.
A4	2	Directors
A4	10	Share or interest qualifications of directors
A4	16	Rotation of Directors
A4	28 (o)	Meetings of Directors and Committees of Directors
A4	29	Holding of any other office or place of profit under the company by a director
A4	46	Annual General Meeting
A4	64&65	Unanimous and majority written resolutions
A6	36	Signing of Companies Acts individual accounts
A11	86	Liability as contributories of past and present members

Chapter 2

Incorporation and Consequential Matters

Head 3 Way of forming a designated activity company

- (1) A DAC may be formed for any lawful purpose by any person or persons subscribing to a constitution and complying with the registration requirements in this Part.
- (2) The number of members is limited to 99 not including current or former employees of the DAC.
- (3) A company may be registered as a DAC following—
 - (i) Re-registration as a DAC of an existing company other than a DAC, pursuant to Part B6;
 - (ii) the merger of two or more DACs pursuant to Part B3, Chapter 9; or
 - (iii) the division of a DAC into two or more DACs pursuant to Part B3, Chapter 9.
- (4) The liability of each member shall be limited to the amount, if any, unpaid on the shares held by him, if any, or to such amount as the members have undertaken to contribute to the assets of the DAC in the event of its being wound up.
- (5) A DAC shall not be formed and registered unless it appears to the Registrar that the DAC, when registered, will carry on an activity in the State.
- (6) The certificate of incorporation issued under Head 8(1) of Part A2 shall state that the company is a designated activity company (DAC).
- (7) Part A2, Head 2 shall not apply to the formation of a DAC.

Explanatory Note

This head sets out the manner in which a DAC may be formed, and delimits the liability of any member of such a company. The text of the head broadly follows the model of Head 2, Part A2. It allows for single member companies.

Subhead (4) recognises that members may be limited either by shares or by shares and guarantee.

Subhead (6) re-enacts Section 5(3) of Companies (Amendment) Act, 1983 for a DAC.

Head 4 The form of the constitution

- (1) Subject to Subhead (3), the constitution of a DAC shall be in the form of a memorandum and articles of association which together shall be referred to in this Part as a constitution.
- (2) The memorandum of association of a DAC shall state—
 - (a) its name;
 - (b) that it is a DAC, registered under this Part;
 - (c) its objects;
 - (d) the amount of share capital with which the DAC proposes to be registered, and the division thereof into shares of a fixed amount.
- (3) If a DAC adopts supplemental regulations, those regulations shall be in the form of articles of association.
- (4) The memorandum of association shall—
 - (a)
 - (i) in the case of a private company limited by shares with the capacity, including the power, to do only those acts or things set out in its constitution, be in the form [as set out in the First Schedule to this Part] or as near thereto as circumstances permit,
 - (ii) in the case of a a private company limited by guarantee and having a share capital with the capacity, including the power, to do only those acts or things set out in its constitution, be in the form [as set out in the Second Schedule to this Part] or as near thereto as circumstances permit;
 - (b) be printed in an entire format;
 - (c) be signed by each subscriber in the presence of at least one witness who must attest the signature.
- (5) In the case of any DAC, the articles of association, if any, shall—

- (a) be in the form set out in the First and Second Schedules to this Part,
 - (b) be printed in an entire format, and
 - (c) be signed by each subscriber in the presence of at least one witness who must attest the signature.
- (6) Where the constitution is delivered to the Registrar otherwise than in legible form and is authenticated by each subscriber in such manner as is directed by the Registrar, the requirements in Subhead (4) for signature by each subscriber in the presence of at least one witness and for attestation of such signature shall not apply.
- (7) Part A2, Head 3 shall not apply to a DAC.

Explanatory Note

The wording at Subhead (4) has been amended to reflect the fact that the constitution of a DAC is a two-part document and to reflect the intention to attach a Schedule (model constitution) for DACs consisting of two Parts: Part I will set out the contents of the memorandum and Part II will be blank to allow for supplemental regulations.

The wording at Head 2(d) has been modelled on the wording of Head 4(2)(d) of Part B2.

Signature requirements are as set out at Head 5, Part A2, i.e. the statement accompanying the constitution shall be signed by or on behalf of the subscribers and shall be accompanied by a consent signed by each of the persons named in it as a director, secretary or joint secretary to act in that capacity.

A new Subhead (6) is added to facilitate online incorporation. It is modelled on Section 2(6)(A) of the UK Companies Act, 1985.

[N.B. Heads 5, 6, 7 and 8 of A2 apply]

Head 5 Provisions as to names of DACs

- (1) The name of a company limited by guarantee shall end with one of the following:
 - “(designated activity company)”
 - “([Irish equivalent])”.
- (2) The words “designated activity company” may be abbreviated to “(dac)”/ “(DAC)” or “(d.a.c.)”/ “(D.A.C.)” in any usage after the registration by any person including the DAC.

- (3) The words “Irish equivalent” may be abbreviated to “(ooo)”/ “(OOO)” or “(o.o.o.)”/ “(O.O.O.)” in any usage after the registration by any person including the [Irish equivalent].
- (4) Every DAC carrying on business under a name other than its corporate name shall register in the manner directed by law for the registration of business names but the use of the abbreviations in Subheads (2) and (3) shall not of itself render such registration necessary.
- (5) Part A2, Head 9 shall not apply to a DAC

Explanatory Note

This head is modelled on Head 5 of Part B2 dealing with provisions as to names of PLCs. It is recognised that currently a charity may apply for a licence under Section 24 of the Companies Act, 1963 to dispense with the ltd./teo in its name, see head below.

Head 6 Trading under a misleading name

- (1) A person who is not a DAC and, if that person is a company, any officer of the company who is in default, shall be guilty of a category three offence if he carries on any trade, profession or business under a name which includes, as its last part, the words “designated activity company” or “[Irish Equivalent]” or abbreviations of those words.
- (2) A DAC and any officer of the DAC who is in default shall be guilty of a category three offence if, in circumstances in which the fact that it is a DAC is likely to be material to any person, it uses a name which may reasonably be expected to give the impression that it is a company other than a DAC.
- (3) Subhead (1) shall not apply to any company-
 - (a) to which Part B7 [equivalent of Part XI of the Companies Act, 1963] applies; and
 - (b) which has provisions in its constitution that would entitle it to rank as a DAC if it had been registered in the State.

Explanatory Note

An amended re-enactment of Sections 56(1), (2) and (4) of the Companies (Amendment) Act, 1983.

Head 7 Power to dispense with “designated activity company” or “Irish equivalent” in name of charitable and other companies

- (1) A DAC shall, notwithstanding its registration as a company with limited liability, be exempt from the provisions of this Bill relating to the use of the words “designated activity company” or “Irish equivalent” as part of its name and the publishing of its name, but shall enjoy all the privileges and shall (subject to this head) be subject to all the obligations of DACs, where -
- (a) its objects are the promotion of commerce, art, science, education, religion, charity or any other prescribed object; and
 - (b) its constitution -
 - (i) requires its profits (if any) or other income to be applied to the promotion of its objects,
 - (ii) prohibits the payment of dividends or the making of distributions to its members, and
 - (iii) requires all the assets which would otherwise be available to its members to be transferred on its winding-up to another company whose objects comply with paragraph (a) and which meets the requirements of this paragraph; and
 - (c) a director or secretary of the company (or, in the case of an association about to be formed as a limited company, one of the persons who are to be the first directors or the person who is to be the first secretary of the company) has delivered to the Registrar a statement in the prescribed form that the company complies or, where applicable, will comply with the requirements of paragraphs (a) and (b).
- (2) The Registrar shall refuse to register as a DAC any association about to be formed as a DAC by a name which does not include the word [“dac”] or [“000”] unless a declaration as provided for under Subhead (1)(c) has been delivered to the Registrar.

- (3) An application by a company registered as a DAC for a change of name including or consisting of the omission of the words “designated activity company” shall be made in accordance with Part A2, Head 13 [equivalent of Section 23 of the Companies Act, 1963] and the Registrar shall refuse to accede to the application unless a declaration as provided for under Subhead (1)(c) has been delivered to him.

- (4) A DAC which is exempt under Subhead (1) and which is permitted to omit the words “designated activity company” from its name shall not alter its constitution so that it ceases to comply with the requirements of that subhead.

- (5) If it appears to the Registrar that a company which is registered under a name not including the words “designated activity company” -

- (a) has carried on any business other than the promotion of any of the objects mentioned in Subhead (1)(a);
- (b) has applied any of its profits or other income otherwise than in promoting such objects; or
- (c) has paid a dividend to any of its members,

the Registrar may, in writing, direct the DAC to change its name within such period as may be specified in the direction so that its name ends with the words “designated activity company”, and the change of name shall be made in accordance with Part A2, Head 13 [equivalent of Section 23 of the Companies Act, 1963].

- (6) A DAC which has received a direction under Subhead (5) shall not thereafter be registered by a name which does not include the words “designated activity company” without the approval of the Registrar.

- (7) A person who -

- (a) alters the constitution of a DAC in contravention of Subhead (4); or
- (b) fails to comply with a direction from the Registrar under Subhead (5),

shall be guilty of a category three offence.

Explanatory Note

Amended re-enactment of Section 24 of the Companies Act, 1963.

[N.B. Heads 11 to 19 of A2 apply]

Head 8 Way in which and extent to which objects of a DAC may be altered

- (1) Notwithstanding Part A2, Head 15, a DAC may only alter its objects in accordance with this head.
- (2) Subject to Subhead (3), a DAC may, by special resolution, alter the provisions of its constitution by abandoning, restricting or amending any existing object or by adopting a new object and any alteration so made shall be as valid as if originally contained therein and be subject to alteration in like manner.
- (3) If an application is made to the court in accordance with this head for the alteration to be cancelled it shall not have effect except in so far as it is confirmed by the court.
- (4) Subject to Subhead (5) an application under this head may be made-
 - (a) by not less than 15 per cent of the DAC's members; or
 - (b) by the holders of not less than 15 per cent of the DAC's debentures, entitling the holders to object to alterations of its objects.
- (5) An application shall not be made under this head by any person who has consented to or voted in favour of the alteration.
- (6) An application under this head must be made within 21 days after the date on which the resolution altering the DAC's objects was passed and may be made on behalf of the persons entitled to make the application by such one or more of their number as they may appoint in writing for the purpose.
- (7) On an application under this head, the court may make an order cancelling the alteration or confirming the alteration, either wholly or in part, and on such terms and conditions as it thinks fit, and may, if it thinks fit, adjourn the proceedings in order that an arrangement may be made to the satisfaction of the court for the purchase of the interests of dissenting members, and may give such directions and make such orders as it may think expedient for facilitating or carrying into effect any such arrangement.
- (8) An order under this head may, if the court thinks fit, provide for the purchase by the company of the shares of any members of the company and for the reduction accordingly of the company's capital and may make such alterations in the constitution of the company as may be required in consequence of that provision.
- (9) Where an order under this head requires the company not to make any, or any specified, alteration in its constitution, then, notwithstanding anything in this Bill, the company shall not have power without the leave of the court to make any such alteration in breach of that requirement.
- (10) Any alteration in the constitution of a company made by virtue of an order under this head, other than one made by resolution of the company, shall be of the same effect as if duly made by resolution of the company, and the provisions of this Bill shall apply to the constitution altered accordingly.
- (11) The debentures entitling the holders to object to alterations of a DAC's objects shall be any debentures secured by a floating charge which were issued or first issued before the operative date [1 April 1964] or form part of the same series as any debentures so issued, and a special resolution altering a DAC's objects shall require the same notice to the holders of any such debentures as to members of the DAC, so however that not less than 10 days' notice shall be given to the holders of any such debentures. In default of any provisions regulating the giving of notice to any such debenture holders, the provisions of the DAC's articles regulating the giving of notice to members shall apply.
- (12) In the case of a DAC which is, by virtue of a permission from the Registrar, granted under Part B3, Head 7 [equivalent of Section 24 of the Companies Act, 1963], exempt from the obligation to use the word ["dac"] or ["000"] as part of its name, a resolution altering the DAC's objects shall also require the same notice to the Registrar as to holders of debentures.
- (13) Where a DAC passes a resolution altering its objects-
 - (a) if no application is made with respect thereto under this head, it shall within 15 days from the end of the period for making such an application, deliver to the Registrar a printed copy of its constitution as altered; and

(b) if such an application is made it shall-

- (i) forthwith give notice of that fact to the Registrar, and
- (ii) within 15 days from the date of any order cancelling or confirming the alteration, deliver to the Registrar an office copy of the order and, in the case of an order confirming the alteration, a printed copy of the constitution as altered.

The court may, by order, at any time extend the time for delivery of documents to the Registrar under paragraph (b) for such period as the court may think proper.

- (14) If a DAC makes default in giving notice or delivering any document to the Registrar as required by Subhead (10), the DAC and every officer of the DAC who is in default shall be guilty of a category three offence.
- (15) In relation to a resolution for altering the provisions of a company's constitution relating to the objects of the company passed before the operative date, this head shall have effect as if, in lieu of Subheads (3) to (13), there had been enacted Subsections (2) to (10) of Section 10 of the Companies Act, 1963, as amended by the Companies Acts, 1963-2006.

Explanatory Note

This is an amended version of Section 10 of the Companies Act, 1963.

Subhead (4) of this head is identical to the UK provision (Section 5(2) of 1985 UK Act).

The permission of the Registrar referred to in Subhead (9) links back to the application which a DAC may make to the Registrar in this regard under Head 7 (3).

Section 10(11) of the Companies Act, 1963 is spent as transitional and therefore has not been re-enacted.

Head 9 Power to alter provisions in memorandum which could have been contained in articles

- (1) Subject to Subhead (2) of this head, Subheads (4) and (5) of Head 15 of Part A2 and Head 72 of Part A4, any provision contained in a company's memorandum which could lawfully have been contained in articles of association instead of in the memorandum may, subject to the provisions of this head, be altered by the company by special resolution.
- (2) If an application is made to the court for the alteration to be cancelled, it shall not have effect except in so far as it is confirmed by the court.
- (3) This head shall not apply where the memorandum itself provides for or prohibits the alteration of all or any of the said provisions, and shall not authorise any variation or abrogation of the special rights of any class of members.
- (4) Subheads (4), (5), (6), (7), (8), (9), (10), (13) and (14) of Head 8 of this Part (except paragraph (b) of the said Subhead (4)) shall apply in relation to any alteration and to any application made under this head as they apply in relation to alterations and to applications made under that head.
- (5) This head shall apply to a company's memorandum whether registered before, on or after the operative date.

Explanatory Note

This head is based on Section 28 of the Companies Act, 1963.

Head 10 Corporate Capacity of a DAC

- (1) A DAC shall have the capacity to do any act or thing stated in the objects set out in its constitution.
- (2) Part A2, Head 20 shall not apply to a DAC.

Explanatory Note

This head and Heads 11 and 12 mirror Heads 8, 9, and 10 of Part B2 respectively.

Head 11 Corporate capacity not limited by the constitution of a DAC

- (1) The validity of an act done by a DAC shall not be called into question on the ground of lack of capacity by reason of anything contained in the constitution of a DAC.
- (2) A member of a DAC may bring proceedings to restrain the doing of an act which, but for Subhead (1), would be beyond the capacity of that DAC; but no such proceedings shall lie in respect of any act to be done in fulfilment of a legal obligation arising from a previous act of that DAC.
- (3) It remains the duty of the directors to observe any limitations on their powers flowing from the constitution of a DAC; and action by the directors which but for Subhead (1) would be beyond the capacity of that DAC may only be ratified by the DAC by special resolution.
- (4) A resolution ratifying such action shall not affect any liability incurred by the directors or any other person; relief from any such liability must be agreed to separately by special resolution.
- (5) A party to a transaction with a DAC is not bound to enquire as to whether it is permitted by the constitution of that DAC.

Explanatory Note

This head mirrors the wording of Head 9 of Part B2 which mitigates the excesses of the doctrine of ultra vires.

Head 12 Corporate authority and the power of directors to bind a DAC

- (1) In favour of a person dealing with a DAC in good faith, the power of the board of directors to bind the DAC, or authorise others to do so, or of any person registered with the Registrar for the purposes of Part A2, Head 21 [equivalent of Reg 6 (3) S.I. 173 of 1963] as a person authorised to bind the DAC, shall be deemed to be free of any limitation under the DAC's constitution.
- (2) For the purposes of Subhead (1) -

- (a) a person "deals with" a DAC if he is a party to any transaction or other act to which the DAC is a party;
 - (b) a person shall not be regarded as acting in bad faith by reason only of his knowing that an act is beyond the powers of the persons referred to in Subhead (1) under the DAC's constitution; and
 - (c) a person shall be presumed to have acted in good faith unless the contrary is proved.
- (3) The references in Subheads (1) and (2) to limitations on the directors' powers or those of a person registered with the Registrar for the purposes of Part A2, Head 21 as a person authorised to bind the DAC under the DAC's constitution include limitations deriving-
 - (a) from a resolution of the DAC in general meeting or a meeting of any class of shareholders; or
 - (b) from any agreement between the members of the DAC or of any class of shareholders.
 - (4) Subhead (1) does not affect any right of a member of the DAC to bring proceedings to restrain the doing of an act which is beyond the powers of the directors or of a person registered with the Registrar for the purposes of Part A2, Head 21 as a person authorised to bind the DAC; but no such proceedings shall lie in respect of an act to be done in fulfilment of a legal obligation arising from a previous act of the DAC.
 - (5) Subhead (1) does not affect any liability incurred by the directors, or any other person including a person registered with the Registrar for the purposes of Part A2, Head 21 as a person authorised to bind the DAC, by reason of the directors or a person registered with the Registrar for the purposes of Part A2, Head 21 of Part A2 as a person authorised to bind the DAC, exceeding their powers.
 - (6) A party to a transaction with a DAC is not bound to enquire as to whether there is any limitation on the powers of the board of directors to bind the DAC or authorise others to do so or on the powers of a person registered with the Registrar for the purposes of Part A2, Head 21 as a person authorised to bind the DAC.

Explanatory Note

This head seeks to protect persons dealing with a company who may be faced with the defence that the persons with whom they dealt did not have the authority to conclude such a transaction. Again, shareholders are protected and may injunct transactions which are beyond the powers of directors.

[N.B. Heads 21 to 36 of A2 apply]

Head 13 Re-registration of existing private companies limited by shares as DACs

Pursuant to Part A2, Heads 37 to 43, every existing private company limited by shares may re-register as a DAC by passing an ordinary resolution after the status date and before the end of the transition period, resolving that the company be so registered and complying otherwise with the provisions of this Part.

Explanatory Note

This mirrors the provisions at Part A2, Head 37. Heads 38 to 43 are relevant if the procedure set out at Head 37 is followed.

Chapter 3

Share Capital

[Heads 1 to 2 and 5 to 41 of A3 apply]

Head 14 Limitation on offer of securities to the public

- (1) A DAC may not make an invitation or offer of securities to the public in respect of which a prospectus must be published in accordance with Irish prospectus law.
- (2) Subhead (1) shall not prevent a DAC from publishing a prospectus solely for the purpose of obtaining an admission to trading on a regulated market for its debentures, which shall include debenture stock, bonds and any other debt instruments of a company or any forms of securitised debt, including depositary receipts in respect of such securities, whether constituting a charge on the assets of the company or not.
- (3) The contravention of Subhead (1) is a category two offence.

Head 15 Allotment of debentures or other debt securities to be dealt in on stock exchange or regulated market

- (1) Where a prospectus, whether issued generally or not, states that application has been or will be made for permission for the debentures or other debt securities offered thereby to be dealt in on any stock exchange or regulated market, any allotment made on an application in pursuance of the prospectus shall, whenever made, be void if the permission has not been applied for before the third day after the first issue of the prospectus or if the permission has not been granted within 6 weeks from the date of the closing of the subscription lists.

- (2) Where the permission has not been applied for as aforesaid or has not been granted, the company shall forthwith repay without interest all money received from applicants in pursuance of the prospectus, and if any such money is not repaid within 8 days after the company becomes liable to repay it, the directors of the company shall be jointly and severally liable to repay that money with interest at the rate of 5 per cent. per annum from the expiration of the eighth day, so however that a director shall not be liable if he proves that the default in the repayment of the money was not due to any misconduct or negligence on his part.
- (3) All money received as aforesaid shall be kept in a separate bank account so long as the company may become liable to repay it under Subhead (2); and, if default is made in complying with this subhead, the company and every officer of the company who is in default shall be guilty of a category three offence.
- (4) Any condition requiring or binding any applicant for debentures or other debt securities to waive compliance with any requirement of this head shall be void.
- (5) This head shall have effect—
 - (a) in relation to any debentures or other debt securities agreed to be taken by a person underwriting an offer thereof by a prospectus as if he had applied therefor in pursuance of the prospectus; and
 - (b) in relation to a prospectus offering debentures or other debt securities for sale with the following modifications—
 - (i) references to sale shall be substituted for references to allotment,
 - (ii) the persons by whom the offer is made, and not the company, shall be liable under Subhead (2) to repay money received from applicants, and references to the company's liability under that subhead shall be construed accordingly, and
 - (iii) for the reference in Subhead (3) to the company and every officer of the company who is in default, there shall be substituted a reference to any person by or through whom the offer is made and who knowingly and wilfully authorises or permits the default.

- (6) In reckoning for the purposes of this head the third day after another day, any intervening day which is a Saturday or Sunday or which is a public holiday shall be disregarded and if the third day (as so reckoned) is itself a Saturday or Sunday or such a public holiday there shall for the said purposes be substituted the first day thereafter which is none of them.
- (7) The provisions of this head shall not apply in relation to an allotment of non-equity securities.
- (ii) the shares or [interest/membership by guarantee] shall, for the purposes of the consolidated accounts prepared by the holding company in accordance with Part A6, Heads 15 and 16 [equivalent of Section 150 and Section 152 of the Companies Act, 1963], be treated in the same manner as is required in respect of shares held as treasury shares under Part A3, Head 33 [equivalent of Section 43A of the Companies Act, 1983 (inserted by Section 232 (c) of the 1990 Act)], and

Explanatory Note

Restatement of Section 57 of the Companies Act, 1963.

Head 16 Holding by subsidiary of shares (or an interest/membership by guarantee) in its holding company.

- (1) Notwithstanding Head 45 of Part A3 [equivalent of Section 32 of the Companies Act, 1963] or, Part A5, Head 37 [equivalent of Section 60 of the Companies Act, 1990], a DAC may, subject to the provisions of this head, acquire and hold shares (or an interest/membership by guarantee) in a company which is its holding company.
- (2) The acquisition and holding by a subsidiary under Subhead (1) of shares or an interest in its holding company shall be subject to the following conditions —
- (a) The consideration for the acquisition of such shares or [interest/membership by guarantee] shall be provided for out of the profits of the subsidiary available for distribution;
- (b) Upon the acquisition of such shares or [interest/membership by guarantee] and for so long as the shares or [interest/membership by guarantee] are held by the subsidiary —
- (i) the profits of the subsidiary available for distribution shall for all purposes be restricted by a sum equal to the total cost of the shares or [interest/membership by guarantee] acquired,
- (iii) the subsidiary shall not exercise any voting rights in respect of the [interest/membership by guarantee] and any purported exercise of those rights shall be void.
- (3) A contract for the acquisition (whether by allotment or transfer) by a subsidiary of shares or [an interest/membership by guarantee] in its holding company shall not be entered into without being authorised in advance both by the subsidiary and its holding company and the provisions of Part A3, Heads 38 and 39 [equivalent of Section 213 and 214 of the Companies Act, 1990] shall apply, with the necessary modifications, to the granting, variation, revocation and release of such authority.
- (4) For the purposes of this head, a subsidiary's profits available for distribution shall not include the profits attributable to any shares in the subsidiary for the time being held by the subsidiary's holding company so far as they are profits for the period before the date on or from which the shares or [interest/membership by guarantee] were acquired by the holding company.
- (5) This head shall not apply to shares or [an interest/membership by guarantee] held by a subsidiary in its holding company in the circumstances permitted by Part A3, Head 45 [equivalent of Section 32 of the Companies Act, 1963].
- (6) Part A3, Head 42 shall not apply to a DAC.

Explanatory Note

Part A3, Head 42 has been amended for the purposes of this Part to replace shares with " shares or [an interest/membership by guarantee]..."
This covers the situation where a subsidiary holds shares or [an interest/membership by guarantee] in its holding company.

[Heads 43 to 52 of Part A3 apply]

Head 17 Power to make regulations for transfer of securities

- (1) The Minister may make provision by regulations for enabling title to securities to be evidenced and transferred without a written instrument.
- (2) Subject to any exceptions that may be specified in the regulations, the regulations may, in respect of—
 - (a) securities of companies admitted to trading on a regulated market;
 - (b) securities of companies admitted to trading on a market other than a regulated market; or
 - (c) securities of public limited companies of a specified class,

provide that the means provided by the regulations for evidencing and transferring title to such securities shall constitute the sole and exclusive means for doing so (and, accordingly, that any purported transfer of such securities otherwise than by those means shall be void).

- (3) In this head—
 - (a) “securities” means transferable securities as defined by Article 1(4) of Directive 93/22/EEC with the exception of money market instruments as defined by Article 1(5) of Directive 93/22/EEC, having a maturity of less than 12 months;
 - (b) references to title to securities include any legal or equitable interest in securities; and
 - (c) references to a transfer of title include a transfer by way of security.

- (4) The regulations may make provision—
 - (a) for procedures for recording and transferring title to securities; and
 - (b) for the regulation of those procedures and the persons responsible for or involved in their operation; and

- (c) for dispensing with the obligations of a DAC under Head 32 of Part A3 [equivalent of Section 86 of the Companies Act, 1963] to issue certificates and providing for alternative procedures.
- (5) The regulations shall contain such safeguards as appear to the Minister appropriate for the protection of investors and for ensuring that competition is not restricted, distorted or prevented.
- (6)
 - (a) The regulations may, for the purpose of enabling or facilitating the operation of the new procedures, make provision with respect to the rights and obligations of persons in relation to securities dealt with under the procedures;
 - (b) The regulations shall be framed so as to secure that the rights and obligations in relation to securities dealt with under the new procedures correspond, so far as practicable, with those which would arise apart from any regulations under this head;
 - (c) The regulations may-
 - (i) require the provision of statements by a company to holders of securities (at specified intervals or on specified occasions) of the securities held in their name;
 - (ii) make provision removing any requirement for the holders of securities to surrender existing share certificates to issuers; and
 - (iii) make provision that the requirements of the regulations supersede any existing requirements in the articles of association of a company which would be incompatible with the requirements of the regulations.
- (7) Without prejudice to the generality of Subheads (5) and (6), the regulations shall not contain provisions that would result in a person who, but for the regulations, would be entitled—
 - (a) to have his or her name entered in the register of members of a company; or
 - (b) to give instructions in respect of any securities, ceasing to be so entitled.

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- (8)
- (a) The regulations may include such supplementary, incidental and transitional provisions as appear to the Minister to be necessary or expedient;
 - (b) In particular, provision may be made for the purpose of giving effect to—
 - (i) the transmission of title of securities by operation of law,
 - (ii) any restriction on the transfer of title to securities arising by virtue of the provisions of any enactment or instrument, court order or agreement,
 - (iii) any power conferred by any such provision on a person to deal with securities on behalf of the person entitled.
- (9) The regulations may, for the purposes mentioned in this head, make provision with respect to the persons who are to be responsible for the operation of the new procedures and for those purposes may empower the Minister to delegate to any person willing and able to discharge them any functions of his under the regulations.
- (10) The regulations may make different provision for different cases.
- (11) Every regulation made under this head shall be laid before each House of the Oireachtas as soon as may be after it is made and if a resolution annulling the regulation is passed by either such House within the next twenty-one days on which that House has sat after the regulation is laid before it, the regulation shall be annulled accordingly, but without prejudice to the validity of anything previously done thereunder.

Explanatory Note

Restatement of Section 239 of the Companies Act, 1990.

The definition of “securities” is taken from Regulation 2 (1) of the Prospectus (Directive 2003/71/EC) Regulations 2005.

Chapter 4 Corporate Governance

[Head 1 of A4 applies]

Head 18 Directors

- (1) Every DAC shall have at least two directors.
- (2) Part A4, Head 2 shall not apply to a DAC.

Explanatory Note

This head gives effect to the recommendation given by the CLRG in its First Report, that the minimum requirement of two directors should remain for all companies other than the new model private company, including unlimited companies [Para 11.8.11]. The head mirrors Part B2, Head 62.

[Heads 3 to 9 of Part A4 apply]

Head 19 Share or interest qualifications of directors

- (1) If the constitution of a DAC requires a director to hold a specified share, interest or guarantee qualification, then-
 - (a) The office of director of a DAC shall be vacated if the director does not, within 2 months from the date of his appointment or within such shorter time as may be fixed by the constitution, obtain his qualification, or if after the expiration of the said period or shorter time, he ceases at any time to hold his qualification; and
 - (b) A person vacating office under this head shall be incapable of being re-appointed director of the DAC until he has obtained his qualification.
- (2) Part A4, Head 10 shall not apply to a DAC.

Explanatory Note

This is an amended version of Part A4, Head 10. The amendment is intended to reflect the fact that the DAC qualification may be a guarantee or interest instead of a share qualification.

[Part A4, Heads 11 to 34 apply]

Note: Head 34 of Part A4 [equivalent of Section 205B of the Companies Act, 1990] applies to a DAC as to a large private company where a DAC meets the balance sheet total and amount of turnover requirements specified for a large private company at Head 34 (1) (a) or the conditions otherwise specified at Head 34 (1) (b).

Head 20 Membership

- (1) The subscribers to the memorandum of association in the constitution of a DAC shall be deemed to have agreed to become members of the DAC, and, on its registration, shall be entered as members in its register of members.
- (2) Every other person who agrees to become a member of a DAC, and whose name is entered in its register of members, shall be a member of the company.
- (3) Supplementary provisions on qualification for membership, its duration and termination may be set out in the constitution of a DAC.
- (4) The constitution of a DAC must state the number of members with which the company proposes to be registered and, if the company has a share capital, the amount of share capital with which the company proposes to be registered.
- (5) Where a DAC has increased the number of its members beyond the registered number, it shall, within 15 days after the increase was resolved on or took place, deliver particulars of the increase to the Registrar.

If default is made in complying with this subhead, the company and every officer of the company who is in default shall be liable to a fine.
- (6) The memorandum of association of a DAC may state the maximum number of persons who may be members of the DAC, subject to the power of the directors to register an increase in the number of members.
- (7) A member may resign his membership by serving notice to that effect upon the directors at the registered office of the DAC, such notice to expire no earlier than the date of service of the notice of resignation.

Part B3 - Designated Activity Companies

- (8) Save where the constitution of a DAC provides otherwise, the directors may require a member to resign his membership by serving notice upon the member terminating his membership to expire no earlier than the date of service of the notice of termination.
- (9) Save where the constitution of a DAC provides otherwise, every member shall have one vote.
- (10) The death of a member shall terminate his membership.
- (11) It shall be a category two offence to personate a member of a DAC.
- (12) Part A4, Head 35, shall not apply to a DAC.
- (4) A general meeting held in pursuance of Subhead (3) shall, subject to any directions of the Director of Corporate Enforcement, be deemed to be an annual general meeting of the DAC but, where a meeting so held is not held in the year in which the default in holding the DAC's annual general meeting occurred, the meeting so held shall not be treated as the annual general meeting for the year in which it is held unless at that meeting the DAC resolves that it shall be so treated.
- (5) Where, pursuant to Subhead (4), a DAC resolves that a meeting shall be so treated, a copy of the resolution shall, within 21 days after the passing thereof, be delivered to the Registrar for registration.

Explanatory Note

This head is new, however it is based on Model Regulation 1 of Table D Part III of the First Schedule to the Companies Act, 1963.

[Heads 36 to 42 of Part A4 apply]

Head 21 Annual General Meeting

- (1) Subject to Subhead (2), every DAC shall in each year, hold a general meeting as its annual general meeting in addition to any other meetings in that year and shall specify the meeting as such in the notices calling it and not more than 15 months shall elapse between the date of one annual general meeting of a DAC and that of the next.
- (2) So long as a DAC holds its first annual general meeting within 18 months of its incorporation, it need not hold it in the year of its incorporation or in the following year.
- (3) If default is made in holding a meeting of a DAC in accordance with Subhead (1), the Director of Corporate Enforcement may, on the application of any member of the DAC, call or direct the calling of a general meeting of the DAC and give such ancillary or consequential directions as the Director of Corporate Enforcement thinks expedient, including directions modifying or supplementing in relation to the calling holding and conducting of the meeting, the operation of the DAC's constitution, and it is hereby declared that the directions which may be given under this subhead include a direction that one member of the DAC present in person or by proxy shall be deemed to constitute a meeting.
- (6) If default is made in holding a meeting of the DAC in accordance with Subhead (1), or in complying with any direction of the Director of Corporate Enforcement under Subhead (3), the DAC and every officer of the DAC who is in default shall be guilty of a category four offence and if default is made in complying with Subhead (5), the DAC and every officer of the DAC who is in default shall be guilty of a category four offence.
- (7) Part A4, Head 43 shall not apply to a DAC unless a DAC has only one member.

Explanatory Note

This head disapplies Subhead (3) of Part A4, Head 46, which allows a private company to dispense with the requirement to hold an AGM, to the DAC unless a DAC has only one member, in which case it can, as now, dispense with the necessity of holding an AGM.

[Heads 44 to 61 of Part A4 apply]

Head 22 Unanimous written resolutions

- (1) Notwithstanding anything to the contrary in this Bill, unless the constitution provides otherwise, a resolution in writing signed by all the members for the time being entitled to attend and vote on such resolution at a general meeting (or being bodies corporate by their duly appointed representatives) shall be as valid and effective for all purposes as if the resolution had been passed at a general meeting of the company duly convened and held, and if described as a special resolution shall be deemed to be a special resolution within the meaning of this Bill.

- (2) Any such resolution shall be deemed to have been passed at a meeting held on the date on which it was signed by the last member to sign, and where the resolution states a date as being the date of his signature thereof by any member the statement shall be prima facie evidence that it was signed by him on that date.
- (3) This head does not apply to a resolution for the purposes of Part A6, Heads 83 to 86 and Part A6, Head 98 [the equivalent of Section 160 of the Companies Act, 1963 – appointment and remuneration of auditors] and Part A4, Head 17 [the equivalent of Section 182 of the Companies Act, 1963 – removal of directors].
- (4) Part A4, Heads 62 and 63 shall not apply to a DAC.

Explanatory Note

This head disapplies Head 62 and 63, Part A4 to DACs and re-enacts Section 141(8) of the Companies Act, 1963, consequently the ability to make majority written resolutions is not extended to DACs (nor is this ability extended to any other non-CLS company).

[Heads 56-61 of Part A4 apply]

Chapter 5

Duties of Directors and other Officers

[Heads 1-44 of Part A4 apply]

Chapter 6

Financial Statements, Annual Return and Audit

Head 23 Exemption from consolidation: size of group

Head 19 of Part A6 shall apply to a DAC subject to the substitution of Subhead (9) (a) thereof with the following Subhead (9) (a):

“any debentures or other debt securities of the DAC or and shares, debentures of other debt securities of a subsidiary undertaking have been admitted to trading on a regulated market of any EEA state, or”.

Head 24 Exemption from consolidation: holding company that is a subsidiary of another EEA registered undertaking

Head 20 of Part A6 shall apply to a DAC with the addition of the following paragraph (f) in Subhead (3):

- (f) “the exempted holding company may not have any debentures or other debt securities admitted to trading on a regulated market of any EEA State.”

Head 25 Exemption from consolidation: holding company that is a subsidiary of a non-EEA undertaking

Head 21 of Part A6 shall apply to a DAC with the addition of the following paragraph (g) in Subhead (3):

- (g) “the exempted holding company may not have any debentures or other debt securities admitted to trading on a regulated market of any EEA State.”

Head 26 Information on related undertakings: Exemption from disclosures

Head 27 of Part A6 shall apply to a DAC with the addition of the following paragraph (7):

- (7) “This head shall not apply to a parent undertaking any of whose debentures or other debt securities have been admitted to trading on a regulated market of any EEA State.”

Head 27 Information on related undertakings: Provision for certain information to be annexed to annual return

Head 29 of Part A6 shall apply to a DAC with the addition of the following Subhead (5):

- (5) “Subhead (1) shall not apply to a parent undertaking any of whose debentures or other debt securities have been admitted to trading on a regulated market of any EEA State.”

Head 28 Approval and signing of statutory financial statements by board of directors

Head 36 of Part 6 shall apply to a DAC subject to the substitution of Subhead (1) thereof with the following Subhead (1):

- (1) “Where the directors of the company are satisfied that the statutory financial statements give a true and fair view and otherwise comply with this Bill or, where applicable, with Article 4 of the IAS Regulation, they shall be approved by the board of directors and signed on their behalf by a majority of the directors where there are more than two directors or by the two directors, where there are only two directors.”

Head 29 Approval and signing of directors' report

Head 43 of Part 6 shall apply to a DAC subject to the substitution of Subhead (1) thereof with the following Subhead (1):

- (1) "The directors' report and, where applicable, the group directors' report shall be approved by the board of directors and signed on their behalf by a majority of the directors where there are more than two directors or by the two directors, where there are only two directors."

Chapter 7

Debentures and Registration of Charges

[Heads 1 to 19 of Part A7 apply]

Chapter 8

Receivers

[Heads 1 to 20 of Part A8 apply]

Chapter 9

Reorganisations

[Heads 1 to 46 of Part A9 apply]

Chapter 10

Examinerships

[Heads 1 to 41 of Part A10 apply]

Chapter 11

Winding-Up

[Heads 1 to 85 of Part A11 apply]

Head 30 Liability as contributories of past and present members

- (1) In the event of a DAC being wound up, every present and past member shall be liable to contribute to the assets of the DAC to an amount sufficient for payment of its debts and liabilities, and the costs, charges and expenses of the winding-up, and for the adjustment of the rights of the contributories among themselves, subject to Subhead (2) and the following qualifications—
- (a) a past member shall not be liable to contribute if he has ceased to be a member for one year or more before the commencement of the winding-up;
 - (b) a past member shall not be liable to contribute in respect of any debt or liability of the DAC contracted after he ceased to be a member;
 - (c) a past member shall not be liable to contribute unless it appears to the court that the existing members are unable to satisfy the contributions required to be made by them in pursuance of this Bill;
 - (d) no contribution shall be required from any member exceeding:
 - (i) the amount, if any, unpaid on the shares in respect of which he is liable as a present or past member, or
 - (ii) the amount undertaken to be contributed by him to the assets of the DAC in the event of its being wound up;
 - (e) nothing in this Bill shall invalidate any provision contained in any policy of insurance or other contract whereby the liability of individual members on the policy or contract is restricted, or whereby the funds of the DAC are alone made liable in respect of the policy or contract;

- (f) a sum due to any member of the DAC, in his character of a member, by way of dividends, profits or otherwise, shall not be deemed to be a debt of the DAC, payable to that member in a case of competition between himself and any other creditor not a member of the DAC, but any such sum may be taken into account for the purpose of the final adjustment of the rights of the contributories among themselves.

- (2) In the winding up of a DAC limited by guarantee which has a share capital, every member of the DAC shall be liable, in addition to the amount undertaken to be contributed by him to the assets of the DAC in the event of its being wound up, to contribute to the extent of any sums unpaid on any shares held by him.

- (3) Part A11, Head 86 shall not apply to a DAC.

Explanatory Note

This is an amended re-enactment of Section 207 of the Companies Act, 1963.

The separate provisions for companies limited by shares and limited by guarantee, in paragraph 207(1) (d) and (e) respectively, removed from Part A11, Head 86 have been re-instated to reflect that a DAC may be a company limited either by shares or guarantee.

Section 207(2) has been deleted in line with the CLRG recommendation that the provision is obsolete.

[Heads 87 to 155 of Part A11 apply]

Chapter 12

Strike Off and Restoration

[Heads 1 to 13 of Part A12 apply]

Chapter 13

Compliance, Investigation and Enforcement

[Heads 1 to 68 of Part A13 apply]

Chapter 14

Regulatory and Advisory Bodies

[Heads 1 to 64 of Part A14 apply]

Chapter 15

Market Abuse

Head 31 Interpretation

(1) In this Chapter —

“2003 Market Abuse Directive” means Directive 2003/6/EC of the European Parliament and of the Council of 28 January 2003 on insider dealing and market manipulation (market abuse), including that Directive as it stands amended for the time being;

“Irish market abuse law” means—

- (a) the measures adopted for the time being by the State to implement the 2003 Market Abuse Directive and the supplemental Directives (whether an Act of the Oireachtas, regulations under Section 3 of the European Communities Act, 1972, regulations under Section 30 or any other enactment (other than, save where the context otherwise admits, this Chapter));
- (b) any measures directly applicable in the State in consequence of the 2003 Market Abuse Directive and, without prejudice to the generality of this paragraph, includes the Market Abuse Regulation; and
- (c) any supplementary and consequential measures adopted for the time being by the State in respect of the Market Abuse Regulation;

“Market Abuse Regulation” means Commission Regulation 2273/2003 of 22 December 2003; 3

“supplemental Directives” means—

- (a) Commission Directive No. 2003/124/EC of 22 December 2003 4;
- (b) Commission Directive No. 2003/125/EC of 22 December 2003 5; and
- (c) Commission Directive No. 2004/72/EC of 29 April 2004 6.

(2) A word or expression that is used in this Chapter and is also used in the 2003 Market Abuse Directive or the supplemental Directives shall have in this Chapter the same meaning as it has in the 2003 Market Abuse Directive or the supplemental Directives, unless—

- (a) the contrary intention appears; or
- (b) Irish market abuse law provides otherwise.

Explanatory Note

Restatement of Section 29 of the Investment Funds, Companies and Miscellaneous Provisions Act, 2005.

Head 32 Regulations (Chapter 15)

(1) The Minister may make regulations for the purposes of—

- (a) giving effect to the 2003 Market Abuse Directive and the supplemental Directives; and
- (b) supplementing and making consequential provision in respect of the Market Abuse Regulation.

(2) Regulations under this head may contain such incidental, supplementary and consequential provisions as appear to the Minister to be necessary or expedient for the purposes of those regulations, including provisions creating offences (but the regulations may only provide penalties in respect of a summary conviction for any such offence).

(3) Regulations under this head may also—

- (a) make, for the purposes of those Regulations, provision analogous to that which was made by Section 3 of the Companies (Amendment) Act, 1999 (repealed by Section 31) for the purposes of that Act;
- (b) impose on a market operator, a requirement similar to that which is imposed by Article 6(9) of the 2003 Market Abuse Directive on the person referred to in that Article 6(9).

(4) This head is without prejudice to Section 3 of the European Communities Act, 1972.

Explanatory Note

Restatement of Section 30 of the Investment Funds, Companies and Miscellaneous Provisions Act, 2005.

Head 33 Conviction on indictment of offences under Irish market abuse law: penalties

A person who is guilty of an offence created by Irish market abuse law (being an offence expressed by that law to be an offence to which this head applies) shall, without prejudice to any penalties provided by that law in respect of a summary conviction for the offence, be liable, on conviction on indictment, to a fine not exceeding €10,000,000 or imprisonment for a term not exceeding 10 years, or both.

Explanatory Note

Restatement of Section 32 of the Investment Funds, Companies and Miscellaneous Provisions Act, 2005.

Head 34 Civil liability for certain breaches of Irish market abuse law

(1) If a person contravenes a provision of Irish market abuse law (being a provision the purpose of which is expressed by that law to be for the implementation of Article 2, 3 or 4 of the 2003 Market Abuse Directive) the person shall be liable—

- (a) to compensate any other party to the transaction concerned who was not in possession of the relevant information for any loss sustained by that party by reason of any difference between the price at which the financial instruments concerned were acquired or disposed of and the price at which they would have been likely to have been acquired or disposed of in such a transaction at the time when the first-mentioned transaction took place if that information had been generally available; and
- (b) to account to the body corporate or other legal entity which issued the financial instruments concerned for any profit accruing to the first-mentioned person from acquiring or disposing of those instruments.

(2) If a person contravenes a provision of Irish market abuse law (being a provision the purpose of which is expressed by that law to be for the implementation of Article 5 of the 2003 Market Abuse Directive) the person shall be liable—

- (a) to compensate any other party who acquired or disposed of financial instruments by reason of the contravention; and
 - (b) to account to the body corporate or other legal entity which issued the financial instruments concerned for any profit accruing to the first-mentioned person from acquiring or disposing of those instruments.
- (3) Subheads (1) and (2) are without prejudice to any other cause of action which may lie against the person for contravening the provision concerned.
- (4) An action under Subhead (1) or (2) shall not be commenced more than 2 years after the date of the contravention concerned.

Explanatory Note

Restatement of Section 33 of the Investment Funds, Companies and Miscellaneous Provisions Act, 2005.

Head 35 Supplementary rules, etc., by competent authority

- (1) In this head “competent authority” means the competent authority designated under Irish market abuse law.
- (2) The competent authority may make rules imposing or enabling the competent authority to impose requirements on persons on whom an obligation or obligations are imposed by Irish market abuse law, being requirements—
- (a) to do or not to do specified things so as to secure that the provisions of Irish market abuse law are complied with and, in particular (without limiting the generality of this paragraph), to adopt specified procedures and use specified forms in the provision of information to the competent authority;

- (b) to do or not to do specified things so as to secure the effective supervision by the competent authority of activities of the kind to which Irish market abuse law relates and, in particular (without limiting the generality of this paragraph), to make such reports or disclose such matters, at such times and in such manner, to the competent authority or other specified persons as are provided for by the rules or specified by the competent authority pursuant to the rules, being reports or a disclosure of matters that is or are required by virtue or in consequence of the operation of Irish market abuse law.
- (3) Rules under this head may include rules providing for the manner in which or the matters by reference to which (or both) a determination is to be made of any issue as to whether a financial interest or interests is or are significant for the purposes of the provisions of Irish market abuse law implementing Article 5(1) of Commission Directive No. 2003/125/EC of 22 December 2003.
- (4) Rules under this head may contain such consequential, incidental or supplemental provisions as the competent authority considers necessary or expedient.
- (5) Rules under this head shall not contain any provision that is inconsistent with Irish market abuse law or require the provision of information to any person, the provision of which is not reasonably related to the purposes for which the applicable provisions of the 2003 Market Abuse Directive or the supplemental Directives have been adopted.
- (6) The provisions of Irish market abuse law that are expressed by that law to be made for the purpose of enabling the imposition of administrative sanctions shall apply in relation to a contravention of rules under this head as they apply in relation to a contravention of a provision of Irish market abuse law and, accordingly, a sanction that may be imposed pursuant to the first-mentioned provisions of Irish market abuse law in respect of a contravention of a provision of that law may, in accordance with that law, be imposed in respect of a contravention of rules under this head.
- (7) The competent authority may issue guidelines in writing as to the steps that may be taken to comply with Irish market abuse law.

Explanatory Note

Restatement of Section 34 of the Investment Funds, Companies and Miscellaneous Provisions Act, 2005.

Head 36 Application of Irish market abuse law to certain markets

- (1) The Minister, after consultation with the competent authority designated under Irish market abuse law, may by provisional order, provide that one or more provisions of Irish market abuse law that apply in relation to a market to which the 2003 Market Abuse Directive applies shall, with such modifications, if any, as are specified in the order, apply to a market specified in the order.
- (2) The Minister may, by provisional order, amend or revoke a provisional order under this head (including a provisional order under this subhead).
- (3) A provisional order under this head shall not have effect unless or until it is confirmed by an Act of the Oireachtas.

Explanatory Note

Restatement of Section 37 of the Investment Funds, Companies and Miscellaneous Provisions Act, 2005.

Chapter 16

Public Offers Of Securities

Head 37 Interpretation

- (1) In this Chapter, unless the context otherwise requires—

“2003 Prospectus Directive” means Directive 2003/71/EC of the European Parliament and of the Council of 4 November 2003 including that Directive as it stands amended for the time being;

“body corporate” includes a company;

“EEA Agreement” means the Agreement on the European Economic Area signed at Oporto on 2 May 1992, as amended for the time being;

“EU prospectus law” means—

- (a) the measures adopted for the time being by a Member State (including the State) or a Member State of the EEA to implement the 2003 Prospectus Directive;
- (b) any measures directly applicable in consequence of the 2003 Prospectus Directive and, without prejudice to the generality of this paragraph, includes the Prospectus Regulation; and
- (c) any supplementary and consequential measures adopted for the time being by a Member State (including the State) or a Member State of the EEA in respect of the Prospectus Regulation;

“expert”, save where a different construction in respect of that expression applies for the purposes of this Chapter by virtue of Irish prospectus law, includes engineer, valuer, accountant and any other individual or body (whether incorporated or unincorporated) the profession of whom, or the profession of members, officers or employees of which, gives authority to a statement made by the individual or body;

“Irish prospectus law” means—

- (a) the measures adopted for the time being by the State to implement the 2003 Prospectus Directive (whether an Act of the Oireachtas, regulations under Section 3 of the European Communities Act, 1972, regulations under Section 46 or any other enactment (other than, save where the context otherwise admits, this Chapter));
- (b) any measures directly applicable in the State in consequence of the 2003 Prospectus Directive and, without prejudice to the generality of this paragraph, includes the Prospectus Regulation; and
- (c) any supplementary and consequential measures adopted for the time being by the State in respect of the Prospectus Regulation;

“issuer” means a body corporate or other legal entity which issues or proposes to issue securities;

“local offer” means an offer of securities to the public in the State where—

- (a) the offer expressly limits the amount of the total consideration for the offer to less than €2,500,000 (and the means by which that limit shall be calculated, in particular in the case of a series of such offers of securities, shall be the same as that provided for by regulations under Head 46 in relation to analogous limits specified by those regulations for any purpose);
- (b) the securities are other than those referred to in any of paragraphs (a) to (g) or paragraph (i) or (j) of Article 1(2) of the 2003 Prospectus Directive; and
- (c) the offer is not of a kind described in Article 3(2) of the 2003 Prospectus Directive;

“Member State of the EEA” means a state that is a contracting party to the EEA Agreement;

“offer of securities to the public” has the same meaning as it has in Irish prospectus law;

“offering document” means a document prepared for a local offer which document, if prepared in connection with an offer to which the 2003 Prospectus Directive applies, would be a prospectus;

“offeror” means a body corporate or other legal entity or an individual which or who offers securities to the public;

“promoter” means, subject to Subhead (5), a promoter who was a party to the preparation of a prospectus, or of the portion thereof containing an untrue statement;

“prospectus” means a document or documents in such form and containing such information as may be required by or under this Chapter or EU prospectus law, howsoever the document or documents are constituted, but does not include any advertisements in newspapers or journals derived from the foregoing;

“Prospectus Regulation” means Commission Regulation (EC) No. 809/2004 of 29 April 2004 implementing Directive 2003/71/EC of the European Parliament and of the Council as regards information contained in prospectuses as well as the format, incorporation by reference and publication of such prospectuses and dissemination of advertisements;

“securities” has the same meaning as it has in Irish prospectus law, and includes shares and debentures of a company.

(2) A word or expression that is used in this Chapter and is also used in the 2003 Prospectus Directive shall have in this Chapter the same meaning as it has in that Directive, unless—

- (a) the contrary intention appears; or
- (b) Irish prospectus law provides otherwise.

(3) For the purposes of this Chapter—

- (a) a statement included in a prospectus shall be deemed to be untrue if it is misleading in the form and context in which it is included; and
- (b) a statement shall be deemed to be included in a prospectus if it is contained therein or in any report or memorandum appearing on the face thereof or by reference incorporated therein.

(4) Without limiting the meaning of that expression in any other context in which it is used in this Part, “statement” in Part B3, Head 42 (2) [equivalent of Section 45(2) of the Investment Funds, Companies and Miscellaneous Provisions Act, 2005] (other than paragraph (b) thereof) and any other head of this Part that makes provision in respect of an expert includes a report and a valuation.

(5) Nothing in this Chapter shall limit or diminish any liability which any person may incur under the general law.

(6) For the purposes of Heads 41 and 43, the following persons shall be deemed not to be a promoter or a person who has authorised the issue of the prospectus—

- (a) a professional adviser to any person referred to in Head 41 acting as such;
- (b) an underwriter or professional adviser to an underwriter acting as such.

(7) The person referred to as the “purchaser” in the following case shall be deemed to be an underwriter for the purposes of Subhead (6)(b).

(8) That case is one in which—

- (a) a person (the “offeror”) intends to make an offer of securities to the public; and
- (b) another person (the “purchaser”)—
 - (i) agrees to purchase those securities with the intention of their immediate resale to give effect to that intention of the offeror, at a profit or subject to payment by the offeror to the purchaser of a commission, and
 - (ii) binds himself or herself to purchase, or procure the purchase of, any of the securities not so resold.

Explanatory Note

Restatement of Section 38 of the Investment Funds, Companies and Miscellaneous Provisions Act, 2005.

Head 38 Civil liability for misstatements in prospectus

(1) Subject to Heads 39 and 40 of this Part [equivalent of 2005 Act, Sections 42 and 43], the following persons shall be liable to pay compensation to all persons who acquire any securities on the faith of a prospectus for the loss or damage they may have sustained by reason of—

- (a) any untrue statement included therein; or
- (b) any omission of information required by EU prospectus law to be contained in the prospectus,

namely—

- (i) the issuer who has issued the prospectus or on whose behalf the prospectus has been issued,
- (ii) the offeror of securities to which the prospectus relates,
- (iii) every person who has sought the admission of the securities to which the prospectus relates to trading on a regulated market,
- (iv) the guarantor of the issue of securities to which the prospectus relates,
- (v) every person who is a director of the issuer at the time of the issue of the prospectus,
- (vi) every person who has authorised himself or herself to be named and is named in the prospectus as a director of the issuer or as having agreed to become such a director either immediately or after an interval of time,
- (vii) every person being a promoter of the issuer,
- (viii) every person who has authorised the issue of the prospectus (not being the competent authority designated under Irish prospectus law).

- (2) In addition to the persons specified in Subhead (1) as being liable in the circumstances there set out, an expert who has given the consent required by Part B3, Head 42 [equivalent of Section 45 of the Investment Funds, Companies and Miscellaneous Provisions Act, 2005] to the inclusion in a prospectus of a statement purporting to be made by him or her shall, subject to Part B3, Heads 39 and 40 [equivalent of Sections 42 and 43 of the Investment Funds, Companies and Miscellaneous Provisions Act, 2005], be liable to pay compensation to all persons who acquire any securities on the faith of the prospectus for the loss or damage they may have sustained by reason of an untrue statement in the prospectus purporting to be made by him or her as an expert.

Explanatory Note

Restatement of Section 41 of the Investment Funds, Companies and Miscellaneous Provisions Act, 2005.

Head 39 Exceptions and exemptions

- (1) A person shall not be liable under Part B3, Head 38 [equivalent of Section 41 of the Investment Funds, Companies and Miscellaneous Provisions Act, 2005] solely on the basis of a summary of a prospectus, including any translation thereof, unless it is misleading, inaccurate or inconsistent when read together with other parts of the prospectus.
- (2) Subject to Subhead (4), a person shall not be liable under Part B3, Head 38 [equivalent of Section 41 of the Investment Funds, Companies and Miscellaneous Provisions Act, 2005] if he or she proves—
 - (a) that, having consented to become a director of the issuer, he or she withdrew in writing, his or her consent before the issue of the prospectus, and that it was issued without his or her authority or consent, or
 - (b) that the prospectus was issued without his or her knowledge or consent, and that on becoming aware of its issue he or she forthwith gave reasonable public notice that it was issued without his or her knowledge or consent; or

- (c) that after the issue of the prospectus and before the acquisition of securities thereunder by the person referred to in Part B3, Head 38 [equivalent of Section 41 of the Investment Funds, Companies and Provisions Act, 2005], he or she, on becoming aware of any untrue statement therein or omission of material information required by EU prospectus law to be contained therein, withdrew in writing, his or her consent thereto and gave reasonable public notice of the withdrawal and of the reason therefor; or
- (d) that—
- (i) as regards—
- (I) every untrue statement not purporting to be made on the authority of an expert or of a public official document or statement,
- (II) the omission from the prospectus of any information required by EU prospectus law to be contained therein,
- he or she had reasonable grounds to believe, and did up to the time of the issue of the securities believe, that the statement was true or that the matter whose omission caused loss was properly omitted, and
- (ii) as regards every untrue statement purporting to be a statement by an expert or contained in what purports to be a copy of or extract from a report or valuation of an expert, it fairly represented the statement, or was a correct and fair copy of or extract from the report or valuation, and he or she had reasonable grounds to believe and did up to the time of the issue of the prospectus believe, that the person making the statement was competent to make it and, where required by Part B3, Head 42 [equivalent of Section 45 of the Investment Funds, Companies and Miscellaneous Provisions Act, 2005], that that person had given his or her consent to the inclusion of the statement in the prospectus and had not withdrawn in writing, that consent before the publication of the prospectus or, to the defendant's knowledge, before issue of securities thereunder, and
- (iii) as regards every untrue statement purporting to be a statement made by an official person or contained in what purports to be a copy of or extract from a public official document, it was a correct and fair representation of the statement or copy of or extract from the document.
- (3) In Subheads (4) and (5) "by reason of the relevant consent", in relation to an expert, means by reason of his or her having given the consent required of him or her by Part B3, Head 42 [equivalent of Section 45 of the Investment Funds, Companies and Miscellaneous Provisions Act, 2005] to the inclusion in the prospectus of the statement concerned.
- (4) Subhead (2) shall not apply in the case of an expert, by reason of the relevant consent, in respect of an untrue statement purporting to be made by him or her as an expert.
- (5) An expert who, apart from this subhead, would under Part B3, Head 38 [equivalent of Section 41 of the Investment Funds, Companies and Miscellaneous Provisions Act, 2005] be liable, by reason of the relevant consent, in respect of an untrue statement purporting to be made by him or her as an expert shall not be so liable if he or she proves—
- (a) that, having given his or her consent to the inclusion in the prospectus of the statement, he or she withdrew it in writing before publication of the prospectus; or
- (b) that, after publication of the prospectus and before the acquisition of securities thereunder by the person referred to in Part B3, Head 38 [equivalent of Section 41 of the Investment Funds, Companies and Miscellaneous Provisions Act, 2005] on becoming aware of the untrue statement, withdrew his or her consent in writing and gave reasonable public notice of the withdrawal, and of the reason therefor; or
- (c) that he or she was competent to make the statement and that he or she had reasonable grounds to believe and did up to the time of such acquisition of the securities believe that the statement was true.

Explanatory Note

Restatement of Section 42 of Investment Funds, Companies and Miscellaneous Provisions Act, 2005.

Head 40 Restriction of liability where non-equity securities solely involved

Where a prospectus is issued solely in respect of non-equity securities—

(a) only—

(i) the offeror or the person who has sought the admission of the securities to which the prospectus relates to trading on a regulated market, and

(ii) subject to, and to the extent provided in, paragraph (c), the guarantor (if any), and no other person referred to in Head 38 of this Part [equivalent of Section 41 of the Investment Funds, Companies and Miscellaneous Provisions Act, 2005] shall be liable under that head in the circumstances in which that head applies unless—

(I) the prospectus expressly provides otherwise, or

(II) that other such person is convicted on indictment of an offence created by Irish prospectus law or an offence under Head 45 of this Part [equivalent of Section 48 of the Investment Funds, Companies and Miscellaneous Provisions Act, 2005] in respect of the issue of that prospectus;

(b) Subhead 5 (1) of Part A5 [equivalent of Section 383(3) of the Companies Act, 1963] shall not apply to the directors or secretary of the issuer to the extent that such application would thereby impose a liability under Head 38 of this Part [equivalent of Section 41 of the Investment Funds, Companies and Miscellaneous Provisions Act, 2005] on such directors or secretary; and

(c) no liability shall attach under Head 38 of this Part [equivalent of Section 41 of the Investment Funds, Companies and Miscellaneous Provisions Act, 2005] to a guarantor of such securities save in respect of statements included in, or information omitted from, the prospectus that relate to the guarantor or the guarantee given by the guarantor.

Explanatory Note

Restatement of Section 43 of the Investment Funds, Companies and Miscellaneous Provisions Act, 2005 (as amended by the Investment Funds, Companies and Miscellaneous Provisions Act, 2006).

Head 41 Indemnification of certain persons

(1) This head applies where—

(a) a prospectus contains the name of a person as a director of the issuer, or as having agreed to become a director thereof, and he or she has not consented to become a director, or has withdrawn, in writing, his or her consent before the issue of the prospectus, and has not authorised or consented to the issue thereof; or

(b) the consent of an expert is required by Head 42 of this Part [equivalent of Section 45 of the Investment Funds, Companies and Miscellaneous Provisions Act, 2005] to the inclusion in a prospectus of a statement purporting to be made by him or her and he or she either has not given that consent or has withdrawn in writing, that consent before the issue of the prospectus.

(2) The directors of the issuer, except any without whose knowledge or consent the prospectus was issued, and any other person who authorised the issue thereof shall be liable to indemnify the person named as mentioned in Subhead (1) or whose consent was required as so mentioned, as the case may be, against all damages, costs and expenses to which he or she may be made liable by reason of his or her name having been inserted in the prospectus or of the inclusion therein of a statement purporting to be made by him or her as an expert as the case may be, or in defending himself or herself against any action or legal proceeding brought against him or her in respect thereof.

Explanatory Note

Restatement of Section 44 of the Investment Funds, Companies and Miscellaneous Provisions Act, 2005.

Head 42 Expert’s consent to issue of prospectus containing statement by him or her

- (1) A prospectus including a statement purporting to be made by an expert shall not be issued unless—
 - (a) the expert has given and has not, before publication of the prospectus, withdrawn in writing, his or her consent to the issue thereof with the statement included in the form and context in which it is included; and
 - (b) to the extent that the inclusion in the prospectus of the following is required by EU prospectus law, a statement that the expert has given and has not withdrawn, in writing, that consent appears in the prospectus.
- (2) If any prospectus is issued in contravention of this head the issuer and every person who is knowingly a party to the issue thereof shall be guilty of a category three offence.

Explanatory Note

Restatement of Section 45 of the Investment Funds, Companies and Miscellaneous Provisions Act, 2005.

In keeping with the new schema for categorisation of offences it may be necessary on the enactment of the General Scheme to re-enact the MAD Regulations or at least the offence provisions therein to reflect the new categorisation.

Head 43 Regulations (Chapter 16)

- (1) The Minister may make regulations for the purposes of—
 - (a) giving effect to the 2003 Prospectus Directive; and
 - (b) supplementing and making consequential provision in respect of the Prospectus Regulation.

- (2) Regulations under this head may contain such incidental, supplementary and consequential provisions as appear to the Minister to be necessary or expedient for the purposes of those regulations, including—
 - (a) provisions creating offences (but the regulations may only provide penalties in respect of a summary conviction for any such offence); and
 - (b) provisions revoking instruments made under other enactments.
- (3) This head is without prejudice to Section 3 of the European Communities Act, 1972.

Explanatory Note

Restatement of Section 46 of the Investment Funds, Companies and Miscellaneous Provisions Act, 2005.

Head 44 Penalties on conviction on indictment and defences in respect of certain offences

- (1) A person who is guilty of an offence created by Irish prospectus law (being an offence expressed by that law to be an offence to which this head applies) shall, without prejudice to any penalties provided by that law in respect of a summary conviction for the offence, be liable, on conviction on indictment, to a fine not exceeding €1,000,000 or imprisonment for a term not exceeding 5 years or both.
- (2) In proceedings for an offence created by Irish prospectus law, it shall be a defence for the defendant to prove—
 - (a) as regards any matter not disclosed in the prospectus concerned, that he or she did not know it; or
 - (b) the contravention arose from an honest mistake of fact on his or her part; or
 - (c) the contravention was in respect of matters which, having regard to the circumstances of the case, was immaterial or as respects which, having regard to those circumstances, he or she ought otherwise reasonably to be excused.

Explanatory Note

Restatement of Section 47 of the Investment Funds, Companies and Miscellaneous Provisions Act, 2005.

Head 45 Untrue statements and omissions in prospectus: criminal liability

- (1) Where a prospectus is issued and—
- (a) includes any untrue statement; or
 - (b) omits any information required by EU prospectus law to be contained in it,
- any person who authorised the issue of the prospectus (not being the competent authority designated under Irish prospectus law) shall be guilty of a category 2 offence unless he or she proves—
- (i) as regards an untrue statement, either that the statement was, having regard to the circumstances of the case, immaterial or that he or she honestly believed and did, up to the time of the issue of the prospectus, believe that the statement was true, or
 - (ii) as regards any information omitted, either that the omission was, having regard to the circumstances of the case, immaterial or that he or she did not know it, or
 - (iii) that the making of the statement or omission was otherwise such as, having regard to the circumstances of the case, ought reasonably to be excused.
- (2) Summary proceedings for an offence under this head may be brought and prosecuted by the competent authority designated under Irish prospectus law.
- (3) If at a trial for an offence under this head or an offence created by Irish prospectus law, the judge or jury has to consider whether the defendant honestly believed a particular thing or was honestly mistaken in relation to a particular thing, the presence or absence of reasonable grounds for such a belief or for his or her having been so mistaken is a matter to which the judge or jury is to have regard, in conjunction with any other relevant matters, in considering whether the defendant so believed or was so mistaken.

Explanatory Note

Amended restatement of Section 48 of the Investment Funds, Companies and Miscellaneous Provisions Act, 2005.

Head 46 Local offers

- (1) An offering document prepared for a local offer shall contain the following statements in print in clearly legible type—
- (a) on the front page or otherwise in a prominent position:

“This document,

—has not been prepared in accordance with Directive 2003/71/EC on prospectuses or any measures made under that Directive or the laws of Ireland or of any EU Member State or EEA treaty adherent state that implement that Directive or those measures,

—has not been reviewed, prior to its being issued, by any regulatory authority in Ireland or in any other EU Member State or EEA treaty adherent state,

and therefore may not contain all the information required where a document is prepared pursuant to that Directive or those laws;”
 - (b) elsewhere in the offering document:
 - (i) where the offering document contains information on past performance:

“Past performance may not be a reliable guide to future performance.”,
 - (ii) where the offering document contains information on simulated performance:

“Simulated performance may not be a reliable guide to future performance.”,
 - (iii) “Investments may fall as well as rise in value.”,

- (iv) where securities are described as being likely to yield income or as being suitable for an investor particularly seeking income from his or her investment, and where the income from the securities can fluctuate:

“Income may fluctuate in accordance with market conditions and taxation arrangements.”,

- (v) where the primary market for the securities or the currency of the underlying business is in a currency other than euro:

“Changes in exchange rates may have an adverse effect on the value, price or income of the securities.”,

- (vi) where the securities do not constitute a readily realisable investment:

“It may be difficult for investors to sell or realise the securities and/or obtain reliable information about their value or the extent of the risks to which they are exposed.”.

- (2) Any requirement of Subhead (1) as to the inclusion of a particular statement in an offering document shall be regarded as satisfied if words substantially to the effect of that statement are instead included in that document.
- (3) If an offeror fails to comply with Subhead (1) the offeror shall be guilty of a category three offence.
- (4) No offering document prepared for a local offer shall be issued by or on behalf of a company or in relation to an intended company unless, on or before the date of its publication, a copy of the offering document has been delivered to the Registrar for registration.
- (5) Summary proceedings for an offence under this head may be brought and prosecuted by the competent authority designated under Irish prospectus law or by the registrar of companies.

Explanatory Note

Restatement of Section 48 of the Investment Funds, Companies and Miscellaneous Provisions Act, 2005.

Head 47 Exclusion of Investment Intermediaries Act 1995

- (1) Any document issued in connection with an offer of securities by or on behalf of an issuer, offeror or person seeking admission of securities to trading on a regulated market, shall not be regarded as constituting an investment advertisement within the meaning of Section 23 of the Investment Intermediaries Act, 1995.
- (2) “Document” in Subhead (1) includes, in the case of a local offer, an offering document.

Explanatory Note

Restatement of Section 50 of the Investment Funds, Companies and Miscellaneous Provisions Act, 2005.

Head 48 Power to make certain rules and issue guidelines

- (1) In this head “competent authority” means the competent authority designated under Irish prospectus law.
- (2) The competent authority may make rules imposing or enabling the competent authority to impose requirements on persons on whom an obligation or obligations are imposed by Irish prospectus law, being requirements—
- (a) to do or not to do specified things so as to secure that the provisions of Irish prospectus law are complied with and, in particular (without limiting the generality of this paragraph), to adopt specified procedures and use specified forms in the provision of information to the competent authority;
- (b) to do or not to do specified things so as to secure the effective supervision by the competent authority of activities of the kind to which Irish prospectus law relates and, in particular (without limiting the generality of this paragraph), to make such reports or disclose such matters, at such times and in such manner, to the competent authority or other specified persons as are provided for by the rules or specified by the competent authority pursuant to the rules, being reports or a disclosure of matters that is or are required by virtue or in consequence of the operation of Irish prospectus law.

- (3) Rules under this head may include rules providing for the manner in which or the matters by reference to which (or both) a determination is to be made of any issue as to whether a transaction or transactions is or are of a significant size for the purposes of the provisions of Irish prospectus law implementing Article 2(2)(a) of the 2003 Prospectus Directive.
- (4) The reference in Subhead (1) to an obligation imposed on a person by Irish prospectus law includes a reference to an obligation imposed on a person by virtue of the person's exercising a right or option provided under Irish prospectus law.
- (5) Rules under this head may contain such consequential, incidental or supplemental provisions as the competent authority considers necessary or expedient.
- (6) Rules under this head shall not contain any provision that is inconsistent with Irish prospectus law or require the provision of information to any person the provision of which is not reasonably related to the purposes for which the applicable provisions of the 2003 Prospectus Directive have been adopted.
- (7) The provisions of Irish prospectus law that are expressed by that law to be made for the purpose of enabling the imposition of administrative sanctions shall apply in relation to a contravention of rules under this head as they apply in relation to a contravention of a provision of Irish prospectus law and, accordingly, a sanction that may be imposed pursuant to the first-mentioned provisions of Irish prospectus law in respect of a contravention of a provision of that law may, in accordance with that law, be imposed in respect of a contravention of rules under this head.
- (8) The competent authority may issue guidelines in writing as to the steps that may be taken to comply with Irish prospectus law.

Explanatory Note

Restatement of Section 51 of the Investment Funds, Companies and Miscellaneous Provisions Act, 2005.

Head 49 Avoidance of certain agreements

A condition—

- (a) requiring or binding an applicant for securities to waive compliance with any requirement of—
 - (i) this Chapter, or
 - (ii) EU prospectus law; or
- (b) where EU prospectus law applies, purporting to affect him or her with notice of any contract, document or matter not specifically referred to in the prospectus concerned,

shall be void.

Explanatory Note

Restatement of Section 52 of the Investment Funds, Companies and Miscellaneous Provisions Act, 2005.

First Schedule

Model form of Memorandum of Association of a Designated Activity Company (DAC), being a Private Company limited by shares

1. The name of the company is: THE WESTERN MINING COMPANY DESIGNATED ACTIVITY COMPANY
2. The company is a designated activity company, registered under Part B3 of the [Companies Bill, 2007].
3. The objects for which the company is established are the mining of minerals of all kinds and the doing of all such other things as are incidental or conducive to the attainment of the above object.
4. The liability of the members is limited.
5. The share capital of the company is €200,000, divided into 200,000 shares of €1 each.

We, the several persons whose names and addresses are subscribed, wish to be formed into a company in pursuance of this memorandum of association, and we agree to take the number of shares in the capital of the company set opposite our respective names.

<i>Names, Addresses and Descriptions of Subscribers</i>	<i>Number of Shares taken by each Subscriber</i>
1. Patrick McKenna Address:	300
2. Bridget McCloy Address:	2,700
Total shares taken:	3,000

Dated the _____ day of _____ 20 ____

Witness to the above Signatures:

Name: _____

Address: _____

ARTICLES OF ASSOCIATION

Note

This form may be used by a DAC which comes within paragraph (a) of the definition of DAC in Head 1, e.g. a private company limited by shares and having an objects clause. The form is modelled on Table B in the 1963 Act, which is the model form of Memo for a private company limited by shares under that Act. Paragraph 1 has been modified in comparison to the 1963 version, so that the inverted commas around the company name have been removed, a colon has been inserted in their place, and the name of the company has been capitalised in its entirety for the sake of legal certainty. Following a discussion at the DAC Committee, the description of the company type (Designated Activity Company) has been included in its entirety at the end of the company name (without an intervening comma). However, Head 5, which contains the provisions as to names of DACs, would permit the use in practice of the abbreviations "DAC", "dac", "D.A.C.", "d.a.c.", "designated activity company" or the Irish equivalents. Paragraph 2 is a new addition, to comply with Head 4 (2) (b), which requires the Memo to state that the company is a DAC registered under this Part of the Act.

cond Schedule

Second Schedule

Model form of Memorandum of Association of a Designated Activity Company (DAC), being a Private Company limited by Guarantee and having a Share Capital

1. The name of the company is: THE WESTERN COUNTIES TOURISM DEVELOPMENT COMPANY DESIGNATED ACTIVITY COMPANY
2. The company is a designated activity company, registered under Part B3 of the [Companies Bill, 2007].
3. The objects for which the company is established are the promotion of tourism in the western counties of Ireland by providing facilities for tourists, and the doing of all such other things as are incidental or conducive to the attainment of the above object.
4. The liability of the members is limited.
5. Every member of the company undertakes to contribute to the assets of the company in the event of its being wound up while he is a member, or within one year afterwards, for payment of the debts and liabilities of the company contracted before he ceases to be a member, and the costs, charges and expenses of winding up, and for the adjustment of the rights of the contributories among themselves, such amount as may be required, not exceeding €50.
6. The share capital of the company is €10,000, divided into 10,000 shares of €1 each.

We, the several persons whose names and addresses are subscribed, wish to be formed into a company in pursuance of this memorandum of association, and we agree to take the number of shares in the capital of the company set opposite our respective names.

<i>Names, Addresses and Descriptions of Subscribers</i>	<i>Number of Shares taken by each Subscriber</i>
1. Ann Larkin Address:	1,000
Total Shares taken	1,000

Dated the _____ day of _____ 20 ____

Witness to the above Signatures:

Name: _____

Address: _____

ARTICLES OF ASSOCIATION

The following Regulations (if any) shall apply to this designated activity company:

Note

This form may be used by a DAC which comes within paragraph (b) of the definition of DAC in Head 1, e.g. a private company limited by guarantee and having a share capital. The form is modelled on Table D in the 1963 Act, which is the model form of Memo for a company limited by guarantee and having a share capital under that Act. As above, Paragraph 1 has been modified in comparison to the 1963 version, so that the inverted commas around the company name have been removed, a colon has been inserted in their place, and the name of the company has been capitalised in its entirety for the sake of legal certainty. Following a discussion at the DAC Committee, the description of the company type (Designated Activity Company) has been included in its entirety at the end of the company name (without an intervening comma). However, Head 5, which contains the provisions as to names of DACs, would permit the use in practice of the abbreviations "DAC", "dac", "D.A.C.", "d.a.c.", "designated activity company" or the Irish equivalents. Again as above, Paragraph 2 is a new addition, to comply with Head 4(2)(b), which requires the Memo to state that the company is a DAC registered under this Part of the Act.

Part B4 – Guarantee Companies

Contents of Part B4

Chapter 1 Preliminary and Interpretation

1. Defined terms
2. Interpretation of this Part

Chapter 2 Incorporation and Consequential Matters

3. Definitions
4. Way of forming a Guarantee Company
5. The form of a Guarantee Company's constitution
6. Provisions as to names of guarantee companies
7. Trading under a misleading name
8. Power to dispense with "company limited by guarantee" or "cuideachta faoi theorainn ráthaíochta" in name of charitable and other companies
9. Effect of Constitution
10. Way in which and extent to which objects of company may be altered
11. Power to alter provisions in memorandum which could have been contained in articles
12. Corporate capacity of a CLG
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14. Corporate authority and the power of directors to bind a CLG
15. Conversion of existing guarantee companies
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Chapter 3 Share Capital

17. Prohibition on issue of shares by a guarantee company
18. Limitation on offer of securities to the public
19. Allotment of debentures or other debt securities to be dealt in on stock exchange or regulated market
20. Shares
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22. Financial assistance
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24. Directors
25. Disqualification of Directors
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29. Register of Members
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32. Convening of Extraordinary General Meeting on Requisition
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34. Proxies
35. Votes of Members
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Part B4 - Guarantee Companies

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- 63. Reorganisations of Guarantee Companies
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- 67. Interpretation
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- 69. Conviction on indictment of offences under Irish market abuse law: penalties
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Chapter 16 Public Offers Of Securities

- 73. Interpretation
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Schedule Model Memorandum and Articles of Association for a CLG

Part B4 – Guarantee Companies

Chapter 1

Preliminary and Definitions

Head 1 Defined terms:

In this Part:

“company limited by guarantee” or **“guarantee company”** means a company which does not have a share capital and which has the liability of its members wholly limited by the constitution to such amount as the members may respectively thereby undertake to contribute to the assets of the company in the event of its being wound up.

“constitution” has the meaning ascribed to it in Head 5 of this Part.

“member” means member of a company limited by guarantee or clg.

Explanatory Note

The definition of “company limited by guarantee” is derived from section 2 Companies Act, 1963 and paragraph 5(2)(b) Companies Act, 1963, with the

substitution of the term “memorandum” by the term “constitution”.

In principle, the CLRG agreed the need for a designated name for all guarantee companies, e.g. clg (company limited by guarantee).

In this respect, it must be acknowledged that a charity may dispense with ltd/teoranta in its name via the exemption procedure under section 24 of the Companies Act, 1963 (as amended by section 88 of Company Law Enforcement Act, 2001). Under that section, a company may make a declaration to the Registrar that it meets certain conditions

Head 2 Interpretation of this Part

- (1) The provisions of Parts A1 to A14 of Group A apply to a CLG except to the extent that they are disappplied or modified by this Part.
- (2) The provisions contained in the following table shall not apply to a CLG to which this Part applies:

Part	Head	Title
A2	1	Defined Terms
A2	2	Way of forming a company limited by shares
A2	3	The form of the constitution
A2	9(1) – (3)	Provisions as to names of companies
A2	14	Effect of constitution
A2	20	Capacity of a private company limited by shares
A2	22	Persons or bodies of persons authorised to bind a company
A2	37 - 43	Chapter 6: Conversion of an Existing Company to a Company Limited by Shares (except Head 38)
A3	4	Limitation on offer of securities to the public
A3	5 to 45,-	Shares
A3	46	Holding by subsidiary of shares or [an interest/membership by guarantee] in its holding company.
A3	47 to 55	Shares
A4	2	Directors
A4	10	Share qualifications of directors.
A4	34	Audit Committee

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A4	35	Definition of member
A4	36	Register of members
A4	43	Transfer of shares in management companies
A4	46	Annual general meeting.
A4	49	Convening of extraordinary general meeting on requisition
A4	51	Persons Entitled to Notice of General Meetings
A4	54	Proxies
A4	59	Votes of members
A4	60	Right to demand a poll
A4	64&65	Unanimous written resolutions
A4	68	Registration of, and obligation of, company to supply copies of certain resolutions and agreements
A4	72	Remedy in case of oppression
A5	7	Directors' Compliance Statement and related statement
A6	31	Details of authorised share capital, allotted share capital and movements
A6	33	Holding of own shares or shares in holding undertakings
A6	38(4)	Contents of Directors' Report: General matters
A6	40	Contents of Directors' report: Acquisition or disposal of own shares
A6	42	Directors' Report: Statement on relevant audit information
A6	44	Obligation for a company's statutory financial statements to be audited
A6	45	Right of members to demand audit
A6	58 – 68	Chapter 14 – Exclusions, exemptions and special provisions
A6	74	Company has availed of exemption from audit.
A6	80	Small and medium sized companies
A6	81	Companies exempt from audit under Head 66
A6	82(2)	Modifications of Act
A6	85	Appointment of independent auditors: by members of company
A6	86	Appointment of independent auditors: Failure to appoint
A6	97	Removal of independent auditors: statement from independent auditors where audit exemption availed of by company
A9	1-6	Schemes of Arrangement, Takeover Offers
A9	7-26	Merger of Guarantee companies
A9	27-46	Division of Guarantee companies
A11	86	Liability as contributories of past and present members

Chapter 2

Incorporation and Consequential Matters

Head 3 Definitions

Part A2, Head 1 shall not apply to guarantee companies.

Head 4 Way of forming a Guarantee Company

- (1) A CLG may be formed for any lawful purpose by any person or persons subscribing to a constitution and complying with the registration requirements in this Bill.
- (2) A company other than a CLG may be registered as a CLG following:
 - (i) re-registration as a CLG of an existing company pursuant to [Part B6];
 - (ii) the merger of two or more guarantee companies pursuant to [Part B4, Chapter 9]; or
 - (iii) the division of two or more guarantee companies pursuant to [Part B4, Chapter 9].
- (3) A CLG shall not be formed and registered unless it appears to the Registrar that the company, when registered, will carry on an activity in the State.
- (4) Part A2, Head 2 shall not apply to the formation of a CLG.
- (5) The certificate of incorporation issued under Head 8(1) of Part A2 shall state that the company is a company limited by guarantee (CLG).

Explanatory Note

This is a new head.

Subhead (1) reduces the minimum number of members for a public guarantee to 2.

subhead (3) is taken in substance from Part B2 provisions. This is done on the understanding that Part B9 will provide for the full scheme of conversions for guarantee companies.

Subhead (5) re-enacts section 5(3) of Companies (Amendment) Act, 1983 for a CLG.

Head 5 The form of a Guarantee Company's constitution

- (1) Subject to Subhead (3), the constitution of a CLG shall be in the form of a memorandum and articles of association which together shall be referred to in this Part as a constitution.
- (2) The memorandum of association of a CLG shall state-
 - (a) its name;
 - (b) that it is a guarantee company, registered under this Part;
 - (c) its objects; and
 - (d) that each member undertakes that, if the company is wound up while he or she is a member, or within one year after he or she ceases to be a member, he or she will contribute to the assets of the company, such amount as may be required for—
 - (i) payment of the debts and liabilities of the company contracted before he or she ceases to be a member,
 - (ii) payment of the costs, charges and expenses of winding-up, and
 - (iii) adjustment of the rights of contributories among themselves, not exceeding a specified amount.
- (3) If a CLG adopts supplemental regulations, those regulations shall be in the form of articles of association.
- (4) The constitution shall—
 - (a) be in accordance with the form set out in the Schedule to this Part or as near thereto as circumstances permit;
 - (b) be printed in an entire format;
 - (c) be signed by each subscriber in the presence of at least one witness who must attest the signature.

- (5) Where the constitution is delivered to the Registrar otherwise than in legible form and is authenticated by each subscriber in such manner as is directed by the Registrar, the requirements in Subhead (4) for signature by each subscriber in the presence of at least one witness and for attestation of the signature do not apply.
- (6) Part A2, Head 3 shall not apply to a CLG.

Explanatory Note

Subhead (1) is new.

Paragraphs 2(a)-(c) are an amended restatement of Section 6(1)(a) of the Companies, Act, 1963.

Subheads (3) to (6) are new.

[N.B. Heads 5 - 8 of A2 apply]

Head 6 Provisions as to names of guarantee companies

- (1) The name of a company limited by guarantee shall end with one of the following:
- (company limited by guarantee)
 - (cuideachta faoi theorainn ráthaíochta).
- (2) The words “(company limited by guarantee)” may be abbreviated to “(clg)”/ “(CLG)” or “(c.l.g.)”/ “(C.L.G.)” in any usage after the registration by any person including the company limited by guarantee.
- (3) The words “(cuideachta faoi theorainn ráthaíochta)” may be abbreviated to “(ctr)”/ “(CTR)” or “(c.t.r.)”/ “(C.T.R.)” in any usage after the registration by any person including the company limited by guarantee.
- (4) Every CLG carrying on business under a name other than its corporate name shall register in the manner directed by law for the registration of business names but the use of the abbreviations in Subheads (2) and (3) shall not of itself render such registration necessary.
- (5) Part A2, Head 9 shall not apply to a CLG

Explanatory Note

*This head is modelled on Head 5 of Part B2 dealing with Provisions as to names of PLCs. It is recognised that currently a charity may apply for a license under Section 24 of the Companies Act, 1963 to dispense with the *ltd./teoranta* in its name, see head below.*

Head 7 Trading under a misleading name

- (1) A person who is not a CLG and, if that person is a company, any officer of the company who is in default shall be guilty of a category three offence if he carries on any trade, profession or business under a name which includes, as its last part, the words “company limited by guarantee” (“cuideachta faoi theorainn ráthaíochta”) or abbreviations of those words.
- (2) A CLG and any officer of the CLG who is in default shall be guilty of a category three offence if, in circumstances in which the fact that it is a CLG is likely to be material to any person, it uses a name which may reasonably be expected to give the impression that it is a company other than a CLG.
- (3) Subhead (1) shall not apply to any company—
- (a) to which Part B7 [equivalent of Part XI of the Companies Bill, 1963] applies; and
 - (b) which has provisions in its constitution that would entitle it to rank as a CLG if it had been registered in the State.

Explanatory Note

An amended re-enactment of Sections 56(1), (2) and (4) of the Companies (Amendment) Bill, 1983.

Head 8 Power to dispense with “company limited by guarantee” or “cuideachta faoi theorainn ráthaíochta” in name of charitable and other companies

- (1) A CLG shall, notwithstanding its registration as a company with limited liability, be exempt from the provisions of this Act relating to the use of the word [“clg”] or [“ctr”] as part of its name and the publishing of its name, but shall enjoy all the privileges and shall (subject to this head) be subject to all the obligations of limited companies, where—
- (a) its objects are the promotion of commerce, art, science, education, religion, charity or any other prescribed object; and

- (b) its constitution—
- (i) requires its profits (if any) or other income to be applied to the promotion of its objects,
 - (ii) prohibits the payment of dividends to its members, and
 - (iii) requires all the assets which would otherwise be available to its members to be transferred on its winding up to another company whose objects comply with paragraph (a) and which meets the requirements of this paragraph; and
- (c) a director or secretary of the CLG (or, in the case of an association about to be formed as a limited company, one of the persons who are to be the first directors or the person who is to be the first secretary of the CLG) has delivered to the Registrar a statement in the prescribed form that the CLG complies or, where applicable, will comply with the requirements of paragraphs (a) and (b).
- (2) The Registrar shall refuse to register as a limited company any association about to be formed as a limited company by a name which does not include the word ["clg"] or ["ctr"] unless a declaration as provided for under Subhead (1)(c) has been delivered to the Registrar.
- (3) An application by a company registered as a CLG for a change of name including or consisting of the omission of the word ["clg"] or ["ctr"] shall be made in accordance with Part A2, Head 13 [equivalent of Section 23 of the Companies Act, 1963] and the Registrar shall refuse to grant the application unless a declaration as provided for under Subhead (1)(c) has been delivered to the Registrar.
- (4) A company which is exempt under subhead (1) and whose name does not include the word ["clg"] or ["ctr"] shall not alter its constitution so that it ceases to comply with the requirements of that subhead.
- (5) If it appears to the Registrar that a company which is registered under a name not including the word ["clg"] or ["ctr"]—
- (a) has carried on any business other than the promotion of any of the objects mentioned in Subhead (1)(a),
 - (b) has applied any of its profits or other income otherwise than in promoting such objects, or
 - (c) has paid a dividend to any of its members,
- the Registrar may, in writing, direct the company to change its name within such period as may be specified in the direction so that its name ends with the word ["clg"] or ["ctr"], and the change of name shall be made in accordance with Part A2, Head 13 [equivalent of Section 23 of the Companies Act, 1963].
- (6) A company which has received a direction under Subhead (5) shall not thereafter be registered by a name which does not include the word ["clg"] or ["ctr"] without the approval of the Registrar.
- (7) A person who—
- (a) changes the name of a company in contravention of Subhead (3);
 - (b) alters its constitution in contravention of Subhead (4); or
 - (c) fails to comply with a direction from the Registrar under Subhead (5)
- shall be guilty of a category three offence.
- (8) Summary proceedings in relation to an offence under Subhead (7) may be brought and prosecuted by the Registrar.

Explanatory Note

Amended re-enactment of Section 24 of the Companies Act, 1963.

[N.B. Heads 11 - 13 of A2 applies]

Head 9 Effect of Constitution

- (1) Subject to the provisions of this Bill, the constitution shall, when registered, bind the CLG and the members thereof to the same extent as if they respectively had been signed and sealed by each member and contained covenants by each member to observe all the provisions of the constitution.
- (2) All money payable by any member to the CLG under the constitution shall be a debt due from him to the CLG.

Part B4 - Guarantee Companies

- (3) An action to recover a debt created by this head shall not be brought after the expiration of 12 years from the date on which the causes of action accrued.
 - (4) Every provision in the constitution, or in any resolution of the CLG, purporting to give any person a right to participate in the divisible profits of the CLG, otherwise than as a member, shall be void.
 - (5) For the purpose of the provisions of this Bill relating to the constitution of a CLG and of this head, every provision in the constitution, or in any resolution, of a CLG purporting to divide the CLG into shares or interests, shall be treated as a provision for a share capital, notwithstanding that the nominal amount or number of the shares or interests is not specified thereby.
 - (6) Part A2, Head 14 shall not apply to a CLG
- (5) An application shall not be made under this head by any person who has consented to or voted in favour of the alteration.
 - (6) An application under this head must be made within 21 days after the date on which the resolution altering the CLG's objects was passed and may be made on behalf of the persons entitled to make the application by such one or more of their number as they may appoint in writing for the purpose.
 - (7) On an application under this head, the court may make an order cancelling the alteration or confirming the alteration, either wholly or in part and on such terms and conditions as it thinks fit, and may, if it thinks fit, adjourn the proceedings in order that an arrangement may be made to the satisfaction of the court for the purchase of the interests of dissentient members, and may give such directions and make such orders as it may think expedient for facilitating or carrying into effect any such arrangement.
 - (8) An order under this head may, if the court thinks fit, provide for the purchase by the company of the shares of any members of the company and for the reduction accordingly of the company's capital and may make such alterations in the constitution of the company as may be required in consequence of that provision.

Explanatory Note

Subheads(1), (2) and (3) replicate Part A2, Head 14. Subheads (4) and (5) are a modified restatement of Section 26 of the Companies Act, 1963.

Head 10 Way in which and extent to which objects of company may be altered

- (1) Notwithstanding Part A2, Head 15, a CLG may only alter its objects in accordance with this head.
 - (2) Subject to Subhead (3), a CLG may by special resolution, alter the provisions of its constitution by abandoning, restricting or amending any existing object or by adopting a new object and any alteration so made shall be as valid as if originally contained therein and be subject to alteration in like manner.
 - (3) If an application is made to the court in accordance with this head for the alteration to be cancelled it shall not have effect except in so far as it is confirmed by the court.
 - (4) Subject to Subhead (5), an application under this head may be made—
 - (a) by not less than 15% of the CLG's members; or
 - (b) by the holders of not less than 15% of the CLG's debentures, entitling the holders to object to alterations of its objects.
- (9) Where an order under this head requires the company not to make any, or any specified, alteration in its constitution, then, notwithstanding anything in this Bill, the company shall not have power without the leave of the court to make any such alteration in breach of that requirement.
 - (10) Any alteration in the constitution of a company made by virtue of an order under this head, other than one made by resolution of the company, shall be of the same effect as if duly made by resolution of the company, and the provisions of this Bill shall apply to the constitution altered accordingly.

- (11) The debentures entitling the holders to object to alterations of a CLG's objects shall be any debentures secured by a floating charge which were issued or first issued before the operative date or form part of the same series as any debentures so issued, and a special resolution altering a CLG's objects shall require the same notice to the holders of any such debentures as to members of the guarantee CLG, so however that not less than 10 days' notice shall be given to the holders of any such debentures.

In default of any provisions regulating the giving of notice to any such debenture holders the provisions of the CLG's articles regulating the giving of notice to members shall apply.

- (12) In the case of a CLG which is, by virtue of a licence from the Minister granted under Head 8 [equivalent of Section 24 of Companies Act, 1963], exempt from the obligation to use the word ["clg"] or ["ctr"] as part of its name, a resolution altering the CLG's objects shall also require the same notice to the Minister as to holders of debentures.
- (13) Where a CLG passes a resolution altering its objects—
- (a) if no application is made with respect thereto under this head, it shall within 15 days from the end of the period for making such an application, deliver to the Registrar a printed copy of its constitution as altered; and
- (b) if such an application is made it shall—
- (i) forthwith give notice of that fact to the Registrar, and
- (ii) within 15 days from the date of any order cancelling or confirming the alteration, deliver to the Registrar an office copy of the order and, in the case of an order confirming the alteration, a printed copy of the constitution as altered.

The court may by order at any time extend the time for delivery of documents to the Registrar under paragraph (b) for such period as the court may think proper.

- (14) If a CLG makes default in giving notice or delivering any document to the Registrar as required by Subhead (10), the CLG and every officer of the CLG who is in default shall be guilty of a category three offence.

- (15) In relation to a resolution for altering the provisions of a company's constitution relating to the objects of the company passed before the operative date, this head shall have effect as if, in lieu of Subheads (3) to (14), there had been enacted Subheads (2) to (10) of Section 10 of the Companies Act, 1963, as amended by the Companies Acts, 1963-2006.

Explanatory Note

This is an amended version of Section 10 Companies Act, 1963.

Subhead(4) of this head is identical to the UK provision (Section 5(2) of the 1985 UK Act).

Head 11 Power to alter provisions in memorandum which could have been contained in articles

- (1) Subject to Subhead (2) of this head, Subheads (4) and (5) of Head 15 of Part A2 and Head 31 of this Part, any provision contained in a company's memorandum which could lawfully have been contained in articles of association instead of in the memorandum may, subject to the provisions of this head, be altered by the company by special resolution.
- (2) If an application is made to the court for the alteration to be cancelled, it shall not have effect except in so far as it is confirmed by the court.
- (3) This head shall not apply where the memorandum itself provides for or prohibits the alteration of all or any of the said provisions, and shall not authorise any variation or abrogation of the special rights of any class of members.
- (4) Subheads (4), (5), (6), (7), (8), (9), (10), (13) and (14) of Head 11 of this Part (except paragraph (b) of the said Subhead (4)) shall apply in relation to any alteration and to any application made under this head as they apply in relation to alterations and to applications made under that head.
- (5) This head shall apply to a company's memorandum whether registered before, on or after the operative date.

Explanatory Note

This head is based on Section 28 of the Companies Act, 1963.

[N.B. Heads 16 & 19 of A2 apply]

Head 12 Corporate capacity of a CLG

- (1) A CLG shall have the capacity to do any act or thing stated in the objects set out in its constitution.
- (2) Part A2, Head 20 shall not apply to a CLG.

Explanatory Note

This head, and the following Heads 13 and 14, mirror Part B2 Heads 8, 9 and 10 respectively.

Head 13 Corporate capacity not limited by a CLG's constitution

- (1) The validity of an act done by a CLG shall not be called into question on the ground of lack of capacity by reason of anything contained in the CLG's constitution.
- (2) A member of a CLG may bring proceedings to restrain the doing of an act which but for Subhead (1) would be beyond the CLG's capacity, but no such proceedings shall lie in respect of any act to be done in fulfilment of a legal obligation arising from a previous act of the CLG.
- (3) It remains the duty of the directors to observe any limitations on their powers flowing from the CLG's constitution, and action by the directors which but for Subhead (1) would be beyond the CLG's capacity may only be ratified by the company by special resolution.
- (4) A resolution ratifying such action shall not affect any liability incurred by the directors or any other person; relief from any such liability must be agreed to separately by special resolution.
- (5) A party to a transaction with a CLG is not bound to enquire as to whether it is permitted by the CLG's constitution.

Explanatory Note

This head mirrors the wording of Part B2, Head 9.

Head 14 Corporate authority and the power of directors to bind a CLG

- (1) In favour of a person dealing with a CLG in good faith, the power of the board of directors to bind the CLG, or authorise others to do so, or of any person registered with the Registrar for the purposes of Part A2, Head 21 [equivalent of Reg.6(3) S.I. 173 of 1963] as a person authorised to bind the CLG, shall be deemed to be free of any limitation under the CLG's constitution.
- (2) For the purposes of Subhead(1) -
 - (a) a person "deals with" a CLG if he is a party to any transaction or other act to which the CLG is a party;
 - (b) a person shall not be regarded as acting in bad faith by reason only of his knowing that an act is beyond the powers of the persons referred to in Subhead (1) under the CLG's constitution; and
 - (c) a person shall be presumed to have acted in good faith unless the contrary is proved.
- (3) The references in Subheads (1) and (2) to limitations on the directors' powers or those of a person registered with the Registrar for the purposes of Part A2 Head 21 as a person authorised to bind the CLG under the CLG's constitution include limitations deriving -
 - (a) from a resolution of the CLG in general meeting or a meeting of any class of shareholders; or
 - (b) from any agreement between the members of the CLG or of any class of shareholders.
- (4) Subhead (1) does not affect any right of a member of the CLG to bring proceedings to restrain the doing of an act which is beyond the powers of the directors or of a person registered with the Registrar for the purposes of Part A2, Head 21 as a person authorised to bind the CLG, but no such proceedings shall lie in respect of an act to be done in fulfilment of a legal obligation arising from a previous act of the CLG.

- (5) Subhead (1) does not affect any liability incurred by the directors, or any other person including a person registered with the Registrar for the purposes of Part A2, Head 21 as a person authorised to bind the CLG, by reason of the directors or a person registered with the Registrar for the purposes of Part A2, Head 21 as a person authorised to bind the CLG, exceeding their powers.
- (6) A party to a transaction with a CLG is not bound to enquire as to whether there is any limitation on the powers of the board of directors to bind the PLC or authorise others to do so or on the powers of a person registered with the Registrar for the purposes of Part A2, Head 21 as a person authorised to bind the CLG.
- (4) Subject to Part B4, Head 8 from the end of the transition period it will be a category four offence for an existing CLG not having a share capital to use or display its name in any way other than provided for in Part B4, Head 7.

Explanatory Note

In Head 1 of Part A2 the transition period is defined as expiring 12 months after the status date, itself being defined as six months after commencement of Part A2. Thus expiry of the transition period will be co-terminous with expiry of the transition period for Part A2, assuming both Parts are commenced on the same date.

Explanatory Note

This head mirrors Part B2, Head 10. This head seeks to protect persons dealing with a company who may be faced with the defence that the persons with whom they dealt did not have the authority to conclude such a transaction. Again, shareholders are protected and may injunct transactions which are beyond the powers of directors.

[N.B Heads 21 to 36 of A2 apply]

Head 15 Conversion of Existing Guarantee Companies

- (1) In this Part the term 'transition period' shall mean the period ending 18 months after the commencement of this Part.
- (2) Every existing guarantee company that does not have a share capital shall at the end of the transition period become a "clg" to which this Part applies.
- (3) Where an existing guarantee company has not, by the end of the transition period, changed its name to comply with Part B4, Head 7 then from the end of the transition period the provisions of Part B4, Head 7 shall apply to that company and from that time forward -
- (a) The word "limited" at the end of the company name shall be replaced by "company limited by guarantee", or
- (b) The word "teoranta" at the end of the company name shall be replaced by "cuideachta faoi theorainn ráthaíochta".

Head 16 Part A2, Heads 37, 38, 39, 40, 41 and 42 shall not apply to a guarantee company.

Part A2, Heads 37, 38, 39, 40, 41 and 42 shall not apply to a guarantee company.

Explanatory Note

These heads are provisions relating to the conversion of 'existing private companies limited by shares' to private companies and are therefore do not apply to guarantee companies.

[Head 38 of A2 applies]

Chapter 3

Share Capital

Head 17 Prohibition on issue of shares by a guarantee company

- (1) No CLG may be formed with the power to issue share capital.
- (2) Notwithstanding any provision in its constitution, no CLG may have a share capital or have the power to issue share capital after the transition date.
- (3) Any existing guarantee company with an issued share capital shall, after the transition period, be deemed to be a designated activity company (dac).
- (4) Part A3, Head 2 shall not apply to a CLG

Explanatory Note

This is a new head. The head places a prohibition on the formation of a clg with a share capital. Existing guarantee companies are prohibited from having a share capital or having the power to raise share capital. Any existing guarantee company with a share capital at the end of the transition period will be re-designated as a DAC.

Head 18 Limitation on offer of securities to the public

- (1) Save to the extent prohibited by its constitution, a CLG shall have the capacity to offer, allot and issue debentures, which shall include debenture stock, bonds and any other debt instruments of a company or any forms of securitised debt, including depositary receipts in respect of such securities, whether constituting a charge on the assets of the company or not, to the public subject to compliance, where applicable with Chapter 13 of Part B2.
- (2) Part A3, Head 3 shall not apply to a CLG.

Explanatory Note

The effect of the head is to apply prospectus law and prevent a CLG from issuing debentures or debt instruments to the public where a prospectus would be needed. The head modifies the text of Part A3, Head 3 by replacing the references to 'securities' with 'debts or other debt instruments'. The wording of the head is subject to review.

Head 19 Allotment of debentures or other debt securities to be dealt in on stock exchange or regulated market

- (1) Where a prospectus, whether issued generally or not, states that application has been or will be made for permission for the debentures or other debt securities offered thereby to be dealt in on any stock exchange or regulated market, any allotment made on an application in pursuance of the prospectus shall, whenever made, be void if the permission has not been applied for before the third day after the first issue of the prospectus or if the permission has not been granted within 6 weeks from the date of the closing of the subscription lists.
- (2) Where the permission has not been applied for as aforesaid or has not been granted, the company shall forthwith repay without interest, all money received from applicants in pursuance of the prospectus, and, if any such money is not repaid within 8 days after the company becomes liable to repay it, the directors of the company shall be jointly and severally liable to repay that money with interest at the rate of 5 per cent. per annum from the expiration of the eighth day, so however that a director shall not be liable if he proves that the default in the repayment of the money was not due to any misconduct or negligence on his part.
- (3) All money received as aforesaid shall be kept in a separate bank account so long as the company may become liable to repay it under Subhead (2), and if default is made in complying with this subhead, the company and every officer of the company who is in default shall be guilty of a category three offence
- (4) Any condition requiring or binding any applicant for debentures or other debt securities to waive compliance with any requirement of this head shall be void.
- (5) This head shall have effect—
 - (a) in relation to any debentures or other debt securities agreed to be taken by a person underwriting an offer thereof by a prospectus as if he had applied therefor in pursuance of the prospectus; and
 - (b) in relation to a prospectus offering debentures or other debt securities for sale with the following modifications —

- (i) references to sale shall be substituted for references to allotment,
 - (ii) the persons by whom the offer is made, and not the company, shall be liable under Subhead (2) to repay money received from applicants, and references to the company's liability under that subhead shall be construed accordingly, and
 - (iii) for the reference in Subhead (3) to the company and every officer of the company who is in default, there shall be substituted a reference to any person by or through whom the offer is made and who knowingly and wilfully authorises or permits the default.
- (6) In reckoning for the purposes of this head the third day after another day, any intervening day which is a Saturday or Sunday or which is a bank holiday shall be disregarded and if the third day (as so reckoned) is itself a Saturday or Sunday or such a bank holiday there shall for the said purposes be substituted the first day thereafter which is none of them.
- (7) The provisions of this head shall not apply in relation to an allotment of non-equity securities.

Explanatory Note

Restatement of Section 57 of the Companies Act, 1963.

Head 20 Shares

- (1) Where a CLG is prohibited by its constitution or by this Part from having members other than by guarantee, then the provisions of Part A3 that relate to membership by shareholding shall not apply.
- (2) Part A3, Heads 5 to 41 and 43 to 52 shall not apply to a CLG.

Explanatory Note

This is a new head. The provisions of Part A3 (as specified in this Head) relate to shares and therefore are not capable of applying to a CLG which is prohibited from having members other than by guarantee.

Head 21 Holding by subsidiary of shares or [an interest/membership by guarantee] in its holding company.

- (1) Notwithstanding Part A3, Head 45 [equivalent of Section 32 of the Companies Act, 1963] or Part A3, Head 15 [equivalent of Section 60 of the Companies Act, 1990], a CLG may, subject to the provisions of this head, acquire and hold shares or [an interest/membership by guarantee] in a company which is its holding company.
- (2) The acquisition and holding by a subsidiary under Subhead (1) of shares or an interest in its holding company shall be subject to the following conditions -

- (a) The consideration for the acquisition of such shares or [interest/membership by guarantee] shall be provided for out of the profits of the subsidiary available for distribution;
- (b) Upon the acquisition of such shares or [interest/membership by guarantee] and for so long as the shares or [interest/membership by guarantee] are held by the subsidiary —

- (i) the profits of the subsidiary available for distribution shall for all purposes be restricted by a sum equal to the total cost of the shares or [interest/membership by guarantee] acquired,

- (ii) the shares or [interest/membership by guarantee] shall, for the purposes of the consolidated accounts prepared by the holding company in accordance with Part A6, Heads 15 and 16 [equivalent of Sections 150 & Sections 152 of the Companies Act, 1963], be treated in the same manner as is required in respect of shares held as treasury shares under Part A3, Head 41 [equivalent of Sections 43A of the Companies Act, 1983 (inserted by Section 232 (c) of the 1990 Act)], and

- (iii) the subsidiary shall not exercise any voting rights in respect of the [interest/membership by guarantee] and any purported exercise of those rights shall be void.

- (3) A contract for the acquisition (whether by allotment or transfer) by a subsidiary of shares or [an interest/membership by guarantee] in its holding company shall not be entered into without being authorised in advance both by the subsidiary and its holding company and the provisions of Part A3, Heads 38 and 39 [equivalent of Sections 212 to s.217 of the Companies Act, 1990] shall apply, with the necessary modifications, to the granting, variation, revocation and release of such authority.
- (4) For the purposes of this head, a subsidiary's profits available for distribution shall not include the profits attributable to any [interest/membership by guarantee] in the subsidiary for the time being held by the subsidiary's holding company so far as they are profits for the period before the date on or from which the [interest/membership by guarantee] was acquired by the holding company.
- (5) This head shall not apply to shares or [an interest/membership by guarantee] held by a subsidiary in its holding company in the circumstances permitted by Part A3, Head 45 [equivalent of Sections 32 of the Companies Act, 1963].
- (6) Part A3, Head 46 shall not apply to a CLG.

Explanatory Note

This head amends Part A3, Head 46 to replace shares with "shares or [an interest/membership by guarantee]..."

This covers the situation where a subsidiary holds shares or [an interest/membership by guarantee] in its holding company.

Head 22 Financial assistance

- (1) It shall not be lawful for a CLG, where it is a subsidiary of a holding company, to give, whether directly or indirectly, and whether by means of a loan, guarantee, the provision of security or otherwise, any financial assistance for the purpose of or in connection with an acquisition (whether by subscription, purchase, exchange, redemption or otherwise) made or to be made by any person of or for any shares in its holding company, unless it is given in compliance with the succeeding subhead of this head.
- (2) Subhead (1) does not prohibit—
- (a) the giving of financial assistance in accordance with the validation procedure defined in Part A4, Head 71;
- (b) the payment of a dividend or making of any distribution out of profits available for distribution;
- (c) the discharge by a CLG of a liability lawfully incurred by it;
- (d) where the lending of money is part of the ordinary business of the CLG, the lending of money by the CLG in the ordinary course of its business;
- (e) the provision by a CLG, in accordance with any scheme for the time being in force, of money for the purchase of, or subscription for, fully paid shares in its holding company, being a purchase or subscription of or for shares to be held by or for the benefit of employees or former employees of the CLG or of any subsidiary of the CLG including any person who is or was a director holding a salaried employment or office in the CLG or any subsidiary of the CLG;
- (f) the making by a CLG of loans to persons, other than directors, bona fide in the employment of the CLG or any subsidiary of the CLG with a view to enabling those persons to purchase or subscribe for fully paid shares in its holding company to be held by themselves as beneficial owners thereof;
- (g)
- (i) the provision of a loan, a guarantee, the provision of security or otherwise to discharge or refinance an existing financial assistance (whether by means of a loan, guarantee, the provision of security or otherwise) where the financial assistance (whether by means of a loan, guarantee, the provision of security or otherwise) had occurred pursuant to the validation procedure or a special resolution passed in accordance with the validation procedure in Part A4, Head 71,
- (ii) the provision of any subsequent or successive financial assistance (whether by way of a loan, guarantee or the provision of security or otherwise) in connection with subsequent or successive refinancings;

- (h) the giving by a CLG of warranties to an acquirer of shares in its holding company for the purpose of or in connection with that acquisition;
 - (i) the payment by a CLG of fees and expenses of the advisers to the CLG and of any subscriber for shares incurred in connection with that subscription;
 - (j) the incurring of expense by a CLG in order to facilitate the admission to or continuance of a trading facility of securities of the CLG on a stock exchange or securities market including the expenses associated with the preparation of and filing of any documents required under the laws of any jurisdiction in which the securities in question are admitted to trading or are afforded a trading facility;
 - (k) the incurring of any expense by a CLG or its subsidiary in order to ensure compliance with Irish Takeover Panel Act, 1997;
 - (l) the reimbursement by an offeree CLG or by a subsidiary of an offeree CLG of expenses of an offeror pursuant to an agreement approved by or in terms approved of by Irish Takeover Panel;
 - (m) in connection with an allotment of shares, the payment of commissions not exceeding 10% of the money received in respect of such allotment to intermediaries, and the payment of professional fees.
- (3) Any transaction in breach of this head shall be voidable at the instance of the company against any person (whether a party to the transaction or not) who had actual or imputed notice of the facts which constitute such breach.
- (4) If a company acts in contravention of this head every officer of the company who is in default shall be guilty of a category two offence.

Explanatory Note

This head is an amended re-enactment of Section 60 of the Companies Act, 1963, as amended by Regulation 10 of the First Schedule of the Companies (Amendment) Act, 1983, and Section 89 of the Company Law Enforcement Act, 2001.

Subhead (1) is an amended re-enactment of Section 60(1). The reference to “purchase or subscription” has been replaced by “...Acquisition (whether by subscription, purchase, exchange, redemption or otherwise)”. The reference to “...Subject to the following subsections” has been deleted and replaced by “...Unless it has been given in accordance with the succeeding subheads of this head”. This is due to the fact that subsections 60(2)-(11) have been deleted and instead there is now a more generalised validation procedure provided for in Part IV of the Bill.

Subhead (2)(a) refers to the single validation procedure now contained in Part IV. This new validation procedure was introduced in accordance with the views of the First report of the Company Law Review Group. It replaces the procedures contained in Sections 60(2) to 60(11) of the Companies Act, 1963, Section 256 of the Companies Act, 1963 and section 31 of the Companies Act, 1990. Subheads (2)(b) & (2)(c) are a re-enactment of Sections 60(11) of the Companies Act, 1963. Subheads 2(d) - 2(f) are a re-enactment of Section 60(13) of the Companies Act, 1963.

Subheads 2(g) - 2(m) are new. They give effect to the views of the Company Law Review Group in its First Report that, owing to width of Section 60, many bona fide transactions are prohibited. The Review Group considered that a number of transactions, specifically Subhead (2) should be exempt from the prohibition and, thus, from the requirement to be effected through a validation procedure.

Subhead (3) is a re-enactment of Section 60(14) of the Companies Act, 1963.

Subhead(6) is a slightly amended re-enactment of Section 60(15) of the Companies Act, 1963.

Head 23 Power to make regulations for transfer of securities

- (1) The Minister may make provision by regulations for enabling title to securities to be evidenced and transferred without a written instrument.
- (2) Subject to any exceptions that may be specified in the regulations, the regulations may, in respect of—
 - (a) securities of companies admitted to trading on a regulated market;
 - (b) securities of companies admitted to trading on a market other than a regulated market; or
 - (c) securities of public limited companies of a specified class,

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provide that the means provided by the regulations for evidencing and transferring title to such securities shall constitute the sole and exclusive means for doing so (and, accordingly, that any purported transfer of such securities otherwise than by those means shall be void).

(3) In this head—

- (a) “securities” means transferable securities as defined by Article 1(4) of Directive 93/22/EEC with the exception of money market instruments as defined by Article 1(5) of Directive 93/22/EEC, having a maturity of less than 12 months;
- (b) references to title to securities include any legal or equitable interest in securities; and
- (c) references to a transfer of title include a transfer by way of security.

(4) The regulations may make provision—

- (a) for procedures for recording and transferring title to securities; and
- (b) for the regulation of those procedures and the persons responsible for or involved in their operation.

(5) The regulations shall contain such safeguards as appear to the Minister appropriate for the protection of investors and for ensuring that competition is not restricted, distorted or prevented.

(6)

- (a) The regulations may, for the purpose of enabling or facilitating the operation of the new procedures, make provision with respect to the rights and obligations of persons in relation to securities dealt with under the procedures;
- (b) The regulations shall be framed so as to secure that the rights and obligations in relation to securities dealt with under the new procedures correspond, so far as practicable, with those which would arise apart from any regulations under this head;

(c) The regulations may—

- (i) require the provision of statements by a company to holders of securities (at specified intervals or on specified occasions) of the securities held in their name,
- (ii) make provision removing any requirement for the holders of securities to surrender existing share certificates to issuers, and
- (iii) make provision that the requirements of the regulations supersede any existing requirements in the articles of association of a company which would be incompatible with the requirements of the regulations.

(7) Without prejudice to the generality of Subheads (5) and (6), the regulations shall not contain provisions that would result in a person who, but for the regulations, would be entitled—

- (a) to have his or her name entered in the register of members of a company; or
- (b) to give instructions in respect of any securities, ceasing to be so entitled.

(8)

- (a) The regulations may include such supplementary, incidental and transitional provisions as appear to the Minister to be necessary or expedient;
- (b) In particular, provision may be made for the purpose of giving effect to—
 - (i) the transmission of title of securities by operation of law,
 - (ii) any restriction on the transfer of title to securities arising by virtue of the provisions of any enactment or instrument, court order or agreement,
 - (iii) any power conferred by any such provision on a person to deal with securities on behalf of the person entitled.

- (9) The regulations may for the purposes mentioned in this head make provision with respect to the persons who are to be responsible for the operation of the new procedures and for those purposes may empower the Minister to delegate to any person willing and able to discharge them any functions of his under the regulations.
- (10) The regulations may make different provision for different cases.
- (11) Every regulation made under this head shall be laid before each House of the Oireachtas as soon as may be after it is made and if a resolution annulling the regulation is passed by either such House within the next twenty-one days on which that House has sat after the regulation is laid before it, the regulation shall be annulled accordingly, but without prejudice to the validity of anything previously done thereunder.

Explanatory Note

Restatement of Section 239 of the Companies Act, 1990.

The definition of "securities" is taken from Regulation 2 (1) of the Prospectus (Directive 2003/71/EC) Regulations 2005.

Subsection (3) (c) has been omitted, since Head 32 of Part A3 is disapplied from CLGs.

Chapter 4 Corporate Governance

[N.B. Part A4, Head 1 applies]

Head 24 Directors

- (1) Every CLG shall be required to have at least two directors.
- (2) Part A4, Head 2 shall not apply to CLGs.

Explanatory Note

New head giving effect to the recommendation given by the CLRG in its First Report, that the minimum requirement of two directors should remain for all companies other than private companies including CLGs [Para 11.8.11]. The head mirrors Part B2, Head 62.

[N.B. Heads 3-9 of Part A4 apply]

Head 25 Disqualification of Directors

- (1) The office of director shall be vacated if the director—
 - (a) without the consent of the CLG in general meeting holds any other office or place of profit in the CLG; or
 - (b) is adjudged bankrupt in the State or in a Member State of the European Communities or makes any arrangement or composition with his creditors generally; or
 - (c) becomes prohibited from being a director by reason of any order made under Part A4, Head 7 [equivalent of Section 183A of the Companies Act, 1963] or Part A13, Head 42 [equivalent of Section 160 of the Companies Act, 1990]; or
 - (d) becomes of unsound mind; or
 - (e) resigns his office by notice in writing to the CLG; or
 - (f) is directly or indirectly interested in any contract with the CLG and fails to declare the nature of his interest in the manner required by Part A5, Head 12 [equivalent of Section 194 of the Companies Act, 1963].
- (2) Part A4, Head 10 does not apply.

Explanatory Note

This is an amended version of Regulation 39 of Table C of the 1963 Act, updated to take account of the provisions re disqualification in the Company Law Enforcement Act, 2001

[Heads 11 to 15 of Part A4 apply]

Head 26 Removal of Directors

Notwithstanding Part A4, Head 17(1), any restriction in the CLG's constitution on the removal of a director by the members other than by ordinary resolution shall be void.

Explanatory Note

This head acts as a proviso to Head 17 of Part A4. Head 17 re-enacts Section 183 of the Companies Act, 1963 which provides for a private company only to have the power to appoint directors for life. In consequence it is necessary to disapply Head 17(1) to other types of companies.

[Heads 17- 33 of Part A4 apply]

Head 27 Audit Committee

- (1) In this head—

'affiliate,' in relation to an auditor, means a firm, body corporate or partnership considered under Part A6, Head 2(2) [equivalent of Section 182(2) of the Companies Act, 1990] to be an affiliate of the auditor at the relevant time;

'amount of turnover' and 'balance sheet total' have the same meanings as in Part A6, Head 58 [equivalent of Section 8 of the Companies (Amendment) Act, 1986];

'internal audit' means an examination of the internal control system of a CLG that is conducted within the company at the request of its audit committee, directors or other officers;

'internal auditor' means a person who conducts an internal audit;

'parent undertaking' and 'subsidiary undertaking' have the same meaning as in the Part A1, Head 6 [equivalent of S.I. No.201 of 1992, EC (Companies: Group Accounts) Regulations, 1992].
- (2) The responsibilities of a committee of directors, to be known as the audit committee, may include, but are not limited to, the following -
 - (a) reviewing, before they are presented to the board of directors for approval—

- (i) the CLG's annual accounts, and
 - (ii) if the CLG is a parent company, the group accounts of the group of undertakings of which the company is the parent company;
- (b) determining whether the annual accounts so reviewed comply with Part 6, Head 13(7) [equivalent of Section 205A(2) of the Companies Act, 1990] and whether, in the committee's opinion, they give at the end of the financial year a true and fair view of—
- (i) the state of affairs of the CLG, and
 - (ii) the profit or loss of the CLG, even if [equivalent of Section 3(2) of the Companies (Amendment) Act, 1986] Part A6, Head 13(3) [equivalent of Section 3(1) of the Companies (Amendment) Act, 1986] does not apply to the CLG's profit and loss account;
- (c) determining whether the group accounts so reviewed comply with Part A6, Head 13(7) [equivalent of Section 205A(2) of the Companies Act, 1990] and whether, in the committee's opinion, they give, at the end of the financial year, a true and fair view of—
- (i) the state of affairs of the group of undertakings of which the CLG is the parent company, and
 - (ii) the profit or loss of that group;
- (d) recommending to the board of directors whether or not to approve the annual accounts and group accounts so reviewed;
- (e) determining, at least annually, whether in the committee's opinion, the CLG has kept proper books of account in accordance with Part A6, Heads 5 to 9 [equivalent of Section 202 of the Companies Act, 1990];
- (f) reviewing, before its approval by the board of directors, the statement required to be made under Part A5, Head 7(2) [equivalent of Section 205E(5) and (6) of the Companies Act, 1990];
- (g) determining whether, in the committee's opinion, the statement so reviewed—
- (i) complies with Part A5, Head 7(2) [equivalent of Section 205E(5) and 5(6) of the Companies Act, 1990], and
 - (ii) is fair and reasonable and is based on due and careful enquiry;
- (h) recommending to the board of directors whether or not to approve a statement reviewed under paragraph (f);
- (i) advising the board of directors as to the recommendation to be made by the board to the shareholders concerning the appointment of the CLG's auditor;
- (j) monitoring the performance and quality of the auditor's work and the auditor's independence from the CLG;
- (k) obtaining from the auditor, up to date information to enable the committee to monitor the CLG's relationship with the auditor, including, but not limited to, information relating to the auditor's affiliates;
- (l) recommending whether or not to award contracts to the auditor or an affiliate of the auditor for non-audit work;
- (m) satisfying itself that the arrangements made and the resources available for internal audits are, in the committee's opinion, suitable;
- (n) reporting, as part of the report under Part A6, Head 37 [equivalent of Section 158 of the Companies Act, 1963], on the committee's activities for the year, including, but not limited to, the discharge of its responsibilities under paragraph (j);
- (o) performing any additional functions prescribed by regulation under Part A14, Head 45(1)(m) [equivalent of Section 48(1)(m) of the Companies (Auditing and Accounting) Act, 2003];
- (p) performing any other functions relating to the CLG's audit and financial management that are delegated to it by the board of directors.
- (3) The board of directors of each CLG shall either—
- (a) establish an audit committee that—

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- (i) has all or some of the responsibilities specified in Subhead (2), and
 - (ii) subject to Subhead (8), otherwise meets the requirements of this head; or
 - (b) decide not to establish an audit committee.
- (4) The board of directors of each large CLG to which Subhead (3) applies shall state in their report under Part A6, Head 37 [equivalent of Section 158 of the Companies Act, 1963]—
- (a) whether the CLG has established an audit committee or decided not to do so;
 - (b) if the CLG has established an audit committee, whether it has only some of the responsibilities specified in Subhead (2); and
 - (c) if the CLG has decided not to establish an audit committee, the reasons for that decision.
- (5) The audit committee is to consist of such directors as the board of directors concerned thinks fit, provided, subject to Subhead (7), both of the following requirements are met -
- (a) the committee consists of not fewer than 2 members;
 - (b) all those appointed to the committee qualify under Subhead (6).
- (6) A director qualifies for appointment to the audit committee unless he or she—
- (a) is, or was at any time during the 3 years preceding appointment to the committee—
 - (i) an employee of the CLG concerned, or
 - (ii) an employee of any subsidiary of the CLG concerned; or
 - (b) is the chairperson of the board of directors.
- (7) The requirements specified in paragraphs (a) and (b) of Subhead (5) do not apply if—
- (a) only one director on the board of directors of the CLG concerned qualifies under subhead (6);
- (b) that director—
 - (i) is appointed as the sole member of the audit committee, or
 - (ii) is appointed as the chairperson of an audit committee consisting of not more than 2 members (including the chairperson) and has, in the case of an equal division of votes, a second or casting vote;
 - (c) any conditions prescribed under Section Part A14, Head 45(1)(m) [48(1)(m) of the Companies (Auditing and Accounting) Act, 2003] are met; and
 - (d) the directors of the CLG concerned state in their report under Part A6, Head 37 [equivalent of Section 158 of the Companies Act, 1963] the reasons for the CLG's exemption from those requirements.
- (8) Written terms of reference concerning the audit committee's role in the audit and financial management of the CLG concerned shall—
- (a) be prepared and approved by the board of directors;
 - (b) be submitted for the information of the shareholders of the CLG concerned at its annual general meeting; and
 - (c) be reviewed each year by the board of directors.
- (9) Without limiting the matters that may be included under Subhead (8), the terms of reference must—
- (a) specify how the audit committee will discharge its responsibilities; and
 - (b) provide for a programme of separate and joint meetings with the management, auditor and internal auditor of the CLG or undertaking concerned.
- (10) Subhead (8) applies also in relation to any amendments of the audit committee's terms of reference.
- (11) Where the director of a CLG fails to take all reasonable steps to comply with the requirements of Subhead (4) the director is guilty of a category three offence.
- (12) Part A4, Head 34 shall not apply to a CLG.

Explanatory Note

This is an amended version of Part A4, Head 34. The head in effect extends the 'comply or explain' requirement for an audit committee to all guarantee companies, and to any group of companies which has a guarantee company as its parent.

Head 28 Membership

- (1) The subscribers to the memorandum of association in the constitution of a CLG shall be deemed to have agreed to become members of the CLG, and on its registration, shall be entered as members in its register of members.
- (2) Such other persons as the directors admit to membership and who give the requisite guarantee shall be members of the CLG and their names shall be entered in its register of members.
- (3) The constitution of a CLG must state the number of members with which the company proposes to be registered and if the company has a share capital, the amount of share capital with which the company proposes to be registered.
- (4) Where a CLG has increased the number of its members beyond the registered number, it shall, within 15 days after the increase was resolved on or took place, deliver particulars of the increase to the Registrar.

If default is made in complying with this subhead, the company and every officer of the company who is in default shall be liable to a fine.

- (5) The memorandum of association of a CLG may state the maximum number of persons who may be members of the CLG, subject to the power of the directors to register an increase in the number of members.
- (6) A member may resign his membership by serving notice to that effect upon the directors at the registered office of the CLG, such notice to expire no earlier than the date of service of the notice of resignation.
- (7) Save where the constitution of a CLG provides otherwise, the directors may require a member to resign his membership by serving notice upon the member terminating his membership to expire no earlier than the date of service of the notice of termination.
- (8) Save where the constitution of a CLG provides otherwise, every member shall have one vote.

- (9) The death of a member shall terminate his membership.
- (10) It shall be a category two offence to personate a member of a CLG.
- (11) Part A4, Head 35, shall not apply to a CLG.

Explanatory Note

This Head is new, however it is based on Model Regulation 3 of Table C of the First Schedule to the Companies Act, 1963.

The Head sets out the principle that new members may not be admitted unless approved by the directors. It also requires that new members must give the requisite guarantee. Membership is not transferable and ceases on resignation or death. The duration of membership and the events or acts which will terminate will be set out in the articles. For example, in the case of apartment management companies it is common to provide that membership ceases when ownership of one of the apartments ceases.

Head 29 Register of Members

- (1) Subject to Subhead (4), every CLG shall keep a register of its members and enter therein the following particulars -
 - (a) the names, addresses of the members; and
 - (b) the date at which each person was entered in the register as a member;
 - (c) the date at which any person ceased to be a member.
- (2) The entries required under paragraphs (a), and (b) of Subhead (1) shall be made within 28 days after the conclusion of the agreement with the CLG to become a member or, in the case of a subscriber of constitution, within 28 days after the registration of the CLG.
- (3) The entry required under paragraph (c) of Subhead (1) shall be made within 28 days after the date when the person concerned ceased to be a member, or, if he ceased to be a member otherwise than as a result of action by the CLG, within 28 days of production to the CLG of evidence satisfactory to the CLG of the occurrence of the event whereby he ceased to be a member.

(4) Subject to Subhead (5), the register of members shall, except when it is closed under the provisions of this Bill, be kept at the registered office of the CLG, so, however, that—

- (a) if the work of making it up is done at another office of the CLG, it may be kept at that other office; and
- (b) if the CLG arranges with some other person for the making up of the register to be undertaken on behalf of the CLG by that other person,

it may be kept at the office of that other person at which the work is done.

(5) The register of members shall not be kept at a place outside the State.

(6) Subject to Subhead (7), every CLG shall send notice to the Registrar of the place where its register of members is kept and of any change in that place.

(7) A CLG shall not be bound to send notice under Subhead (6) where the register has, at all times since it came into existence or, in the case of a register in existence on the operative date, at all times since then, been kept at the registered office of the CLG.

(8) Where a CLG makes default in complying with any of the requirements of Subheads (1) to (5) or makes default for 14 days in complying with Subhead (6), the CLG and every officer of the CLG who is in default shall be guilty of a category three offence .

(9) Part A4, Head 36 shall not apply to a CLG

Explanatory Note

Subhead (1) of Part A4, Head 36 has been amended so as to remove the requirement for the particulars of the shareholding of a member. In effect it reflects the requirements in Section 116 of the Companies Act, 1963 rather than those in Head 36.

Section 116 of the Companies Act, 1963 requires every company to keep a register of members which should be open to inspection by the public.

[Heads 37 to 42 of Part A4 apply]

Head 30 Transfer of membership of a CLG that is a management company

(1) This head applies to a CLG that is a management company as defined in Part A1, Head 1.

(2) A member of a CLG that is a management company shall cease to be a member upon disposal of their estate or interest in property and the person who acquires the property automatically becomes a member of the CLG.

(3) Part A4, Head 43 shall not apply to a CLG.

Explanatory Note

This is a new head designed to clarify entitlement to transfer membership where a company is also a management company. The equivalent provision in Part A4, Head 43, deals only with transfer of shares, therefore a separate head dealing with membership was required for companies limited by guarantee. The head is intended to create the situation where cessation and acquisition of membership happens automatically upon acquisition or disposal of property, without requirement for anything further.

Head 31 Annual General Meeting

(1) Subject to Subhead (2), every CLG shall in each year hold a general meeting as its annual general meeting in addition to any other meetings in that year and shall specify the meeting as such in the notices calling it and not more than 15 months shall elapse between the date of one annual general meeting of a CLG and that of the next.

(2) So long as a CLG holds its first annual general meeting within 18 months of its incorporation, it need not hold it in the year of its incorporation or in the following year.

- (3) If default is made in holding a meeting of the CLG in accordance with Subhead (1), the Director of Corporate Enforcement may, on the application of any member of the CLG, call or direct the calling of a general meeting of the CLG and give such ancillary or consequential directions as the Director of Corporate Enforcement thinks expedient, including directions modifying or supplementing in relation to the calling, holding and conducting of the meeting, the operation of the CLG's constitution, and the directions which may be given under this subhead may include a direction that one member of the CLG present in person or by proxy shall be deemed to constitute a meeting.
- (4) A general meeting held in pursuance of Subhead (3) shall, subject to any directions of the Director of Corporate Enforcement, be deemed to be an annual general meeting of the CLG but, where a meeting so held is not held in the year in which the default in holding the CLG's annual general meeting occurred, the meeting so held shall not be treated as the annual general meeting for the year in which it is held unless at that meeting the CLG resolves that it shall be so treated.
- (5) Where a CLG resolves that a meeting shall be so treated, a copy of the resolution shall, within 21 days after the passing thereof, be delivered to the Registrar for registration.
- (6) If default is made in holding a meeting of the CLG in accordance with Subhead (1), or in complying with any direction of the Director of Corporate Enforcement under Subhead (3), the CLG and every officer of the CLG who is in default shall be guilty of a category three offence, and if default is made in complying with Subhead (5), the CLG and every officer of the CLG who is in default shall be guilty of a category three offence.
- (7) Part A4, Head 46 shall not apply to a CLG.

Explanatory Note

This head disapplies Subhead (3) of Head 46, Part A4, which allows a private company to dispense with the requirement to hold an AGM.

[Heads 44 to 46 of Part A4 shall apply]

Head 32 Convening of Extraordinary General Meeting on Requisition

- (1) The directors of a CLG, notwithstanding anything in its constitution shall on the requisition of members of the company holding at the date of the deposit of the requisition not less than one-tenth of the total voting rights of all the members having at the said date a right to vote at general meetings of the CLG forthwith, proceed duly to convene an extraordinary general meeting of the CLG.
- (2) The requisition must state the objects of the meeting and must be signed by the requisitionists and deposited at the registered office of the CLG and may consist of several documents in like form each signed by one or more requisitionists.
- (3) If the directors do not, within 21 days from the date of the deposit of the requisition, proceed duly to convene a meeting to be held within 2 months from the said date, the requisitionists, or any of them representing more than 50% of the total voting rights of all of them, may themselves convene a meeting, but any meeting so convened shall not be held after the expiration of 3 months from the said date.
- (4) A meeting convened under this head by the requisitionists shall be convened in the same manner as nearly as possible as that in which meetings are to be convened by directors.
- (5) Any reasonable expenses incurred by the requisitionists by reason of the failure of the directors duly to convene a meeting shall be repaid to the requisitionists by the CLG, any sum so repaid shall be retained by the CLG out of any sums due or to become due from the CLG by way of fees or other remuneration in respect of their services to such of the directors as were in default.
- (6) For the purposes of this head, the directors shall, in the case of a meeting at which a resolution is to be proposed as a special resolution, be deemed not to have duly convened the meeting if they do not give such notice thereof as is required by Part A4, Head 52 [equivalent of Section 133 of the Companies Act, 1963].
- (7) Part A4, Head 49 shall not apply to a CLG.

Explanatory Note

This head modifies Part A4, Head 49 by deleting the words relating to rights derived from paid up capital from Subhead (1).

[Head 48 of Part A4 applies]

Head 33 Persons Entitled to Notice of General Meetings

- (1)
- (a) Notice of every general meeting shall be given to —
 - (i) every member,
 - (ii) the personal representatives of a deceased member of the CLG, which member would but for his death have the right to vote at the meeting, and
 - (iii) the Official Assignee in bankruptcy of a bankrupt member of the CLG, which member would but for his bankruptcy have the right to vote at the meeting,
 - (iv) the directors and secretary of the CLG;
 - (b) No other person shall be entitled to receive notices of general meetings unless the constitution of a CLG provides otherwise.
- (2) The auditors of a CLG shall be entitled to attend any general meeting of a CLG and to receive all notices of, and other communications relating to any general meeting which any member of the CLG is entitled to receive and to be heard at any general meeting which they attend on any part of the business of the meeting which concerns them as auditors.
- (3) Part A4, Head 51 shall not apply to a CLG

Explanatory Note

This head is equivalent to Head 51, Part A4, however the provisions at 41(1)(b) has been deleted as these relate to shares.

[Heads 50 and 51 of Part A4 apply]

Head 34 Proxies

- (1) Save to the extent that the constitution provides otherwise -
- (a) any member of a CLG entitled to attend and vote at a meeting of the CLG shall be entitled to appoint another person (whether a member or not) as his proxy to attend and vote instead of him, and a proxy so appointed shall have the same right as the member to speak at the meeting and to vote on a show of hands and on a poll;
 - (b) a member of a CLG shall not be entitled to appoint more than one proxy to attend on the same occasion;
 - (c) the instrument appointing a proxy shall be in writing under the hand of the appointer or of his attorney duly authorised in writing, or if the appointer is a body corporate, either under seal or under the hand of an officer or attorney duly authorised. A proxy need not be a member of the CLG;
 - (d) The instrument appointing a proxy and the power of attorney or other authority, if any, under which it is signed, or a notarially certified copy of that power or authority shall be deposited at the office or at such other place within the State as is specified for that purpose in the notice convening the meeting, not less than 48 hours before the time for holding the meeting or adjourned meeting at which the person named in the instrument proposes to vote, or, in the case of a poll, not less than 48 hours before the time appointed for the taking of the poll, and, in default, the instrument of proxy shall not be treated as valid.
- (2) A vote given in accordance with the terms of an instrument of proxy shall be valid notwithstanding the previous death or unsound mind of the principal or revocation of the proxy or of the authority under which the proxy was executed or the transfer of the [interest/ membership by guarantee] in respect of which the proxy is given, if no intimation in writing of such death, unsound mind, revocation or transfer as aforesaid is received by the CLG at the office before the commencement of the meeting or adjourned meeting at which the proxy is used.

- (3) This head shall apply to meetings of any class of members of a CLG as it applies to general meetings of the CLG.
- (4) Subject to Subhead (5), if for the purpose of any meeting of a CLG, invitations to appoint as proxy a person or one of a number of persons specified in the invitations are issued at the CLG's expense to some only of the members entitled to be sent a notice of the meeting and to vote thereat by proxy, every officer of the CLG who knowingly and wilfully authorises or permits their issue as aforesaid shall be guilty of a category three offence.
- (5) An officer shall not be liable under Subhead (4) by reason only of the issue, to a member, at his request in writing, of a form of appointment naming the proxy, or of a list of persons willing to act as proxy if the form or list is available on request in writing to every member entitled to vote at the meeting by proxy.
- (6) Part A4, Head 54 shall not apply to a CLG.
- (b) Where there are joint holders, the vote of the senior who tenders a vote, whether in person or by proxy, shall be accepted to the exclusion of the votes of the other joint holders; and for this purpose, seniority shall be determined by the order in which the names stand in the register of members;
- (c) A member of unsound mind, or a member who has made an enduring power of attorney or in respect of whom an order has been made by any court having jurisdiction in unsoundness of mind, may vote, whether on a show of hands or on a poll, by his committee, receiver, guardian or other person appointed by that court and any such committee, donee or an enduring power of attorney, receiver, guardian, or other person may vote by proxy on a show of hands or on a poll;
- (d) Where a CLG is being wound up no member shall be entitled to vote at any general meeting unless any guarantee payable by him has been paid;
- (e) No objection shall be raised to the qualification of any voter except at the meeting or adjourned meeting at which the vote objected to is given or tendered, and every vote not disallowed at such meeting shall be valid for all purposes. Any such objection made in due time shall be referred to the chairman of the meeting, whose decision shall be final and conclusive.
- (f) Subject to Part B4, Head 34, votes may be given either personally or by proxy.

Explanatory Note

Subhead (2) differs from that contained in Part A4, Head 54 by providing that the constitution of a guarantee company may provide that members by guarantee do not have the right to attend by proxy. The previous position as stated in Section 136 of the Companies Act, 1963 provides that the default position is that members by guarantee do not have the right to attend by proxy but that their articles may provide otherwise.

In Subhead (2), "insanity" has been replaced by "unsound mind". Insanity is generally a criminal law concept, while unsound mind is recognised in civil law. Further, there is a procedure (Order 47 of the Circuit Court Rules 2001) by which an application may be made to declare a person to be of unsound mind, whereas it may not be as easy to establish insanity if that term were to be retained.

[Heads 53 - 56 of Part A4 apply]

Head 35 Votes of Members

- (1) Unless the constitution otherwise provides -
- (a) In the case of each member by guarantee, every member present in person and every proxy shall have one vote, whether on a show of hands or on a poll, so, however, that no individual shall have more than one vote;

- (2) Part A4, Head 59 shall not apply to a CLG.

Explanatory Note

Subhead (1) of this head replaces Subhead(1) of Part A4, Head 59.

In Subhead (3), "lunacy" has been replaced by "unsoundness of mind", for consistency with Head 34, and for the reasons set out in the note to Head 25.

Head 36 Right to demand a poll

- (1) A poll may be demanded whether before or on the declaration of the result of the show of hands by any of the following persons –
 - (a) by the chairman; or
 - (b) subject to the constitution, by at least three members present in person or by proxy; or
 - (c) by any member or members present in person or by proxy and representing not less than 10 percent of the total voting rights of all the members having the right to vote at the meeting;

provided always that where a poll is demanded by any person or class of person mentioned in (a) to (c) above, that person or class of person can withdraw the demand for a poll.

- (2) Except as provided in Subhead (3), if a poll is duly demanded it shall be taken in such manner as the chairman directs, and the result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded.
- (3) A poll demanded on the election of a chairman or on a question of adjournment shall be taken forthwith. A poll demanded on any other question shall be taken at such time as the chairman of the meeting directs, and any business other than that on which a poll is demanded may be proceeded with pending the taking of the poll.
- (4) The instrument appointing a proxy to vote at a meeting of a CLG shall be deemed also to confer authority to demand or join in demanding a poll, and for the purposes of Subhead (1), a demand by a person as proxy for a member shall be the same as a demand by the member.
- (5) Part A4, Head 60 shall not apply to a CLG.

Explanatory Note

This head is equivalent to Part A4, Head 60, however the reference at 60(1)(b) to voting on the basis of share capital has been deleted.

[Heads 59 – 61 of Part A4 apply]

Head 37 Unanimous written resolutions

- (1) Notwithstanding anything to the contrary in this Part, unless the constitution provides otherwise, a resolution in writing signed by all the members for the time being entitled to attend and vote on such resolution at a general meeting (or being bodies corporate by their duly appointed representatives) shall be as valid and effective for all purposes as if the resolution had been passed at a general meeting of the company duly convened and held, and if described as a special resolution shall be deemed to be a special resolution within the meaning of this Bill.
- (2) Any such resolution shall be deemed to have been passed at a meeting held on the date on which it was signed by the last member to sign, and where the resolution states a date as being the date of his signature thereof by any member the statement shall be prima facie evidence that it was signed by him on that date.
- (3) This head does not apply to a resolution for the purposes of Part A6, Head 83 [the equivalent of Section 160 of the Companies Act, 1963 – appointment and remuneration of auditors] and Part A4, Head 17 [the equivalent of Section 182 of the Companies Act, 1963 – removal of directors]
- (4) Part A4, Heads 62 and 63 shall not apply to a CLG.

Explanatory Note

This head disapplies Part A4, Heads 62 and 63 and re-enacts Section 141(8) of the Companies Act, 1963. Consequently, the ability the ability to make majority written resolution is not extended to CLGs.

[Head 64 of Part A4 applies]

Head 38 Registration of and obligation of company to supply copies of, certain resolutions and agreements

- (1) A printed copy of every resolution or agreement to which this head applies shall, within 15 days after the passing or making thereof, be forwarded to the Registrar of companies and recorded by him.

- (2) A copy of every such resolution or agreement for the time being in force shall be embodied in or annexed to every copy of the constitution issued after the passing of the resolution or the making of the agreement.
- (3) A copy of every such resolution or agreement shall be forwarded to any member at his request on payment of €10 or such less sum as the CLG may direct.
- (4) This head shall apply to—
 - (a) resolutions that are required by this Bill or by a CLG's constitution to be special resolutions;
 - (b) resolutions which have been agreed to by all the members of a CLG, but which, if not so agreed to, would not have been effective for their purpose unless they had been passed as special resolutions;
 - (c) resolutions or agreements which have been agreed to by all the members of some class of membership but which if not so agreed to, would not have been effective for their purpose unless they had been passed by some particular majority or otherwise in some particular manner, and all resolutions or agreements which effectively bind all the members of any class of membership though not agreed to by all those members;
 - (d) resolutions that a CLG be wound up voluntarily, passed under Part A11, Head 20 [equivalent of Section 251(1)(a) of the Companies Act, 1963]; and
 - (e) resolutions of the directors passed by virtue of Part B2, Head 31 [equivalent of Section 43(3) of the Companies (Amendment) Act, 1983];
- (5) If a CLG fails to comply with Subhead (1), the CLG and every officer of the CLG who is in default shall be guilty of a category four offence.
- (6) If a CLG fails to comply with Subhead (2) or Subhead (3), the CLG and every officer of the CLG who is in default shall be guilty of a category four offence.
- (7) For the purposes of Subheads (5) and (6), a liquidator of a CLG shall be deemed to be an officer of the CLG.

[Heads 67 to 69 of Part A4 apply]

Head 39 Remedy in case of oppression

- (1) Any member of a CLG who complains that the affairs of the CLG are being conducted or that the powers of the directors of the CLG are being exercised in a manner oppressive to him or any of the members (including himself), or in disregard of his or their interests as members, may apply to the court for an order under this head.
- (2) In a case falling within Subhead (1), the Director of Corporate Enforcement may apply for an order under this head.
- (3) If, on any application under Subhead (1) or Subhead (2) the court is of the opinion that the CLG's affairs are being conducted or the directors' powers are being exercised as aforesaid, the court may, with a view to bringing to an end the matters complained of, make such order as it thinks fit, whether directing or prohibiting any act or cancelling or varying any transaction or for regulating the conduct of the CLG's affairs in future, or for the payment of compensation or otherwise.
- (4) Where an order under this head makes any alteration in, or addition to, the CLG's constitution, then, notwithstanding anything in any other provision of this Bill but subject to the provisions of the order, the CLG concerned shall not have power without the leave of the court to make any further alteration in or addition to the constitution inconsistent with the provisions of the order; but, subject to the foregoing provisions of this subhead, the alterations or additions made by the order shall be of the same effect as if duly made by resolution of the CLG and the provisions of this Bill shall apply to the constitution as so altered or added to accordingly.
- (5) An office copy of any order under this head altering or adding to or giving leave to alter or add to a CLG's constitution shall, within 21 days after the making thereof, be delivered by the CLG to the Registrar for registration; and if a CLG fails to comply with this subhead, the CLG and every officer of the CLG who is in default shall be guilty of a category four offence.

Explanatory Note

This head is the equivalent of Part A4, Head 68, with references to shares and share capital deleted.

Part B4 - Guarantee Companies

- (6) The personal representative of a person who, at the date of his death was a member of a CLG, or any trustee of, or person having, a member's interest in a CLG by virtue of the will or intestacy of any such person, may apply to the court under Subhead (1) for an order under this head and accordingly, any reference in that subhead to a member of a CLG shall be construed as including a reference to any such personal representative, trustee or person having a member's interest as aforesaid or to all of them.
- (7) If, in the opinion of the court, the hearing of proceedings under this head would involve the disclosure of information the publication of which would be seriously prejudicial to the legitimate interests of the CLG, the court may order that the hearing of the proceedings or any part thereof shall be in camera.
- (8) Part A4, Head 72, shall not apply to a CLG.

Explanatory Note

This head is the equivalent of Part A4, Head 72, with references to share dealings and to transmission of shares or interest on death deleted.

Chapter 5

Duties of Directors and other Officers

Head 40 Interpretation Provisions

- 1) In this Chapter -

References to 'shares' in Part A5, Heads 33 to 38 shall, for the purposes of the application of those heads to this Part, be interpreted as references to an interest in or membership of a CLG.

- (2) This head shall apply in addition to Part A5, Head 1.

Explanatory Note

[Heads 1 to 5 of Part A5 apply]

Head 41 Directors' compliance statement and related statement

Part A5, Head 7 shall not apply to a CLG.

Explanatory Note

Part A5, head 7 is an amended re-enactment of Section 205E of the Companies Act, 1990 as inserted by Section 45 of the Companies (Auditing and Accounting) Act, 2003. The effect of disapplying Part A5, Head 7 under this head is that directors of a guarantee company are not required to make a directors' compliance statement.

[Head 8 to 12 of Part A5 apply]

Head 42 Duty of director to disclose his interest in contracts made by the company.

- (1) If a CLG fails to comply with Part A5, Head 12(5) the CLG and every officer of the CLG who is in default shall be guilty of a category three offence and if any inspection or production required thereunder is refused, the court may by order compel an immediate inspection or production.
- (2) Any director of a CLG who fails to comply with Head 12(5) of Part A5 shall be guilty of a category three offence.

Explanatory Note

This head is an amended re-enactment of Sections 194(5)(b) and 194(6) of the Companies Act, 1963.

The reason for the exclusion of these subsections from Part A5 is that since their purpose was to protect the investing public, it carries less weight in relation to the private company limited by shares as the shares cannot be offered to the public. Furthermore, it was the opinion of the Company Law Review Group that such a declaration was a matter of contract and, as such, there was no public interest in having the matter prosecuted. They have been reinstated in this part as appropriate to guarantee companies.

[Heads 13 to 38 in Part A5 apply]

Chapter 6

Financial Statements, Annual Return and Audit

Head 43 Exemption from consolidation: size of group

Head 19 of Part A6 shall apply to a CLG subject to the substitution of Subhead (9)(a) thereof with the following Subhead (9)(a):

“any debentures or other debt securities of the CLG or any shares, debentures or other debt securities of a subsidiary undertaking have been admitted to trading on a regulated market of any EEA state, or”

Head 44 Exemption from consolidation: holding company that is a subsidiary of another EEA registered undertaking

Head 20 of Part A6 shall apply to a CLG with the addition of the following paragraph (f) in Subhead (3):

“(f) the exempted holding company may not have any debentures or other debt securities admitted to trading on a regulated market of any EEA State.”

Head 45 Exemption from Consolidation: holding company that is a subsidiary of a non-EEA undertaking

Head 21 of Part A6 shall apply to a CLG with the addition of the following paragraph (g) in Subhead (3):

“(g) the exempted holding company may not have any debentures or other debt securities admitted to trading on a regulated market of any EEA State.”

Head 46 Information on related undertakings: Exemption from disclosures

Head 28 of Part A6 shall apply to a CLG with the addition of the following paragraph (7):

“(7) This head shall not apply to a parent undertaking any of whose debentures or other debt securities have been admitted to trading on a regulated market of any EEA State.”

Head 47 Information on related undertakings: Provision for certain information to be annexed to annual return

Head 29 of Part A6 shall apply to a CLG with the addition of the following Subhead (5):

“(5) Subhead (1) shall not apply to a parent undertaking any of whose debentures or other debt securities have been admitted to trading on a regulated market of any EEA State.”

Head 48 Approval and signing of statutory financial statements by Board of Directors

Head 36 of Part A6 shall apply to a CLG subject to the substitution of Subhead (1) thereof with the following Subhead (1):

“(1) Where the directors of the company are satisfied that the statutory financial statements give a true and fair view and otherwise comply with this Bill or, where applicable, with Article 4 of the IAS Regulation, they shall be approved by the board of directors and signed on their behalf by a majority of the directors where there are more than two directors or by the two directors, where there are only two directors.”

Head 49 Approval and signing of directors' report

Head 43 of Part A6 shall apply to a CLG subject to the substitution of Subhead (1) thereof with the following Subhead (1):

“(1) The directors' report and, where applicable, the group directors' report shall be approved by the board of directors and signed on their behalf by a majority of the directors where there are more than two directors or by the two directors, where there are only two directors.”

Head 50 Obligation for a company's statutory financial statements to be audited

The directors of a CLG shall arrange for the statutory financial statements of the CLG for a financial year to be audited by an independent auditor.

Explanatory Note

This is an alternative to Part A6, Head 44.

Head 51 Independent auditors' report on revised financial statements and revised report

Head 73 of Part 6 shall apply to a CLG subject to the substitution of Subhead (1) thereof with the following Subhead (1):

“(1) Subject to the next subhead, a company's current independent auditors shall make a report or, as the case may be, a further report under Head 93 in the form required by Head 46 to the company's members under this head on revised financial statements prepared under Head 71 and Head 94 (assessment of accounting records) and Head 95 (reporting of offences) shall apply mutatis mutandis.”

Head 52 Appointment of independent auditors: by directors

- (1) The first independent auditors of a company shall be appointed by the directors at any time before the first annual general meeting.
- (2) Where any casual vacancy in the office of independent auditors arises, it shall be the duty of the directors to appoint independent auditors to the company as soon as may be after that vacancy has arisen.
- (3) Independent auditors appointed pursuant to Subheads (1) or (2) shall hold office until the conclusion of the next annual general meeting of the company held after their appointment at which statutory financial statements are required to be laid so however that —
 - (a) the members of the company may at any general meeting, remove any such independent auditors and appoint in their place any other person (or persons) who have been nominated for appointment by any member of the company and of whose nomination notice has been given to the members of the company not less than 14 days before the date of the meeting; and
 - (b) if the directors fail to exercise their powers under this head, the members of the company in general meeting may appoint independent auditors and thereupon the said powers of the directors shall cease.

Head 53 Appointment of independent auditors: by members of the company

Head 85 of Part A6 shall apply to a CLG provided that paragraph (d) of Subhead (2) shall not apply.

Head 54 Appointment of independent auditors: failure to appoint

- (1) Where at an annual general meeting no independent auditors are appointed by the members, the Minister / Director of Corporate Enforcement may appoint a person to fill the position of independent auditors.
- (2)
 - (a) A CLG shall—
 - (i) within one week of the Minister / Director of Corporate Enforcement's power under Subhead (1) becoming exercisable, give the Minister / Director of Corporate Enforcement notice of that fact, and
 - (ii) where a resolution removing the independent auditors is passed, give notice of that fact in the prescribed form to the Registrar within 14 days of the meeting at which the resolution removing the independent auditors was passed;
 - (b) If a CLG fails to give notice as required by paragraph (a) of this subhead, the CLG and every officer of the CLG who is in default shall be guilty of a category 3 offence.

Head 55 Disclosure of directors' remuneration

Provide that all references to shares in and share capital of the company in Head 24 of Part A6 shall be disapplied in the case of a CLG.

Head 56 Financial Assistance

Provide that all reference to shares in the company in Part A6, Head 32 be disapplied in the case of a CLG but retained in so far as may be relevant to the holding company or subsidiary of a CLG.

Head 57 Holding of shares in holding undertaking

- (1) Where a CLG, or a nominee of the CLG, holds shares in its holding undertaking or an interest in such shares, such shares are treasury shares and shall not be shown as an asset but the consideration paid for such shares -
 - (a) shall be shown as a deduction from the CLG's capital and reserves; and
 - (b) the profits available for distribution shall accordingly be restricted by the amount of such deduction.
- (2) Where shares are held as treasury shares under Subhead (1) the notes to the financial statements shall give separately for the shares held under each subheads -
 - (a) the number and aggregate nominal value of the treasury shares and, where shares of more than one class have been acquired, the number and aggregate nominal value of each class held as treasury shares; and
 - (b) particulars of any restriction on profits available for distribution by virtue of holding such shares.

Head 58 Obligation to prepare directors' report for every financial year

Head 37 of Part A6 shall apply to a CLG provided that paragraphs (c) and (e) of Subhead (1) shall not apply in the case of a CLG.

Head 59 Directors' report: interests in debentures

Head 41 of Part A6 shall apply to a CLG provided that all references to "shares in, or debentures of" the company shall be replaced with "debentures of" where referring to the CLG but shall remain as references to "shares in, or debentures of" in all references to the CLG's holding company or subsidiary where such companies have share capital.

Head 60 Circulation of statutory financial statements

Head 48 of Part A6 shall apply to a CLG provided that the following additional Subhead (1A) shall also apply:

“(1A) In the case of a CLG, Subhead (1) shall not require a copy of the documents referred to in that subhead to be sent to a member of the company who is not entitled to receive notices of general meetings of the company or to a holder of debentures of the company who is not so entitled.”

Head 61 Report to Registrar and to Director of Corporate Enforcement: Accounting Records

Head 94 of Part A6 shall apply to a CLG save that the reference to “shareholders” in Subhead (6) shall be replaced with “members”.

Head 62 Report to Registrar and to Director of Corporate Enforcement: Category 1 and 2 Offences under the Companies Act

Head 95 of Part A6 shall apply to a CLG save that the reference to “shareholders” in Subhead (4) shall be replaced with “members”.

Chapter 7**Debentures and Registration of Charges**

[Heads 1-19 of Part A7 apply]

Chapter 8**Receivers**

[Heads 1-20 of Part A8 apply]

Chapter 9

Reorganisations

Head 63 Reorganisations of Guarantee Companies

[Part A9, Heads 1 to 5 apply]

Head 64 Merger of Guarantee companies

Where one or more CLG are acquiring companies or existing companies in an operation referred to in Head 8 of Part A9, Chapter 3 of Part A9 shall apply to such CLG or CLGs as it applies to a company to which Pillar A applies, provided that references to shares held by members shall instead be construed as referring to relevant rights or incidents of membership, including the right to vote or receive a distribution.

Explanatory Note

The mergers regime in Part A9 is adopted for CLGs, with the above interpretive proviso.

[Part A9, Head 10, 13 and 19-25 apply].

Head 65 Division of Guarantee companies

Where one or more CLGs are acquiring companies in an operation referred to in Head 28 of Part A9, Chapter 4 of Part A9 shall apply to such CLG or CLGs as it applies to a company to which Pillar A applies, provided that references to shares held by members shall instead be construed as referring to relevant rights or incidents of membership, including the right to vote or receive a distribution.

Explanatory Note

The divisions regime in Part A9 is adopted for CLGs, with the above interpretive proviso.

Chapter 10

Examinerships

[Heads 1 – 41 of Part A10 apply]

Chapter 11

Winding-Up

Head 66 Liability as contributories of past and present members

- (1) In the event of a CLG being wound up, every present and past member shall be liable to contribute to the assets of the CLG to an amount sufficient for payment of its debts and liabilities and the costs, charges and expenses of the winding-up, and for the adjustment of the rights of the contributories among themselves, subject the following qualifications -
- (a) a past member shall not be liable to contribute if he has ceased to be a member for one year or more before the commencement of the winding-up;
 - (b) a past member shall not be liable to contribute in respect of any debt or liability of the CLG contracted after he ceased to be a member;
 - (c) a past member shall not be liable to contribute unless it appears to the court that the existing members are unable to satisfy the contributions required to be made by them in pursuance of this Bill;
 - (d) no contribution shall be required from any member exceeding the amount undertaken to be contributed by him to the assets of the CLG in the event of its being wound up;
 - (e) nothing in this Bill shall invalidate any provision contained in any policy of insurance or other contract whereby the liability of individual members on the policy or contract is restricted, or whereby the funds of the CLG are alone made liable in respect of the policy or contract;
 - (f) a sum due to any member of the CLG, in his character of a member, by way of dividends, profits or otherwise, shall not be deemed to be a debt of the CLG, payable to that member in a case of competition between himself and any other creditor not a member of the CLG, but any such sum may be taken into account for the purpose of the final adjustment of the rights of the contributories among themselves.

(2) Part A11, Head 86 shall not apply to a CLG.

Explanatory Note

This is an amended re-enactment of Section 207 of the Companies Act, 1963.

Chapter 12

Strike Off and Restoration

[Heads 1 – 13 of Part A12 apply]

Chapter 13

Compliance, Investigation and Enforcement

[Heads 1 – 68 of Part A13 apply]

Chapter 14

Regulatory and Advisory Bodies

[Heads 1 – 64 of Part A14 apply]

Chapter 15

Market Abuse

Head 67 Interpretation

(1) In this Chapter —

“2003 Market Abuse Directive” means Directive 2003/6/EC of the European Parliament and of the Council of 28 January 2003 on insider dealing and market manipulation (market abuse), including that Directive as it stands amended for the time being;

“Irish market abuse law” means—

- (a) the measures adopted for the time being by the State to implement the 2003 Market Abuse Directive and the supplemental Directives (whether an Act of the Oireachtas, regulations under Section 3 of the European Communities Act, 1972, regulations under section 30 or any other enactment (other than, save where the context otherwise admits, this Chapter));
- (b) any measures directly applicable in the State in consequence of the 2003 Market Abuse Directive and, without prejudice to the generality of this paragraph, includes the Market Abuse Regulation; and
- (c) any supplementary and consequential measures adopted for the time being by the State in respect of the Market Abuse Regulation;

“Market Abuse Regulation” means Commission Regulation 2273/2003 of 22 December 2003;

“supplemental Directives” means—

- (a) Commission Directive No. 2003/124/EC of 22 December 2003;
- (b) Commission Directive No. 2003/125/EC of 22 December 2003; and
- (c) Commission Directive No. 2004/72/EC of 29 April 2004.

(2) A word or expression that is used in this Chapter and is also used in the 2003 Market Abuse Directive or the supplemental Directives shall have in this Chapter the same meaning as it has in the 2003 Market Abuse Directive or the supplemental Directives, unless—

- (a) the contrary intention appears; or

- (b) Irish market abuse law provides otherwise.

Explanatory Note

Restatement of Section 29 of the Investment Funds, Companies and Miscellaneous Provisions Act, 2005.

Head 68 Regulations (Chapter 15)

(1) The Minister may make regulations for the purposes of—

- (a) giving effect to the 2003 Market Abuse Directive and the supplemental Directives; and
- (b) supplementing and making consequential provision in respect of the Market Abuse Regulation.

(2) Regulations under this head may contain such incidental, supplementary and consequential provisions as appear to the Minister to be necessary or expedient for the purposes of those regulations, including provisions creating offences (but the regulations may only provide penalties in respect of a summary conviction for any such offence).

(3) Regulations under this head may also—

- (a) make, for the purposes of those Regulations, provision analogous to that which was made by Section 3 of the Companies (Amendment) Act, 1999 (repealed by section 31) for the purposes of that Act;
- (b) impose on a market operator a requirement similar to that which is imposed by Article 6(9) of the 2003 Market Abuse Directive on the person referred to in that Article 6(9).

(4) This head is without prejudice to Section 3 of the European Communities Act, 1972.

Explanatory Note

Restatement of Section 30 of the Investment Funds, Companies and Miscellaneous Provisions Act, 2005.

Head 69 Conviction on indictment of offences under Irish market abuse law: penalties

A person who is guilty of an offence created by Irish market abuse law (being an offence expressed by that law to be an offence to which this head applies) shall, without prejudice to any penalties provided by that law in respect of a summary conviction for the offence, be liable, on conviction on indictment, to a fine not exceeding €10,000,000 or imprisonment for a term not exceeding 10 years or both.

Explanatory Note

Restatement of Section 32 of the Investment Funds, Companies and Miscellaneous Provisions Act, 2005.

Head 70 Civil liability for certain breaches of Irish market abuse law

(1) If a person contravenes a provision of Irish market abuse law (being a provision the purpose of which is expressed by that law to be for the implementation of Article 2, 3 or 4 of the 2003 Market Abuse Directive) the person shall be liable—

- (a) to compensate any other party to the transaction concerned who was not in possession of the relevant information for any loss sustained by that party by reason of any difference between the price at which the financial instruments concerned were acquired or disposed of and the price at which they would have been likely to have been acquired or disposed of in such a transaction at the time when the first-mentioned transaction took place if that information had been generally available; and
- (b) to account to the body corporate or other legal entity which issued the financial instruments concerned for any profit accruing to the first-mentioned person from acquiring or disposing of those instruments.

(2) If a person contravenes a provision of Irish market abuse law (being a provision the purpose of which is expressed by that law to be for the implementation of Article 5 of the 2003 Market Abuse Directive) the person shall be liable—

- (a) to compensate any other party who acquired or disposed of financial instruments by reason of the contravention; and
 - (b) to account to the body corporate or other legal entity which issued the financial instruments concerned for any profit accruing to the first-mentioned person from acquiring or disposing of those instruments.
- (3) Subheads (1) and (2) are without prejudice to any other cause of action which may lie against the person for contravening the provision concerned.
- (4) An action under Subhead (1) or (2) shall not be commenced more than 2 years after the date of the contravention concerned.

Explanatory Note

Restatement of Section 33 of the Investment Funds, Companies and Miscellaneous Provisions Act, 2005.

Head 71 Supplementary rules, etc., by competent authority

- (1) In this head “competent authority” means the competent authority designated under Irish market abuse law.
- (2) The competent authority may make rules imposing or enabling the competent authority to impose requirements on persons on whom an obligation or obligations are imposed by Irish market abuse law, being requirements—
- (a) to do or not to do specified things so as to secure that the provisions of Irish market abuse law are complied with and, in particular (without limiting the generality of this paragraph), to adopt specified procedures and use specified forms in the provision of information to the competent authority;

- (b) to do or not to do specified things so as to secure the effective supervision by the competent authority of activities of the kind to which Irish market abuse law relates and, in particular (without limiting the generality of this paragraph), to make such reports or disclose such matters, at such times and in such manner, to the competent authority or other specified persons as are provided for by the rules or specified by the competent authority pursuant to the rules, being reports or a disclosure of matters that is or are required by virtue or in consequence of the operation of Irish market abuse law.
- (3) Rules under this head may include rules providing for the manner in which, or the matters by reference to which (or both), a determination is to be made of any issue as to whether a financial interest or interests is or are significant for the purposes of the provisions of Irish market abuse law implementing Article 5(1) of Commission Directive No. 2003/125/EC of 22 December 2003.
- (4) Rules under this head may contain such consequential, incidental or supplemental provisions as the competent authority considers necessary or expedient.
- (5) Rules under this head shall not contain any provision that is inconsistent with Irish market abuse law or require the provision of information to any person the provision of which is not reasonably related to the purposes for which the applicable provisions of the 2003 Market Abuse Directive or the supplemental Directives have been adopted.
- (6) The provisions of Irish market abuse law that are expressed by that law to be made for the purpose of enabling the imposition of administrative sanctions shall apply in relation to a contravention of rules under this head as they apply in relation to a contravention of a provision of Irish market abuse law and, accordingly, a sanction that may be imposed pursuant to the first-mentioned provisions of Irish market abuse law in respect of a contravention of a provision of that law may, in accordance with that law, be imposed in respect of a contravention of rules under this head.
- (7) The competent authority may issue guidelines in writing as to the steps that may be taken to comply with Irish market abuse law.

Explanatory Note

Restatement of Section 34 of the Investment Funds, Companies and Miscellaneous Provisions Act, 2005.

Head 72 Application of Irish market abuse law to certain markets

- (1) The Minister, after consultation with the competent authority designated under Irish market abuse law, may, by provisional order, provide that one or more provisions of Irish market abuse law that apply in relation to a market to which the 2003 Market Abuse Directive applies shall, with such modifications, if any, as are specified in the order, apply to a market specified in the order.
- (2) The Minister may, by provisional order, amend or revoke a provisional order under this head (including a provisional order under this subhead).
- (3) A provisional order under this head shall not have effect unless or until it is confirmed by an Act of the Oireachtas.

Explanatory Note

Restatement of Section 37 of the Investment Funds, Companies and Miscellaneous Provisions Act, 2005.

Chapter 16

Public Offers Of Securities

Head 73 Interpretation

(1) In this Chapter, unless the context otherwise requires—

“2003 Prospectus Directive” means Directive 2003/71/EC of the European Parliament and of the Council of 4 November 2003, including that Directive as it stands amended for the time being;

“body corporate” includes a company;

“EEA Agreement” means the Agreement on the European Economic Area signed at Oporto on 2 May 1992, as amended for the time being;

“EU prospectus law” means—

- (a) the measures adopted for the time being by a Member State (including the State) or a Member State of the EEA to implement the 2003 Prospectus Directive;
- (b) any measures directly applicable in consequence of the 2003 Prospectus Directive and, without prejudice to the generality of this paragraph, includes the Prospectus Regulation; and
- (c) any supplementary and consequential measures adopted for the time being by a Member State (including the State) or a Member State of the EEA in respect of the Prospectus Regulation;

“expert”, save where a different construction in respect of that expression applies for the purposes of this Chapter by virtue of Irish prospectus law, includes engineer, valuer, accountant and any other individual or body (whether incorporated or unincorporated) the profession of whom, or the profession of members, officers or employees of which, gives authority to a statement made by the individual or body;

“Irish prospectus law” means—

- (a) the measures adopted for the time being by the State to implement the 2003 Prospectus Directive (whether an Act of the Oireachtas, regulations under Section 3 of the European Communities Act, 1972, regulations under head 79 [equivalent of Section 46 of the 2005 Act], or any other enactment (other than, save where the context otherwise admits, this Chapter);

- (b) any measures directly applicable in the State in consequence of the 2003 Prospectus Directive and, without prejudice to the generality of this paragraph, includes the Prospectus Regulation; and

- (c) any supplementary and consequential measures adopted for the time being by the State in respect of the Prospectus Regulation;

“issuer” means a body corporate or other legal entity which issues or proposes to issue securities;

“local offer” means an offer of securities to the public in the State where—

- (a) the offer expressly limits the amount of the total consideration for the offer to less than € 2,500,000 (and the means by which that limit shall be calculated, in particular in the case of a series of such offers of securities, shall be the same as that provided for by regulations under Section 46 in relation to analogous limits specified by those regulations for any purpose);
- (b) the securities are other than those referred to in any of paragraphs (a) to (g) or paragraph (i) or (j) of Article 1(2) of the 2003 Prospectus Directive; and
- (c) the offer is not of a kind described in Article 3(2) of the 2003 Prospectus Directive;

“Member State of the EEA” means a state that is a contracting party to the EEA Agreement;

“offer of securities to the public” has the same meaning as it has in Irish prospectus law;

“offering document” means a document prepared for a local offer which document, if prepared in connection with an offer to which the 2003 Prospectus Directive applies, would be a prospectus;

“offeror” means a body corporate or other legal entity or an individual which or who offers securities to the public;

“promoter” means, subject to Subhead (5), a promoter who was a party to the preparation of a prospectus, or of the portion thereof containing an untrue statement;

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“prospectus” means a document or documents in such form and containing such information as may be required by or under this Chapter or EU prospectus law, howsoever the document or documents are constituted, but does not include any advertisements in newspapers or journals derived from the foregoing;

“Prospectus Regulation” means Commission Regulation (EC) No. 809/2004 of 29 April 2004 implementing Directive 2003/71/EC of the European Parliament and of the Council as regards information contained in prospectuses as well as the format, incorporation by reference and publication of such prospectuses and dissemination of advertisements;

“securities” has the same meaning as it has in Irish prospectus law, and includes shares and debentures of a company.

- (2) A word or expression that is used in this Chapter and is also used in the 2003 Prospectus Directive shall have in this Chapter the same meaning as it has in that Directive, unless—
- (a) the contrary intention appears; or
 - (b) Irish prospectus law provides otherwise.
- (3) For the purposes of this Chapter—
- (a) a statement included in a prospectus shall be deemed to be untrue if it is misleading in the form and context in which it is included; and
 - (b) a statement shall be deemed to be included in a prospectus if it is contained therein or in any report or memorandum appearing on the face thereof or by reference incorporated therein.
- (4) Without limiting the meaning of that expression in any other context in which it is used in this Part, “statement” in Part B4, Head 78 (2) [equivalent of Section 45(2) of the Investment Funds, Companies and Miscellaneous Provisions Act, 2005] (other than paragraph (b) thereof) and any other head of this Part that makes provision in respect of an expert includes a report and a valuation.
- (5) Nothing in this Chapter shall limit or diminish any liability which any person may incur under the general law.
- (6) For the purposes of Heads 74 and 76, the following persons shall be deemed not to be a promoter or a person who has authorised the issue of the prospectus—
- (a) a professional adviser to any person referred to in Head 41 acting as such;
 - (b) an underwriter or professional adviser to an underwriter acting as such.
- (7) The person referred to as the “purchaser” in the following case shall be deemed to be an underwriter for the purposes of Subhead (5)(b).
- (8) That case is one in which—
- (a) a person (the “offeror”) intends to make an offer of securities to the public, and
 - (b) another person (the “purchaser”)—
 - (i) agrees to purchase those securities with the intention of their immediate resale to give effect to that intention of the offeror, at a profit or subject to payment by the offeror to the purchaser of a commission; and
 - (ii) binds himself or herself to purchase, or procure the purchase of, any of the securities not so resold.

Explanatory Note

Restatement of Section 38 of the Investment Funds, Companies and Miscellaneous Provisions Act, 2005.

Head 74 Civil liability for misstatements in prospectus

- (1) Subject to Heads 75 and 76 of this Part [equivalent of Section 42 and 43 of the 2005 Act], the following persons shall be liable to pay compensation to all persons who acquire any securities on the faith of a prospectus for the loss or damage they may have sustained by reason of—
- (a) any untrue statement included therein; or
 - (b) any omission of information required by EU prospectus law to be contained in the prospectus,
- namely—
- (i) the issuer who has issued the prospectus or on whose behalf the prospectus has been issued,
 - (ii) the offeror of securities to which the prospectus relates,

- (iii) every person who has sought the admission of the securities to which the prospectus relates to trading on a regulated market,
- (iv) the guarantor of the issue of securities to which the prospectus relates,
- (v) every person who is a director of the issuer at the time of the issue of the prospectus,
- (vi) every person who has authorised himself or herself to be named and is named in the prospectus as a director of the issuer or as having agreed to become such a director either immediately or after an interval of time,
- (vii) every person being a promoter of the issuer,
- (viii) every person who has authorised the issue of the prospectus (not being the competent authority designated under Irish prospectus law).

- (2) In addition to the persons specified in Subhead (1) as being liable in the circumstances there set out, an expert who has given the consent required by Part B4 Head 78 [equivalent of Section 45 of the Investment Funds, Companies and Miscellaneous Provisions Act, 2005] to the inclusion in a prospectus of a statement purporting to be made by him or her shall, subject to Part B4, Heads 76 and 77 [equivalents of Sections 42 and 43 of the Investment Funds, Companies and Miscellaneous Amendments Act, 2005], be liable to pay compensation to all persons who acquire any securities on the faith of the prospectus for the loss or damage they may have sustained by reason of an untrue statement in the prospectus purporting to be made by him or her as an expert.

Explanatory Note

Restatement of Section 41 of the Investment Funds, Companies and Miscellaneous Provisions Act, 2005.

Head 75 Exceptions and exemptions

- (1) A person shall not be liable under Part B4, Head 74 [equivalent of Section 41 of the Investment Funds, Companies and Miscellaneous Provisions Act, 2005] solely on the basis of a summary of a prospectus, including any translation thereof, unless it is misleading, inaccurate or inconsistent when read together with other parts of the prospectus.
- (2) Subject to Subhead (4), a person shall not be liable under Part B4, Head 74 [equivalent of Section 41 of the Investment Funds, Companies and Miscellaneous Provisions Act, 2005] if he or she proves—
 - (a) that, having consented to become a director of the issuer, he or she withdrew, in writing, his or her consent before the issue of the prospectus, and that it was issued without his or her authority or consent; or
 - (b) that the prospectus was issued without his or her knowledge or consent, and that on becoming aware of its issue he or she forthwith gave reasonable public notice that it was issued without his or her knowledge or consent; or
 - (c) that after the issue of the prospectus and before the acquisition of securities thereunder by the person referred to in Part B4, Head 74 [equivalent of Section 41 of the Investment Funds, Companies and Miscellaneous Provisions Act, 2005], he or she, on becoming aware of any untrue statement therein or omission of material information required by EU prospectus law to be contained therein, withdrew, in writing, his or her consent thereto and gave reasonable public notice of the withdrawal and of the reason therefor; or
 - (d) that—
 - (i) as regards—
 - (I) every untrue statement not purporting to be made on the authority of an expert or of a public official document or statement,

- (II) the omission from the prospectus of any information required by EU prospectus law to be contained therein,
- he or she had reasonable grounds to believe, and did up to the time of the issue of the securities believe, that the statement was true or that the matter whose omission caused loss was properly omitted, and
- (ii) as regards every untrue statement purporting to be a statement by an expert or contained in what purports to be a copy of or extract from a report or valuation of an expert, it fairly represented the statement, or was a correct and fair copy of or extract from the report or valuation, and he or she had reasonable grounds to believe and did up to the time of the issue of the prospectus believe that the person making the statement was competent to make it and, where required by Part B4, Head 78 [equivalent of Section 45 of the Investment Funds, Companies and Miscellaneous Provisions Act, 2005], that that person had given his or her consent to the inclusion of the statement in the prospectus and had not withdrawn, in writing, that consent before the publication of the prospectus or, to the defendant's knowledge, before issue of securities thereunder, and
- (iii) as regards every untrue statement purporting to be a statement made by an official person or contained in what purports to be a copy of or extract from a public official document, it was a correct and fair representation of the statement or copy of or extract from the document.
- (3) In Subheads (4) and (5) "by reason of the relevant consent", in relation to an expert, means by reason of his or her having given the consent required of him or her by Part B4, Head 78 [equivalent of Section 45 of the Investment Funds, Companies and Miscellaneous Provisions Act, 2005] to the inclusion in the prospectus of the statement concerned.
- (4) Subhead (2) shall not apply in the case of an expert, by reason of the relevant consent, in respect of an untrue statement purporting to be made by him or her as an expert.
- (5) An expert who, apart from this subhead, would under Part B4, Head 74 [equivalent of Section 41 of the Investment Funds, Companies and Miscellaneous Provisions Act, 2005] be liable, by reason of the relevant consent, in respect of an untrue statement purporting to be made by him or her as an expert shall not be so liable if he or she proves—
- (a) that, having given his or her consent to the inclusion in the prospectus of the statement, he or she withdrew it in writing before publication of the prospectus; or
- (b) that, after publication of the prospectus and before the acquisition of securities thereunder by the person referred to in Part B4, Head 74 [equivalent of Section 41 of the Investment Funds, Companies and Miscellaneous Provisions Act, 2005] on becoming aware of the untrue statement, withdrew his or her consent in writing and gave reasonable public notice of the withdrawal, and of the reason therefor; or
- (c) that he or she was competent to make the statement and that he or she had reasonable grounds to believe and did up to the time of such acquisition of the securities believe that the statement was true.

Explanatory Note

Restatement of Section 42 of the Investment Funds, Companies and Miscellaneous Provisions Act, 2005.

Head 76 Restriction of liability where non-equity securities solely involved

Where a prospectus is issued solely in respect of non-equity securities—

- (a) only—
- (i) the offeror or the person who has sought the admission of the securities to which the prospectus relates to trading on a regulated market, and

(ii) subject to, and to the extent provided in, paragraph (c), the guarantor (if any), and no other person referred to in Head 74 of this Part [equivalent of Section 41 of the Investment Funds, Companies and Miscellaneous Provisions Act, 2005] shall be liable under that head in the circumstances in which that head applies unless—

- (I) the prospectus expressly provides otherwise, or
- (II) that other such person is convicted on indictment of an offence created by Irish prospectus law or an offence under Head 81 of this Part [equivalent of Section 48 of the Investment Funds, Companies and Miscellaneous Provisions Act, 2005] in respect of the issue of that prospectus;

- (b) Head 5 (1) of Part A5 [equivalent of Section 383(3) of the Companies Act, 1963] shall not apply to the directors or secretary of the issuer to the extent that such application would thereby impose a liability under Head 74 of this Part [equivalent of Section 41 of the Investment Funds, Companies and Miscellaneous Provisions Act, 2005] on such directors or secretary; and
- (c) no liability shall attach under Head 74 of this Part [equivalent of Section 41 of the Investment Funds, Companies and Miscellaneous Provisions Act, 2005] to a guarantor of such securities save in respect of statements included in, or information omitted from, the prospectus that relate to the guarantor or the guarantee given by the guarantor.

Explanatory Note

Restatement of Section 43 of the Investment Funds, Companies and Miscellaneous Provisions Act, 2005 (as amended by the Investment Funds, Companies and Miscellaneous Provisions Act, 2006).

Head 77 Indemnification of certain persons

- (1) This head applies where—
 - (a) a prospectus contains the name of a person as a director of the issuer, or as having agreed to become a director thereof, and he or she has not consented to become a director, or has withdrawn, in writing, his or her consent before the issue of the prospectus, and has not authorised or consented to the issue thereof or
 - (b) the consent of an expert is required by Head 78 of this Part [equivalent of section 45 of the Investment Funds, Companies and Miscellaneous Provisions Act, 2005] to the inclusion in a prospectus of a statement purporting to be made by him or her and he or she either has not given that consent or has withdrawn, in writing, that consent before the issue of the prospectus.
- (2) The directors of the issuer, except any without whose knowledge or consent the prospectus was issued, and any other person who authorised the issue thereof shall be liable to indemnify the person named as mentioned in Subhead (1) or whose consent was required as so mentioned, as the case may be, against all damages, costs and expenses to which he or she may be made liable by reason of his or her name having been inserted in the prospectus or of the inclusion therein of a statement purporting to be made by him or her as an expert, as the case may be, or in defending himself or herself against any action or legal proceeding brought against him or her in respect thereof.

Explanatory Note

Restatement of Section 44 of the Investment Funds, Companies and Miscellaneous Provisions Act, 2005.

Head 78 Expert's consent to issue of prospectus containing statement by him or her

- (1) A prospectus including a statement purporting to be made by an expert shall not be issued unless—
- (a) the expert has given and has not, before publication of the prospectus, withdrawn, in writing, his or her consent to the issue thereof with the statement included in the form and context in which it is included; and
 - (b) to the extent that the inclusion in the prospectus of the following is required by EU prospectus law, a statement that the expert has given and has not withdrawn, in writing, that consent appears in the prospectus.
- (2) If any prospectus is issued in contravention of this head, the issuer and every person who is knowingly a party to the issue thereof shall be guilty of a category three offence .

Explanatory Note

Restatement of Section 45 of the Investment Funds, Companies and Miscellaneous Provisions Act, 2005.

In keeping with the new schema for categorisation of offences it may be necessary on the enactment of the General Scheme to re-enact the MAD Regulations or at least the offence provisions therein to reflect the new categorisation.

Head 79 Regulations (Chapter 16)

- (1) The Minister may make regulations for the purposes of—
- (a) giving effect to the 2003 Prospectus Directive; and
 - (b) supplementing and making consequential provision in respect of the Prospectus Regulation.
- (2) Regulations under this head may contain such incidental, supplementary and consequential provisions as appear to the Minister to be necessary or expedient for the purposes of those regulations, including—

- (a) provisions creating offences (but the regulations may only provide penalties in respect of a summary conviction for any such offence); and
- (b) provisions revoking instruments made under other enactments.

- (3) This head is without prejudice to section 3 of the European Communities Act, 1972.

Explanatory Note

Restatement of Section 46 of the Investment Funds, Companies and Miscellaneous Provisions Act, 2005.

Head 80 Penalties on conviction on indictment and defences in respect of certain offences

- (1) A person who is guilty of an offence created by Irish prospectus law (being an offence expressed by that law to be an offence to which this head applies) shall, without prejudice to any penalties provided by that law in respect of a summary conviction for the offence, be liable, on conviction on indictment, to a fine not exceeding €1,000,000 or imprisonment for a term not exceeding 5 years, or both.
- (2) In proceedings for an offence created by Irish prospectus law, it shall be a defence for the defendant to prove—
- (a) as regards any matter not disclosed in the prospectus concerned, that he or she did not know it; or
 - (b) the contravention arose from an honest mistake of fact on his or her part; or
 - (c) the contravention was in respect of matters which, having regard to the circumstances of the case, was immaterial or as respects which, having regard to those circumstances, he or she ought otherwise reasonably to be excused.

Explanatory Note

Restatement of Section 47 of the Investment Funds, Companies and Miscellaneous Provisions Act, 2005.

Head 81 Untrue statements and omissions in prospectus: criminal liability

- (1) Where a prospectus is issued and—
- (a) includes any untrue statement; or
 - (b) omits any information required by EU prospectus law to be contained in it,

any person who authorised the issue of the prospectus (not being the competent authority designated under Irish prospectus law) shall be guilty of a category 2 offence unless he or she proves—

 - (i) as regards an untrue statement, either that the statement was, having regard to the circumstances of the case, immaterial or that he or she honestly believed and did, up to the time of the issue of the prospectus, believe that the statement was true, or
 - (ii) as regards any information omitted, either that the omission was, having regard to the circumstances of the case, immaterial or that he or she did not know it, or
 - (iii) that the making of the statement or omission was otherwise such as, having regard to the circumstances of the case, ought reasonably to be excused.
- (2) Summary proceedings for an offence under this head may be brought and prosecuted by the competent authority designated under Irish prospectus law.
- (3) If at a trial for an offence under this head or an offence created by Irish prospectus law, the judge or jury has to consider whether the defendant honestly believed a particular thing or was honestly mistaken in relation to a particular thing, the presence or absence of reasonable grounds for such a belief or for his or her having been so mistaken is a matter to which the judge or jury is to have regard, in conjunction with any other relevant matters, in considering whether the defendant so believed or was so mistaken.

Explanatory Note

Amended restatement of Section 48 of the Investment Funds, Companies and Miscellaneous Provisions Act, 2005.

Head 82 Local offers

- (1) An offering document prepared for a local offer shall contain the following statements in print in clearly legible type -
- (a) on the front page or otherwise in a prominent position:

“This document,

 - has not been prepared in accordance with Directive 2003/71/EC on prospectuses or any measures made under that Directive or the laws of Ireland or of any EU Member State or EEA treaty adherent state that implement that Directive or those measures,
 - has not been reviewed, prior to its being issued, by any regulatory authority in Ireland or in any other EU Member State or EEA treaty adherent state,

and therefore may not contain all the information required where a document is prepared pursuant to that Directive or those laws.”;
 - (b) elsewhere in the offering document:
 - (i) where the offering document contains information on past performance:

“Past performance may not be a reliable guide to future performance.”,
 - (ii) where the offering document contains information on simulated performance:

“Simulated performance may not be a reliable guide to future performance.”,
 - (iii) “Investments may fall as well as rise in value.”,

- (iv) where securities are described as being likely to yield income or as being suitable for an investor particularly seeking income from his or her investment, and where the income from the securities can fluctuate:

“Income may fluctuate in accordance with market conditions and taxation arrangements.”,

- (v) where the primary market for the securities or the currency of the underlying business is in a currency other than euro:

“Changes in exchange rates may have an adverse effect on the value, price or income of the securities.”,

- (vi) where the securities do not constitute a readily realisable investment:

“It may be difficult for investors to sell or realise the securities and/or obtain reliable information about their value or the extent of the risks to which they are exposed.”.

- (2) Any requirement of Subhead (1) as to the inclusion of a particular statement in an offering document shall be regarded as satisfied if words substantially to the effect of that statement are instead included in that document.
- (3) If an offeror fails to comply with Subhead (1) the offeror shall be guilty of a category three offence.
- (4) No offering document prepared for a local offer shall be issued by or on behalf of a company or in relation to an intended company unless, on or before the date of its publication, a copy of the offering document has been delivered to the Registrar for registration.
- (5) Summary proceedings for an offence under this head may be brought and prosecuted by the competent authority designated under Irish prospectus law or by the Registrar of companies.

Explanatory Note

Restatement of Section 48 of the Investment Funds, Companies and Miscellaneous Provisions Act, 2005.

Head 83 Exclusion of Investment Intermediaries Act 1995

- (1) Any document issued in connection with an offer of securities by or on behalf of an issuer, offeror or person seeking admission of securities to trading on a regulated market shall not be regarded as constituting an investment advertisement within the meaning of Section 23 of the Investment Intermediaries Act, 1995.
- (2) “Document” in Subhead (1) includes, in the case of a local offer, an offering document.

Explanatory Note

Restatement of Section 50 of the Investment Funds, Companies and Miscellaneous Provisions Act, 2005.

Head 84 Power to make certain rules and issue guidelines

- (1) In this head, “competent authority” means the competent authority designated under Irish prospectus law.
- (2) The competent authority may make rules imposing or enabling the competent authority to impose requirements on persons on whom an obligation or obligations are imposed by Irish prospectus law, being requirements—
- (a) to do or not to do specified things so as to secure that the provisions of Irish prospectus law are complied with and, in particular (without limiting the generality of this paragraph), to adopt specified procedures and use specified forms in the provision of information to the competent authority;
- (b) to do or not to do specified things so as to secure the effective supervision by the competent authority of activities of the kind to which Irish prospectus law relates and, in particular (without limiting the generality of this paragraph), to make such reports or disclose such matters, at such times and in such manner, to the competent authority or other specified persons as are provided for by the rules or specified by the competent authority pursuant to the rules, being reports or a disclosure of matters that is or are required by virtue or in consequence of the operation of Irish prospectus law.

- (3) Rules under this head may include rules providing for the manner in which or the matters by reference to which (or both) a determination is to be made of any issue as to whether a transaction or transactions is or are of a significant size for the purposes of the provisions of Irish prospectus law implementing Article 2(2)(a) of the 2003 Prospectus Directive.
- (4) The reference in Subhead (1) to an obligation imposed on a person by Irish prospectus law includes a reference to an obligation imposed on a person by virtue of the person's exercising a right or option provided under Irish prospectus law.
- (5) Rules under this head may contain such consequential, incidental or supplemental provisions as the competent authority considers necessary or expedient.
- (6) Rules under this head shall not contain any provision that is inconsistent with Irish prospectus law or require the provision of information to any person the provision of which is not reasonably related to the purposes for which the applicable provisions of the 2003 Prospectus Directive have been adopted.
- (7) The provisions of Irish prospectus law that are expressed by that law to be made for the purpose of enabling the imposition of administrative sanctions shall apply in relation to a contravention of rules under this head as they apply in relation to a contravention of a provision of Irish prospectus law and, accordingly, a sanction that may be imposed pursuant to the first-mentioned provisions of Irish prospectus law in respect of a contravention of a provision of that law may, in accordance with that law, be imposed in respect of a contravention of rules under this head.
- (8) The competent authority may issue guidelines in writing as to the steps that may be taken to comply with Irish prospectus law.

Explanatory Note

Restatement of Section 51 of the Investment Funds, Companies and Miscellaneous Provisions Act, 2005.

Head 85 Avoidance of certain agreements

A condition—

- (a) requiring or binding an applicant for securities to waive compliance with any requirement of—
 - (i) this Chapter, or
 - (ii) EU prospectus law; or
- (b) where EU prospectus law applies, purporting to affect him or her with notice of any contract, document or matter not specifically referred to in the prospectus concerned,

shall be void.

Explanatory Note

Restatement of Section 52 of the Investment Funds, Companies and Miscellaneous Provisions Act, 2005.

Schedule

MODEL MEMORANDUM AND ARTICLES OF ASSOCIATION FOR A COMPANY LIMITED BY GUARANTEE (CLG)

1. The name of the company is "The University Foundation, Limited."
2. The objects for which the company is established are the raising of funds for the furtherance of education and research carried out by Irish universities and the doing of all such other things as are incidental or conducive to the attainment of the above object.
3. The liability of the members is limited.
4. Every member of the company undertakes to contribute to the assets of the company in the event of its being wound up while he is a member, or within one year afterwards, for payment of the debts and liabilities of the company contracted before he ceases to be a member, and the costs, charges and expenses of winding - up, and for the adjustment of the rights of the contributories among themselves, such amount as may be required not exceeding €1.

We, the several persons whose names and addresses are subscribed, wish to be formed into a company in pursuance of this memorandum of association.

Names, Addresses and Descriptions of Subscribers.

1. Francis McMaster of _____
.....in the County of _____
.....University Provost. _____
2. Colleen D. Cahill of _____
.....in the County of _____
.....Science Teacher. _____
3. Guy Tabarie of _____
.....in the County of _____
.....Neuroscientist. _____
4. Zara Tristan of _____
.....in the County of _____
.....Economist. _____

Dated the.....day of..... 20.....

Witness to the above signatures

Name: _____

Address: _____

Part B5 – Unlimited Companies

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First Schedule

Memorandum and Articles of Association for a ULC/PUC

Second Schedule

Memorandum and Articles of Association for a PULC

Part B5 – Unlimited Companies

Chapter 1

Preliminary and Definitions

Head 1 Defined terms

(1) In this Part:

“**constitution**” has the meaning assigned to it in Head 5;

“**member**” means member of an unlimited company;

“**PUC**” means a public unlimited company;

“**PULC**” means a public unlimited company that has no share capital;

“**ULC**” means a private unlimited company;

“**unlimited company**” or “**UL**” means a company not having any limit on the liability of its members.

(2) In this Part, references to an ‘unlimited company’ includes references to PUCs, PULCs and ULCs.

Explanatory Note

The definition of unlimited company replaces paragraph 5(2)(c) of the Companies Act, 1963, which provides that a company incorporated under the Act may be an unlimited company.

Head 2 Interpretation of this Part

(1) The provisions of Parts A1 to A14 of Group A apply to unlimited companies subject to such amendments thereto, or exclusions therefrom, as are contained in this Part.

(2) [Table setting out provisions that do not apply to a ULC, PUC or PULC as relevant]

Part	Head	Title	ULC	PUC	PULC
A2	2	Way of forming a company limited by shares	Disapply	Disapply	Disapply
A2	3	The form of the constitution	Disapply	Disapply	Disapply
A2	7	Effect of registration	Disapply	Disapply	disapply
A2	9	Provisions as to names of companies	Disapply	Disapply	Disapply
A2	20	Capacity of a private company limited by shares	Disapply	Disapply	Disapply
A2	35	Security for costs	Disapply	Disapply	Disapply
A2	37-43	All of A2 Chapter 6 – Conversion of an existing company to a company limited by shares	Disapply	Disapply	Disapply
A3	4	Limitation on offer of securities to the public	Apply	Disapply	Disapply
A3	5	Allotment of shares	Disapply	Disapply	Disapply
A3	16	Variation of company capital	Disapply	Disapply	Disapply
A3	17	Variation in capital	Disapply	Disapply	Disapply
A3	21	Variation of rights attached to special classes of shares	Apply	Apply	Disapply
A3	27(2)	Transfer of shares	Disapply	Disapply	Disapply
A3	49	Profits available for distribution	Disapply	Disapply	Apply

Part B5 - Unlimited Companies

Part	Head	Title	ULC	PUC	PULC
A4	2	Directors	Disapply	Disapply	Disapply
A4	35	Definition of member	Disapply	Disapply	Disapply
A4	43	Transfer of shares in management companies	Disapply	Disapply	Disapply
A4	46	Annual general meeting	Disapply	Disapply	Disapply
A4	64&65	Unanimous written resolutions	Disapply	Disapply	Disapply
A5	7	Directors' compliance statement	Disapply	Disapply	Disapply
A6	31	Details of authorised share capital, allotted share capital and movements	Apply	Apply	Disapply
A6	33	Holding of own shares or shares in holding undertaking	Apply	Apply	Disapply
A6	38(4)	Directors' report: general matters	Apply	Disapply	Disapply
A6	40	Directors' report: acquisition or disposal of own shares	Apply	Apply	Disapply
A6	42	Directors' report: Statement on relevant audit information	Apply	Disapply	Disapply
A6	44	Obligation for a company's statutory financial statements to be audited	Apply	Disapply	Disapply
A6	45	Right of members to require audit	Apply	Disapply	Disapply
A6	55	Documents to be annexed to annual return: all companies	Disapply	Apply	Apply
A6	56	Documents to be annexed to annual return: certain companies	Disapply	Apply	Apply
A6	57	Exceptions from requirement to annex statutory financial statements to annual return	Disapply	Apply	Apply
A6	58 – 68	Chapter 14 – Exclusions, exemptions and special provisions	Apply	Disapply	Disapply
A6	74	Company has availed of exemption from audit	Apply	Disapply	Disapply
A6	80	Small and medium sized companies	Apply	Disapply	Disapply
A6	81	Companies exempt from audit by virtue of Head 64	Apply	Disapply	Disapply
A6	82(2)	Modifications of Act	Apply	Disapply	Disapply
A6	85	Appointment of independent auditors by members of company	Apply	Disapply	Disapply
A6	86	Appointment of independent auditors: Failure to appoint	Apply	Disapply	Disapply
A6	97	Removal of independent auditors: statement from independent auditors where audit exemption availed of by company	Apply	Disapply	Disapply
A11	86	Liability as contributories of past and present members	Disapply	Disapply	Disapply
A11	90	Payment of debts due by contributory to the company and extent to which set-off allowed	Disapply	Disapply	Disapply

Chapter 2

Incorporation and Consequential Matters

Head 3 Way of forming an unlimited company

- (1) An unlimited company may be formed for any lawful purpose by any person or persons subscribing to a constitution and complying with the registration requirements in this Bill.
- (2) Each member shall have unlimited liability.
- (3) A company may also be registered as an unlimited company following -
 - (a) re-registration as an unlimited company of an existing company other than an unlimited company pursuant to [Part B9]; or
 - (b) the merger of two or more unlimited companies pursuant to [Part B5, Chapter 9]; or
 - (c) the division of an unlimited company into two or more unlimited companies pursuant to [Part B5, Chapter 9]
- (4) An unlimited company shall not be formed and registered unless it appears to the Registrar that the company, when registered, will carry on an activity in the State.
- (5) Part A2, Head 2 shall not apply to an unlimited company.

Explanatory Note

This head sets out the manner in which an unlimited company may be formed. Following a determination made by the Steering Committee, it amalgamates separate heads applying to private and public companies in Part A2 and Part B2 respectively. Subhead (4) provides for the unlimited liability of members.

The proposed head provides for single member private unlimited companies and adopts the two member minimum for public companies under Part B2.

Head 4 The form of a the constitution for a public unlimited company that has no share capital

- (1) Subject to subhead (3) the constitution of a PULC shall be in the form of a memorandum and articles of association which together shall be referred to in this Part as a constitution.
- (2) The memorandum of association of a PULC shall state-
 - (a) its name;
 - (b) that it is a PULC, registered under this Part;
 - (c) its objects;
 - (d) the fact that it has no share capital;
 - (e) the fact that its members have unlimited liability.
- (3) If a PULC adopts supplemental regulations, those regulations shall be in the form of articles of association.
- (4) The constitution shall—
 - (a) be in accordance with the form set out in the Second Schedule to this Part or as near thereto as circumstances permit;
 - (b) be printed in an entire format; and
 - (c) be signed by each subscriber in the presence of at least one witness who must attest the signature.
- (5) Where the constitution is delivered to the Registrar otherwise than in legible form and is authenticated by each subscriber in such manner as is directed by the Registrar, the requirements in Subhead (4) for signature by each subscriber in the presence of at least one witness and for attestation of the signature, do not apply.
- (6) Part A2, Head 3 shall not apply to a PULC.

Explanatory Note

This head, for the most part, mirrors Part B3 Head 5, which provides for the form of a constitution of a DAC. Paragraphs (d) and (e) have been inserted into subhead (2) to accommodate the two defining features of the public unlimited company without a share capital.

Head 5 The form of the constitution for a private unlimited company or a public unlimited company with a share capital.

- (1) Subject to subhead (3), the constitution of an ULC or PUC shall be in the form of a memorandum and articles of association which together shall be referred to in this Part as a constitution.
- (2) The memorandum of association of a ULC or PUC shall state-
 - (a) its name;
 - (b) that it is either a ULC or PUC, registered under this Part;
 - (c) its objects;
 - (d) the amount of share capital with which the company proposes to be registered and the division thereof into shares of a fixed amount;
 - (e) the fact that its members have unlimited liability.
- (3) If the ULC or PUC adopts supplemental regulations, those regulations shall be in the form of articles of association.
- (4) The constitution shall—
 - (a) be in accordance with the form set out in the First Schedule to this Part or as near thereto as circumstances permit;
 - (b) be printed in an entire format; and
 - (c) be signed by each subscriber in the presence of at least one witness who must attest the signature.
- (5) Where the constitution is delivered to the Registrar otherwise than in legible form and is authenticated by each subscriber in such manner as is directed by the Registrar of Companies, the requirements in subhead (4) for signature by each subscriber in the presence of at least one witness and for attestation of the signature do not apply.

- (6) Part A2, Head 3 shall not apply to a ULC or a PUC.

Explanatory Note

This head largely mirrors Part B3 Head 5 with the insertion of 2(d) and (e) to ensure the share capital and the unlimited liability of members is addressed by the constitution of a ULC or PUCs.

[N.B. Heads 5 to 7 of A2 apply]

Head 6 Effect of registration

- (1) On the registration of the constitution of an unlimited company the Registrar shall certify in writing that the unlimited company is incorporated, and shall issue a certificate of incorporation for the unlimited company.
- (2) From the date of incorporation mentioned in the certificate of incorporation, the subscriber or subscribers of the constitution, together with such other persons as may from time to time become members of the unlimited company, shall be a body corporate with the name contained in the constitution, capable forthwith of exercising the functions of an incorporated company, and having perpetual succession and a common seal, but with such liability on the part of the members to contribute to the assets of the unlimited company in the event of its being wound up as is mentioned in this Bill.
- (3) The certificate of incorporation issued under Subhead (1) shall state that the company is an unlimited company.
- (4) A certificate of incorporation given under Subhead(1) shall be conclusive evidence that the requirements mentioned in Part A2, Head 6 [equivalent of Section 3 of the Companies (Amendment) Act, 1982] have been complied with, and that the unlimited company is duly registered under this Bill.
- (5) The persons who are specified in the statement required to be delivered to the Registrar pursuant to Part A2, Head 6 [equivalent of Section 3 of the Companies (Amendment) 1982 Act] as the director or directors, secretary or joint secretaries of the unlimited company to which the statement refers shall, on the incorporation of the unlimited company, be deemed to have been appointed as the first director or directors, or secretary, as the case may be, of the unlimited company, and any indication in the constitution specifying a person as a director or secretary of a unlimited company shall be void unless such person is specified as a director or as secretary in the said statement.

- (6) Part A2, Head 8 shall not apply to an unlimited company.

Explanatory Note

This head mirrors Part A2, Head 8. However, Subhead (1) has been altered to provide for certification by the Registrar that a company is an unlimited company. Section 18(1) of the Companies Act, 1963 previously only provided for the Registrar to certify that "in the case of a limited company, that the company is limited".

Subhead (3) re-enacts section 5(3) of the Companies (Amendment) Act, 1983 for an unlimited company.

Head 7 Provisions as to names of unlimited companies

- (1) The name of an unlimited company shall end with one of the following:
- “(unlimited company)”
 - “([Irish equivalent])”.
- (2) The words “(unlimited company)” may be abbreviated to [“(uc)”/“(UC)” or “(u.c.)”/“(UC).”] in any usage after the registration by any person including unlimited company.
- (3) The words “Irish equivalent” may be abbreviated to “(ooo)”/“(OOO)” or “(o.o.o.)”/“(O.O.O.)” in any usage after the registration by any person including the ULC.
- (4) Every ULC carrying on business under a name other than its corporate name shall register in the manner directed by law for the registration of business names but the use of the abbreviations in subheads (2) and (3) shall not of itself render such registration necessary.
- (5) Part A2, Head 9 shall not apply to an unlimited company.

Explanatory Note

This head is modelled on Part B2, Head 5 dealing with provisions as to names of PLCs.

[N.B. Heads 11 to 19 of A2 apply]

Head 8 Trading under a misleading name

- (1) A person who is not an unlimited company and, if that person is a company, any officer of the company who is in default shall be guilty of a category three offence if he carries on any trade, profession or business under a name which includes, as its last part, the words “unlimited company” or abbreviations of those words.
- (2) An unlimited company and any officer of the unlimited company who is in default shall be guilty of a category three offence if, in circumstances in which the fact that it is an unlimited company is likely to be material to any person, it uses a name which may reasonably be expected to give the impression that it is a company other than an unlimited company.
- (3) Subhead (1) shall not apply to any company-
- (a) to which Part B7 [equivalent of Part XI of the Companies Act, 1963] applies; and
 - (b) which has provisions in its constitution that would entitle it to rank as an unlimited company if it had been registered in the State.

Explanatory Note

An amended re-enactment of Sections 56(1), (2) and (4) of the Companies (Amendment) Act, 1983.

Head 9 Corporate capacity of an unlimited company

- (1) An unlimited company shall have the capacity to do any act or thing stated in the objects set out in its constitution.
- (2) Part A2, Head 20 shall not apply to an unlimited company .

Explanatory Note

This head replicates Part B3, Head 10 on the basis that both private and public unlimited companies must have objects clauses.

Head 10 Corporate capacity not limited by the constitution of an unlimited company

- (1) The validity of an act done by an unlimited company shall not be called into question on the ground of lack of capacity by reason of anything contained in the constitution of an unlimited company.
- (2) A member of an unlimited company may bring proceedings to restrain the doing of an act which but for subhead (1) would be beyond the capacity of that unlimited company but no such proceedings shall lie in respect of any act to be done in fulfilment of a legal obligation arising from a previous act of that unlimited company.
- (3) It remains the duty of the directors to observe any limitations on their powers flowing from the constitution of a unlimited company and action by the directors which but for subsection (1) would be beyond the capacity of that unlimited company may only be ratified by the unlimited company by special resolution.
- (4) A resolution ratifying such action shall not affect any liability incurred by the directors or any other person; relief from any such liability must be agreed to separately by special resolution,
- (5) A party to a transaction with an unlimited company is not bound to enquire as to whether it is permitted by the constitution of that unlimited company.

Explanatory Note

This head mirrors the wording of Part B2, Head 9 and Part B3, Head 11.

Head 11 Way in which and extent to which objects of company may be altered

- (1) Notwithstanding Part A2, Head 15, an unlimited company may only alter its objects in accordance with this head.
- (2) Subject to subhead (3), an unlimited company may, by special resolution, alter the provisions of its constitution by abandoning, restricting or amending any existing object or by adopting a new object and any alteration so made shall be as valid as if originally contained therein and be subject to alteration in like manner.

- (3) If an application is made to the court in accordance with this head, for the alteration to be cancelled, it shall not have effect except in so far as it is confirmed by the court.
- (4) Subject to subsection (5) an application under this section may be made-
 - (a) by not less than 15 percent of the unlimited company's members; or
 - (b) by the holders of not less than 15 percent of the unlimited company's debentures, entitling the holders to object to alterations of its objects.
- (5) An application shall not be made under this head by any person who has consented to or voted in favour of the alteration.
- (6) An application under this head must be made within 21 days after the date on which the resolution altering the unlimited company's objects was passed and may be made on behalf of the persons entitled to make the application by such one or more of their number as they may appoint in writing for the purpose.
- (7) On an application under this head, the court may make an order cancelling the alteration or confirming the alteration either wholly or in part and on such terms and conditions as it thinks fit, and may, if it thinks fit, adjourn the proceedings in order that an arrangement may be made to the satisfaction of the court for the purchase of the interests of dissentient members, and may give such directions and make such orders as it may think expedient for facilitating or carrying into effect any such arrangement.
- (8) An order under this head may, if the court thinks fit, provide for the purchase by the company of the shares of any members of the company and for the reduction accordingly of the company's capital and may make such alterations in the constitution of the company as may be required in consequence of that provision.

- (9) Where an order under this head requires the company not to make any, or any specified, alteration in its constitution, then, notwithstanding anything in this Bill, the company shall not have power without the leave of the court to make any such alteration in breach of that requirement.

(10) Any alteration in the constitution of a company made by virtue of an order under this head, other than one made by resolution of the company, shall be of the same effect as if duly made by resolution of the company, and the provisions of this Bill shall apply to the constitution altered accordingly.

(11) The debentures entitling the holders to object to alterations of an unlimited company's objects shall be any debentures secured by a floating charge which were issued or first issued before the operative date or form part of the same series as any debentures so issued, and a special resolution altering an unlimited company's objects shall require the same notice to the holders of any such debentures as to members of the unlimited company, so however that not less than 10 days' notice shall be given to the holders of any such debentures.

In default of any provisions regulating the giving of notice to any such debenture holders, the provisions of the unlimited company's articles regulating the giving of notice to members shall apply.

(12) Where an unlimited company passes a resolution altering its objects-

(a) if no application is made with respect thereto under this head, it shall within 15 days from the end of the period for making such an application, deliver to the Registrar a printed copy of its constitution as altered; and

(b) if such an application is made it shall-

- (i) forthwith give notice of that fact to the Registrar; and
- (ii) within 15 days from the date of any order cancelling or confirming the alteration, deliver to the Registrar an office copy of the order and, in the case of an order confirming the alteration, a printed copy of the constitution as altered.

The court may, by order, at any time extend the time for delivery of documents to the Registrar under paragraph (b) for such period as the court may think proper.

(13) If an unlimited company makes default in giving notice or delivering any document to the Registrar as required by subhead(10), the unlimited company and every officer of the unlimited company who is in default shall be guilty of a category three offence .

(14) In relation to a resolution for altering the provisions of a company's constitution relating to the objects of the company passed before the operative date, this head shall have effect as if, in lieu of Subheads (3) to (13), there had been enacted Subheads (2) to (10) of Section 10 of the Companies Act, 1963.

Explanatory Note

This is an amended version of ~Section 10 of the Companies Act, 1963.

Head 12 Power to alter provisions in memorandum which could have been contained in articles

(1) Subject to Subhead (2) of this head, Subheads (4) and (5) of Head 15 of Part A2 and Head 72 of Part A4, any provision contained in a company's memorandum which could lawfully have been contained in articles of association instead of in the memorandum may, subject to the provisions of this head, be altered by the company by special resolution.

(2) If an application is made to the court for the alteration to be cancelled, it shall not have effect except in so far as it is confirmed by the court.

(3) This head shall not apply where the memorandum itself provides for or prohibits the alteration of all or any of the said provisions, and shall not authorise any variation or abrogation of the special rights of any class of members.

(4) Subheads(4), (5), (6), (7), (8), (9), (10), (13) and (14) of Head 11 of this Part (except paragraph (b) of the said subhead (4)) shall apply in relation to any alteration and to any application made under this head as they apply in relation to alterations and to applications made under that head.

(5) This head shall apply to a company's memorandum whether registered before, on or after the operative date.

Explanatory Note

This head is based on Section 28 of the Companies Act, 1963.

[Heads 21 to 34 of Part A2 applies]

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Head 13 Security for costs

Part A2, Head 35 shall not apply to an unlimited company.

Head 14 Conversion of existing unlimited company

- (1) In this Part the term 'transition period' shall mean the period ending 18 months after the commencement of this Part.
- (2) Every existing unlimited company shall at the end of the transition period become an "unlimited company" to which this Part applies.
- (3) Where an existing unlimited company has not, by the end of the transition period, changed its name to comply with Part B5, Head 7 then from the end of the transition period the provisions of Part B5, Head 7 shall apply to that company and from that time forward
 - (a) The words "unlimited company" shall be added to the end of the company name;
 - (b) The words "[Irish equivalent]" shall be added to the end of the company name.
- (4) Part A2, Heads 35 to 42 shall not apply to an unlimited company.

Explanatory Note

In Head 1 of Part A2 the transition period is defined as expiring 12 months after the status date, itself being defined as six months after commencement of Part A2. Thus expiry of the transition period will be co-terminous with expiry of the transition period for Part A2, assuming both Parts are commenced on the same date.

Chapter 3

Share Capital

[Heads 1 and 2 of A3 apply]

Head 15 Limitation on offers of securities to the public

- (1) Part A3, Head 4 shall not apply to a PUC or a PULC.
- (2) Save to the extent prohibited by its constitution a PUC or a PULC shall have the capacity to offer, allot and issue securities (as defined in Part A3, Head 1) to the public subject to compliance, where applicable, with Chapter 13 of Part B2.

Explanatory Note

Part A3, Head 4 applies prospectus law and prevents an ULC from issuing shares or debts to the public where a prospectus would be needed. This head disapplies those restrictions from public unlimited companies and imposes an obligation to comply with the prospectus directive. Part A3, Head 4 applies to an ULC.

Head 16 Allotment of debentures or other debt securities to be dealt in on stock exchange or regulated market

- (1) Where a prospectus, whether issued generally or not, states that application has been or will be made for permission for the debentures or other debt securities offered thereby to be dealt in on any stock exchange or regulated market, any allotment made on an application in pursuance of the prospectus shall, whenever made, be void if the permission has not been applied for before the third day after the first issue of the prospectus or if the permission has not been granted within 6 weeks from the date of the closing of the subscription lists.

- (2) Where the permission has not been applied for as aforesaid or has not been granted, the company shall forthwith repay without interest all money received from applicants in pursuance of the prospectus, and, if any such money is not repaid within 8 days after the company becomes liable to repay it, the directors of the company shall be jointly and severally liable to repay that money with interest at the rate of 5 per cent. per annum from the expiration of the eighth day, so however that a director shall not be liable if he proves that the default in the repayment of the money was not due to any misconduct or negligence on his part.
- (3) All money received as aforesaid shall be kept in a separate bank account so long as the company may become liable to repay it under Subhead (2); and, if default is made in complying with this Subhead, the company and every officer of the company who is in default shall be guilty of a category three offence.
- (4) Any condition requiring or binding any applicant for debentures or other debt securities to waive compliance with any requirement of this head shall be void.
- (5) This head shall have effect—
 - (a) in relation to any debentures or other debt securities agreed to be taken by a person underwriting an offer thereof by a prospectus as if he had applied therefor in pursuance of the prospectus; and
 - (b) in relation to a prospectus offering debentures or other debt securities for sale with the following modifications,—
 - (i) references to sale shall be substituted for references to allotment,
 - (ii) the persons by whom the offer is made, and not the company, shall be liable under subhead (2) to repay money received from applicants, and references to the company's liability under that subhead shall be construed accordingly, and
 - (iii) for the reference in Subhead (3) to the company and every officer of the company who is in default there shall be substituted a reference to any person by or through whom the offer is made and who knowingly and wilfully authorises or permits the default.

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- (6) In reckoning for the purposes of this head the third day after another day, any intervening day which is a Saturday or Sunday or which is a bank holiday shall be disregarded and if the third day (as so reckoned) is itself a Saturday or Sunday or such a bank holiday there shall for the said purposes be substituted the first day thereafter which is none of them.
- (7) The provisions of this head shall not apply in relation to an allotment of non-equity securities.
- (8) This head shall not apply to a PULC.

Explanatory Note

Restatement of Section 57 of the Companies Act, 1963.

Head 17 Authority to allot and pre-emption rights

- (1) An authority to allot shares in an unlimited company pursuant to Subhead 4 (1) of Part A3 shall not exceed a period of 5 years but (whether or not it has been previously renewed under this Subhead) may be renewed for a further period not exceeding 5 years.
- (2) The directors may allot relevant securities, notwithstanding that any authority for the purposes of this head has expired, if the relevant securities are allotted in pursuance of an offer or agreement made by the unlimited company before the authority expired and the authority allowed it to make an offer or agreement which would or might require relevant securities to be allotted after the authority expired.
- (3) A resolution of a company to give, vary, revoke or renew such an authority may, notwithstanding that it alters the constitution of the company, be an ordinary resolution, but Head 68 of Part A4 [equivalent of Section 143 of the Companies Act, 1963] shall apply to it.
- (4) Any director who knowingly and wilfully contravenes, or permits or authorises a contravention of this head shall be guilty of a category three offence.
- (5) An ULC shall not offer, allot or agree to allot any shares (or debentures) of the ULC to which Part B2, Chapter 13, Heads 000-000 [equivalent of Article 2 of Council Directive 2003/71/EC (i.e. Prospectus Directive)] would apply.
- (6) Part A3, Head 5 (8) shall not apply to an unlimited company.

Explanatory Note

This head essentially restates Part A3, Head 5 but removes the requirement to register the details of an allotment of shares with the Registrar within one month of the allotment [Subhead 4(7)]. Subhead (9) has also been amended so that the restriction on the allotment of shares where a prospectus would be required does not apply to public unlimited companies.

Subhead (1) is an amended re-enactment of Section 20(4) of the Companies (Amendment) Act, 1983.

Subhead (2) is a re-enactment of Section 20(5) of the Companies (Amendment) Act, 1983.

Subhead(3) is a re-enactment of Section 20(6) of the Companies (Amendment) Act, 1983.

Subhead (4) is a re-enactment of Section 20(7) of the Companies (Amendment) Act, 1983.

[Heads 6 to 11 of Part A3 apply]

Head 18 Variation of company capital

- (1) Unless the constitution provides otherwise, a PUC or an ULC may by special resolution—
- (a) increase the share capital by such sum to be divided into shares of such amount as the resolution may prescribe;
 - (b) consolidate its shares into shares of a larger amount than its existing shares;
 - (c) subdivide its shares into shares of a smaller amount than its existing shares;
 - (d) cancel any shares which at the date of the passing of the resolution have not been taken or agreed to be taken by any person;
 - (e) reduce its share capital in any way.
- (2) Part A3, Head 12 shall not apply to an unlimited company.

Explanatory Note

This head disapplies Part A3, Head 12 to reflect that there is no limitation upon an unlimited company's ability to vary its company capital. It was not considered necessary to insert a provision to that effect

Head 19 Reduction of company capital

- (1) Save to the extent that its constitution otherwise provides, a PUC or ULC may by special resolution, reduce its share capital in any way, and without prejudice to the generality of the foregoing, may thereby:
 - (a) extinguish or reduce the liability on any of its shares in respect of share capital not paid up; or
 - (b) either with or without extinguishing or reducing liability on any of its shares, cancel any paid up company capital which is lost or unrepresented by available assets; or
 - (c) either with or without extinguishing or reducing liability on any of its shares, pay off any paid up share capital which is in excess of the wants of the unlimited company.
- (2) A resolution referred to in Subhead (1) which would have the effect of eliminating all share capital shall not be effective unless notwithstanding the passing of the resolution the unlimited company retains at least one member.
- (3) Part A3, Head 13 shall not apply to an unlimited company.

Explanatory Note

This head acknowledges that an unlimited company may reduce its company capital in any way and removes the restrictions placed by Part A3, Head 13 on a private limited company's ability to reduce share capital.

[Heads 14 to 20 of Part A3 apply]

Head 20 Transfer of shares

- (1) The instrument of transfer of any share shall be executed by or on behalf of the transferor and the transferee, and the transferor shall be deemed to remain the holder of the share until the name of the transferee is entered in the register in respect thereof.
- (2) Part A3, Head 21 (2) shall not apply to an unlimited company.

Head 21 Profits available for distribution

Part A3, Head 46 shall not apply to an unlimited company.

Explanatory Note

This head disapplies Part A3, Head 46 which imposes certain restrictions upon the distribution of profits by a CLS. These restrictions, which are an amended re-enactment of Section 45 of the Companies (Amendment) Act, 1983, are compelled by the 2nd EU Company Law Directive. The CLRG has accepted the view that the provisions relating to the distribution of profits are not necessary for unlimited companies and were extended by the 1983 Act to unlimited companies without specific intention.

Head 22 Power to make regulations for transfer of securities

- (1) The Minister may make provision by regulations for enabling title to securities to be evidenced and transferred without a written instrument.
- (2) Subject to any exceptions that may be specified in the regulations, the regulations may, in respect of—
 - (a) securities of companies admitted to trading on a regulated market,
 - (b) securities of companies admitted to trading on a market other than a regulated market; or
 - (c) securities of public limited companies of a specified class, provide that the means provided by the regulations for evidencing and transferring title to such securities shall constitute the sole and exclusive means for doing so (and, accordingly, that any purported transfer of such securities otherwise than by those means shall be void).
- (3) In this head—
 - (a) "securities" means transferable securities as defined by Article 1(4) of Directive 93/22/EEC with the exception of money market instruments as defined by Article 1(5) of Directive 93/22/EEC, having a maturity of less than 12 months;

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- (b) references to title to securities include any legal or equitable interest in securities; and
 - (c) references to a transfer of title include a transfer by way of security.
- (4) The regulations may make provision—
- (a) for procedures for recording and transferring title to securities; and
 - (b) for the regulation of those procedures and the persons responsible for or involved in their operation; and
 - (c) for dispensing with the obligations of an unlimited company under Head 32 of Part A3 [equivalent of Section 86 of the Companies Act, 1963] to issue certificates and providing for alternative procedures.
- (5) The regulations shall contain such safeguards as appear to the Minister appropriate for the protection of investors and for ensuring that competition is not restricted, distorted or prevented.
- (6)
- (a) The regulations may, for the purpose of enabling or facilitating the operation of the new procedures, make provision with respect to the rights and obligations of persons in relation to securities dealt with under the procedures.
 - (b) The regulations shall be framed so as to secure that the rights and obligations in relation to securities dealt with under the new procedures correspond, so far as practicable, with those which would arise apart from any regulations under this head.
 - (c) The regulations may—
 - (i) require the provision of statements by a company to holders of securities (at specified intervals or on specified occasions) of the securities held in their name,
 - (ii) make provision removing any requirement for the holders of securities to surrender existing share certificates to issuers, and
 - (iii) make provision that the requirements of the regulations supersede any existing requirements in the articles of association of a company which would be incompatible with the requirements of the regulations.
- (7) Without prejudice to the generality of Subheads (5) and (6), the regulations shall not contain provisions that would result in a person who, but for the regulations, would be entitled—
- (a) to have his or her name entered in the register of members of a company; or
 - (b) to give instructions in respect of any securities, ceasing to be so entitled.
- (8)
- (a) The regulations may include such supplementary, incidental and transitional provisions as appear to the Minister to be necessary or expedient;
 - (b) In particular, provision may be made for the purpose of giving effect to—
 - (i) the transmission of title of securities by operation of law;
 - (ii) any restriction on the transfer of title to securities arising by virtue of the provisions of any enactment or instrument, court order or agreement;
 - (iii) any power conferred by any such provision on a person to deal with securities on behalf of the person entitled.
- (9) The regulations may, for the purposes mentioned in this head, make provision with respect to the persons who are to be responsible for the operation of the new procedures and for those purposes may empower the Minister to delegate to any person willing and able to discharge them any functions of his under the regulations.
- (10) The regulations may make different provision for different cases.
- (11) Every regulation made under this head shall be laid before each House of the Oireachtas as soon as may be after it is made and if a resolution annulling the regulation is passed by either such House within the next twenty-one days on which that House has sat after the regulation is laid before it, the regulation shall be annulled accordingly, but without prejudice to the validity of anything previously done thereunder.

Explanatory Note

Restatement of Section 239 of the Companies Act 1990.

The definition of "securities" is taken from regulation 2 (1) of the Prospectus (Directive 2003/71/EC) Regulations 2005.

Chapter 4

Corporate Governance

[Head 1 of Part A4 applies]

Head 23 Directors

- (1) Every unlimited company shall have at least two directors.
- (2) Part A4, Head 2 shall not apply to an unlimited company .

Explanatory Note

This head gives effect to the recommendation given by the CLRG in its First Report, that the minimum requirement of two directors should remain for all companies other than CLS including unlimited companies [Para 11.8.11].

[Heads 3 to 34 of Part A4 apply]

Head 24 Membership of a PULC

- (1) The subscribers to the memorandum of association in the constitution of a PULC shall be deemed to have agreed to become members of the PULC, and, on its registration, shall be entered as members in its register of members.
- (2) Such other persons as the directors admit to membership and who give the requisite guarantee shall be members of the PULC and their names shall be entered in its register of members.
- (3) The constitution of an unlimited company must state the number of members with which the company proposes to be registered and, if the company has a share capital, the amount of share capital with which the company proposes to be registered.
- (4) Where an unlimited company has increased the number of its members beyond the registered number, it shall, within 15 days after the increase was resolved on or took place, deliver particulars of the increase to the Registrar.

If default is made in complying with this subhead, the company and every officer of the company who is in default shall be guilty of an offence and liable to a fine.

- (5) The memorandum of association of a PULC may state the maximum number of persons who may be members of the PULC, subject to the power of the directors to register an increase in the number of members.
- (6) A member may resign his membership by serving notice to that effect upon the directors at the registered office of the PULC, such notice to expire no earlier than the date of service of the notice of resignation.
- (7) Save where the constitution of a PULC provides otherwise, the directors may require a member to resign his membership by serving notice upon the member terminating his membership to expire no earlier than the date of service of the notice of termination.
- (8) Save where the constitution of a PULC provides otherwise, every member shall have one vote.
- (9) The death of a member shall terminate his membership.
- (10) It shall be a category three offence to personate a member of a PULC
- (11) Part A4, Head 35, shall not apply to a PULC

Explanatory Note

This head is new, however, it is based on Model Regulation 3 of Table C of the First Schedule to the Companies Act 1963.

The head sets out the principle that new members may not be admitted unless approved by the directors. It also requires that new members must give the requisite guarantee. Membership is not transferable and ceases on resignation or death. The duration of membership and the events or acts which will terminate will be set out in the articles. For example, in the case of apartment management companies it is common to provide that membership ceases when ownership of one of the apartments ceases.

Head 25 Membership of a PUC

- (1) The subscribers to the memorandum of association in the constitution of a PUC shall be deemed to have agreed to become members of the PUC, and on its registration, shall be entered as members in its register of members.
- (2) Every other person who agrees to become a member of a PUC, and whose name is entered in its register of members, shall be a member of the company.

- (3) Supplementary provisions on qualification for membership, its duration and termination may be set out in the constitution of a PUC.
- (4) The constitution of a PUC must state the number of members with which the company proposes to be registered and, if the company has a share capital, the amount of share capital with which the company proposes to be registered.
- (5) Where a PUC has increased the number of its members beyond the registered number, it shall, within 15 days after the increase was resolved on or took place, deliver particulars of the increase to the Registrar.

If default is made in complying with this subhead, the company and every officer of the company who is in default shall be liable to a fine.

- (6) The memorandum of association of a PUC may state the maximum number of persons who may be members of the PUC, subject to the power of the directors to register an increase in the number of members.
- (7) A member may resign his membership by serving notice to that effect upon the directors at the registered office of the PUC, such notice to expire no earlier than the date of service of the notice of resignation.
- (8) Save where the constitution of a PUC provides otherwise, the directors may require a member to resign his membership by serving notice upon the member terminating his membership to expire no earlier than the date of service of the notice of termination.
- (9) Save where the constitution of a PUC provides otherwise, every member shall have one vote.
- (10) The death of a member shall terminate his membership.
- (11) It shall be a category two offence to personate a member of a PUC.
- (12) Part A4, Head 35, shall not apply to a PUC.

Explanatory Note

This head is new, however it is based on Model Regulation 1 of Table E Part II of the First Schedule to the Companies Act, 1963.

Head 26 Membership of a ULC

- (1) The subscribers to the memorandum of association in the constitution of an ULC shall be deemed to have agreed to become members of the ULC, and, on its registration, shall be entered as members in its register of members.
- (2) Every other person who agrees to become a member of an ULC, and whose name is entered in its register of members, shall be a member of the company.
- (3) Supplementary provisions on qualification for membership, its duration and termination may be set out in the constitution of an ULC.
- (4) The constitution of an ULC must state the number of members with which the company proposes to be registered and, if the company has a share capital, the amount of share capital with which the company proposes to be registered.
- (5) Where a ULC has increased the number of its members beyond the registered number, it shall, within 15 days after the increase was resolved or took place, deliver particulars of the increase to the registrar.

If default is made in complying with this subhead, the company and every officer of the company who is in default shall be liable to a fine.

- (6) The memorandum of association of an ULC may state the maximum number of persons who may be members of the ULC, subject to the power of the directors to register an increase in the number of members.
- (7) A member may resign his membership by serving notice to that effect upon the directors at the registered office of the ULC, such notice to expire no earlier than the date of service of the notice of resignation.
- (8) Save where the constitution of an ULC provides otherwise, the directors may require a member to resign his membership by serving notice upon the member terminating his membership to expire no earlier than the date of service of the notice of termination.
- (9) Save where the constitution of a ULC provides otherwise, every member shall have one vote.
- (10) The death of a member shall terminate his membership.

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(11) It shall be a category two offence to personate a member of an ULC.

(12) Part A4, Head 35, shall not apply to an ULC.

Explanatory Note

This head is new, however it is based on Model Regulation 1 of Table E Part III of the First Schedule to the Companies Act, 1963.

[Heads 36 to 42 of Part A4 apply]

Head 27 Annual General Meeting

(1) Subject to Subhead (2), every unlimited company shall in each year hold a general meeting as its annual general meeting in addition to any other meetings in that year and shall specify the meeting as such in the notices calling it and not more than 15 months shall elapse between the date of one annual general meeting of a ULC and that of the next.

(2) So long as an unlimited company holds its first annual general meeting within 18 months of its incorporation, it need not hold it in the year of its incorporation or in the following year.

(3) If default is made in holding a meeting of the unlimited company in accordance with Subhead (1), the Director of Corporate Enforcement may, on the application of any member of the unlimited company, call or direct the calling of a general meeting of the unlimited company and give such ancillary or consequential directions as the Director of Corporate Enforcement thinks expedient, including directions modifying or supplementing in relation to the calling holding and conducting of the meeting, the operation of the unlimited company's constitution, and it is hereby declared that the directions which may be given under this Subhead include a direction that one member of the unlimited company present in person or by proxy shall be deemed to constitute a meeting.

(4) A general meeting held in pursuance of Subhead (3) shall, subject to any directions of the Director of Corporate Enforcement, be deemed to be an annual general meeting of the unlimited company but, where a meeting so held is not held in the year in which the default in holding the unlimited company's annual general meeting occurred, the meeting so held shall not be treated as the annual general meeting for the year in which it is held unless at that meeting the unlimited company resolves that it shall be so treated.

(5) Where an unlimited company resolves that a meeting shall be so treated, a copy of the resolution shall, within 21 days after the passing thereof, be delivered to the Registrar for registration.

(6) If default is made in holding a meeting of the unlimited company in accordance with Subhead (1), or in complying with any direction of the Director of Corporate Enforcement under Subhead (3), the unlimited company and every officer of the unlimited company who is in default shall be guilty of a category three offence, and if default is made in complying with Subhead (5), the unlimited company and every officer of the unlimited company who is in default shall be guilty of a category three offence.

(7) Part A4, Head 43 shall not apply to an unlimited company .

Explanatory Note

This head disapplies Subhead (3) of Head 43 Part A4, which allows a CLS to dispense with the requirement to hold an AGM.

[Heads 44 to 61 of Part A4 apply]

Head 28 Unanimous written resolutions

(1) Notwithstanding anything to the contrary in this Bill, unless the constitution provides otherwise, a resolution in writing signed by all the members for the time being entitled to attend and vote on such resolution at a general meeting, (or being bodies corporate by their duly appointed representatives) shall be as valid and effective for all purposes as if the resolution had been passed at a general meeting of the unlimited company duly convened and held, and if described as a special resolution shall be deemed to be a special resolution within the meaning of this Bill.

(2) Any such resolution shall be deemed to have been passed at a meeting held on the date on which it was signed by the last member to sign, and where the resolution states a date as being the date of his signature thereof by any member the statement shall be prima facie evidence that it was signed by him on that date.

- (3) This head does not apply to a resolution for the purposes of Part A6, Heads 83 to 86 and 95 [the equivalents of Section 160 of the Companies Act, 1963 – appointment and remuneration of auditors] and Part A4, Head 17 [the equivalent of Section 182 of the Companies Act, 1963 – removal of directors]
- (4) Part A4, Heads 62 and 63 shall not apply to an unlimited company

Explanatory Note

This head disapplies Head 63 and 64, Part A4 to ULCs and re-enacts Section 141(8) of the Companies Act, 1963, consequently, the ability to make majority written resolutions is not extended to ULCs.

[Heads 64 to 70 of Part A4 apply]

Chapter 5

Duties of Directors and other Officers

[Heads 1 to 5 and 7 to 44 of Part A4 apply]

Head 29 Director's compliance statement and related statement.

Part A5, Head 7 shall not apply to an unlimited company.

Explanatory Note

This is a re-statement of the current law as Section 45 of the Companies (Auditing and Accounting) Act, 2003 does not apply to unlimited companies.

Chapter 6

Financial Statements, Annual Return and Audit

Head 30 Provisions applicable to a designated ULC

- (1) The term “designated ULC” refers to the following ULCs -
 - (a) ULCs where all the members thereof who do not have a limit on their liability are—
 - (i) companies limited by shares or by guarantee, or
 - (ii) bodies not governed by the law of the State but equivalent to those in subparagraph (i), or
 - (iii) any combination of the types of bodies referred to in subparagraphs (i) and (ii); and
 - (b) ULCs where all the members thereof who do not have a limit on their liability are—
 - (i)
 - (I) unlimited companies of the type referred to in paragraph (a) that are governed by the laws of a Member State, or
 - (II) partnerships, all the partners whereof are bodies of the types set out in subparagraphs (i) to (iii) of paragraph (a) that are governed by the laws of a Member State, or
 - (III) bodies governed by the laws of a Member State that are of a legal form comparable to those referred to in subparagraph (I), or
 - (ii) any combination of the types of bodies referred to in subparagraph (i) and subparagraphs (i) and (ii) of paragraph (a).
- (2) The term “non-designated ULC” refers to all ULCs that are not designated ULCs.
- (3) The provisions of Part A6 shall apply to a designated ULC without any of the exclusions or qualifications contained in the rest of this Chapter.

Explanatory Note

Subhead (1) is a restatement of Regulation 6 of the European Communities (Accounts) Regulations, 1993.

Head 31 Exemption from consolidation: size of group

- (1) Head 19 of Part A6 shall apply to a PUC subject to the substitution of Subhead (9)(a) thereof with the following Subhead (9)(a):

“any shares, debentures or other debt securities of the PUC or of a subsidiary undertaking have been admitted to trading on a regulated market of any EEA state, or”.
- (2) Head 19 of Group A Part A6 shall apply to a PULC subject to the substitution of Subhead (9)(a) thereof with the following Subhead (9)(a):

“any debentures or other debt securities of the PULC or any shares, debentures or other debt securities of a subsidiary undertaking have been admitted to trading on a regulated market of any EEA state, or”.

Head 32 Exemption from consolidation: holding company that is a subsidiary of another EEA registered undertaking

- (1) Head 20 of Part A6 shall apply to a PUC with the addition of the following paragraph (f) in Subhead (3):

“(f) the exempted holding company may not have any shares, debentures or other debt securities admitted to trading on a regulated market of any EEA State. “
- (2) Head 20 of Part A6 shall apply to a PULC with the addition of the following paragraph (f) in Subhead (3):

(f) the exempted holding company may not have any debentures or other debt securities admitted to trading on a regulated market of any EEA State.

Head 33 Exemption from Consolidation: holding company that is a subsidiary of a non-EEA undertaking

- (1) Head 21 of Part A6 shall apply to a PUC with the addition of the following paragraph (g) in Subhead (3):
- “(g) the exempted holding company may not have any shares, debentures or other debt securities admitted to trading on a regulated market of any EEA State.”
- (2) Head 21 of Part A6 shall apply to a PULC with the addition of the following paragraph (g) in Subhead (3):
- “(g) the exempted holding company may not have any debentures or other debt securities admitted to trading on a regulated market of any EEA State.”

Head 35 Information on related undertakings: Provision for certain information to be annexed to annual return

- (1) Head 29 of Part A6 shall apply to a PUC with the addition of the following Subhead (5):
- “(5) Subhead (1) shall not apply to a parent undertaking any of whose shares, debentures or other debt securities have been admitted to trading on a regulated market of any EEA State.”
- (2) Head 29 of Part A6 shall apply to a PULC with the addition of the following Subhead (5):
- “(5) Subhead (1) shall not apply to a parent undertaking any of whose debentures or other debt securities have been admitted to trading on a regulated market of any EEA State.”

Head 34 Information on related undertakings: Exemption from disclosures

- (1) Head 28 of Part A6 shall apply to a PUC with the addition of the following paragraph (7):
- “(7) This Head shall not apply to a parent undertaking any of whose shares, debentures or other debt securities have been admitted to trading on a regulated market of any EEA State.”
- (2) Head 28 of Part A6 shall apply to a PULC with the addition of the following paragraph (7):
- “(7) This head shall not apply to a parent undertaking any of whose debentures or other debt securities have been admitted to trading on a regulated market of any EEA State.”

Head 36 Details of authorised share capital, allotted share capital and movements

Head 31 of Part A6 shall not apply to a PULC or to a non-designated ULC which does not have a share capital, but where there are changes in the interests of members of a PULC or a non-designated ULC which does not have a share capital in the period covered by the financial statements, those changes shall be given in the notes to the financial statements.

Head 37 Approval and signing of statutory financial statements by Board of Directors

Head 36 of Part 6 shall apply to a PUC, PULC and non-designated ULC subject to the substitution of Subhead (1) thereof with the following Subhead (1):

“(1) Where the directors of the company are satisfied that the statutory financial statements give a true and fair view and otherwise comply with this Act or, where applicable, with Article 4 of the IAS Regulation, they shall be approved by the board of directors and signed on their behalf by a majority of the directors where there are more than two directors or by the two directors, where there are only two directors.”

Head 38 Approval and signing of directors’ report

Head 43 of Part 6 shall apply to a PUC, PULC and non-designated ULC subject to the substitution of Subhead(1) thereof with the following Subhead (1):

“(1) The directors’ report and, where applicable, the group directors’ report shall be approved by the board of directors and signed on their behalf by a majority of the directors where there are more than two directors or by the two directors, where there are only two directors.”

Head 39 Disclosure of directors’ remuneration

Provide that all references to shares in and share capital of the company in Head 24 of Part A6 shall be disapplied in the case of a PULC.

Head 40 Financial Assistance

Provide that all reference to shares in the company in Head 32 of Part A6 be disapplied in the case of a PULC or a non-designated ULC which does not have a share capital but retained in so far as may be relevant to the holding company or subsidiary of a PULC or a non-designated ULC which does not have a share capital.

Head 41 Holding of shares in holding undertaking

Subhead 33 (1) of A6 shall not apply to a PULC or a non-designated ULC which does not have a share capital.

Head 42 Obligation to prepare directors’ report for every financial year

Head 37 of Part A6 shall apply to a PULC provided that paragraphs (c) of Subhead (1) shall not apply in the case of a PULC.

Head 43 Directors’ report: interests in debentures

Head 41 of Part A6 shall apply to a PULC or a non-designated ULC which does not have a share capital provided that all references to “shares in, or debentures of” the company shall be replaced with “debentures of” where referring to the PULC or non-designated ULC which does not have a share capital but shall remain as references to “shares in, or debentures of” in all references to that company’s holding company or subsidiary where such companies have shares capital.

Head 44 Circulation of statutory financial statements

Head 48 shall apply to a PULC or a non-designated ULC which does not have a share capital provided that the following additional Subhead (1A) shall also apply:

“(1A) In the case of a PULC or a non-designated ULC which does not have a share capital, Subhead (1) shall not require a copy of the documents referred to in that Subhead to be sent to a member of the company who is not entitled to receive notices of general meetings of the company or to a holder of debentures of the company who is not so entitled.”

Head 45 Report to Registrar and to Director of Corporate Enforcement: Accounting Records

Head 94 of Part A6 shall apply to a PULC or a non-designated ULC which does not have a share capital save that the reference to “shareholders” in Subhead (6) shall be replaced with “members”.

Head 46 Report to Registrar and to Director of Corporate Enforcement: Category 1 and 2 Offences under the Companies Act

Head 95 of Part A6 shall apply to a PULC or a non-designated ULC which does not have a share capital save that the reference to “shareholders” in Subhead (4) shall be replaced with “members”.

Head 47 Documents to be annexed to the annual return

(1) The auditors of a non-designated ULC shall prepare a separate report to the directors which—

(a) confirms that they audited the accounts for the relevant year; and

(b) includes within it the report made to the members of the company pursuant to Head 92 of Part A6 [equivalent of Section 193 of the Companies Act, 1990].

(2) A copy of the report prepared in accordance with Subhead (1) shall be certified by a director and by the secretary of the company to be a true copy of that report and shall be attached to the company’s annual return.

Explanatory Note

This head is based on Sections 128 (6B) and (6C) of the Companies Act, 1963.

Chapter 7

Debentures and Registration of Charges

[Heads 1 to 19 of Part A7 apply]

Chapter 8

Receivers

[Heads 1 to 20 of Part A8 apply]

Chapter 9

Reorganisations

[Heads 1 to 45 of Part A9 apply]

Chapter 10

Examinerships

[Heads 1 to 41 of Part A10 apply]

Chapter 11

Winding-Up

[Heads 1 to 85 of Part A11 apply]

Head 48 Liability as contributories of past and present members

- (1) In the event of an unlimited company being wound up, every present and past member shall be liable to contribute to the assets of the unlimited company to an amount sufficient for payment of its debts and liabilities, and the costs, charges and expenses of the winding-up, and for the adjustment of the rights of the contributories among themselves, subject to Subhead (2) and the following qualifications -
- (a) a past member shall not be liable to contribute if he has ceased to be a member for one year or more before the commencement of the winding up;
 - (b) a past member shall not be liable to contribute in respect of any debt or liability of the unlimited company contracted after he ceased to be a member;
 - (c) a past member shall not be liable to contribute unless it appears to the court that the existing members are unable to satisfy the contributions required to be made by them in pursuance of this Bill;
 - (d) nothing in this Bill shall invalidate any provision contained in any policy of insurance or other contract whereby the liability of individual members on the policy or contract is restricted, or whereby the funds of the unlimited company are alone made liable in respect of the policy or contract;
 - (e) a sum due to any member of the unlimited company in his character of a member, by way of dividends, profits or otherwise, shall not be deemed to be a debt of the unlimited company, payable to that member in a case of competition between himself and any other creditor not a member of the unlimited company, but any such sum may be taken into account for the purpose of the final adjustment of the rights of the contributories among themselves.
- (2) Part A11, Head 86 shall not apply to an unlimited company .

Explanatory Note

This head largely mirrors the wording of Head 87, Part A11 which itself is an amended re-enactment of Section 207 of the Companies Act, 1963. However, paragraph 86(1)(d) provides "no contribution shall be required from any member exceeding the amount, if any, unpaid on the shares in respect of which he is liable as a present or past member". Consequently, this paragraph has been disapplied to this Part as it is clearly inconsistent with the purpose of an unlimited company.

[Heads 87 to 89 of Part A11 apply]

Head 49 Payment of debts due by contributory to the company and extent to which set-off allowed.

- (1) The court may make an order to any contributory for the time being on the list of contributories, to pay in a manner directed by the order, any money due from him or from the estate of the person whom he represents to the unlimited company exclusive of any money payable by him or the estate by virtue of any call in pursuance of this Bill.
- (2) The court in making such an order may allow to the contributory, by way of set-off, any money due to him or to the estate which he represents from the unlimited company on any independent dealing or contract with the ULC , but not any money due to him as a member of the unlimited company in respect of any dividend or profit.
- (3) When all the creditors are paid in full, any money due on any account whatever to a contributory from the unlimited company may be allowed to him by way of set-off against any subsequent call.
- (4) Part A11, Head 90 shall not apply to an unlimited company.

Explanatory Note

This head is an amended re-enactment of Section 237 of the Companies Act ,1963. The reference to unlimited companies has been removed from paragraph (2)(a) as the provision will only apply to unlimited companies. Paragraph (2)(a) has also been removed to reflect the CLRG recommendation that the power of companies to make directors liability unlimited be deleted from the Companies Acts. The remainder of the provision replicates Part A11, Head 90.

Part B5 - Unlimited Companies

[Heads 91 to 155 of Part A11 apply]

Chapter 12

Strike Off and Restoration

[Heads 1 – 13 of Part A12 apply]

Chapter 13

Compliance, Investigation and
Enforcement

[Heads 1 to 68 of Part A13 apply]

Chapter 14

Regulatory and Advisory Bodies

[Heads 1 to 64 of Part A14 apply]

Chapter 15

Market Abuse

Head 50 Application of this Chapter

This Chapter shall apply to a PUC or a PULC.

Head 51 Interpretation

(1) In this Chapter —

“2003 Market Abuse Directive” means Directive 2003/6/EC of the European Parliament and of the Council of 28 January 2003 on insider dealing and market manipulation (market abuse), including that Directive as it stands amended for the time being;

“Irish market abuse law” means—

- (a) the measures adopted for the time being by the State to implement the 2003 Market Abuse Directive and the supplemental Directives (whether an Act of the Oireachtas, regulations under Section 3 of the European Communities Act, 1972, regulations under Section 30 or any other enactment (other than, save where the context otherwise admits, this Chapter));
- (b) any measures directly applicable in the State in consequence of the 2003 Market Abuse Directive and, without prejudice to the generality of this paragraph, includes the Market Abuse Regulation; and
- (c) any supplementary and consequential measures adopted for the time being by the State in respect of the Market Abuse Regulation;

“Market Abuse Regulation” means Commission Regulation 2273/2003 of 22 December 2003;

“supplemental Directives” means—

- (a) Commission Directive No. 2003/124/EC of 22 December 2003;
- (b) Commission Directive No. 2003/125/EC of 22 December 2003,
- (c) Commission Directive No. 2004/72/EC of 29 April 2004.

(2) A word or expression that is used in this Chapter and is also used in the 2003 Market Abuse Directive or the supplemental Directives shall have in this Chapter the same meaning as it has in the 2003 Market Abuse Directive or the supplemental Directives, unless—

- (a) the contrary intention appears; or
- (b) Irish market abuse law provides otherwise.

Explanatory Note

Restatement of Section 29 of the Investment Funds, Companies and Miscellaneous Provisions Act, 2005.

Head 52 Regulations (Chapter 15)

(1) The Minister may make regulations for the purposes of—

- (a) giving effect to the 2003 Market Abuse Directive and the supplemental Directives, and
- (b) supplementing and making consequential provision in respect of the Market Abuse Regulation.

(2) Regulations under this head may contain such incidental, supplementary and consequential provisions as appear to the Minister to be necessary or expedient for the purposes of those regulations, including provisions creating offences (but the regulations may only provide penalties in respect of a summary conviction for any such offence).

(3) Regulations under this head may also—

- (a) make, for the purposes of those Regulations, provision analogous to that which was made by Section 3 of the Companies (Amendment) Act, 1999 (repealed by Section 31 of the Investment Funds, Companies and Miscellaneous Provisions Act, 2005) for the purposes of that Act;
- (b) impose on a market operator a requirement similar to that which is imposed by Article 6(9) of the 2003 Market Abuse Directive on the person referred to in that Article 6(9).

(4) This head is without prejudice to Section 3 of the European Communities Act, 1972.

Explanatory Note

Restatement of head 30 of the Investment Funds, Companies and Miscellaneous Provisions Act, 2005.

Head 53 Conviction on indictment of offences under Irish market abuse law: penalties

A person who is guilty of an offence created by Irish market abuse law (being an offence expressed by that law to be an offence to which this head applies) shall, without prejudice to any penalties provided by that law in respect of a summary conviction for the offence, be liable, on conviction on indictment, to a fine not exceeding €10,000,000 or imprisonment for a term not exceeding 10 years, or both.

Explanatory Note

Restatement of Section 32 of the Investment Funds, Companies and Miscellaneous Provisions Act, 2005.

Head 54 Civil liability for certain breaches of Irish market abuse law

(1) If a person contravenes a provision of Irish market abuse law (being a provision the purpose of which is expressed by that law to be for the implementation of Article 2, 3 or 4 of the 2003 Market Abuse Directive) the person shall be liable—

- (a) to compensate any other party to the transaction concerned who was not in possession of the relevant information for any loss sustained by that party by reason of any difference between the price at which the financial instruments concerned were acquired or disposed of and the price at which they would have been likely to have been acquired or disposed of in such a transaction at the time when the first-mentioned transaction took place if that information had been generally available; and
- (b) to account to the body corporate or other legal entity which issued the financial instruments concerned for any profit accruing to the first-mentioned person from acquiring or disposing of those instruments.

(2) If a person contravenes a provision of Irish market abuse law (being a provision the purpose of which is expressed by that law to be for the implementation of Article 5 of the 2003 Market Abuse Directive) the person shall be liable—

- (a) to compensate any other party who acquired or disposed of financial instruments by reason of the contravention; and
 - (b) to account to the body corporate or other legal entity which issued the financial instruments concerned for any profit accruing to the first-mentioned person from acquiring or disposing of those instruments.
- (3) Subheads (1) and (2) are without prejudice to any other cause of action which may lie against the person for contravening the provision concerned.
- (4) An action under Subhead (1) or (2) shall not be commenced more than 2 years after the date of the contravention concerned.

Explanatory Note

Restatement of Section 33 of the Investment Funds, Companies and Miscellaneous Provisions Act, 2005.

Head 55 Supplementary rules, etc., by competent authority

- (1) In this head “competent authority” means the competent authority designated under Irish market abuse law.
- (2) The competent authority may make rules imposing or enabling the competent authority to impose requirements on persons on whom an obligation or obligations are imposed by Irish market abuse law, being requirements—
- (a) to do or not to do specified things so as to secure that the provisions of Irish market abuse law are complied with and, in particular (without limiting the generality of this paragraph), to adopt specified procedures and use specified forms in the provision of information to the competent authority;

- (b) to do or not to do specified things so as to secure the effective supervision by the competent authority of activities of the kind to which Irish market abuse law relates and, in particular (without limiting the generality of this paragraph), to make such reports or disclose such matters, at such times and in such manner, to the competent authority or other specified persons as are provided for by the rules or specified by the competent authority pursuant to the rules, being reports or a disclosure of matters that is or are required by virtue or in consequence of the operation of Irish market abuse law.
- (3) Rules under this head may include rules providing for the manner in which or the matters by reference to which (or both) a determination is to be made of any issue as to whether a financial interest or interests is or are significant for the purposes of the provisions of Irish market abuse law implementing Article 5(1) of Commission Directive No. 2003/125/EC of 22 December 2003.
- (4) Rules under this head may contain such consequential, incidental or supplemental provisions as the competent authority considers necessary or expedient.
- (5) Rules under this head shall not contain any provision that is inconsistent with Irish market abuse law or require the provision of information to any person the provision of which is not reasonably related to the purposes for which the applicable provisions of the 2003 Market Abuse Directive or the supplemental Directives have been adopted.
- (6) The provisions of Irish market abuse law that are expressed by that law to be made for the purpose of enabling the imposition of administrative sanctions shall apply in relation to a contravention of rules under this head as they apply in relation to a contravention of a provision of Irish market abuse law and, accordingly, a sanction that may be imposed pursuant to the first-mentioned provisions of Irish market abuse law in respect of a contravention of a provision of that law may, in accordance with that law, be imposed in respect of a contravention of rules under this head.
- (7) The competent authority may issue guidelines in writing as to the steps that may be taken to comply with Irish market abuse law.

Explanatory Note

Restatement of Section 34 of the Investment Funds, Companies and Miscellaneous Provisions Act, 2005.

Head 56 Application of Irish market abuse law to certain markets

- (1) The Minister, after consultation with the competent authority designated under Irish market abuse law, may, by provisional order, provide that one or more provisions of Irish market abuse law that apply in relation to a market to which the 2003 Market Abuse Directive applies shall, with such modifications, if any, as are specified in the order, apply to a market specified in the order.
- (2) The Minister may, by provisional order, amend or revoke a provisional order under this section (including a provisional order under this subsection).
- (3) A provisional order under this section shall not have effect unless or until it is confirmed by an Act of the Oireachtas.

Explanatory Note

Restatement of section 37 of Investment Funds, Companies and Miscellaneous Provisions Act 2005.

Chapter 16

Public Offers Of Securities

Head 57 Application of this Chapter

This Chapter shall apply to a PUC or a PULC.

Head 58 Interpretation

- (1) In this Chapter, unless the context otherwise requires—

“2003 Prospectus Directive” means Directive 2003/71/EC of the European Parliament and of the Council of 4 November 2003, including that Directive as it stands amended for the time being;

“body corporate” includes a company;

“EEA Agreement” means the Agreement on the European Economic Area signed at Oporto on 2 May 1992, as amended for the time being;

“EU prospectus law” means—

- (a) the measures adopted for the time being by a Member State (including the State) or a Member State of the EEA to implement the 2003 Prospectus Directive;
- (b) any measures directly applicable in consequence of the 2003 Prospectus Directive and, without prejudice to the generality of this paragraph, includes the Prospectus Regulation; and
- (c) any supplementary and consequential measures adopted for the time being by a Member State (including the State) or a Member State of the EEA in respect of the Prospectus Regulation;

“expert”, save where a different construction in respect of that expression applies for the purposes of this Chapter by virtue of Irish prospectus law, includes engineer, valuer, accountant and any other individual or body (whether incorporated or unincorporated) the profession of whom, or the profession of members, officers or employees of which, gives authority to a statement made by the individual or body;

“Irish prospectus law” means—

- (a) the measures adopted for the time being by the State to implement the 2003 Prospectus Directive (whether an Act of the Oireachtas, regulations under Section 3 of the European Communities Act, 1972, regulations under section 46 or any other enactment (other than, save where the context otherwise admits, this Chapter);
- (b) any measures directly applicable in the State in consequence of the 2003 Prospectus Directive and, without prejudice to the generality of this paragraph, includes the Prospectus Regulation, and
- (c) any supplementary and consequential measures adopted for the time being by the State in respect of the Prospectus Regulation;

“issuer” means a body corporate or other legal entity which issues or proposes to issue securities;

“local offer” means an offer of securities to the public in the State where—

- (a) the offer expressly limits the amount of the total consideration for the offer to less than €2,500,000 (and the means by which that limit shall be calculated, in particular in the case of a series of such offers of securities, shall be the same as that provided for by regulations under Section 46 in relation to analogous limits specified by those regulations for any purpose);
- (b) the securities are other than those referred to in any of paragraphs (a) to (g) or paragraph (i) or (j) of Article 1(2) of the 2003 Prospectus Directive; and
- (c) the offer is not of a kind described in Article 3(2) of the 2003 Prospectus Directive;

“Member State of the EEA” means a state that is a contracting party to the EEA Agreement;

“offer of securities to the public” has the same meaning as it has in Irish prospectus law;

“offering document” means a document prepared for a local offer which document, if prepared in connection with an offer to which the 2003 Prospectus Directive applies, would be a prospectus;

“offeror” means a body corporate or other legal entity or an individual which or who offers securities to the public;

“promoter” means, subject to Subhead (5), a promoter who was a party to the preparation of a prospectus, or of the portion thereof containing an untrue statement;

“prospectus” means a document or documents in such form and containing such information as may be required by or under this Chapter or EU prospectus law, howsoever the document or documents are constituted, but does not include any advertisements in newspapers or journals derived from the foregoing;

“Prospectus Regulation” means Commission Regulation (EC) No. 809/2004 of 29 April 2004 implementing Directive 2003/71/EC of the European Parliament and of the Council as regards information contained in prospectuses as well as the format, incorporation by reference and publication of such prospectuses and dissemination of advertisements;

“securities” has the same meaning as it has in Irish prospectus law, and includes shares and debentures of a company.

- (2) A word or expression that is used in this Chapter and is also used in the 2003 Prospectus Directive shall have in this Chapter the same meaning as it has in that Directive, unless—
- (a) the contrary intention appears; or
 - (b) Irish prospectus law provides otherwise.
- (3) For the purposes of this Chapter—
- (a) a statement included in a prospectus shall be deemed to be untrue if it is misleading in the form and context in which it is included; and
 - (b) a statement shall be deemed to be included in a prospectus if it is contained therein or in any report or memorandum appearing on the face thereof or by reference incorporated therein.
- (4) Without limiting the meaning of that expression in any other context in which it is used in this Part, “statement” in Part B5, Head 63 (2) [equivalent of Section 45(2) of the Investment Funds, Companies and Miscellaneous Provisions Act, 2005] (other than paragraph (b) thereof) and any other head of this Part that makes provision in respect of an expert includes a report and a valuation.
- (5) Nothing in this Chapter shall limit or diminish any liability which any person may incur under the general law.
- (6) For the purposes of heads 41 and 43, the following persons shall be deemed not to be a promoter or a person who has authorised the issue of the prospectus—
- (a) a professional adviser to any person referred to in head 41 acting as such;
 - (b) an underwriter or professional adviser to an underwriter acting as such.
- (7) The person referred to as the “purchaser” in the following case shall be deemed to be an underwriter for the purposes of Subhead (5)(b).
- (8) That case is one in which—
- (a) a person (the “offeror”) intends to make an offer of securities to the public; and
 - (b) another person (the “purchaser”)—
 - (i) agrees to purchase those securities with the intention of their immediate resale to give effect to that intention of the offeror, at a profit or subject to payment by the offeror to the purchaser of a commission, and
 - (ii) binds himself or herself to purchase, or procure the purchase of, any of the securities not so resold.

Explanatory Note

Restatement of Section 38 of the Investment Funds, Companies and Miscellaneous Provisions Act, 2005.

Head 59 Civil liability for misstatements in prospectus

- (1) Subject to Heads 60 and 61 of this Part [equivalents of Sections 42 and 43 of the 2005 Act], the following persons shall be liable to pay compensation to all persons who acquire any securities on the faith of a prospectus for the loss or damage they may have sustained by reason of—
- (a) any untrue statement included therein; or
 - (b) any omission of information required by EU prospectus law to be contained in the prospectus,
- namely—
- (i) the issuer who has issued the prospectus or on whose behalf the prospectus has been issued,
 - (ii) the offeror of securities to which the prospectus relates,
 - (iii) every person who has sought the admission of the securities to which the prospectus relates to trading on a regulated market,
 - (iv) the guarantor of the issue of securities to which the prospectus relates,
 - (v) every person who is a director of the issuer at the time of the issue of the prospectus,
 - (vi) every person who has authorised himself or herself to be named and is named in the prospectus as a director of the issuer or as having agreed to become such a director either immediately or after an interval of time,
 - (vii) every person being a promoter of the issuer,
 - (viii) every person who has authorised the issue of the prospectus (not being the competent authority designated under Irish prospectus law).

- (2) In addition to the persons specified in Subhead (1) as being liable in the circumstances there set out, an expert who has given the consent required by Part B5 Head 63 [equivalent of Section 45 of the Investment Funds, Companies and Miscellaneous Provisions Act, 2005] to the inclusion in a prospectus of a statement purporting to be made by him or her shall, subject to Part B5, Heads 60 and 61 [equivalent of Sections 42 and 43 of the Investment Funds, Companies and Miscellaneous Provisions Act, 2005], be liable to pay compensation to all persons who acquire any securities on the faith of the prospectus for the loss or damage they may have sustained by reason of an untrue statement in the prospectus purporting to be made by him or her as an expert.

Explanatory Note

Restatement of Section 41 of the Investment Funds, Companies and Miscellaneous Provisions Act, 2005.

Head 60 Exceptions and exemptions

- (1) A person shall not be liable under Part B5, Head 59 [equivalent of Section 41 of the Investment Funds, Companies and Miscellaneous Provisions Act, 2005] solely on the basis of a summary of a prospectus, including any translation thereof, unless it is misleading, inaccurate or inconsistent when read together with other parts of the prospectus.
- (2) Subject to Subhead (4), a person shall not be liable under Part B5, Head 59 [equivalent of Section 41 of the Investment Funds, Companies and Miscellaneous Provisions Act, 2005] if he or she proves—
- (a) that, having consented to become a director of the issuer, he or she withdrew, in writing, his or her consent before the issue of the prospectus, and that it was issued without his or her authority or consent; or
 - (b) that the prospectus was issued without his or her knowledge or consent, and that on becoming aware of its issue he or she forthwith gave reasonable public notice that it was issued without his or her knowledge or consent; or

- (c) that after the issue of the prospectus and before the acquisition of securities thereunder by the person referred to in Part B5, Head 59 [equivalent of Section 41 of the Investment Funds, Companies and Miscellaneous Provisions Act, 2005], he or she, on becoming aware of any untrue statement therein or omission of material information required by EU prospectus law to be contained therein, withdrew, in writing, his or her consent thereto and gave reasonable public notice of the withdrawal and of the reason therefor; or
- (d) that—
- (i) as regards—
- (I) every untrue statement not purporting to be made on the authority of an expert or of a public official document or statement,
- (II) the omission from the prospectus of any information required by EU prospectus law to be contained therein, he or she had reasonable grounds to believe, and did up to the time of the issue of the securities believe, that the statement was true or that the matter whose omission caused loss was properly omitted, and
- (ii) as regards every untrue statement purporting to be a statement by an expert or contained in what purports to be a copy of or extract from a report or valuation of an expert, it fairly represented the statement, or was a correct and fair copy of o, extract from the report or valuation, and he or she had reasonable grounds to believe and did up to the time of the issue of the prospectus believe, that the person making the statement was competent to make it and, where required by Part B5, Head 63 [equivalent of Section 45 of the Investment Funds, Companies and Miscellaneous Amendments Act, 2005], that that person had given his or her consent to the inclusion of the statement in the prospectus and had not withdrawn, in writing, that consent before the publication of the prospectus or, to the defendant's knowledge, before issue of securities thereunder, and
- (iii) as regards every untrue statement purporting to be a statement made by an official person or contained in what purports to be a copy of or extract from a public official document, it was a correct and fair representation of the statement or copy of or extract from the document.
- (3) In Subheads (4) and (5) "by reason of the relevant consent", in relation to an expert, means by reason of his or her having given the consent required of him or her by Part B5, Head 63 [equivalent of Section 45 of the Investment Funds, Companies and Miscellaneous Provisions Act, 2005] to the inclusion in the prospectus of the statement concerned.
- (4) Subhead (2) shall not apply in the case of an expert, by reason of the relevant consent, in respect of an untrue statement purporting to be made by him or her as an expert.
- (5) An expert who, apart from this Subhead, would under Part B5, Head 59 [equivalent of Section 41 of the Investment Funds, Companies and Miscellaneous Provisions Act, 2005] be liable, by reason of the relevant consent, in respect of an untrue statement purporting to be made by him or her as an expert shall not be so liable if he or she proves—
- (a) that, having given his or her consent to the inclusion in the prospectus of the statement, he or she withdrew it in writing before publication of the prospectus; or
- (b) that, after publication of the prospectus and before the acquisition of securities thereunder by the person referred to in Part B5, Head 59 [equivalent of Section 41 of the Investment Funds, Companies and Miscellaneous Provisions Act, 2005] on becoming aware of the untrue statement, withdrew his or her consent in writing and gave reasonable public notice of the withdrawal, and of the reason therefor; or
- (c) that he or she was competent to make the statement and that he or she had reasonable grounds to believe and did up to the time of such acquisition of the securities believe that the statement was true.

Explanatory Note

Restatement of Section 42 of the Investment Funds, Companies and Miscellaneous Provisions Act, 2005.

Head 61 Restriction of liability where non-equity securities solely involved

Where a prospectus is issued solely in respect of non-equity securities—

- (a) only—
 - (i) the offeror or the person who has sought the admission of the securities to which the prospectus relates to trading on a regulated market, and
 - (ii) subject to, and to the extent provided in, paragraph (c), the guarantor (if any), and no other person referred to in Head 59 of this Part [equivalent of Section 41 of the Investment Funds, Companies and Miscellaneous Provisions Act, 2005] shall be liable under that head in the circumstances in which that head applies unless—
 - (I) the prospectus expressly provides otherwise, or
 - (II) that other such person is convicted on indictment of an offence created by Irish prospectus law or an offence under Head 66 of this Part [equivalent of Section 48 of the Investment Funds, Companies and Miscellaneous Provisions Act, 2005] in respect of the issue of that prospectus,
- (b) Subhead 5 (1) of Part A5 [equivalent of Section 383(3) of the Companies Act 1963] shall not apply to the directors or secretary of the issuer to the extent that such application would thereby impose a liability under Head 59 of this Part [equivalent of Section 41 of the Investment Funds, Companies and Miscellaneous Provisions Act, 2005] on such directors or secretary; and

- (c) no liability shall attach under Head 59 of this Part [equivalent of Section 41 of the Investment Funds, Companies and Miscellaneous Provisions Act, 2005] to a guarantor of such securities save in respect of statements included in, or information omitted from, the prospectus that relate to the guarantor or the guarantee given by the guarantor.”.

Explanatory Note

Restatement of Section 43 of the Investment Funds, Companies and Miscellaneous Provisions Act, 2005 (as amended by the Investment Funds, Companies and Miscellaneous Provisions Act, 2006).

Head 62 Indemnification of certain persons

- (1) This head applies where—
 - (a) a prospectus contains the name of a person as a director of the issuer, or as having agreed to become a director thereof, and he or she has not consented to become a director, or has withdrawn, in writing, his or her consent before the issue of the prospectus, and has not authorised or consented to the issue thereof; or
 - (b) the consent of an expert is required by Head 63 of this Part [equivalent of Section 45 of the Investment Funds, Companies and Miscellaneous Provisions Act, 2005] to the inclusion in a prospectus of a statement purporting to be made by him or her and he or she either has not given that consent or has withdrawn, in writing, that consent before the issue of the prospectus.
- (2) The directors of the issuer, except any without whose knowledge or consent the prospectus was issued, and any other person who authorised the issue thereof shall be liable to indemnify the person named as mentioned in Subhead (1) or whose consent was required as so mentioned, as the case may be, against all damages, costs and expenses to which he or she may be made liable by reason of his or her name having been inserted in the prospectus or of the inclusion therein of a statement purporting to be made by him or her as an expert, as the case may be, or in defending himself or herself against any action or legal proceeding brought against him or her in respect thereof.

Explanatory Note

Restatement of Section 44 of the Investment Funds, Companies and Miscellaneous Provisions Act, 2005.

Head 63 Expert’s consent to issue of prospectus containing statement by him or her

- (1) A prospectus including a statement purporting to be made by an expert shall not be issued unless—
- (a) the expert has given and has not, before publication of the prospectus, withdrawn, in writing, his or her consent to the issue thereof with the statement included in the form and context in which it is included; and
 - (b) to the extent that the inclusion in the prospectus of the following is required by EU prospectus law, a statement that the expert has given and has not withdrawn, in writing, that consent appears in the prospectus.
- (2) If any prospectus is issued in contravention of this head the issuer and every person who is knowingly a party to the issue thereof shall be guilty of a category three offence .

Explanatory Note

Restatement of Section 45 of the Investment Funds, Companies and Miscellaneous Provisions Act, 2005.

In keeping with the new schema for categorisation of offences it may be necessary on the enactment of the General Scheme to re-enact the MAD Regulations or at least the offence provisions therein to reflect the new categorisation.

Head 64 Regulations (Chapter 16)

- (1) The Minister may make regulations for the purposes of—
- (a) giving effect to the 2003 Prospectus Directive; and
 - (b) supplementing and making consequential provision in respect of the Prospectus Regulation.

- (2) Regulations under this head may contain such incidental, supplementary and consequential provisions as appear to the Minister to be necessary or expedient for the purposes of those regulations, including—
- (a) provisions creating offences (but the regulations may only provide penalties in respect of a summary conviction for any such offence); and
 - (b) provisions revoking instruments made under other enactments.
- (3) This head is without prejudice to Section 3 of the European Communities Act, 1972.

Explanatory Note

Restatement of Section 46 of the Investment Funds, Companies and Miscellaneous Provisions Act, 2005.

Head 65 Penalties on conviction on indictment and defences in respect of certain offences

- (1) A person who is guilty of an offence created by Irish prospectus law (being an offence expressed by that law to be an offence to which this head applies) shall, without prejudice to any penalties provided by that law in respect of a summary conviction for the offence, be liable, on conviction on indictment, to a fine not exceeding €1,000,000 or imprisonment for a term not exceeding 5 years, or both.
- (2) In proceedings for an offence created by Irish prospectus law, it shall be a defence for the defendant to prove—
- (a) as regards any matter not disclosed in the prospectus concerned, that he or she did not know it; or
 - (b) the contravention arose from an honest mistake of fact on his or her part; or
 - (c) the contravention was in respect of matters which, having regard to the circumstances of the case, was immaterial or as respects which, having regard to those circumstances, he or she ought otherwise reasonably to be excused.

Explanatory Note

Restatement of Section 47 of the Investment Funds, Companies and Miscellaneous Provisions Act, 2005.

Head 66 Untrue statements and omissions in prospectus: criminal liability

- (1) Where a prospectus is issued and—
- (a) includes any untrue statement; or
 - (b) omits any information required by EU prospectus law to be contained in it,
- any person who authorised the issue of the prospectus (not being the competent authority designated under Irish prospectus law) shall be guilty of a category 2 offence unless he or she proves—
- (i) as regards an untrue statement, either that the statement was, having regard to the circumstances of the case, immaterial or that he or she honestly believed and did, up to the time of the issue of the prospectus, believe that the statement was true, or
 - (ii) as regards any information omitted, either that the omission was, having regard to the circumstances of the case, immaterial or that he or she did not know it, or
 - (iii) that the making of the statement or omission was otherwise such as, having regard to the circumstances of the case, ought reasonably to be excused.
- (2) Summary proceedings for an offence under this head may be brought and prosecuted by the competent authority designated under Irish prospectus law.
- (3) If at a trial for an offence under this head or an offence created by Irish prospectus law, the judge or jury has to consider whether the defendant honestly believed a particular thing or was honestly mistaken in relation to a particular thing, the presence or absence of reasonable grounds for such a belief or for his or her having been so mistaken is a matter to which the judge or jury is to have regard, in conjunction with any other relevant matters, in considering whether the defendant so believed or was so mistaken.

Explanatory Note

Amended restatement of Section 48 of the Investment Funds, Companies and Miscellaneous Provisions Act, 2005.

Head 67 Local offers

- (1) An offering document prepared for a local offer shall contain the following statements in print in clearly legible type:
- (a) on the front page or otherwise in a prominent position:
 - “This document,
 - has not been prepared in accordance with Directive 2003/71/EC on prospectuses or any measures made under that Directive or the laws of Ireland or of any EU Member State or EEA treaty adherent state that implement that Directive or those measures,
 - has not been reviewed, prior to its being issued, by any regulatory authority in Ireland or in any other EU Member State or EEA treaty adherent state,and therefore may not contain all the information required where a document is prepared pursuant to that Directive or those laws.”;
 - (b) elsewhere in the offering document:
 - (i) where the offering document contains information on past performance:
 - “Past performance may not be a reliable guide to future performance.”;
 - (ii) where the offering document contains information on simulated performance:
 - “Simulated performance may not be a reliable guide to future performance.”;
 - (iii) “Investments may fall as well as rise in value.”;

- (iv) where securities are described as being likely to yield income or as being suitable for an investor particularly seeking income from his or her investment, and where the income from the securities can fluctuate:

“Income may fluctuate in accordance with market conditions and taxation arrangements.”,

- (v) where the primary market for the securities or the currency of the underlying business is in a currency other than euro:

“Changes in exchange rates may have an adverse effect on the value, price or income of the securities.”,

- (vi) where the securities do not constitute a readily realisable investment:

“It may be difficult for investors to sell or realise the securities and/or obtain reliable information about their value or the extent of the risks to which they are exposed.”.

- (2) Any requirement of Subhead (1) as to the inclusion of a particular statement in an offering document shall be regarded as satisfied if words substantially to the effect of that statement are instead included in that document.
- (3) If an offeror fails to comply with Subhead (1) the offeror shall be guilty of a category three offence.
- (4) No offering document prepared for a local offer shall be issued by or on behalf of a company or in relation to an intended company unless, on or before the date of its publication, a copy of the offering document has been delivered to the Registrar for registration.
- (5) Summary proceedings for an offence under this head may be brought and prosecuted by the competent authority designated under Irish prospectus law or by the Registrar.

Explanatory Note

Restatement of Section 48 of the Investment Funds, Companies and Miscellaneous Provisions Act, 2005.

Head 68 Exclusion of Investment Intermediaries Act 1995

- (1) Any document issued in connection with an offer of securities by or on behalf of an issuer, offeror or person seeking admission of securities to trading on a regulated market shall not be regarded as constituting an investment advertisement within the meaning of Section 23 of the Investment Intermediaries Act, 1995.
- (2) “Document” in Subhead (1) includes, in the case of a local offer, an offering document.

Explanatory Note

Restatement of Section 50 of the Investment Funds, Companies and Miscellaneous Provisions Act, 2005.

Head 69 Power to make certain rules and issue guidelines

- (1) In this head “competent authority” means the competent authority designated under Irish prospectus law.
- (2) The competent authority may make rules imposing or enabling the competent authority to impose requirements on persons on whom an obligation or obligations are imposed by Irish prospectus law, being requirements—
- (a) to do or not to do specified things so as to secure that the provisions of Irish prospectus law are complied with and, in particular (without limiting the generality of this paragraph), to adopt specified procedures and use specified forms in the provision of information to the competent authority;
- (b) to do or not to do specified things so as to secure the effective supervision by the competent authority of activities of the kind to which Irish prospectus law relates and, in particular (without limiting the generality of this paragraph), to make such reports or disclose such matters, at such times and in such manner, to the competent authority or other specified persons as are provided for by the rules or specified by the competent authority pursuant to the rules, being reports or a disclosure of matters that is or are required by virtue or in consequence of the operation of Irish prospectus law.

- (3) Rules under this head may include rules providing for the manner in which or the matters by reference to which (or both) a determination is to be made of any issue as to whether a transaction or transactions is or are of a significant size for the purposes of the provisions of Irish prospectus law implementing Article 2(2)(a) of the 2003 Prospectus Directive.
- (4) The reference in Subhead (1) to an obligation imposed on a person by Irish prospectus law includes a reference to an obligation imposed on a person by virtue of the person's exercising a right or option provided under Irish prospectus law.
- (5) Rules under this head may contain such consequential, incidental or supplemental provisions as the competent authority considers necessary or expedient.
- (6) Rules under this head shall not contain any provision that is inconsistent with Irish prospectus law or require the provision of information to any person the provision of which is not reasonably related to the purposes for which the applicable provisions of the 2003 Prospectus Directive have been adopted.
- (7) The provisions of Irish prospectus law that are expressed by that law to be made for the purpose of enabling the imposition of administrative sanctions shall apply in relation to a contravention of rules under this head as they apply in relation to a contravention of a provision of Irish prospectus law and accordingly, a sanction that may be imposed pursuant to the first-mentioned provisions of Irish prospectus law in respect of a contravention of a provision of that law may, in accordance with that law, be imposed in respect of a contravention of rules under this head.
- (8) The competent authority may issue guidelines in writing as to the steps that may be taken to comply with Irish prospectus law.

Explanatory Note

Restatement of Section 51 of the Investment Funds, Companies and Miscellaneous Provisions Act, 2005.

Head 70 Avoidance of certain agreements

A condition—

- (a) requiring or binding an applicant for securities to waive compliance with any requirement of—
 - (i) this Chapter or
 - (ii) EU prospectus law; or
- (b) where EU prospectus law applies, purporting to affect him or her with notice of any contract, document or matter not specifically referred to in the prospectus concerned,

shall be void.

Explanatory Note

Restatement of Section 52 of the Investment Funds, Companies and Miscellaneous Provisions Act, 2005.

First Schedule

MODEL FORM OF MEMORANDUM OF ASSOCIATION OF AN UNLIMITED COMPANY HAVING A SHARE CAPITAL

1. The name of the company is: "Big Warehouse Unlimited Company".
2. The company is an unlimited company having a share capital, registered under this Part.
3. The objects for which the company is established are the design and manufacture of clothing, and the doing of all such other things as are incidental or conducive to the attainment of the above object.
4. The share capital of the company is €200,000, divided into 200,000 shares of €1 each.
5. The liability of the members is unlimited.

We, the several persons whose names and addresses are subscribed, wish to be formed into a company in pursuance of this memorandum of association, and we agree to take the number of shares in the capital of the company set opposite our respective names.

<i>Names and Addresses of Subscribers</i>	<i>Number of Shares taken by each Subscriber</i>
1. Henry Klein Address:	300
2. Brendan Pettit Address:	2,700
3. Frances Little	
Total shares taken:	3,000

Dated the _____ day of _____ 20 ____

Witness to the above Signatures:

Name: _____

Address: _____

Second Schedule

MODEL FORM OF MEMORANDUM OF ASSOCIATION OF A PUBLIC UNLIMITED COMPANY NOT HAVING A SHARE CAPITAL

1. The name of the company is: "The Old Head Leisure Unlimited Company"
2. The company is a public unlimited company not having a share capital, registered under this Part
3. The objects for which the company is established are the development of improved methods of cutting and harvesting turf and the doing of all such things as are incidental or conducive to the attainment of the above object.
4. The liability of the members is unlimited.

We, the several persons whose names and addresses are subscribed, wish to be formed into a company in pursuance of this memorandum of association, and we agree to take the number of shares in the capital of the company set opposite our respective names.

<i>Names and Addresses of Subscribers</i>
1. Emmett O'Toole Address:
2. Máire de Barra Address:
3. Liam Wallis Address:
4. Carla Stewart Address:
5. Jane Grey Address:

Dated the _____ day of _____ 20 ____

Witness to the above Signatures:

Name: _____

Address: _____

Part B6 – Re-registration & Conversion of Companies

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Chapter 6 – Cross-Border Mergers

To be inserted

Part B6 - Re-registration & Conversion of Companies

Chapter 1

Preliminary and Interpretation

Head 1 Defined terms and expressions

(1) In this Part:

“Another company type” means a company of a type that may be formed and registered under this Bill;

“Authorised minimum” has the meaning ascribed to it by Part B2, Head 1;

“Constitution” in the context of a private company means its constitution as defined in Part A of this Bill and in the case of any other company type means its memorandum and articles;

“Destination company type” means the company type as which a company wishes to be re-registered;

“Statement of compliance” means a statement by a director or secretary of the company that the requirements of this Part as to re-registration as the company type concerned have been complied with, including the passing of the special resolution for re-registration;

“Statement of guarantee” means a statement that each member undertakes that, if the company is wound up while he or she is a member or within one year after he or she ceases to be a member, he or she will contribute to the assets of the company such amount as may be required for (a) payment of the debts and liabilities of the company contracted before he or she ceases to be a member, (b) payment of the costs, charges and expenses of winding-up and (c) adjustment of the rights of contributories among themselves, not exceeding a specified amount.

Chapter 2

General Provisions as to Re-registration

Head 2 Re-registration of company as a different type of company

- (1) Subject to Chapter 3 of this Part, a company may become or be re-registered as another company type only if—
 - (a) a special resolution, complying with Subhead (2) that it should be so re-registered is passed; and
 - (b) an application for the purpose, in the prescribed form and signed by a director or secretary of the company, is delivered to the Registrar together with the documents mentioned in Subhead (3).
- (2) The special resolution must—
 - (a) alter the company's constitution so that it states that the company is to be a company of the type as to which the company wishes to re-register;
 - (b) make such other alterations in the company's constitution as are necessary to bring it, in substance and in form, into conformity with the requirements of this Bill with respect to the constitution of that resulting company type; and
 - (c) make such other alterations in the company's constitution as are requisite in the circumstances.
- (3) The documents referred to in Subhead (1) are—
 - (a) a copy of the special resolution that the company should re-register as another company type;
 - (b) a copy of the constitution of the company as altered by the resolution;
 - (c) a statement of compliance that the requirements of this Part as to re-registration as another company type have been complied with by the company.
- (4) The Registrar may accept the statement of compliance as sufficient evidence that the special resolution has been duly passed and the said conditions have been satisfied and that the company is entitled to be re-registered as the company type concerned.
- (5) If, on an application for re-registration of a company as another company type under Subhead (1), the Registrar is satisfied that a company is entitled to be so re-registered, he shall—
 - (a) retain the application and other documents delivered to him under this Part; and
 - (b) issue the company with a certificate of incorporation altered to meet the circumstances of the case, which certificate states that it is issued on re-registration and the date on which it is issued.
- (6) Upon the issue to a company of a certificate of incorporation on re-registration under Subhead (5)—
 - (a) the company shall, by virtue of the issue of that certificate, become a company of the type described in the certificate; and
 - (b) any alterations in the constitution set out in the special resolution shall take effect accordingly.
- (7) A certificate of incorporation on re-registration issued to a company under Subhead (6) shall—
 - (a) be conclusive evidence that the requirements of this Part as to re-registration and of matters precedent and incidental thereto have been complied with; and
 - (b) that the company is the company type which is set out in the certificate

and the law applicable to the destination company type shall thereafter apply to the company.
- (8) The re-registration of a company as another company type pursuant to this Part shall not affect any rights or obligations of the company or render defective any legal proceedings by or against the company, and any legal proceedings which might have been continued or commenced against it in its former status may be continued or commenced against it in its new status.

Explanatory Note

Restatement of Section 9 of the Companies (Amendment) Act, 1983

The general re-registration provisions are taken in substance from Section 9 of the Companies (Amendment) Act, 1983 and applied to companies generally.

It is necessary to confine the re-registration provision to ensure that companies may only re-register as a company type, the formation of which is provided for under statute. This ought to ensure the continuity of the prohibition in Section 7 of the Companies (Amendment) Act, 1983 on the re-registration of a company as a public company limited by guarantee and having a share capital. Section 7 of the CAA, 1983 also provides that no company shall be formed as a public company limited by guarantee and having a share capital. The definition of CLG in Part B4, Head 1 provides that a CLG “means a company which does not have a share capital”.

It has been decided to have various prescribed forms to cater for the different source and destination company types.

Reference to “printed” copy of company constitution has been removed from Subsection (3)(b) to enable an electronic version of constitution to be supplied to CRO on re-registration to facilitate e-filing.

The replacement of a statutory declaration by a statement of compliance in Subhead (3)(c) will also facilitate e-filing. The UK are adopting a statement of compliance in their new Bill.

Requirements particular to PLCs are now placed in Chpt.3 of this Part.

Head 3 Form of statements required by company that is to have a share capital on its re-registration

- (1) A statement of initial shareholdings and a statement of share capital shall be delivered to the Registrar by a company which does not have a share capital but which is to have a share capital on its re-registration.
- (2) The statement of initial shareholdings required to be delivered in the case of a company that is to have a share capital on re-registration, must state with respect to each member of the company-

- (a) the number and nominal value of the shares to be allotted to him or her on re-registration; and

- (b) the amount (if any) payable in respect of each share on re-registration, whether on account of the nominal value or by way of a premium.

- (3) The statement of share capital required to be delivered in the case of a company that is to have a share capital on re-registration must state with respect to the company’s share capital to be allotted on re-registration –

- (a) the total number of shares of the company;

- (b) the aggregate nominal value of those shares;

- (c) for each class of shares –

- (i) the total number of shares of that class, and

- (ii) the aggregate nominal value of shares of that class, and

- (iii) the amount paid up and the amount (if any) unpaid on each share (whether on account of the nominal value of the share or by way of premium).

Explanatory Note

This provision is to cater for where a company which does not have a share capital wishes to re-register as a company having a share capital. This is information which would be supplied on the incorporation of a company having a share capital, so there should be a requirement that any company re-registering, that does not have a share capital but is to have a share capital after re-registration, supply this information to CRO in the context of the re-registration process. It replicates Section 111 of the UK Company Law Reform Bill. As it applies to all re-registrations as a company having a share capital from a company not having a share capital, it is located in Chapter 2.

Head 4 Application to Court to cancel special resolution of PLC to re-register as a private company or DAC

- (1) Where a special resolution by a PLC to be re-registered as a private company or a DAC has been passed, an application to the court for the cancellation of the resolution may be made -
- (a) by the holders of not less in the aggregate than 5 percent in nominal value of the company's issued share capital or any class of the company's issued share capital (disregarding any shares held by the company as treasury shares);
 - (b) if the company is not limited by shares, by not less than 5 percent of its members; or
 - (c) by not less than 50 of the company's members,
- but any such application shall not be made by any person who has consented to or voted in favour of the resolution, and in any case where all the members of a PLC have consented to or voted in favour of the resolution, this head shall have no application to the company.
- (2) An application pursuant to Subhead (1) must be made within 28 days after the passing of the resolution and may be made on behalf of the persons entitled to make it by such one or more of their numbers as they may appoint in writing for the purpose.
- (3) If an application is made under Subhead (1), the company -
- (a) shall forthwith give notice of that fact to the Registrar; and
 - (b) within 15 days of the making of the court's order on the application, or such longer period as the court may at any time direct, the company must deliver to the Registrar an office copy of the order.
- (4) On the hearing of an application under Subhead (1), the court shall make an order either cancelling or confirming the resolution and-

- (a) may make that order on such terms and conditions as it thinks fit, and may if it thinks fit, adjourn the proceedings in order that an arrangement may be made to the satisfaction of the court for the purchase of the interests of dissentient members; and
 - (b) may give such directions and make such order as it thinks expedient for facilitating or carrying into effect any such arrangement.
- (5) The court's order may, if the court thinks fit-
- (a) provide for the purchase, by the company, of the shares of any of its members and for the reduction accordingly of the company's capital; and
 - (b) make such alteration in the company's constitution as may be required in consequence of that provision.
- (6) Where an order under this head requires the company not to make any, or any specified, alterations in its constitution, then, notwithstanding anything in this Bill, the company shall not have power without the leave of the court to make any such alteration in breach of that requirement.
- (7) Any alteration in the constitution of the company made by virtue of an order under this head, other than one made by resolution of the company, shall be of the same effect as if duly made by resolution of the company, and the provisions of this Bill shall apply to the constitution as so altered accordingly.
- (8) A company which fails to comply with Subhead (3) and any officer of the company who is in default shall be guilty of a category three offence.

Explanatory Note

This is a restatement of Section 15 of the C(A)A 1983 which applies to a PLC applying to re-register as a private company. The Steering Group was of the view that the cancellation provision should apply to a PLC applying to re-register as private company or as DAC and that it ought to be confined to such re-registrations.

Head 5 Re-registration upon reduction of share capital of a PLC

Explanatory Note

This is a restatement of Section 17(4) and (5) of the C(A)A, 1983 which applies to PLCs re-registering as another company type on foot of a court order confirming a reduction of capital below the authorised minimum and authorising the company on that basis to be re-registered as another company type without the need to pass a special resolution. It applies to re-registrations generally and so is appropriately located in this Chapter.

- (1) A court making an order confirming a reduction of the capital of a PLC which has the effect of bringing the nominal value of the company's allotted share capital below the authorised minimum, may authorise the PLC to be re-registered as another form of company without its having passed a special resolution and, where the court so authorises a PLC, the court shall specify in the order the alterations in the PLC's constitution to be made in connection with that re-registration.
- (2) In its application to a PLC that applies to be re-registered as another company type in pursuance of an authority given under Subhead (1), Part B6, Head 2 shall have effect with the following modifications—
 - (a) references to the special resolution of the PLC shall have effect as references to the order of the court under Subhead (1) hereof;
 - (b) Part B6, Head 2 (1) (a) and (2), and in the event of an application to re-register the PLC as a private company, Part B6, Head 6 (1) (b) shall not apply, and in the event of an application to re-register the PLC as a DAC, Head 10 (1) (b) shall not apply; and
 - (c) Part B6, Head 2 (5) shall be read as if the words— “ If on an application for re-registration of a company as another type of company under Subhead (1), the Registrar is satisfied that a company is entitled to be so re-registered, he shall”- were deleted and the following words substituted therefor “On receipt of an application for re-registration under this head made in pursuance of an order of the court under Part B6, Head 5 (1), the Registrar shall”.

Chapter 3

Special Requirements for Re-registration

Head 6 Particular Requirements for conversion to a private company

- (1) A company may be re-registered as a private company if, in addition to compliance with Part B6, Head 2 (1), (2) and (3), it also complies with the following -
- (a) If the company is a company to which Part B6, Head 4 applies, a special resolution that it should be so-registered complying with Part B6, Head 2 (2) is passed and the resolution has not been cancelled by the court under Part B6, Head 4;
 - (b) if the company is a company to which Part B6, Head 4 applies, the period during which an application for the cancellation of the resolution under Part B6, Head 4 has expired without any such application having been made or where such an application has been made, the application has been withdrawn or an order has been made under Part B6, Head 4 confirming the resolution and a copy of that order has been delivered to the Registrar;
 - (c) if the company is an unlimited company, the special resolution required by Part B6, Head 2 (1) must state that the liability of the members is to be limited by shares and what the share capital of the company is to be; and
 - (d) if the company does not already have a share capital,
 - (i) a statement of initial shareholdings, and
 - (ii) a statement of share capitalin the form laid down by Part B6, Head 3, are delivered to the Registrar.

- (2) The resolution must make such alterations in the company's constitution as are requisite in the circumstances and in particular in such a manner that they include the provisions which under Part A2 Head 2 (4) [equivalent of Section 33(1) of the Companies Act, 1963] are required to be included in the constitution of a company in order that it be constituted a private company.

Explanatory Note

This includes a restatement of Section 14 of the C(A)A 1983 as to re-registration of a PLC as a private company. It also sets out the requirements where the company re-registering as a private company is not currently a limited company and/or where it does not currently have a share capital.

If the company is a PLC where all members have consented to or voted in favour of the resolution to re-register as a private company or DAC, Head 4 (cancellation provision) has no application which means that the resolution to re-register can take effect immediately and there is no need to wait for the 28 day period under Head 4 to expire before the conversion can be implemented by the CRO.

Subhead(2) cross-refers to the provision in Part A1 which defines a private company.

Head 7 Particular requirements for conversion to PLC

- (1) A company may be re-registered as a PLC if, in addition to compliance with Part B6, Head 2 (1), (2) and (3) and the requirements of Part B6, Head 8 as to share capital, it also delivers the following documents to the Registrar -
- (a) a copy of a balance sheet prepared as at a date not more than seven months before the date on which the application is received by the Registrar;
 - (b) an [unqualified] report by the company's auditor on that balance sheet;
 - (c) a copy of a written statement by the auditors of the company that, in their opinion, at the balance sheet date the amount of the company's net assets was not less than the aggregate of its called-up share capital and undistributable reserves;
 - (d) a copy of any report prepared under Subhead (5)(b);

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- (e) a statement of compliance which also confirms that, between the balance sheet date and the application of the company for re-registration, there has been no change in the financial position of the company that has resulted in the amount of the company's net assets becoming less than the aggregate of its called-up share capital and undistributable reserves;
- (f) If the company applying for re-registration as a plc is an unlimited company, the special resolution required by Part B6, Head 2 (1) includes a statement that the liability of the members is to be limited by shares and what the share capital of the company is to be; and
- (g) If the company does not already have a share capital,
- (i) a statement of initial shareholdings and
 - (ii) a statement of share capital
- in the form laid down by Part B6, Head 3.
- (2) The Registrar shall not issue a certificate of incorporation under Part B6, Head 2 (6) if it appears to him that the court has made an order confirming a reduction of the PLC's capital, which has the effect of bringing the nominal value of the PLC's allotted share capital below the authorised minimum.
- (3) A qualification shall be treated for the purposes of the definition of an unqualified report in Subhead (5) as being not material in relation to any balance sheet if, but only if, the person making the report states in writing that the thing giving rise to the qualification is not material for the purposes of determining, by reference to that balance sheet, whether at the balance sheet date the amount of the company's net assets was not less than the aggregate of its called-up share capital and undistributable reserves. *[In the context of qualifications to auditors reports and in relation to Part B6, Head 7(1)(b), the impact of S.I. 116 of 2005 must be looked at].*
- (4) For the purposes of the making, in relation to the balance sheet of a company, of a report falling within the definition in Part B6, Head 7 (6) of an unqualified report, Part A6, Head 13 [equivalent of Section 149 and the 6th Schedule to the Companies Act, 1963] shall be deemed to have effect in relation to that balance sheet, with such modifications as are necessary by reason of the fact that that balance sheet is prepared otherwise than in respect of a financial year.
- (5) In this head—
- “undistributable reserves”** has the same meaning as in Part B2, Head 57 (2);
- “unqualified report”** means, in relation to the balance sheet of a company, a report stating without material qualification—
- (a) that, in the opinion of the person making the report, the balance sheet complies with the requirements of Part A6, Heads 13 and 36, [equivalent of Sections 149 and 156 of the Companies Act, 1963]; and
 - (b) without prejudice to paragraph (a) that, except where the company is entitled to avail itself, and has availed itself, of the benefit of any of the provisions of Part A6, Schedule 1, [equivalent of Part III of the Sixth Schedule to the Companies Act, 1963], in the opinion of that person, the balance sheet gives a true and fair view of the state of the company's affairs as at the balance sheet date.

Explanatory Note

General re-registration provision taken in substance from Section of the 9 Companies (Amendment) Act, 1983 and applied to companies generally. This head is comprised of those requirements in Section 9 of the 1983 Act which are particular to PLCs.

Some elements of section 11 CAA 1983 have also been included. Section 11(2) provides that the special resolution required by section 9(1) must—

- (a) state that the liability of the members is to be limited by shares and what the share capital of the company is to be; (this is included in Part B6, Head 7(1)(f) above); and*
- (b) make such alterations in the company's memorandum as are necessary to bring it in substance and in form into conformity with the requirements of the Companies Acts with respect to the memorandum of a Public limited company. (This has been included in the general re-registration provision at Part B6, Head 2(2)).*

Head 8 Requirements as to share capital of a company applying to re-register as a PLC.

(1) Subject to Subhead (2), a company shall not be re-registered under this Part as a PLC unless, at the time the special resolution that the company should be re-registered as a PLC is passed—

- (a) the nominal value of the company's allotted share capital is not less than the authorised minimum;
- (b) each of its allotted shares is paid up at least as to one-quarter of the nominal value of that share and the whole of any premium on it;
- (c) where any share in the company or any premium payable on it has been fully or partly paid up by an undertaking given by any person that he or another should do work or perform services for the company or another, the undertaking has been performed or otherwise discharged; and
- (d) where shares have been allotted as fully or partly paid up to their par value or any premium payable on them otherwise than in cash and the consideration for the allotment consists of or includes an undertaking (other than one to which paragraph (c) applies) to the company either—
 - (i) that undertaking has been performed or otherwise discharged; or
 - (ii) there is a contract between the company and any person pursuant to which that undertaking must be performed within five years from that time.

(2) Subject to Subhead (3), any share allotted by the company—

- (a) which was allotted prior to 13 October 1986; or
- (b) which was allotted in pursuance of an employees' share scheme and by reason of which the company would, but for this subhead, be precluded under Subhead (1) (b), but not otherwise, from being re-registered as a public limited company,

may be disregarded for the purpose of determining whether Subhead (1)(b) to (d) is complied with in relation to the company, and a share so disregarded shall be treated for the purposes of Subhead (1) (a) as if it were not part of the allotted share capital of the company.

- (3) A share shall not be disregarded by virtue of Subhead (2)(a) if the aggregate in par value of that share and the other shares which it is proposed so to disregard is more than one-tenth of the par value of the company's allotted share capital (not including any share disregarded by virtue of Subhead (2)(b)).

Explanatory Note

Restatement of Section 10 of the Companies (Amendment) Act, 1983. The "general transitional period" ran from 13 October 1983 to 12 October 1986 inclusive, so the reference to "before the end of the general transitional period" has been replaced with "prior to 13 October 1986".

Section 53(6) and (7) of the C(A)A, 1983 are currently applied to re-registration of unlimited companies as PLC's by Section 11(4) of the C(A)A, 1983. Section 56(7) is dealt with in the context of the general provisions as to re-registration in Chapter 2, at Part B6, Head 2(9).

Note that as a re-registered PLC meets the requirements under Section 6 of the 1983 Act in relation to a trading certificate, there is no need to require a re-registered PLC to apply to the Registrar for same before it can do business or exercise any borrowing powers and that account should be taken of this in Part B2, Head 7.

Head 9 Shares allotted by company applying to re-register as PLC between balance sheet date and passing of special resolution to re-register

- (1) Where shares are allotted by a company applying to re-register as a PLC between the balance sheet date and the passing of the special resolution as fully or partly paid up as to their par value or any premium on them otherwise than in cash, the company shall not make an application for re-registration as a PLC under this Part unless before the making of the application—

- (a) the consideration for that allotment has been valued in accordance with the provisions of Part B2, Head 21 [equivalent of Section 30 of the Companies (Amendment) Act, 1983] applied by this subhead and Part B2, Head 22 [equivalent of Section 31 of the Companies (Amendment) Act, 1983]; and
- (b) a report with respect to its value has been made to the company in accordance with those provisions during the six months immediately preceding the allotment of the shares,

and Subheads (2) to (8) and (12) to (14) of Part B2, Head 21 [equivalent of Section 30 of the Companies (Amendment) Act, 1983] shall apply for the purposes of this subhead as they apply for the purposes of that head and as if the references to Part B2, Head 21 (1) were references to this subhead.

- (2) Subject to Subhead (3), Heads 17, 19 to 22, 25, 26 and 30 of Part B2 [equivalent of Sections 26, 28 to 31 and 34 to 36 of the Companies (Amendment) Act, 1983] shall apply to a joint stock company (within the meaning of Head 22 of Part B8 [equivalent of Section 329 of the Companies Act, 1963]) which has passed and not revoked a resolution that the company be a PLC as those heads apply to a PLC.
- (3) Head 17 and Heads 19 to 22 of Part B2 [equivalent of Section 26 and Sections 28 to 31 of the Companies (Amendment) Act, 1983] of shall not apply to the allotment of shares by a company, other than a PLC registered as such on its original incorporation, where the contract for their allotment was entered into-
 - (a) except in a case falling within paragraph (b), before the end of the general transitional period;
 - (b) in the case of a company re-registered or registered as a PLC in pursuance of a resolution of any description mentioned in Subhead(1) that is passed before the end of that period, before the date on which that resolution is passed.

Explanatory Note

This head is a re-enactment of Section 9 (5) of the Companies (Amendment) Act, 1983. It has been removed from the general provisions as to re-registration since it applies only to companies applying to register as a PLC.

Subheads (2) and (3) are amended re-enactments of Section 37(1)-(2) of the Companies (Amendment) Act, 1983.

Head 10 Power of unlimited company to provide for reserve share capital on re-registration

An unlimited company having a share capital may, by its resolution for registration as a limited company in pursuance of this Bill, do either or both of the following things -

- (a) increase the nominal amount of its share capital by increasing the nominal amount of each of its shares, but subject to the condition that no part of the increased capital shall be capable of being called up, except in the event and for the purposes of the company being wound up;
- (b) provide that a specified portion of its uncalled share capital shall not be capable of being called up except in the event and for the purposes of the company being wound up.

Explanatory Note

This head re-enacts Section 71 of the Companies Act, 1963.

Head 11 Particular requirements for conversion of a limited to an unlimited company

- (1) A company may be re-registered as unlimited if all the members of the company have assented to its being so re-registered and if, in addition to compliance with Part B6, Head 2 (1), (2) and (3), the following documents are delivered to the Registrar -
 - (a) the prescribed form of assent to the company's being registered as unlimited, subscribed to by or on behalf of all members of the company;

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- (b) the statement of compliance includes confirmation by the directors of the company that the persons by whom or on whose behalf the form of assent is subscribed constitute the whole membership of the company and, if any of the members have not subscribed that form themselves, that the directors have taken all reasonable steps to satisfy themselves that each person who subscribed it on behalf of a member was lawfully empowered to do;
- (c) an annual return pursuant to Part A6, Head 52 [equivalent of Section 125 of the Companies Act, 1963] made up to a date no earlier than 14 days prior to the date of the application to re-register and annexed accounts pursuant to Part A6, Heads 55 and 56 [equivalent of Section 7 of the Companies (Amendment) Act, 1986] the financial year end of which accounts predate the effective date of the annual return by no more than nine months;

For the purposes of this subhead:

- (i) subscription to a form of assent by the legal personal representative of a deceased member of a company shall be deemed to be subscription by him;
- (ii) a trustee in bankruptcy of a person who is a member of a company shall, to the exclusion of that person, be deemed to be a member of the company.
- (2) Where the prescribed form of assent to the company being re-registered as an unlimited company has been supplied, subscribed to by or on behalf of all members of the company, the company is not obliged to lodge a special resolution to re-register as an unlimited company pursuant to Part B6, Head 2 (1).
- (3) Where a company is re-registered as an unlimited company, a person who, at the time when the application for it to be re-registered was delivered to the Registrar, was a past member of the company and did not thereafter again become a member thereof shall not, in the event of the company's being wound up, be liable to contribute to the assets of the company more than he would have been liable to contribute thereto had it not been so-registered.

company as unlimited. The statutory declaration of the directors as to the completion of the assent by all members has been replaced by inclusion of this confirmation in the statement of compliance in order to facilitate e-filing.

New requirement that a limited company becoming unlimited is required to file an up to date annual return with annexed accounts with the application to re-register. This is designed to prevent companies, on an annual basis, re-registering as unlimited shortly prior to their ARD/annual return filing deadline, and thereafter re-registering as a limited company, purely in order to avoid the accounts filing obligation which attaches to limited companies, but which does not apply to unlimited companies. At present this is not open to a company which re-registers as unlimited under Section 52 of the 1983 Act as such company is debarred under Section 53 from re-registering as limited. If there is no restriction, the option being given to companies to re-register without restriction is open to abuse. Companies would be free to opt to re-register annually as unlimited in advance of the date on which they are due to file their annual return, such that they were unlimited on that date and so have no obligation to attach accounts to their annual return, with no bar to the companies concerned lodging an application to re-register as limited as soon as the annual return has been delivered to CRO. Such companies are in substance limited companies, and it would be undesirable to allow them to become unlimited for a short period to coincide with their annual return filing obligation and then to revert to being limited after the return has been filed. This can be avoided if an annual return with accounts is required to be delivered in the context of the application for re-registration from limited to unlimited. There is no unfairness as the accounts are historic and relate to a period during which the company will have been a limited liability company.

The restatement of Subsections (3) to (8) of Section 35 of the CA, 1963, inserted by C(A)A 1983 Sch 1 para 6, has been removed from the draft heads. A company re-registering as an unlimited company of course would have to comply with any obligations under the Prospectus Directive.

The CLRG has taken the view that where an assent from all the members to the re-registration is supplied, there is no need to file a special resolution as 100 percent of the members are consenting to the conversion.

Explanatory Note

Modelled on Section 52 of the Companies (Amendment) Act, 1983, re-registration of limited

Head 12 Particular Requirements for conversion to CLG

- (1) A company may be re-registered as a CLG if, in addition to compliance with Part B6, Head 2 (1), (2) and (3), a statement of guarantee is delivered to the Registrar; and where the company is a company with a share capital -
- (a) the prescribed form of assent to the company being re-registered as a CLG is delivered to the Registrar subscribed to, by or on behalf of all members of the company;
 - (b) the statement of compliance includes confirmation by the directors of the company that the persons by whom or on whose behalf the form of assent is subscribed, constitute the whole membership of the company and, if any of the members have not subscribed that form themselves, that the directors have taken all reasonable steps to satisfy themselves that each person who subscribed it on behalf of a member was lawfully empowered to do;
 - (c) the court has sanctioned the re-registration and given directions as to what is to be done with the company's share capital, except where the issued shares are not paid-up and the liability of the members to contribute to the company's debts on a winding-up per the statement of guarantee remains the same as if the shares were still in issue, in which case it shall not be necessary to apply to the court to sanction the re-registration.

For the purposes of this subhead:

- (i) subscription to a form of assent by the legal personal representative of a deceased member of a company shall be deemed to be subscription by him,
- (ii) a trustee in bankruptcy of a person who is a member of a company shall, to the exclusion of that person, be deemed to be a member of the company.

- (2) Where the prescribed form of assent to the company being re-registered as an unlimited company has been supplied subscribed to by or on behalf of all members of the company, the company is not obliged to lodge a special resolution to re-register as a CLG pursuant to Part B6, Head 2 (1).

Explanatory Note

At present, the Companies Acts do not provide for conversion to a Guarantee company, so this is a new provision.

*NOTE: A CLG cannot have a share capital so provision must be made for a procedure whereby a company with a share capital can divest itself of its share capital in the event that it wishes to convert to CLG. What is proposed is that all shareholders in a company limited by shares must consent to the conversion to CLG, and that the Court must also sanction the re-registration and the consequent reduction in issued share capital and give directions as to what is to happen with the issued share capital of which the company is divesting itself, save and except where the issued shares are not paid up **and** the liability of the members of the CLG to contribute to the company's liabilities on a winding-up is to remain the same as if the shares were still in issue. For instance, if a company has two €1 shares, neither of which is paid up, and it wishes to convert to a CLG, and the liability of the members under the statement of guarantee is to be €1 each, there is no need for court approval of this conversion, as there is no capital to be repaid and each member's statement of guarantee will replace the uncalled-for share capital amounts.*

Head 13 Particular requirements for conversion to a DAC

- (1) A company may be re-registered as a DAC if, in addition to compliance with Part B6, Head 2 (1), (2) and (3), it also complies with the following-
- (a) If the company is a company to which Part B6, Head 4 applies, a special resolution that it should be so registered, complying with Part B6, Head 2 (2), is passed and the resolution has not been cancelled by the court under Part B6, Head 4;

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- (b) if the company is a company to which Part B6, Head 4 applies, the period during which an application for the cancellation of the resolution under Part B6, Head 4 has expired without any such application having been made or, where such an application has been made, the application has been withdrawn or an order has been made under Part B6, Head 4 confirming the resolution and a copy of that order has been delivered to the Registrar;
 - (c) if the company is an unlimited company, the special resolution required by Part B6, Head 2 (1) must state that the liability of the members is to be limited by shares and what the share capital of the company is to be; and
 - (d) if the company does not already have a share capital —
 - (i) a statement of initial shareholdings, and
 - (ii) a statement of share capital,in the form laid down by Part B6, Head 3 are delivered to the Registrar;
 - (e) where the destination company type is a DAC, being a private company limited by guarantee having a share capital, a statement of guarantee is delivered to the Registrar.
- (2) The resolution must make such alterations in the company's constitution as are requisite in the circumstances and in such a manner that they include the provisions which under Part A2 Head 2 (4) [equivalent of Section 33(1) of the Companies Act, 1963] are required to be included in the constitution of a company in order to constitute it a private company.

Explanatory Note

This provision has many similarities to Part B6, Head 6 on conversion to a private company.

It includes a restatement of section 14 of the C(A)A 1983 as to re-registration of a PLC as a private company. It also sets out the requirements where the company re-registering as a DAC is not currently a limited company and/or where it does not currently have a share capital. Where the company is becoming a guarantee company, it must in addition supply a statement of guarantee.

Subhead (2) cross-refers to the provision in Part A1 which defines a private company, which provision is to be redrawn.

Chapter 4

Continuance

Head 14 Continuance by a body corporate as a PLC

Subject to Part B6, Head 15, a body which is incorporated outside the State may apply, under Part B6, Head 16, to the Registrar for the issue to it of a certificate that it continues as a company incorporated under this Part, if it is immediately before such continuance registered in an EU Member State or authorised to make such an application by the laws of the jurisdiction under which it is incorporated outside the State.

Explanatory Note

Head 11 to 21 give effect to the 14th Directive and therefore regard must be had to the end product to ensure consistency with the Directive. They are modeled on Jersey's continuance provisions.

Head 15 Restrictions on continuance

- (1) An application may not be made under Part B6, Head 16 by a body corporate if—
 - (a) it is in liquidation or in examinership or is subject to proceedings under a scheme of arrangement Part A9, Head 2 [equivalent to Section 201 of the Companies Act, 1963];
 - (b) it is unable to pay its debts as they fall due within the meaning of Part A11, Head 11 [equivalent of Section 214 of the Companies Act, 1963];
 - (c) a receiver, manager or administrator (by whatever name any such person is called) has been appointed, whether by a court or in some other manner, in respect of any property of that body corporate or company;
 - (d) it has entered into a compromise or arrangement with a creditor (not being a compromise or arrangement approved by the Registrar) and that compromise or arrangement is in force; or

- (e) an application is pending before a court for the liquidation or examinership of that body corporate or company, or to have it declared insolvent, or for the appointment of such a receiver, manager or administrator or for the approval of such a compromise or arrangement.

(2) For the purposes of Subhead (1), the jurisdiction in which—

- (a) the body corporate is in liquidation or in examinership;
- (b) the receiver, manager or administrator has been appointed or the compromise or arrangement has been entered into; or
- (c) the application before a court is pending, is immaterial.

Head 16 Application to Registrar for continuance within State

- (1) An application to the Registrar under this head, by a body incorporated outside the State, for continuance as a PLC incorporated under this Part, shall be in the prescribed form and accompanied by—
 - (a) a copy (certified, in a manner approved by the Registrar, to be a true copy) of the memorandum and articles, or of the law or other instrument constituting or defining the constitution of the body corporate;
 - (b) a constitution which complies with Part B2, Head 4;
 - (c) a statement of status and solvency in the prescribed form;
 - (d) the name under which it is proposed to continue the body corporate as a PLC incorporated under this Part;
 - (e) in relation to every person who is a director of the body corporate at the date of the application under this head or is to be a director of it upon its continuance as a company incorporated under this Part, the particulars specified in Part A4, Head 19 (6) [equivalent of Section 195(6) of the Companies Act, 1963];

- (f) in relation to each person who is a secretary of the body corporate at the date of the application under this Chapter or is to be its secretary upon its continuance as a company incorporated under this Part, the particulars specified in Part A4, Head 19 (6) [equivalent of Section 195(6) of the 1963 Act] and his qualifications;
 - (g) such other information as the Registrar would require on an application to register the body corporate as a PLC under this Part;
 - (h) such other documents and information as are prescribed or as the Registrar may require in respect of a particular application under this head; and
 - (i) such application fee as may be prescribed.
- (2) The application under this head shall also be accompanied by evidence, satisfactory to the Registrar, of the following matters—
- (a) that the body corporate is authorised, by the laws of the jurisdiction under which it is incorporated, to make the application to the Registrar;
 - (b) where the constitution of the body corporate or the law of that jurisdiction requires that any authorisation be given for the application to the Registrar, that it has been given;
 - (c) that if a certificate of continuance is issued under this law pursuant to the application under this head, the body will thereupon cease to be incorporated under the other jurisdiction;
 - (d) that if a certificate of continuance is so issued, the interests of the members and the creditors of the body corporate will not be unfairly prejudiced; and
 - (e) that the body corporate is not prevented by Part B6, Head 15 from making the application under this head.

Explanatory Note

Subsections (2)(a) may not be relevant in light of 14th Directive

Subheads (3) & (4) are now generally provided for in Head 4(3) & (4) of Part A2.

Head 17 Constitution on continuance

The constitution of the body corporate shall be such as is necessary to conform to the laws of the State, and shall, subject to such compliance, contain all provisions of the constitutive documents of such body corporate, as amended.

Explanatory Note

Part A2, Head 7(4) is amended to provide for this.

Head 18 Determination of application to Registrar for continuance within State

- (1) If the Registrar, on an application under Part B6, Head 15 for continuance as a PLC incorporated under this Part—
 - (a) is satisfied that the application complies with that head and with Part B6, Head 14;
 - (b) is satisfied that all other approvals and consents required by the law of the State for the issue of a certificate of continuance to the applicant have been given,and, in addition to the applicant having paid the application fee (if any), the Registrar may grant the application.
- (2) If the application is granted, the applicant shall thereupon inform the Registrar and deliver to him the documents which accompanied the application.
- (3) On determining the application, the Registrar shall issue a certificate of incorporation.
- (4) If so required by the applicant, the Registrar shall furnish it, within fourteen days, with a statement in writing of the reasons for its decision.
- (5) An applicant may, within one month after being informed of a decision by the Registrar to refuse its application, appeal to the court on the ground that the decision of the Registrar was unreasonable having regard to all the circumstances of the case.
- (6) In hearing the appeal, the court -

Part B6 - Re-registration & Conversion of Companies

- (a) may confirm or reverse the decision of the Registrar; and
- (b) may make such order as to the costs of the appeal as it thinks fit.
- (c) all actions and other legal proceedings which, immediately before the issue of the certificate of continuance, were pending by or against the body corporate may be continued by or against the PLC.

Head 19 Issue of certificate of continuance within State

- (1) When the Registrar has granted an application for a certificate of continuance as a PLC incorporated under this Part, he shall register the application and those documents.
- (2) On registration, the Registrar shall immediately issue to the applicant a certificate of continuance.
- (3) When the Registrar issues a certificate of continuance, he shall also forthwith send a copy of it (electronically or by some other means of instantaneous transmission) to the appropriate official or public body in the jurisdiction to which Part B6, Head 16 (2) (a) refers.

- (3) A certificate of continuance is conclusive evidence of the following matters—
 - (a) that the PLC is incorporated under this Part;
 - (b) that the requirements of this Part have been complied with in respect of the continuance of the PLC under this Part.

Head 20 Effect of issue of certificate of continuance within State

- (1) Upon the issue of the certificate of continuance by the Registrar—
 - (a) the body corporate becomes a PLC incorporated under this Part, to which this Part applies accordingly; and
 - (b) the memorandum and articles, or the instrument constituting or defining the constitution of the body corporate, as amended in accordance with its articles of continuance, become the constitution of the continued PLC.
- (2) When a body corporate is continued as a PLC incorporated under this Part—
 - (a) all property and rights to which the body corporate was entitled immediately before the certificate of continuance is issued are the property and rights of the PLC;
 - (b) the PLC is subject to all criminal and civil liabilities, and all contracts, debts and other obligations, to which the body corporate was subject immediately before the certificate of continuance is issued; and

Chapter 5

Migration of a Company

Head 21 Approval by company and members of proposal for continuance overseas

A proposal by a company to apply in another jurisdiction for continuance there must be approved by the validation procedure in Part A4, Head 71.

Head 22 Notice to creditors of application to Registrar for authorisation to seek continuance overseas

- (1) At least 30 days before making an application under Part B6, Head 23 to the Registrar for authorisation to seek continuance in another jurisdiction, a company shall give notice to its creditors in accordance with Subhead (2).
- (2) The notice—
 - (a) shall state that the company intends to make the application to the Registrar, and shall specify the jurisdiction in which it proposes to seek continuance;
 - (b) shall be sent in writing to each creditor of the company;
 - (c) shall be published once in a newspaper circulating in the State or in such other manner as the court may on application direct; and
 - (d) shall state that any creditor of the company who objects to the application may within 30 days of the date of the advertisement give notice of his objection to the company.
- (3) A creditor who gives notice in accordance with paragraph (d) of Subhead (2) and whose claim against the company has not been discharged may, within 30 days after the date of the notice, apply to the court for an order restraining the application by the company under Part B6, Head 23, to the Registrar.

- (4) On the creditor's application, the court, if satisfied that the interests of the creditor would be unfairly prejudiced by the proposed continuance, may make an order (subject to such terms, if any, as it may think fit) restraining the application by the company under Part B6, Head 23, to the Registrar.

Head 23 Application to Registrar for authorisation to seek continuance overseas

- (1) An application to the Registrar under this head for authorisation to seek continuance in another jurisdiction shall be accompanied by copies of the declaration and report, required by Part A4, Head 71 in accordance with Part B6, Head 21.
- (2) The application under this head shall also be accompanied by evidence of the following matters—
 - (a) that the laws of the jurisdiction in which the company proposes to continue, allow its continuance there as a body corporate;
 - (b) that those laws provide that upon the continuance of the company as a body corporate in that jurisdiction—
 - (i) all property and rights of the company will become the property and rights of the body corporate,
 - (ii) the body corporate will become subject to all criminal and civil liabilities, and all contracts, debts and other obligations, to which the company is subject, and
 - (iii) all actions and other legal proceedings which are pending by or against the company may be continued by or against the body corporate;
 - (c) that notice has been given to the creditors of the company in accordance with Part B6, Head 22 of the application to the Registrar under this head, and either—
 - (i) no creditor has applied to the court for an order restraining the application made to the Registrar under this Head, or

- (ii) the application of every creditor who has so applied to the court has been determined by the court in a way which does not prevent the Registrar from granting the application made to it under this head;
- (d) that the company has complied with such other conditions as may be prescribed; and
- (e) that the company is not prevented by Part B6, Head 15 from making the application.

Head 24 Determination of application to Registrar for authorisation to seek continuance overseas

- (1) On an application under Part B6, Head 23, the Registrar may grant the application on the condition specified in paragraph (2) and on such other conditions as it may specify.
- (2) It shall be a condition of the grant of any application made under Part B6, Head 23 that the applicant will ensure—
 - (a) that the Registrar is informed of the date on which continuance will be or is granted in the other jurisdiction; and
 - (b) that a copy of the instrument of continuance in the other jurisdiction, certified to be a true copy, is delivered to the Registrar,in sufficient time to enable the Registrar to comply with Part B6, Head 25.
- (3) On determining the application, the Registrar shall inform the applicant of its decision.
- (4) If so required by the applicant, the Registrar shall furnish it within 14 days, with a statement in writing of the reasons for its decision.
- (5) An applicant may, within one month after being informed of a decision by the Registrar to refuse its application, or to grant it subject to a condition (not being a condition specified in Subhead (2)), appeal to the court on the ground that the decision of the Registrar was unreasonable having regard to all the circumstances of the case.

- (6) On hearing the appeal, the court—
 - (a) may confirm, reverse or vary the decision of the Registrar; and
 - (b) may make such order as to the costs of the appeal as it thinks fit.

Head 25 Effect of continuance overseas

When a company is, in accordance with the terms of authorisation of the Registrar under Part B6, Head 24, continued as a body corporate under the laws of the other jurisdiction to which the authorisation relates—

- (a) it thereupon ceases to be a company incorporated under this Bill; and
- (b) the Registrar shall, on that date, record that by virtue of paragraph (a) of this head, it has ceased to be so incorporated.

Head 26 Orders relating to continuance

- (1) The Minister may by order, prescribe for the purposes of this Part—
 - (a) any document or information which is to be provided on applications relating to continuance within or outside the State;
 - (b) the manner in which applicants are to verify documents or information so provided;
 - (c) application fees;
 - (d) conditions to be complied with in respect of applications under Part B6, Head 24 to the Registrar for authorisation to seek continuance under the laws of other jurisdictions; and
 - (e) the manner in which records are to be kept by the Registrar, of bodies which have ceased under Part B6, Head 24 to be companies incorporated under this Bill.
- (2) Without prejudice to the generality of Subhead (1), conditions to which sub-paragraph (e) of that paragraph refers—

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- (a) may relate to matters to be complied with on or before the making of such applications to the Registrar, or after the grant of such applications; and
- (b) may require applicants to appoint and maintain authorised representatives in the State for such periods, whether before or after their applications to the Registrar are determined, as may be prescribed.

Chapter 6

Cross-Border Mergers

To be inserted

Part B7 – External Companies

Contents of Part B7

Chapter 1 – Preliminary and Definitions

1. Defined Terms
2. Application of this Part and of Pillar A to External Companies

Chapter 2 – Filing Obligations of External Companies

3. Filing Obligations of EU Companies
4. Accounting Documents Required to be Filed by EU Companies
5. Filing Obligations of Non-EU Companies
6. Accounting Documents Required to be Filed by Non-EU Companies

Chapter 3 – Disclosure and Translation

7. Disclosure on Letter and Order Forms
8. Translations

Chapter 4 – Statement in Lieu of Full Filing

9. Statement in Lieu of Full Filing under Head 3 or Head 5

Chapter 5 – Service of Process or Notice

10. Service of Process or Notice
11. Notice to be given when company to which this Part applies ceases to carry on business in the state

Chapter 6 – Compliance and Enforcement

12. Duty of Securing Compliance with this Part.

Part B7 - External Companies

Explanatory Note

This Part seeks to re-enact Part XI of the Companies Act, 1963 (the Established Place of Business law) and S.I. 393/1993, the Branch Disclosure Regulations. It is proposed to repeal Section 354 of the 1963 Act and replace this with Heads 3 (EU Companies) and 5 (Non-EU Companies).

Regulation 9 of SI 395/1993 which would require an External Company to cause to be published in the Companies Registration Office Gazette, notice of the delivery to the Registrar of the documents and particulars referred to in this Part, as appropriate, within 21 days of such delivery has been omitted. This is because it is provided in A14 that the Registrar is obliged to publish notice of certain documents that have been delivered to the CRO in the CRO Gazette. Regulation 14 is considered redundant. Regulation 19 is no longer needed as each specific offence has been identified and categorised in accordance with the new categorisation of offences.

Chapter 1

Preliminary and Definitions

Head 1 Defined Terms

(1) In this Part, unless the context otherwise requires—

“accounting documents” means, in relation to a financial year of an External Company,—

- (a) its accounts for the period, including, if it has one or more subsidiaries, any consolidated accounts of the group;
- (b) any annual report of the directors for the period;
- (c) the report of the auditors on the accounts mentioned in sub-paragraph (a); and
- (d) any report of the auditors on the report mentioned in sub-paragraph (b).

“certified” means certified by –

- (a) a director or secretary of the External Company before any of the persons or bodies specified in paragraphs (b),(c) and (d);
- (b) any person authorised to take statutory declarations;
- (c) any notary or notary public;
- (d) a court;

in the prescribed manner to be a true copy or a correct translation;

“constitutive documents”, in relation to an External Company, means its memorandum and articles of association or its charter, statutes or other instrument constituting or defining its constitution;

“establishment”, means a place where, with the intention or fact of permanency, business is transacted under delegated management and includes a branch within the meaning of the 1989 Directive;

“financial year” in relation to an External Company, means the period for which the External Company

draws up its accounts in accordance with the law of the state in which it is incorporated;

“EU Company” means a body corporate whose members' liability in respect of such body corporate is limited, which is incorporated in a state (other than the State) that is a contracting party to the EEA Agreement;

“External Company” means an EU Company or a Non-EU Company;

“Non-EU Company” means a body corporate whose members' liability in respect of such body corporate is limited, incorporated in a state that is not a member of the European Union or a state that is a contracting party to the EEA Agreement;

“the 1968 Directive” means Council Directive No. 68/151/EEC of 9 March 1968;

“the 1989 Directive” means Council Directive No. 89/666/EEC of 21 December, 1989.

- (2) A word or expression that is used in this Part and is also used in the 1989 Directive or the 1968 Directive shall, unless the contrary intention appears, have the same meaning in this Part as it has in the Directive concerned.

Explanatory Note

“External Company” is defined to mean either an EU company or a non-EU company.

“Establishment” is defined to mean a place where business is transacted with any person and includes a branch within the meaning of the 1989 Directive. In this regard, the new law would be moving away from the “Branch” and a “place of business” tests and moving to a new test which is intended to include both.

This definition would seek to define ‘Establishment’ on the same basis as the ECJ has sought to define ‘branch’ in Establissemments Somafer v Saar Ferngus Ag Case 33/78 [1979] 1 CMLR 490.

Note: this definition will relieve some existing external companies that currently file under ‘place of business’ provisions from any obligation.

“EEA Agreement” should be defined in Part B1, definitions, to mean: “means the Agreement on the European Economic Area signed at Oporto on 2 May 1992, as amended for the time being.”

Head 2 Application of this Part and of Pillar A to External Companies

- (1) This Part shall apply to all External Companies which, after the operative date, set up an establishment in the State, and to External Companies which have, before the operative date, an establishment in the State and continue to have an establishment in the State on the operative date.
- (2) The following provisions in Pillar A shall apply to external companies -
- (a) Part A4, Head 6 [equivalent of Section 183 of the Companies Act, 1963]; Head 20 (equivalent of Section 196 of the Companies Act, 1963).
- (b) The provisions of Part A7 shall extend to charges on property in the State which are created on or after the operative date and to charges on property in the State which is acquired on or after the operative date by an external company and to judgment mortgages created on or after the operative date and affecting property in the State of an external company;
- (c) Chapter 6 of Part A13. [i.e. Heads 52-60]
- (d) Part A13, Head 2 (equivalent of Section 7 of the Companies Act, 1990) other than paragraphs (a), (b) and (c) of Subhead (1), and paragraph (d) only in so far as it relates to creditors of the External Company who are creditors with reference to liabilities which have arisen under and by virtue of business carried on by the External Company within the State.

Part B7 - External Companies

(e) Part A13, Head 3 [equivalent of Section 8 of the Companies Act, 1990]; Head 4 [equivalent of Sections 7(4) and 8(2)(a) of the Companies Act, 1990]; Head 5 [equivalent of Section 9 of the Companies Act, 1990]; Head 7 [equivalent of Section 10 of the Companies Act, 1990]; Head 8 [equivalent of Section 11 of the Companies Act, 1990]; Head 9 [equivalent of Section 12 of the Companies Act, 1990]; Head 10 [equivalent of Section 13 of the Companies Act, 1990]; Head 11 [equivalent of Section 14 of the Companies Act, 1990]; Head 12 [equivalent of Section 15 of the Companies Act, 1990]; Head 13 [equivalent of Section 16 of the Companies Act, 1990]; Head 14 [equivalent of Section 19 of the Companies Act, 1990]; Head 15 [equivalent of Section 20 of the Companies Act, 1990]; Head 16 [equivalent of Section 21 of the Companies Act, 1990]; Head 17 [equivalent of Section 19A of the Companies Act, 1990]; Head 18 [equivalent of Section 384 of the Companies Act, 1963]; Head 19 [equivalent of Section 23 of the Companies Act, 1990]; Head 20 [equivalent of Section 23A of the Companies Act, 1990]; Head 21 [equivalent of Section 24 of the Companies Act, 1990]; Heads 31 to 40 [equivalent of Sections 149 to 158 of the Companies Act, 1990].

(f) Chapter 4 of Part A13.

- (3) A Non-EU Company shall not, within the State, make an invitation or offer of securities to the public unless it complies with Irish prospectus law and the provisions of Chapter 13 of Part B2.
- (4) If a Non-EU Company acts in contravention of Subhead (3), the Non-EU Company and every officer who is in default shall be guilty of a category 2 offence.

Explanatory Note

Subhead (1) re-enacts Section 351 of the 1963 Act amended to include a new definition of External Company and the new definition of place of business which has been expressed in Head 1 to include a branch.

Subhead (2) expressly applies certain provisions in Pillar A to external companies – (a) applies Part A4, Head 6 to external companies and effectively re-enacts Section 183 (3) of the Companies Act, 1963; (b) applies Part A7 dealing with charges and re-enacts Section 111 of the Companies Act, 1963; (c) Chapters 6 of A13 deal with prosecution of companies and includes in Head 60 the prosecution of companies on indictment, which re-enacts Section 382(7) of the Companies Act, 1963.

Subhead (3) prohibits Non-EU Companies from making invitations or offers of securities to the public in Ireland unless they comply with Irish prospectus law. It is not necessary to legislate for EU Companies since these are already governed by the Prospectus Directive. Subhead (4) makes it a category 2 offence to contravene Subhead (3).

Chapter 2

Filing Obligations of External Companies

Head 3 Filing Obligations of EU Companies

- (1) An EU Company shall, within one month of the date of the setting up of an establishment in the State, deliver to the Registrar for registration a certified copy of its constitutive documents.
- (2) An EU Company shall, within one month of the date of the setting up of an establishment in the State, notify the Registrar in the prescribed form of or otherwise furnish the following matters —
- (a) its name and legal form and the name of the establishment if that is different from its name;
 - (b) its certificate of incorporation;
 - (c) the address of its establishment;
 - (d) its activities at the establishment;
 - (e) its place of registration and the number with which it is registered;
 - (f) a list of its directors and secretary and any other persons who are authorised to represent the company in dealings with third parties and in legal proceedings together with the following details relating to each such person:
 - (i) present forename and surname and any former forename and surname,
 - (ii) date of birth,
 - (iii) usual residential address,
 - (iv) nationality,
 - (v) business occupation, if any,
 - (vi) particulars of any other directorships of bodies corporate, whether incorporated in the State or elsewhere, held by that person, and
 - (vii) the extent of that person's powers in relation to the activities of the establishment;
- (g) the name and addresses of some one or more persons resident in the State who is or are:
- (i) authorised to accept service of proceedings and any notices required to be served on the EU Company, and
 - (ii) authorised to ensure compliance with the provisions of this Part together with a consent signed by each such person to act in this capacity;
- (h) copies of its latest accounting documents as described in Head 4.
- (3) An EU Company shall also deliver to the Registrar for registration, under cover of the prescribed form, the following documents and notices within one month of the occurrence of the event concerned, namely—
- (a) any document making or evidencing an alteration in its constitutive documents;
 - (b) every amended text of its constitutive documents;
 - (c) notice of a change among the persons referred to in Subhead (2) (f) or (g) or in any of the particulars relating to such persons specifying the date of the change;
 - (d) notice of a change in the address referred to in Subhead (2) (c) together with the new address of the establishment;
 - (e) notice of its winding-up, the appointment of liquidators, particulars concerning them and their powers and the termination of the liquidation in accordance with disclosure by the company as provided for in Article 2 (1) (h), (j) and (k) of the 1968 Directive and particulars concerning insolvency proceedings, arrangements, compositions or any analogous proceedings to which the company is subject;
 - (f) the closure of the establishment.
- (4) Head 19 (16) of Part A4 [equivalent to Section 195(15) of the CA, 1963] shall apply for the purposes of Subhead (2) (f).
- (5) If Subheads (1), (2) or (3) are not complied with, the EU Company and every officer who is in default shall be guilty of a category 3 offence.

Explanatory Note

This replaces Regulation 4 of S.I. 395/1993. The language is changed but it is thought all changes are permissible within the confines of EU Directive 89/666. This head also replaces (for EU Companies) Sections 352 and 353 of the 1963 Act.

Subhead (3) uses the terms “director” and “secretary” and this is in line with the UK’s transposition of the Directive 89/666.

Head 4 Accounting Documents Required to be Filed by EU Companies

- (1) In each year, an EU Company that has set up an establishment in the State shall deliver to the Registrar, under cover of the prescribed form, such accounting documents as it is required to make public in accordance with the laws of the Member State in which it is incorporated.
- (2) The accounting documents referred to in Subhead (1) shall be delivered to the Registrar not later than one month following the last date upon which the EU Company was required to make public such accounting documents in accordance with the law of the Member State in which it is incorporated.
- (3) If Subhead (1) is not complied with, the EU Company and every officer who is in default shall be guilty of a category 3 offence.

Explanatory Note

This is a revised provision to that in S.I. 395/1993. This provision seeks to create an obligation on EU companies that establish a branch or place of business in Ireland to disclose their accounting documents (by registration with the Registrar) to no more or no less the extent to which they are so required to disclose their accounts to the public in their home member state. Moreover, it is proposed that the obligation to file in Ireland will be not later than one month following the date the obligation to file arises in the company’s home member state.

Head 5 - Filing Obligations of Non-EU Companies

- (1) A Non-EU Company shall, within one month of the date of the setting up of an establishment in the State, deliver to the Registrar for registration a certified copy of its constitutive documents.
- (2) A Non-EU Company shall, within one month of the date of the setting up of an establishment in the State, notify the Registrar in the prescribed form of or otherwise furnish the following matters-
 - (a) its name and legal form and the name of the establishment if that is different from its name;
 - (b) its certificate of incorporation;
 - (c) the address of its establishment;

- (d) its activities at its establishment;
- (e) its place of registration and the number with which it is registered;
- (f) a list of its directors and secretary and any other persons who are authorised to represent the company in dealings with third parties and in legal proceedings together with the following details relating to each such person:
- (i) present forename and surname and any former forename and surname,
- (ii) date of birth,
- (iii) usual residential address,
- (iv) nationality,
- (v) business occupation, if any,
- (vi) particulars of any other directorships of bodies corporate, whether incorporated in the State or elsewhere, held by that person, and
- (vii) the extent of that person's powers in relation to the activities of the establishment;
- (g) the name and addresses of some one or more persons resident in the State who is or are:
- (i) authorised to accept service of proceedings and any notices required to be served on the Non-EU Company, and
- (ii) authorised to ensure compliance with the provisions of this Part together with a consent signed by each such person to act in this capacity;
- (h) copies of its latest accounting documents as described in Head 6.
- (i) its principal establishment;
- (j) its objects;
- (k) the place where it is incorporated;
- (l) its called-up share capital.
- (3) A Non-EU Company shall also deliver to the Registrar for registration, under cover of the prescribed form, the following documents and notices within one month of the occurrence of the event concerned, namely—
- (a) any document making or evidencing an alteration in its constitutive documents;
- (b) every amended text of its constitutive documents;
- (c) notice of a change among the persons referred to in Subhead (2) (f) or (g) or in any of the particulars relating to such persons specifying the date of the change;
- (d) notice of a change in the address referred to in Subhead (2) (c), together with the new address of the establishment;
- (e) notice of its winding-up, the appointment of liquidators, particulars concerning them and their powers and the termination of the liquidation, insolvency proceedings, arrangements, compositions or any analogous proceedings to which it is subject;
- (f) the closure of the establishment.
- (4) Head 19 (16) of Part A4 [equivalent to Section 195(15) of the CA, 1963] shall apply for the purposes of Subhead (2) (f).
- (5) If Subhead (1), (2) or (3) are not complied with, the Non-EU Company and every officer who is in default shall be guilty of a category 3 offence.

Explanatory Note

In Head 5(2), paragraphs (i) – (l) are additions to the list of matters required in the case of EU Companies.

This head also replaces Regulation 6 of S.I. 395/1993. The language is changed but it is thought all changes are permissible within the confines of EU Directive 89/666. This head also replaces (for Non-EU Companies), sections 352 and 353 of the 1963 Act.

Subhead (3) uses the terms “director” and “secretary” and this is in line with the UK’s transposition of the Directive 89/666.

Head 6 **Accounting Documents Required to be Filed by Non-EU Companies**

- (1) In each year, a Non-EU Company that has set up an establishment in the State shall deliver to the Registrar under cover of the prescribed form, such accounting documents as it is required to make public in accordance with the laws of the state in which it is incorporated.
- (2) The accounting documents referred to in Subhead (1) shall be delivered to the Registrar not later than one month following the last date upon which the Non-EU Company was required to make public such accounting documents in accordance with the law of the state in which it is incorporated.
- (3) Where –
 - (a) the law of the state in which a Non-EU Company is incorporated does not require it to have accounting documents drawn-up and audited in accordance with Council Directives 78/660/EEC and 83/349/EEC or International Accounting Standards and such Non-EU Company does not in fact have its accounting documents so drawn-up and audited; and
 - (b) the state in which the Non-EU Company is incorporated has been prescribed by regulations made by the Minister as not having an otherwise acceptable standard,then any such Non-EU Company must deliver to the Registrar accounting documents drawn-up and audited in accordance with Council Directives 78/660/EEC and 83/349/EEC or International Accounting Standards.
- (4) If Subhead (1) is not complied with, the Non-EU Company and every officer who is in default shall be guilty of a category 3 offence.

Explanatory Note

This provision seeks to address the essential difficulties with the current law, whereby some non-EU states seek to avoid registration as the branch of an External Company because to do so means that they must file accounts in circumstances where their home country does not require them to be filed. This provision seeks to distinguish between non-EU states that have no filing requirements at all and may be simply jurisdictions of convenience to avoid disclosure and other non-EU states that do have.

Chapter 3

Disclosure and Translation

Head 7 Disclosure on Letter and Order Forms

- (1) In the case of an EU Company, that sets up an establishment in the State, every letter and order form that issues from or in respect of its establishment in the State shall bear the following particulars—
 - (a) the EU Company's place of registration and the number with which it is registered;
 - (b) the EU Company's name (if different to the name of its establishment), legal form and the address of its registered office;
 - (c) in the case of an EU Company which is being wound up, the fact that that is so;
 - (d) the EU Company's place of registration of its establishment and the number with which it is registered;
 - (e) if on any letters or order forms of the establishment there is reference to the share capital of the EU Company, the reference shall be to the paid-up share capital.
- (2) In the case of a Non-EU Company that sets up an establishment in the State, every letter and order form that issues from or in respect of its establishment in the State shall bear the following particulars—
 - (a) the Non- EU Company's name (if different to the name of its establishment), place of registration of its establishment and the number with which it is registered;
 - (b) if the law of the state in which the Non-EU Company is incorporated requires entry in a register, the place of registration of the Non-EU Company and the number with which it is registered;
 - (c) if on any letters or order forms of the establishment there is reference to the share capital of the Non-EU Company, the reference shall be to the paid-up share capital.

- (3) If Subhead (1) is not complied with, the EU Company and every officer who is in default shall be guilty of a category 3 offence.
- (4) If Subhead (2) is not complied with, the non-EU Company and every officer who is in default shall be guilty of a category 3 offence.

Explanatory Note

This re-enacts Regulations 4 and 7 of S.I. 395/1993, with some modifications.

The term "used by a branch" has been replaced with "that issues from or in respect of its place of business".

Head 8 Translations

Every document required to be delivered or notified to the Registrar under Heads 3, 4, 5 or 6 shall, if they are not written in the Irish or the English language, have annexed to them a certified translation thereof.

Explanatory Note

This re-enacts Regulation 12 of S.I. 395/1993

Chapter 4

Statement in Lieu of Full Filing

Head 9 Statement in Lieu of Full Filing under Head 3 or Head 5

(1) Where, prior to the date referred to in Head 3 or 5 as appropriate, an External Company which had -

(a) established a branch in the State, in complying with the European Communities (Branch Disclosures) Regulations, 1993; or

(b) established a place of business in the State, in complying with Part XI of the Companies Act, 1963,

in respect of an establishment in the State, had returned to the Registrar, documents which are the same in all respects as the documents required by Heads 3(1) or 5(1), as appropriate, and it has no outstanding obligation to make a return to the Registrar so far as concerns any alterations to those documents, then the External Company may return, in lieu of the documents required by Heads 3(1) or 5(1), a statement in the prescribed form that this information has already been returned to the Registrar.

(2) Where, prior to the date referred to in Head 3 or 5 as appropriate, an External Company which had -

(a) established a branch in the State, in complying with the European Communities (Branch Disclosures) Regulations, 1993; or

(b) established a place of business in the State, in complying with Part XI of the Companies Act, 1963,

in respect of an establishment in the State, had returned to the Registrar particulars which are the same in all respects as the corresponding particulars required by Head 3(2) (f) and (g) or Regulation 5(2) (f) and (g), as appropriate, and it has no outstanding obligation to make a return to the Registrar so far as concerns any alterations to those particulars, then the company may return, in lieu of the corresponding particulars required by Head 3(2) (f) and (g) or Head 5(2) (f) and (g), as appropriate, a statement in the prescribed form that this information has already

been returned to the Registrar.

(3) Where paragraph (1) applies, a reference to the delivery of the matter referred to in Head 3(1) or Head 5(1) shall be construed as a reference to the return of the statement referred to in Subhead (1).

Explanatory Note

This re-enacts Regulation 15 and 16 of S.I. 395/1993.

Chapter 5

Service of Process or Notice

Explanatory Note

This head re-enacts Section 357 of the Companies Act, 1963.

Head 10 Service of Process or Notice

- (1) Subject to Subhead (2), any process, notice or summons required to be served on a External Company to which this Part applies shall be sufficiently served if addressed to any person whose name has been delivered to the Registrar under Head 3(2)(g) or Head 5(2)(g) (or any changes notified thereto) and left at or sent by post to the address which has been so delivered.
- (2) A document may be served on any External Company by leaving it at or sending it by post to any establishment established in the State—
 - (a) where the External Company makes default in delivering to the Registrar, the name and address of a person resident in the State who is authorised to accept, on behalf of the External Company, service of process; or
 - (b) if at any time all the persons whose names and addresses have been so delivered are dead or have ceased to so reside, or refuse to accept service on behalf of the External Company, or for any reason it cannot be served.
- (3) This head shall cease to apply to a company on the expiration of two years after it has given the notice referred to in Head 11 of this Part [equivalent of Section 357 of the Companies Act, 1963].

Explanatory Note

This re-enacts Section 356 of the 1963 Act and Regulation 17 of S.I. 395/1993.

Head 11 Notice to be given when company to which this part applies ceases to carry on business in the state.

If any company to which this Part applies ceases to have a place of business in the State, it shall forthwith give notice of the fact to the Registrar, and as from the date on which notice is so given, the obligation of the company to deliver any document to the Registrar shall cease.

Chapter 6

Compliance

Head 12 Duty of Securing Compliance with this Part

The duty of securing compliance by an External Company with this Part shall, without prejudice to the duty of the External Company concerned, also lie upon the persons appointed by a External Company to ensure compliance with this Part.

Explanatory Note

This re-enacts Regulation 18 of S.I. 395/1993.

Part B8 – Unregistered Companies and Joint Stock Companies

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Part B8 - Unregistered Companies and Joint Stock Companies

Chapter 1

Preliminary and Definitions

Head 1 Defined Terms

“registration resolution” has the meaning assigned to it in Head 6;

“registration date” has the meaning assigned to it in Head 8.

Note

Each draft Part B includes a head which provides that ‘the provisions of Parts A1 to A14 apply to [PLC/DAC/CLG/ULC] subject to such amendments thereto, or exclusions therefrom, as are contained in this Part. In relation to unregistered companies, the opposite applies in that Parts A do not apply unless expressly stated, see Head 4 below.

Chapter 2

Application of this Bill to Unregistered Companies

Head 2 Application of certain provisions of this Bill to unregistered companies

- (1) The provisions specified in Part B8, Head 4/ Schedule X [the equivalent of the Ninth Schedule to the Companies Act, 1963] shall apply to all unregistered companies incorporated in and having a principal place of business in the State, other than those mentioned in Subhead (2), as if they were companies registered under this Bill and subject to such adaptations and modifications (if any) as may be prescribed.
- (2) The said provisions shall not apply by virtue of this head to any of the following bodies-
 - (a) an unregistered company incorporated by or registered under any public general statute; and
 - (b) an unregistered company not formed for the purpose of carrying on a business which has for its objects the acquisition of gain by the body or by the individual members thereof; and
 - (c) an unregistered company which is prohibited by statute or otherwise from making any distribution of its income or property among its members while it is a going concern or when it is in liquidation; and
 - (d) an unregistered company for the time being exempted by direction of the Minister.
- (3) The said provisions shall apply also in like manner in relation to any unincorporated body of persons entitled by virtue of letters patent to any of the privileges conferred by the Chartered Companies Act, 1837, and not registered under any other public general statute but subject to the like exceptions as are provided for in the case of bodies corporate by paragraphs (b), (c) and (d) of Subhead(2).
- (4) This head shall not repeal or revoke, in whole or in part, any enactment, charter or other instrument constituting or regulating any body in relation to which the said provisions are applied by virtue of this head, or restrict the power of the Government to grant a charter in lieu of or supplementary to any such charter as aforesaid, but in relation to any such body, the operation of any such enactment, charter or instrument shall be suspended in so far as it is inconsistent with any of the said provisions as they apply for the time being to that body.
- (5) Every body to which this head applies and which has not already done so, shall forthwith deliver to the Registrar for registration, a certified copy of the charter, statutes, memorandum and articles or other instrument constituting or defining the constitution of the body.
- (6) Every body to which this head applies and which comes into existence on or after the operative date shall, within three months after coming into existence, deliver to the Registrar of companies for registration a certified copy of the charter, statutes, memorandum and articles or other instrument constituting or defining the constitution of the body
- (7) If default is made in complying with Subheads (5) or (6), the body and every officer of the body who is in default shall be guilty of a category three offence.

Explanatory Notes

This head is a re-enactment of Section 377 of the Companies Act, 1963 as amended by section 250 of the Companies Act, 1990, Section 15 of the Companies (Amendment) Act, 1982 and Section 57 and Schedule 2 of the Companies (Auditing and Accounting) Act, 2003.

Section 377 of the CA, 1963 applied the provisions of the Companies Acts that are listed in CA 1963, Schedule 9 to "all bodies corporate incorporated in and having a principal place of business in the State", other than those set out in subsection (2) of Section 377.

Subhead (1) is a re-enactment of Section 377(1) of the Companies Act, 1963 as amended by section 250(1) of the Companies Act, 1990. The cross-references have been updated in accordance with the structure of the Bill.

Subheads (2) to (6) are a re-enactment of Sections 377(2) to (6) respectively.

Part B8 - Unregistered Companies and Joint Stock Companies

Subhead (7) is a re-enactment of Section 377(7) Companies Act, 1963 as amended by section 15 of the Companies (Amendment) Act, 1982 (which increased the penalty for the offence) and Section 57 and Schedule 2 of the Companies (Auditing and Accounting) Act, 2003.

Head 3 Minister's power to make regulations

- (1) The Minister may, if he considers it necessary to do so in the interests of the orderly and proper regulation of the business of unregistered companies, make regulations adding to or subtracting from, the list of the provisions of the Companies Acts specified in the Part B8, Head 4/Schedule X [equivalent to the Ninth Schedule to the Companies Act, 1963].
- (2) Every regulation made by the Minister under this head shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the regulation is passed by either House within the next 21 days on which that House has sat after the regulation is laid before it, the regulation shall be annulled accordingly, but without prejudice to the validity of anything previously done thereunder.

Explanatory Note

This head is a re-enactment of Section 250 of the Companies Act, 1990.

Subhead (1) is a re-enactment of Section 250(2). All cross-references have been updated in accordance with the structure of the Bill.

Subhead (2) is a re-enactment of Section 250(3) There may be a need to have a specific head which provides for the making of Regulations generally under this Part. If so, Subhead (2) may be removed as it would be provided for under the general Head.

Section 250(1), which amended the Subsection (1) of Section 377 of the Companies Act, 1963, has been incorporated into the previous Head [equivalent of Section 377 of the Companies Act, 1963]

Head 4 Schedule X Provisions applied to unregistered companies [equivalent of Ninth Schedule to Companies Act 1963]

- (1) Subject to the modifications set out in Subhead (2) the head/heads contained in the following table shall apply to an unregistered company to which this Part applies -

Subject Matter	Provisions Applied
Acts done by a company (ultra vires rule)	[Equivalent of s 8 Companies Act 1963] <ul style="list-style-type: none"> • Part B2, Head 9
Pre-incorporation contracts	[Equivalent of ss 37(1)&(2) Companies Act 1963] <ul style="list-style-type: none"> • Part A2, Head 28
Prospectuses and allotments	[Equivalent of s 43 to 52, 56, 57, 61 Companies Act 1963 and the Third Schedule] <ul style="list-style-type: none"> • Sections 43-47, 49-52, 56, and 61 of CA 1963, repealed by section 40 of the Investment Funds, Companies and Miscellaneous Provisions Act 2005. • Section 48 repealed by section 3 Companies (Amendment) Act 1983 • Provisions of Part 5 Investment Funds Act 2005 and the Prospectus (Directive 2003/6/EC) Regulations 2005 apply to unregistered companies as they would fall within the definition of 'bodies corporate or other legal entity' eg see s 38(1) Investment Funds Act defn of 'offeror'
Validation of invalid issue, redemption or purchase of shares	[Equivalent of s 89 Companies Act 1963] <ul style="list-style-type: none"> • Part A3, Head 34
Registered office	[Equivalent of s 113 Companies Act 1963 as inserted by the Companies (Amendment) Act 1982] <ul style="list-style-type: none"> • Part A2, Head 33

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Subject Matter	Provisions Applied
Alteration of constitution by special resolution	Part A2, Head 15(3)
Registered person	Part A2, Head 21
Persons or bodies of persons authorised to bind a company	Part A2, Head 22(1)
Particulars to be shown on all business letters of the company	Part A4, Head 20(2)-(3)
Annual return	[Equivalent of s 125 to 129 Companies Act 1963 and the Fifth Schedule] <ul style="list-style-type: none"> • S125 – Part A6, Head 52 • S126 – repealed by s 59 Company Law Enforcement Act, 2001 • S127 – Part A6, Head 52 • S128 – <i>Documents to be annexed to Annual Return. S 128 does not apply to private companies therefore is it to be re-enacted within Part B2.</i> • S129 – <i>Certificates to be sent by private company with annual return</i> • Fifth Schedule repealed by s 63(2) Company Law Enforcement Act, 2001
Accounts and Audit	[Equivalent of s 148 to 153, 155 to 161, 191 and the Sixth Schedule (except subparagraphs (c) to (e) of paragraph 3 and subparagraph (d) of paragraph 8 as amended by the Companies (Amendment) Act, 1986) of the Companies Act, 1963] <ul style="list-style-type: none"> • S148 – Part A6, Heads 12 – 14, 23, 51. • S149 – substituted for Reg 4 EC (IFRS and Miscellaneous Amendments) Regulations 2005 S.I. No 116 of 2005; s 149 (5)&(6) > Part A6, Head 13, 49. • S150 – Part A6, Head 15, 49, 51. • S151 – ‘replaced’ by Regulation 13 European Communities (Company Group Accounts) Regulations 1992; Part A6 Sch 2 Part I 2 • S152 – ‘replaced’ by Regulation 14 European Communities (Company Group Accounts) Regulations 1992; Part A6, Head 10, 16 • S153 – <i>Financial year of holding company and subsidiary</i> Part A6, Head 10, 54 • S155 – Part A1, Head 6 • S156 – Part A6, Head 36 • S157 – Part A6, Head 36 • S158 – Part A6, Head 37 • S159 – Part A6, Head 48, 49 • S160 – Part A6, Head 83 - 86, 98 • S161 – Part A6, Head 95 – 96 • <i>Sixth Schedule to Companies Act 1963 -</i>
Validity of acts of directors	[Equivalent of s 178 Companies Act, 1963] <ul style="list-style-type: none"> • Part A4, Head 9
Register of directors and secretaries. Particulars relating to directors to be shown on all business letters of the company.	[Equivalent of s 195 (inserted by Companies Act, 1990) and section 196 Companies Act, 1963 – s 195 = Part A4 Heads 19 – 21] <ul style="list-style-type: none"> • S195 – Part A4, Head 18 • S196 – <i>Particulars relating to directors to be shown on all business letters of the company</i>
Registration of documents, enforcement and other supplemental matters	[Equivalent of s 2, 193, 369 to 371, 378, 379, 383, 384, 386, 387, 395(1) and the Eighth Schedule of the Companies Act 1963] <ul style="list-style-type: none"> • S2 – interpretation provision • S193 – <i>not re-enacted (general duty of directors to disclose etc)</i> • S369 – Part A14, Head 8; Part 1, Head 18 • S370 – Part A14, Head 9 • S371 – Part A13, Head 22 • S378 – <i>Form of registers, minute books and books of account</i> Part A4 Head 73 • S379 – Part A2, Head 34 • S383 – Part A5, Head 5(1), (2), (3) & (5) • S384 – Part A13, Head 18 • S386 – Part A13, Head 63 • S395(1) – <i>Ministers power to alter Tables & Forms</i> Part 14 Head 6 • <i>Eighth Schedule – s 369 re-stated in Part A14, Head-8</i>

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Subject Matter	Provisions Applied
Liability of officers and others for negligence etc	[Equivalent of s 200 and 391 Companies Act, 1963] <ul style="list-style-type: none"> • S200 - Part A5, Head 15 • S391 - Part A5, Head 14
Share certificates	[Equivalent of s 2 and 3 Companies (Amendment) Act, 1977] <ul style="list-style-type: none"> • S2 – Part B2, Head 27(2) • S3 – Part B2, Head 27
Company records	[Equivalent of s 4 Companies (Amendment) Act 1977] <ul style="list-style-type: none"> • S4 – Part A4, Head 74
Maintenance of capital. Restrictions on distribution of profits and assets.	[Equivalent of s 40 to 42, 45, 45A (inserted by Companies (Amendment) Act 1986) and 49 to 51 Companies (Amendment) Act 1983] [Equivalent of s 43, 43A, 44, 46 and 47 Companies (Amendment) Act 1983 with the modification that those sections shall apply to all bodies corporate to which (Head 2(1)) - equivalent of s 377(1) CA 1963) applies other than those which, if they were registered, would be private companies.] <ul style="list-style-type: none"> • S40 – Part B2, Head 67 • S41 – Part A3, Head 36 • S42 – Part A3, Head 37 • S43 – Part B2, Head 31 • S44 – Part B2, Head 32 • S45 – Part A3, Head 49 • S45A – Part A3, Head 50 • S46 – Part B2, Head 57 • S47 – Part B9, Head 40
	[Equivalent of all the Regulations of the European Communities (Stock Exchange) Regulations 1984 (S.I. No 282 of 1984)] <ul style="list-style-type: none"> • Regulations amended by Schedule 3 of the Prospectus (Directive 2003/6/EC) Regulations 2005 – see attached Schedule
	[Equivalent of all of the Regulations of the European Communities (Mergers and Divisions of Companies) Regulations 1987 (S.I No 137 of 1987)] <ul style="list-style-type: none"> • Part A9, • Part B2, Heads 21(16), 69(2) and (3)
	[Equivalent of all provisions of Companies (Amendment) Act, 1990] <ul style="list-style-type: none"> • Part A10, Heads 1 to 37, and 39.
	[Equivalent of Parts I to III, V, VII, IX, X, XI and XII of Companies Act, 1990.] [Equivalent of Part IV Companies Act, 1990 with the modification that Chapter 2 of that Part shall apply to all bodies corporate to which [equivalent of s 377(1) Companies Act, 1963] applies other than those which, if they were registered, would be private companies and Chapter 3 of that Part apply to all such bodies corporate which, if they were registered, would be private companies] [Equivalent of Part VI Companies Act, 1990 except sections 122, 128 to 131 and 133] <ul style="list-style-type: none"> • Parts I to II – Part A13, Heads 2 to 21 • Part III to section 40 – Part A5, Heads 1 to 3 and 15 to 26 • Part III section 41 to 46 – Part A6, Heads 000 • S50 – Part A4, Head 20 • Part IV section 53 to 62 – Part A5, Heads 33, to 37 • S63 – Part A6, Head 000 • Part IV sections 98 to 104 – Part A13, Heads 2 to 8
	[Equivalent of all of the Regulations of the European Communities (Public Limited Companies Subsidiaries) Regulations 1997 (S.I. No 67 of 1997)] <ul style="list-style-type: none"> • Reg 5(2)-(8) – Part A3, Heads 15(3) and 36(3)-(8)

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- (2) Any reference in Part A13, Head 28 [equivalent of Section 102 of the Companies Act, 1990] to the registered office of a company shall, in the case of an unregistered company be construed as a reference to the principal office of the company.

Explanatory Note

This head is an amended re-enactment of the Ninth Schedule to the Companies Act, 1963.

Subhead (1) is a work in progress, and it is intended to go through the list of provisions in the Table/Schedule above to determine the appropriateness of their applicability or otherwise to unregistered companies. The list is therefore at this stage not conclusive.

Subhead (2) provides for the re-enactment of Section 102(5) of the Companies Act, 1990 which applies exclusively to unregistered companies and therefore cannot be included in Pillar A. Section 102 imposes an obligation to give notice of a court ordered disclosure order upon the applicant for said order. Part A13 Head 28, equivalent to Section 102, will need to be included.

Chapter 3

Registration of an Unregistered Company

Head 5 Registration of an unregistered company as a company

With the exception contained in Subhead (2) and subject to the provisions of this Part, an unregistered company of the type specified in Part B8, Head 2(1) [equivalent of Section 377(1) of the Companies Act, 1963] may apply to be registered under [this Chapter] as a private company, designated activity company, guarantee company or unlimited company where it satisfies the appropriate requirements under the applicable Part of this Bill.

Explanatory Note

This head and the heads that follow, are new. They are based, however, on the procedure in Part IX of the Companies Act, 1963 under which unregistered companies may register as limited companies under the Companies Acts. The procedure includes the possibility of registering as a PLC subject to compliance with the additional conditions and formalities set out in Section 18 of the Companies (Amendment) Act, 1983.

The wording follows, with modification, the wording of Section 328 of the Companies Act, 1963.

Head 6 Requirements for registration of an unregistered company

- (1) An unregistered company shall not be registered under Part B8, Head 5 without the assent (a “**registration resolution**”) of a majority of such of its members as, being entitled so to do, vote in person or, where proxies are allowed, by proxy at a general meeting summoned for the purpose. In computing any majority under this head when a poll is demanded, regard shall be had to the number of votes to which the member is entitled according to the regulations of the unregistered company.
- (2) Before a registration resolution is moved, a statement in accordance with Subhead (3) shall be sent by the unregistered company to every member entitled to notice of the meeting of the unregistered company at which the registration resolution is to be moved.
- (3) Every statement required by Subhead (2) shall—

- (a) state the name with which the unregistered company is proposed to be registered;
 - (b) state the reasons for the proposal to register;
 - (c) summarise the principal implications for members of the registration;
 - (d) indicate where the memorandum and articles of association of the proposed unregistered company that comply with the requirements of this Bill may be obtained or inspected (which may include on the body corporate’s website).
- (4) An application by an unregistered company that has duly approved a registration resolution in accordance with this head shall be made to the Registrar within 30 days of the meeting at which the unregistered company approved the registration, by delivery to the Registrar of the following documents -
- (a) a copy of the statement required by Subhead (2) and of the registration resolution under Subhead (1), each certified by a director or other officer of the unregistered company;
 - (b) a list showing the names and addresses of all persons who, on a day named in the list (not more than 28 clear days before the day of registration), were members of the unregistered company, with the addition of the shares or stock held by them respectively (distinguishing, in cases where the shares are numbered, each share by its number);
 - (c) the nominal share capital of the company and the number of shares into which it is divided, or the amount of stock of which it consists;
 - (d) the number of shares taken and the amount paid on each share; and
 - (e) the memorandum and articles of association of the proposed company.
- (5) On compliance with the requirements of this Part with respect to registration, and on payment of such fees, if any, as are payable under the provisions of this Bill, the Registrar shall certify under his hand that the company applying for registration is incorporated as a limited company under this Bill and thereupon the company shall be so incorporated.

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- (6) A certificate given under this head in respect of a company shall be conclusive evidence that the requirements of this Part in respect of registration and of matters precedent and incidental thereto have been complied with.

Explanatory Notes

Subhead (1) draws upon Section 328(6) and (9) of the Companies Act, 1963 (and see also Bye-law 49 of the Bank's Bye-laws)

Subheads (2) & (3) are new.

Requirements in Subheads (4) are largely drawn from those in Section 330 of the Companies Act, 1963.

Subhead (5) is a re-enactment of Section 336(1) of the Companies Act, 1963 (section 336 of the Companies Act was inserted by Schedule 1 of the Companies (Amendment) Act, 1983).

*Subhead (6) is an amended re-enactment of Section 336(2) Companies Act, 1963, which has been modified to take account of constitutional issues raised by *Maher v Attorney General* [1973] IR 146.*

Head 7 Registration of an unregistered company as a public limited company

An unregistered company applying to be registered under Part B8, Head 5 as a PLC may apply to be so registered as a PLC, subject to it complying with the requirements of [equivalent of Section 18 of the Companies (Amendment) Act, 1983] as if the unregistered company were a joint stock company (within the meaning of Head 22 of this part [equivalent of Section 329 of the Companies Act, 1963]) applying to be registered in pursuance of Chapter 5 of this Part [equivalent of Part IX of the 1963 Act] and [equivalent of section 18 Companies (Amendment) Act, 1983] as a PLC. In the application of [equivalent of Section 18 of the Companies (Amendment) Act, 1983] to an unregistered company applying to be registered under Head 5 at this Part as a PLC, any reference to a resolution in [equivalent of sub-sections (2) and (4)(a) of section 18 Companies (Amendment) Act, 1983] shall be taken to be a reference to the registration resolution referred to in Part B8, Head 6.

Explanatory Note

This head is new.

Section 18 of the Companies (Amendment) Act, 1983 allows a company not formed under the Companies Acts, which is using the Part IX registration procedure to register as a limited company, to be so registered as a public limited company. Section 18 modifies the 1963 Act's requirements for re-registration of private companies as public companies for this purpose. As a consequence, a joint stock company registering as a plc must prepare a re-registration balance sheet, and provide to the Registrar, an auditor's statement as to its net asset position and a statutory declaration of the directors as to the net asset position between the balance sheet date and the date of re-registration etc. In contrast, the procedure for conversion of a building society into a public limited company set out in the Building Societies Act, 1989 (as amended) has no such requirements.

Head 8 Effect of registration

- (1) On the date (the "registration date") shown in the certificate of incorporation as a company, the body corporate shall be a company limited by shares incorporated under this Bill and this Bill shall apply to it accordingly, subject to, as follows—
- (a) the provisions of this Bill relating to the numbering of shares shall not apply to any body corporate which has issued stock or whose shares are not numbered;
 - (b) for the purposes of any provision of this Bill which requires delivery of a document or return to the Registrar, the company shall not, after the registration date be obliged to so deliver any document or return which relates to the period prior to the registration date, if it would not have been required to deliver such document or return had it not registered as a company;
 - (c) in the event of the company being wound up, every person shall be a contributory, in respect of the debts and liabilities of the company contracted before resignation, who is liable to pay or contribute to the payment of any debt or liability of the company contracted before registration or to pay or contribute to the payment of any sum for the adjustment of the rights of the members among themselves in respect of any such debt or liability, or to pay or contribute to the payment of the costs and expenses of winding up the company, so far as relates to such debts or liabilities as aforesaid;

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- (d) in the event of the company being wound up, every contributory shall be liable to contribute to the assets of the company, in the course of the winding-up, all sums due from him in respect of any such liability as aforesaid, and, in the event of the death or bankruptcy of any contributory, the provisions of this Bill relating to the personal representatives of deceased contributories and to the assignees of bankrupt contributories shall apply;
 - (e) Head 23, Part B2 [equivalent of Section 32 of the Companies (Amendment) Act, 1983] shall not apply to the company;
 - (f) Part A3 Head 6 and Part B2 Heads 19 to 21 [equivalent of Sections 26 and Sections 28 to 31 respectively of the Companies (Amendment) Act, 1983] shall not apply to the allotment of shares by the company where the contract or other obligation for their allotment was entered into or incurred before the date on which the registration resolution is passed, and the provisions of Part B6 Head 9(2) [equivalent of Section 37(1)(c) of the Companies (Amendment) Act, 1983] shall be modified accordingly;
 - (g) Part A3 Head 5 [equivalent of Section 20 of the Companies (Amendment) Act, 1983] shall not apply to the allotment of relevant securities (within the meaning of Subsection [10] of the said Section [20]) by the company where the contract or other obligation for their allotment was entered into or incurred before the registration date or where the relevant securities are allotted in pursuance of an offer made by the body corporate before the registration date;
 - (h) Part A3 Head 5 [equivalent of Section 20 of the Companies (Amendment) Act, 1983] shall not apply to the allotment of equity securities (within the meaning of Subsection [10] of the said Section [20]) to the company where the contract or other obligation for their allotment was entered into or incurred before the registration date or where the relevant equity securities are allotted in pursuance of an offer made by the body corporate before the registration date.
- (2) All property, real and personal (including things in action), belonging to or vested in a body corporate at the date of its registration in pursuance of this Part, shall, on registration, pass to and vest in the company as incorporated under this Bill for all the estate and interest of the body corporate therein.
 - (3) Registration of a company in pursuance of this Part shall not affect the rights or liabilities of the body corporate in respect of any debt or obligation incurred, or any contract entered into by, to, with or on behalf of, the company before registration, or the priority of any mortgage, charge, pledge or other security or encumbrance created by the company before registration.
 - (4) All actions and other legal proceedings which, at the time of the registration of a company in pursuance of this Part, are pending by or against the company, or the public officer or any member thereof, may be continued in the same manner as if the registration had not taken place.
 - (5) Without prejudice to the generality of Subheads (2) to (4), the following provisions shall have effect where a body corporate registers as a company pursuant to this Part, that is to say -
 - (a) a reference (express or implied) to the body corporate in any instrument made, given, passed, or executed before the registration date shall be read and construed as a reference to the company;
 - (b) all contracts, agreements, conveyances, mortgages, deeds, leases, licences, other instruments, undertakings and notices (whether or not in writing) entered into by, made with, given to or by, or addressed to the body corporate (whether alone or with any other person) before the registration date and subsisting immediately before the registration date shall, to the extent that they were previously binding on and enforceable by, against, or in favour of the body corporate, be binding on and enforceable by, against, or in favour of the company as fully and effectually in every respect as if, instead of the body corporate, the company had been the person by whom they were entered into, with whom they were made, or to or by whom they were given or addressed as the case may be;
 - (c) an instruction, order, direction, mandate, or authority given to the body corporate and subsisting immediately before the registration date shall be deemed to have been given to the company;

- (d) a security held by the body corporate as security for a debt or other liability to the body corporate incurred before the registration date shall be available to the company as security for the discharge of that debt or liability and, where the security extends to future or prospective debts or liabilities, shall be available as security for the discharge of debts or liabilities to the company incurred on or after the registration date, and, in relation to a security, the company, shall be entitled to all the rights and priorities (howsoever arising) and shall be subject to all liabilities to which the body corporate would have been entitled or subject if the body corporate had not become registered as a company;
- (e) all the rights and liabilities of the body corporate as bailor or bailee of documents or chattels shall be vested in and assumed by the company;
- (f) a negotiable instrument or order for payment of money which, before the registration date is drawn on or given to or accepted or endorsed by the body corporate or payable at a place of business of the body corporate shall, unless the context otherwise requires, have the same effect on and after the registration date as if it had been drawn on or given to or accepted or endorsed by the company instead of the body corporate or was payable at the place of business of the company;
- (g) nothing effected or authorised by this Part—
- (i) shall be regarded as placing the body corporate, or the company, or any other person, in breach of contract or confidence or as otherwise making any of them guilty of a civil wrong, or
- (ii) shall be regarded as giving rise to a right to any person to terminate or cancel any contract or arrangement or to accelerate the performance of any obligation, or
- (iii) shall be regarded as placing the body corporate or the company, or any other person in breach of any enactment or rule of law or contractual provision prohibiting, restricting or regulating the assignment or transfer of any property or the disclosure of any information or
- (iv) shall release any surety, wholly or in part, from any obligation or
- (v) shall invalidate or discharge any contract or security.

Explanatory Note

This head is new. The head's constituent parts, however, are drawn from the Companies Act, 1963 and Section 107 of the Building Societies Act, 1989. Subhead 1(a) represents an edited version of Section 340 of the Companies Act, 1963.

Subhead (1)(b) is new.

Subhead 1(e): Broadly speaking Section 32 of the Companies (Amendment) Act, 1983, which applies also to an entity registered as a plc under Section 18 of the 1983 Act, requires the prior valuation by an independent expert of non-cash asset acquisition transactions entered into by the plc in the two year period following registration as a plc with anyone who was a member on the date of registration. While this requirement is manageable in the case of a private limited company (where the 50 member limit applies) reregistering as a plc, it would not be appropriate to apply the provision to the Bank, which is already in substance a fully fledged listed plc with a very large and dispersed membership. The requirements could become applicable in a wide range of circumstances, e.g. a purchase of any sort of property by the Bank, simply because the seller happened to be a shareholder on its registration as a plc, a takeover offer or a buyback of shares by the Bank where a target shareholder or, as the case may be, Bank shareholder happened to be a shareholder on the date of registration. It would, in practice, be impossible for the Bank to police compliance with the provision.

Part B8 - Unregistered Companies and Joint Stock Companies

Subhead 1(f): None of Sections 26 or 28 to 31 of the 1983 Act (laying down various rules applicable to issues of shares by public limited companies, e.g., compulsory valuation provisions for non-cash issues) currently applies to the Bank. The purpose of Subhead 1(f) is to disapply those provisions in respect of share issues arising from commitments undertaken by the Bank before the passing of the registration resolution. The disapplication does not include Section 27 of the 1983 Act (no share issues at a discount), even though the Bank is not currently subject to Section 27. We are assuming that the Bank does not and will not have any commitments to issue shares at a discount.

Subhead 1(g): Section 20 of the 1983 Act does not currently apply to the Bank. The purpose of Subhead 1(g) is to disapply Section 20 in respect of pre-registration commitments undertaken by the Bank (e.g., any outstanding convertible shares or loans, warrants, options etc).

Subhead 1(h): Section 23 of the 1983 Act (shareholder pre-emption rights on new equity issues for cash) does not currently apply to the Bank. The purpose of Subhead 1(h) is to disapply Section 23 in respect of pre-registration commitments undertaken by the Bank (e.g., any outstanding convertible shares or loans, warrants, options etc).

Subhead 2 is a re-enactment of Section 337 of the Companies Act, 1963.

Subhead 3 is a re-enactment of Section 338 of the Companies Act, 1963.

Subhead 4 is a re-enactment of Section 339 of the Companies Act, 1963.

Subhead 5 is an adaptation of Section 107 of the Building Societies Act, 1989

Head 10 Commencement and power to make supplementary regulations

This Part shall come into operation on such day or days as, by order or orders made by the Minister under this head, may be fixed therefore either generally or with reference to any particular purpose or provision, and different days may be so fixed for different purposes and different provisions (including the application of Part B8, Head 9 to different enactments and statutory instruments specified in the Schedule and to different provisions of those enactments and instruments).

Explanatory Notes

This head is new.

The wording of this head is based on Section 13(2) of the ACC Bank Act, 2001.

Head 9 Consequent repeals

- (1) The enactments mentioned in column (2) of Part 1 of the Schedule are repealed to the extent mentioned in column (3) of that Part.(2).
- (2) The statutory instruments mentioned in column (2) of Part 2 of the Schedule are revoked to the extent mentioned in column (3) of that Part.

Explanatory Note

This head is new. It sets out a proposed mechanism that will synchronise repeals of existing law with the registration of an unregistered company as a PLC under this Part. The Head is subject to review

Chapter 4

Winding Up of Unregistered Company

Head 11 Meaning of unregistered companies.

For the purposes of this Part “unregistered company” shall include any trustee savings bank certified under the Trustee Savings Banks Acts, 1863 to 1958, any partnership whether limited or not any association and any company with the following exceptions—

- (a) a company as defined by Part A1, Head 2 [equivalent of Section 2 of the Companies Act, 1963];
- (b) a partnership association or company which consists of less than eight members and is not formed outside the State.

Explanatory Note

Re-enactment of Section 344 of the Companies Act, 1963.

Head 12 Winding-up of unregistered companies

- (1) Subject to the provisions of this Part, any unregistered company may be wound up under Part A11 and all the provisions of Part A11 relating to winding-up shall apply to an unregistered company with the exceptions and additions mentioned in this head.
- (2) The principal place of business in the State of an unregistered company shall, for all the purposes of the winding-up, be deemed to be the registered office of the company.
- (3) No unregistered company shall be wound up under this Bill voluntarily.
- (4) The circumstances in which an unregistered company may be wound up are as follows—
 - (a) if the company is dissolved or has ceased to carry on business or is carrying on business only for the purpose of winding-up its affairs;
 - (b) if the company is unable to pay its debts;

- (c) if the court is of the opinion that it is just and equitable that the company should be wound up.
- (5) An unregistered company shall, for the purposes of this Bill, be deemed to be unable to pay its debts—
 - (a) if a creditor, by assignment or otherwise, to whom the company is indebted in a sum exceeding [£1000] then due has served on the company, by leaving at its principal place of business in the State or by delivering to the secretary or some director or principal officer of the company or by serving otherwise in such manner as the court may approve or direct, a demand in writing requiring the company to pay the sum so due and the company has, for 3 weeks after the service of the demand, neglected to pay the amount or to secure or compound for it to the satisfaction of the creditor;
 - (b) if any action or other proceeding has been instituted against any member for any debt or demand due, or claimed to be due, from the company or from him in his character of member and notice in writing of the institution of the action or proceeding having been served on the company by leaving the same at its principal place of business in the State or by delivering it to the secretary or some director or principal officer of the company or by otherwise serving the same in such manner as the court may approve or direct, the company has not, within 10 days after service of the notice, paid, secured or compounded for the debt or demand or procured the action or proceeding to be stayed or indemnified, the defendant to his reasonable satisfaction against the action or proceeding and against all costs damages and expenses to be incurred by him by reason of the same;
 - (c) if in the State or in any country recognised by the Minister for the purposes of Part A11, Head 137 [equivalent of Section 250 of the Companies Act, 1963] execution or other process issued on a judgement decree or order obtained in any court in favour of a creditor against the company or any member thereof as such or any person authorised to be sued as nominal defendant on behalf of the company is returned unsatisfied;

- (d) if it is otherwise proved to the satisfaction of the court that the company is unable to pay its debts.
- (6) A petition for winding up a trustee savings bank may be presented by the Minister for Finance as well as by any person authorised under the other provisions of this Bill to present a petition for winding up a company.
- (7) Where a company incorporated outside the State which has been carrying on business in the State ceases to carry on business in the State it may be wound up as an unregistered company under this Part notwithstanding that it has been dissolved or otherwise ceased to exist as a company under or by virtue of the laws of the country under which it was incorporated.

Explanatory Note

This head is a re-enactment of Section 345 of the Companies Act, 1963.

The cross-references have been updated in accordance with the structure of the Bill. The reference to £50 in paragraph (5)(a) will be revised at a later date (this reference to £50 was changed to £1000 in Companies Act, 1990).

Head 13 Contributories in winding up of unregistered company.

- (1) In the event of an unregistered company being wound up, every person shall be deemed to be a contributory who is liable to pay or contribute to the payment of any debt or liability of the company or to pay or contribute to the payment of any sum for the adjustment of the rights of the members among themselves or to pay or contribute to the payment of the costs and expenses of winding up the company and every contributory shall be liable to contribute to the assets of the company, all sums due from him in respect of any such liability as aforesaid.
- (2) In the event of the death or bankruptcy of any contributory, the provisions of this Bill relating to the personal representatives of deceased contributories and to the assignees of bankrupt contributories respectively shall apply.

Explanatory Notes

Re-enactment of Section 346 of the Companies Act, 1963.

Head 14 Power of court to stay or restrain proceedings.

The provisions of this Bill relating to staying and restraining actions and proceedings against a company at any time after the presentation of a petition for winding-up and before the making of a winding-up order shall, in the case of an unregistered company where the application to stay or restrain is by a creditor, extend to actions and proceedings against any contributory of the company.

Explanatory Note

Re-enactment of Section 347 of the Companies Act, 1963

Head 15 Actions stayed on winding-up order.

Where an order has been made for winding up an unregistered company, no action or proceeding shall be proceeded with or commenced against any contributory of the company in respect of any debt of the company, except by leave of the court and subject to such terms as the court may impose.

Explanatory Note

Re-enactment of Section 348 of the Companies Act, 1963

Head 16 Provisions of [this Chapter] to be cumulative.

The provisions of this Chapter relating to unregistered companies shall be in addition to and not in restriction of any provisions hereinbefore contained in Part A11 relating to winding up companies by the court and the court or liquidator may exercise any powers or do any act in the case of unregistered companies which might be exercised or done by it or him in winding up companies formed and registered under this Bill.

Explanatory Note

Re-enactment of Section 349 of the Companies Act, 1963

Chapter 5

Application of Bill to Companies Formed or Registered under Former Acts

Note: *This Chapter restates verbatim the provisions of Part VIII of the 1963 Act. It may be necessary to modify the Heads of this Chapter after further consideration.*

Head 17 Application of Bill to companies formed and registered under former Companies Acts

- (1) Subject to Subhead (2), in the application of this Bill to existing companies, it shall apply in the same manner—
 - (a) in the case of a limited company, other than a company limited by guarantee, as if the company had been formed and registered under this Bill as a company limited by shares;
 - (b) in the case of a company limited by guarantee, as if the company had been formed and registered under this Bill as a company limited by guarantee; and
 - (c) in the case of a company other than a limited company, as if the company had been formed and registered under this Bill as an unlimited company.
- (2) Reference, express or implied, to the date of registration shall be construed as a reference to the date at which the company was registered under the Joint Stock Companies Act, 1862, the Companies (Consolidation) Act, 1908 or the Companies Acts, 1963 to 2006, as the case may be.

Explanatory Note

Restatement of Section 324 of the Companies Act, 1963.

Head 18 Application of Bill to companies registered but not formed under former Companies Acts

- (1) Subject to subhead (2), this Bill shall apply to every company registered (in a register kept in the State) but not formed under the Joint Stock Companies Acts, the Companies Act, 1862, the Companies (Consolidation) Act, 1908 or the Companies Acts, 1963 to 2006, in the same manner as it is in Chapter 6 declared to apply to companies registered but not formed under this Bill.
- (2) Reference, express or implied, to the date of registration shall be construed as a reference to the date at which the company was registered under the Joint Stock Companies Acts, the Companies Act, 1862, the Companies (Consolidation) Act, 1908, or the Companies Acts 1963 to 2006, as the case may be.

Explanatory Note

Restatement of Section 325 of the Companies Act, 1963.

Head 19 Application of Bill to unlimited companies re-registered as limited companies under former Companies Acts

- (1) Subject to Subhead (2), this Bill shall apply to every unlimited company registered (in a register kept in the State) as a limited company in pursuance of the Companies Act, 1879, or Section 57 of the Companies (Consolidation) Act, 1908, in the same manner as it applies to an unlimited company registered in pursuance of this Bill as a limited company.
- (2) Reference, express or implied, to the date of registration shall be construed as a reference to the date at which the company was registered as a limited company under the said Act of 1879 or the said Section 57 of the Companies (Consolidation) Act, 1908, as the case may be.

Explanatory Note

Restatement of Section 326 of the Companies Act, 1963.

Head 20 Provisions as to companies registered under Joint Stock Companies Acts

- (1) A company registered under the Joint Stock Companies Acts may cause its shares to be transferred in manner hitherto in use, or in such other manner as the company may direct.
- (2) The power of altering articles under Part B2, Head 12 [equivalent of Section 15 of the Companies Act, 1963] shall, in the case of an unlimited company formed and registered under the Joint Stock Companies Acts, extend to altering any regulations relating to the amount of capital or to its distribution into shares, notwithstanding that those regulations are contained in the memorandum.

Explanatory Note

Restatement of Section 327 of the Companies Act, 1963. This provision may be more appropriate to be included in Chapter 6 below, and may be moved there after further consideration.

Chapter 6

Registration of Joint Stock Companies under this Bill

Note: *This Chapter broadly restates the provisions of Part IX of the Companies Act 1963, but has been amended slightly so as to apply primarily to joint stock companies, as it is intended that other unregistered companies will be covered by the preceding Chapters of this Part.*

Head 21 Companies capable of being registered

- (1) With the exceptions and subject to the provisions contained in this head, any company registered under the Joint Stock Companies Acts may at any time register under this Bill as an unlimited company, or as a company limited by shares, or as a company limited by guarantee, and the registration shall not be invalid by reason that it has taken place with a view to the company's being wound up.
- (2) This head shall not apply to a company registered under the Companies Act, 1862, or the Companies (Consolidation) Act, 1908, or to a company which has not its registered office or principal place of business in the State.
- (3) A company having the liability of its members limited by statute or letters patent, and not being a joint stock company as hereinafter defined, shall not register in pursuance of this head.
- (4) A company, having the liability of its members limited by statute or letters patent, shall not register in pursuance of this head as an unlimited company or as a company limited by guarantee.
- (5) A company that is not a joint stock company as hereinafter defined, shall not register in pursuance of this head as a company limited by shares.
- (6) A company shall not register in pursuance of this head without the assent of a majority of such of its members as are present in person or by proxy at a general meeting summoned for the purpose.

- (7) Where a company, not having the liability of its members limited by statute or letters patent, is about to register as a limited company, the majority required to assent as aforesaid shall consist of not less than three-fourths of the members present in person or by proxy at the meeting.
- (8) Where a company is about to register as a company limited by guarantee, the assent to its being so registered shall be accompanied by a resolution declaring that each member undertakes to contribute to the assets of the company, in the event of its being wound up while he is a member, or within one year after he ceases to be a member, for payment of the debts and liabilities of the company contracted before he ceased to be a member, and of the costs and expenses of winding-up and for the adjustment of the rights of the contributories among themselves, such amount as may be required, not exceeding a specified amount.
- (9) In computing any majority under this head when a poll is demanded, regard shall be had to the number of votes to which each member is entitled according to the regulations of the company.

Explanatory Note

Restatement of Section 328 of the Companies Act, 1963

Head 22 Definition of joint stock company

For the purposes of this Chapter, as far as relates to registration of companies as companies limited by shares, a joint stock company means a company having a permanent paid up or nominal share capital of fixed amount divided into shares, also of fixed amount, or held and transferable as stock, or divided and held partly in one way and partly in the other, and formed on the principle of having for its members the holders of those shares or that stock, and no other persons, and such a company when registered with limited liability under this Bill shall be deemed to be a company limited by shares.

Explanatory Note

Restatement of Section 329 of the Companies Act, 1963.

Head 23 Requirements for registration of joint stock companies

Before the registration in pursuance of this Chapter of a joint stock company, there shall be delivered to the Registrar the following documents—

- (a) a list showing the names, addresses and occupations of all persons who on a day named in the list, not being more than 6 clear days before the day of registration, were members of the company, with the addition of the shares or stock held by them respectively, distinguishing in cases where the shares are numbered, each share by its number;
- (b) a copy of any statute, charter, letters patent, deed of settlement, contract of co-partnership or other instrument constituting or regulating the company; and
- (c) if the company is intended to be registered as a limited company, a statement specifying the following particulars—
 - (i) the nominal share capital of the company and the number of shares into which it is divided, or the amount of stock of which it consists,
 - (ii) the number of shares taken and the amount paid on each share,
 - (iii) the name of the company with the addition of the word “limited” or “teoranta” as the last word thereof, and
 - (iv) in the case of a company intended to be registered as a company limited by guarantee, the resolution declaring the amount of the guarantee.

Explanatory Note

Restatement of Section 330 of the Companies Act, 1963

Note: Section 331 of 1963 has not been restated here as it deals with companies which are not joint stock companies.

Head 24 Verifications of lists of members and directors of company for purposes of registration

The lists of members and directors and any other particulars relating to the company required to be delivered to the Registrar shall be verified by a statutory declaration of any two or more directors or other principal officers of the company.

Explanatory Note

Restatement of Section 332 of the Companies Act, 1963.

Head 25 Registrar may require evidence as to nature of company

The Registrar may require such evidence as he thinks necessary for the purpose of satisfying himself whether any company proposing to be registered is or is not a joint stock company as hereinbefore defined.

Explanatory Note

Restatement of Section 333 of the Companies Act, 1963

Head 26 Change of name for purposes of Registration

- (1) Subject to Subhead (2), where the name of a company seeking registration under this Chapter is one by which it may not be so registered by reason of the name being, in the opinion of the Minister, undesirable, it may, with the approval of the Minister signified in writing, change its name with effect from its registration as aforesaid.
- (2) The like assent of the members of the company shall be required to the change of name as is by Part B8, Head 21 [equivalent of Section 328 of the Companies Act, 1963] required to the registration under this Bill.

Explanatory Note

Restatement of Section 334 of the Companies Act, 1963.

Head 27 Addition of “limited” or “teoranta” to name

- (1) Subject to Subhead (2), when a company registers in pursuance of this Chapter with limited liability, the word “limited” or “teoranta” shall form and be registered as part of its name.
- (2) Subhead (1) shall not be taken as excluding the operation of Part B3 Head7 or Part B4 Head, 8 [the equivalent of Section 24 of the Companies Act, 1963]

Explanatory Note

Restatement of Section 335 of the Companies, Act 1963.

Head 28 Certificate of registration of existing companies

On compliance with the requirements of this Chapter relating to registration, and on payment of such fees, if any, as are payable under the following provisions of this Bill, the Registrar shall certify under his hand that the company applying for registration is incorporated as a company under this Bill, and in the case of a limited company, that it is limited and thereupon the company shall be so incorporated.

Explanatory Note

Restatement of Section 336 of the Companies Act, 1963.

Head 29 Vesting of property on registration

All property, real and personal (including things in action) belonging to or vested in a company at the date of its registration in pursuance of this Chapter, shall on registration pass to and vest in the company as incorporated under this Bill for all the estate and interest of the company therein.

Explanatory Note

Restatement of Section 337 of the Companies Act, 1963.

Head 30 Saving for existing liabilities

Registration of a company in pursuance of this Chapter shall not affect the rights or liabilities of the company in respect of any debt or obligation incurred, or any contract entered into by, to, with or on behalf of the company before registration.

Explanatory Note

Restatement of section 338 of Companies Act 1963.

Head 31 Continuation of existing actions

- (1) Subject to Subhead (2), all actions and other legal proceedings which at the time of the registration of a company in pursuance of this Chapter are pending by or against the company, or the public officer or any member thereof, may be continued in the same manner as if the registration had not taken place.
- (2) Execution shall not issue against the effects of any individual member of the company on any judgement, decree or order obtained in any such action or proceeding, but in the event of the property and effects of the company being insufficient to satisfy the judgement, decree or order, an order may be obtained for winding up the company.

Explanatory Note

Restatement of Section 339 of the Companies Act, 1963.

Head 32 Effects of registration under this Part

- (1) When a company is registered in pursuance of this Part, Subheads (2) to (7) shall have effect.
- (2) All provisions contained in any statute or instrument constituting or regulating the company, including, in the case of a company registered as a company limited by guarantee, the resolution declaring the amount of the guarantee, shall be deemed to be conditions and regulations of the company, in the same manner and with the same incidents as if so much thereof as would, if the company had been formed under this Bill, have been required to be inserted in the memorandum, were contained in a registered memorandum, and the residue thereof were contained in registered articles.

Part B8 - Unregistered Companies and Joint Stock Companies

- (3) All the provisions of this Bill shall apply to the company and the members, contributories and creditors thereof, in the same manner in all respects as if it had been formed under this Bill, subject as follows—
- (a) Table A or *Tábla A* shall not apply unless adopted by special resolution;
 - (b) the provisions of this Bill relating to the numbering of shares shall not apply to any joint stock company whose shares are not numbered;
 - (c) subject to the provisions of this head, the company shall not have power to alter any provision contained in any statute relating to the company;
 - (d) subject to the provisions of this head, the company shall not have power without the sanction of the Minister, to alter any provision contained in any letters patent relating to the company;
 - (e) the company shall not have power to alter any provision contained in a charter or letters patent relating to the objects of the company;
 - (f) in the event of the company being wound up, every person shall be a contributory, in respect of the debts and liabilities of the company contracted before registration, who is liable to pay or contribute to the payment of any debt or liability of the company contracted before registration or to pay or contribute to the payment of any sum for the adjustment of the rights of the members among themselves in respect of any such debt or liability, or to pay or contribute to the payment of the costs and expenses of winding up the company, so far as relates to such debts or liabilities as aforesaid;
 - (g) in the event of the company being wound up, every contributory shall be liable to contribute to the assets of the company, in the course of the winding-up, all sums due from him in respect of any such liability as aforesaid, and in the event of the death or bankruptcy of any contributory, the provisions of this Bill relating to the personal representatives of deceased contributories and to the assignees of bankrupt contributories shall apply.
- (4) The provisions of this Bill relating to—
- (a) the registration of an unlimited company as limited,
 - (b) the powers of an unlimited company on registration as a limited company to increase the nominal amount of its share capital and to provide that a portion of its share capital shall not be capable of being called up except in the event of winding-up;
 - (c) the power of a limited company to determine that a portion of its share capital shall not be capable of being called up except in the event of winding-up;
- shall apply notwithstanding any provisions contained in any statute, charter or other instrument constituting or regulating the company.
- (5) Nothing in this head shall authorise the company to alter any such provisions contained in any instrument constituting or regulating the company as would, if the company had originally been formed under this Bill, have been required to be contained in the memorandum and are not authorised to be altered by this Bill.
- (6) None of the provisions of this Bill (apart from those of Part A4, Head 72(4) and Part B4 39(4) [equivalent of Subsection (4) of Section 205 of the Companies Act, 1963]) shall derogate from any power of altering its constitution or regulations which may, by virtue of any statute or other instrument constituting or regulating the company, be vested in the company.
- (7) In this head, “instrument” includes deed of settlement, contract of co-partnership and letters patent.

Explanatory Note

Restatement of Section 340 of the Companies Act, 1963.

Head 33 Power to substitute memorandum and articles for deed of settlement

- (1) Subject to Subheads (2) to (4), a company registered in pursuance of this Chapter may, by special resolution, alter the form of its constitution by substituting a memorandum and articles for a deed of settlement.
- (2) The provisions of Part B2, Head 11 [equivalent of Section 10 of the Companies Act, 1963] relating to applications to the court for cancellation of alterations of the objects of a company and matters consequential on the passing of resolutions for such alterations shall, so far as applicable, apply to an alteration under this head with the following modifications—
 - (a) there shall be substituted for the printed copy of the altered memorandum, required to be delivered to the Registrar, a printed copy of the substituted memorandum and articles; and
 - (b) on the delivery to the Registrar of a printed copy of the substituted memorandum and articles or on the date when the alteration is no longer liable to be cancelled by order of the court, whichever last occurs, the substituted memorandum and articles shall apply to the company in the same manner as if it were a company registered under this Bill, with that memorandum and those articles, and the company's deed of settlement shall cease to apply to the company.
- (3) An alteration under this head may be made either with or without any alteration of the objects of the company under this Bill.
- (4) In this head, "deed of settlement" includes any contract of co-partnership or other instrument constituting or regulating the company, not being a statute, charter or letters patent.

Explanatory Note

Restatement of Section 341 of the Companies Act, 1963.

Head 34 Power of court to stay or restrain proceedings

The provisions of this Bill relating to staying and restraining actions and proceedings against a company at any time after the presentation of a petition for winding-up and before the making of a winding-up order shall, in the case of a company registered in pursuance of this Chapter, where the application to stay or restrain is by a creditor, extend to actions and proceedings against any contributory of the company.

Explanatory Note

Restatement of Section 342 of the Companies Act, 1963.

Head 35 Actions stayed on winding-up order

Where an order has been made for winding-up a company registered in pursuance of this Chapter, no action or proceeding shall be commenced or proceeded with against the company or any contributory of the company, in respect of any debt of the company except by leave of the court and subject to such terms as the court may impose.

Explanatory Note

Restatement of Section 343 of the Companies Act, 1963.

Part B9 – Investment Companies

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Part B9 - Investment Companies

Chapter 1

Preliminary and Interpretation

Head 1 Defined terms and expressions

[Part B2, Head 1(1), 1(2) apply]

(1) In this Part—

“the Bank” means the Central Bank and Financial Services Authority of Ireland;

“investment company” means a company to which this Part applies and “company” shall be construed accordingly;

“property” means real or personal property of whatever kind (including securities);

“the UCITS Regulations” means the European Communities (Undertakings for Collective Investment in Transferable Securities) Regulations, 2003 (S.I. No. 211 of 2003) as amended;

“management company” means a company designated by an investment company to undertake the management of the investment company;

“sub-fund” means a separate portfolio of assets maintained by an investment company in accordance with its articles;

“umbrella fund” means an investment company which has one or more sub-funds and which is authorised by the Bank pursuant to Part B9, Head 7 [equivalent of Section 256 of the Companies Act, 1990].

(2) For the purposes of the application by this Part of certain provisions of the UCITS Regulations to investment companies, the said provisions shall be construed as one with the Companies Acts.

Explanatory Note

Subheads 1 and 2 are restatements of Section 252 of the Companies Act, 1990, as amended by Section 22 of the Investment Funds, Companies and Miscellaneous Provisions Act, 2005.

The references to the Central Bank and the UCITS Regulations have been updated.

The definition of the Central Bank was removed from Section 252 of the 1990 Act by CBFSAI 2003 and inserted into Section 3 of the 1990 Act. Accordingly it will be necessary to check how Section 3 will be treated under the proposed legislation. Also, under the 1990 Act, the Bank is referred to throughout as “Central Bank” (unlike other Financial Services legislation which uses “the Bank”). The 2005 Act uses the term ‘the Bank’ so references in this part to CBFSAI have been standardised as ‘the Bank’.

Head 2 Interpretation of this Part

- (1) Part B2, including the provisions of Part 1 to 14 of Pillar A, as specified in Part B2, apply to investment companies subject to such amendments thereto or exclusions therefrom as are contained in this Part.
- (2) Part B2, Head 2, shall not apply to an investment company.
- (3) Part B2, Head 2(3), shall not apply to an investment company.

Explanatory Note

Part B2 applies generically to this Part unless the provisions are qualified because all investment companies are PLCs. Head 2 of Part B2 applies Pillar A unless individual provisions are similarly qualified in Part B2. Head 2(3) of Part B2 is the “anchor” section of the Societas Europaea. SEs cannot be constituted as investment companies.

Head 3 Adaptation of certain provisions of the UCITS Regulations

Regulations 14, 31, 63, 74(3), 85(2) to (9), and 98 to 105 of the UCITS Regulations shall apply to an investment company, or in the case of the said Regulation 74(3), such a company other than one to which Head 5 of Part B9 [equivalent of Section 253(2A)(a) of the Companies Act, 1990] applies, as they apply to the bodies to which those Regulations relate subject to the following modifications—

- (a) a reference in those Regulations to a term or expression specified in the second column of the Table to this head at any reference number shall be construed, where the context admits, as a reference to the term or expression specified in the third column of the said Table at that reference number; and
- (b) references to cognate terms or expressions in those Regulations shall be construed accordingly.

Ref. No (1)	Term or expression referred to in UCITS Regulations (2)	Construction of term or expression for purposes of this head (3)
1	"repurchase"	"purchase"
2	"these Regulations"	"Part B11 [Equivalent of Part XIII of the Companies Act, 1990]"
3	"UCITS"	"investment company"
4	"unit"	"share"
5	"unit-holder"	"shareholder"

Explanatory Note

Restatement of Section 258 of the Companies Act, 1990. The references to UCITS Regulations in Section 258 of the 1990 Act were references to the 1989 UCITS Regulations, which were replaced by S.I. 211 of 2003, with consequent renumbering of individual Regulations. A table of cross references to these specific UCITS Regulations is contained in Part 2 of Schedule 3 to the European Communities (Undertaking for Collective Investment in Transferable Securities)(Amendment No. 2) Regulations 2003, S.I. 497 of 2003, with which these references have been verified.

Chapter 2

Incorporation & Registration

Head 4 Way of forming an investment company

- (1) An investment company may be formed for any lawful purpose by any person subscribing to a constitution and complying with the registration requirements in this Bill.
- (2) A company may be registered as an investment company following -
 - (a) the reregistration as an investment company of a body corporate pursuant to Part B6, Head 2;
 - (b) the reregistration as a investment company of an SE pursuant to Part B6;
 - (c) merger of two or more investment companies pursuant to Part B9, Chapter 10;
 - (d) division of two or more investment companies pursuant to Part B9, Chapter 10;
 - (e) merger of one or more investment companies with one or more bodies corporate registered immediately before such continuance as a body corporate in another EU Member State pursuant to Part B9, Chapter 10.
- (2) The liability of its member or members shall be limited to the amount, if any, unpaid on the shares respectively held by him or them.
- (3) No investment company shall be formed as, or become, an investment company by guarantee and having a share capital.
- (4) An investment company shall not be formed and registered unless it appears to the Registrar that the company, when registered, will carry on an activity in the State.

Explanatory Note

This head is a modified version of Part B2, Head 3.

The CLRG is working on establishing a provision for forming each type of company. The head for 'Way of forming an investment company' may differ very little from Head 3 of B2, 'Way of forming a PLC.'

Part B2, Head 3, shall not apply to an investment company.

Head 5 The form of an investment company's constitution

- (1) Part B2, Head 4, applies.
- (2) The memorandum of association of an investment company shall, in respect of the share capital of the company, state in lieu of the matters specified in Part B2, Head 4(2)(d) [equivalent of Section 6 (4) of the Companies Act, 1963] —
 - (a) that the share capital of the company shall be equal to the value for the time being of the issued share capital of the company;
 - (b) the division of that share capital into a specified number of shares without assigning any par value thereto; and
 - (c) that the issued share capital of the company for the time being shall not be less than a minimum amount nor more than a maximum amount specified in the memorandum,

and the form of memorandum provided for in Part B2, Head 4 shall, as may be appropriate, have effect with respect to such company with the necessary modifications.
- (3) This Part applies to a company limited by shares (not being a company to which the UCITS Regulations apply)—
 - (a) the sole object of which is stated in its memorandum to be the collective investment of its funds in property, with the aim of spreading investment risk and giving members of the company the benefit of the results of the management of its funds; and
 - (b) the articles or memorandum of which provide—
 - (i) that the actual value of the paid up share capital of the company shall be at all times equal to the value of the assets of any kind of the company after the deduction of its liabilities, and

Part B9 - Investment Companies

- (ii) that the shares of the company shall, at the request of any of the holders thereof, be purchased by the company directly or indirectly out of the company's assets.
- (4) Notwithstanding Subhead (3)(b)(ii), this Part shall also apply to a company to which Subhead (3) otherwise applies, the articles or memorandum of which do not provide that the shares of the company shall, at the request of any holders thereof, be purchased in the manner therein provided, to the extent as may be approved and subject to such conditions as may be applied by the Bank.
- (5) For the purposes of Subhead (3)(b) (ii), action taken by a company to ensure that the stock exchange value of its shares does not deviate from its net asset value by more than a percentage specified in its articles (which deviation shall not be so specified as greater than 5 per cent) shall be regarded as the equivalent of purchase of its shares by the company.
- (6) The constitution of a company shall be regarded as providing for the matters referred to in paragraphs (a) and (b) of Subhead (3) notwithstanding the inclusion in the memorandum or articles with respect thereto of incidental or supplementary provisions.
- (7) A reference to the nominal value of an issued or allotted share in, or of the issued or allotted share capital of, a company limited by shares shall be construed, in the case of an investment company, as a reference to the value of the consideration for which the share or share capital (as the case may be) has been issued or allotted.

Explanatory Note

Amended restatement of Section 253 of the 1990 Act as amended by Section 54 of the Companies (Amendment) (no. 2) Act, 1999 and Section 80 of the Investment Intermediaries Act, 1995 with appropriate referencing to the heads of Part B2.

Head 6 Restriction on commencement of business

Part B2, Head 7 [equivalent of Section 6 of the Companies (Amendment) Act, 1983 shall not apply to an investment company.

Explanatory Note

This head is currently disappplied to an investment company by Section 260(3) of the 1990 Act.

[Part B2, Heads 8 to 13 apply]

Head 7 Authorisation by Bank

- (1) An investment company shall not carry on business in the State unless it has been authorised to do so by the Bank on the basis of criteria approved by the Minister.
- (2) A person shall not carry on business on behalf of an investment company, insofar as relates to the purchase or sale of the shares of the investment company, unless the investment company has been authorised in the manner referred to in Subhead (1).
- (3) The Bank shall not authorise an investment company to carry on business in the State unless the company has paid up share capital which, in the opinion of the Bank, will be sufficient to enable it to conduct its business effectively and meet its liabilities.
- (4) An application by an investment company for the authorisation referred to in Subhead(1) shall be made in writing to the Bank and contain such information as the Bank may specify for the purpose of determining the application (including such additional information as the Bank may specify in the course of determining the application).
- (5) Where the Bank proposes to grant an authorisation to an investment company under this head and the Bank is satisfied that the company will raise capital by providing facilities for the direct or indirect participation by the public in the profits and income of the company, the Bank shall, in granting the authorisation, designate the company as an investment company which may raise capital in that manner, and "designated company" in this head and Part B9, Head 8 [equivalent of Section 257 of the Companies Act, 1990] shall be construed accordingly.
- (6) In the event that a designated company does not promote the sale of its shares to the public within a period, not greater than six months, which shall be specified in the authorisation under this head, the company shall, on the expiry of the period so specified, be deemed to have ceased to be a designated company.

- (7) An investment company which is not a designated company shall not raise capital by providing facilities for the direct or indirect participation by the public in the profits and income of the company.
 - (8) A variable capital company incorporated outside the State for the purpose of providing facilities for the participation by the public in profits or income arising from the acquisition, holding, management or disposal of securities or any other property whatsoever, shall not sell or purchase shares of the company or make solicitation in respect of such sale or purchase except in accordance with the requirements of the Bank.
 - (9) A company incorporated outside the State which, if it were incorporated in the State, would be a company to which this Part applies shall not advertise or market its shares in any way in the State without the approval of the Bank, which approval may be subject to such conditions as the Bank considers appropriate and prudent for the purposes of the orderly and proper regulation of so much of the business of companies of that type as is conducted in the State.
- (2) Conditions imposed under Subhead (1) may be imposed generally, or by reference to particular classes of company or business (including, but not limited to, whether or not an investment company is a designated company), or by reference to any other matter the Bank considers appropriate and prudent for the purposes of the orderly and proper regulation of the business of investment companies.
 - (3) The power to impose conditions referred to in Subhead(1) shall include a power to impose such further conditions from time to time as the Bank considers appropriate and prudent for the purposes of the orderly and proper regulation of the business of investment companies.
 - (4) Without prejudice to the generality of Subheads (1), (2) and (3), conditions imposed by the Bank on an investment company may make provision for any or all of the following matters—
 - (a) the prudential requirements of the investment policies of the company;
 - (b) prospectuses and other information disseminated by the company;
 - (c) the vesting of the assets or specified assets of the company in a person nominated by the Bank with such of the powers or duties of a trustee with regard to the company as are specified by the Bank;
 - (d) such other supervisory and reporting requirements and conditions relating to its business as the Bank considers appropriate and prudent to impose on the company from time to time for the purposes referred to in the aforesaid subhead; and
 - (e) supervisory and reporting requirements and conditions relating to the business of a management company as the Bank considers appropriate or prudent to impose on the management from time to time.

Explanatory Note

This head is largely a restatement of Section 256 of the Companies Act, 1990, as amended by Section 54 of the Companies (Amendment) (No. 2) Act, 1999 and Section 35 and the Schedule. to CBFSAI Act, 2003. Subhead (8) is being amended to take account of the implementation of the Prospectus Directive, in the context of closed-ended investment companies, and also to streamline the rules for inward marketing of investment companies with those which apply under the Unit Trusts Act, 1990. The wording mirrors, with appropriate modification, the wording of Section 9 of the Unit Trusts Act, 1990.

Head 8 Powers of Bank

- (1) Notwithstanding any other powers which may be available to the Bank under any other enactment, order or regulation, the Bank may impose such conditions for the granting of an authorisation to a company under Part B9, Head 7, [equivalent of Section 256 of the Companies Act, 1990] as it considers appropriate and prudent for the purposes of the orderly and proper regulation of the business of investment companies.
- (5) A company shall comply with any conditions relating to its authorisation or business imposed by the Bank.

Explanatory Note

Restatement of Section 257 of the Companies Act, 1990, as amended by Section 26 of the Investment Funds, Companies and Miscellaneous Provisions Act, 2005.

Head 9 Default of investment company or failure in performance of its investments.

An authorisation by the Bank under Part B9, Head 7 [equivalent of Section 256 of the Companies Act 1990] of an investment company shall not constitute a warranty by the Bank as to the creditworthiness or financial standing of that company and the Bank shall not be liable by virtue of that authorisation or by reason of its exercise of the functions conferred on it by this Part (or any regulations made under this Part) in relation to investment companies for any default of the company unless the Bank acted in bad faith in exercising such functions.

Explanatory Note

Restatement of Section 259 of the Companies Act, 1990.

Chapter 3

Share Capital

Head 10 Authorised share capital

The term 'authorised minimum' as defined in Part B2, Head 1(1) [equivalent of Section 19 of the Companies (Amendment) Act, 1983] shall not apply to an investment company.

Explanatory Note

This head is currently disapplied to an investment company by Section 260(3) of the Companies Act, 1990

Head 11 Power to allot and pre-emption rights

Part B2, Head 14 (2) shall not apply to an investment company.

Explanatory Note

Section 20 of Companies (Amendment) Act, 1983 provides for the authority of directors to allot shares to be prescribed by GM or in articles. The authority must state the maximum number of shares which may be allotted and the date on which the authority will expire (not more than 5 years) - Section 20(3). Section 20(4) provides for shareholder approval of renewal of authority where it has expired.

Under Sections of the Section 260(3) of the Companies Act, 1990, these provisions are disapplied for the purposes of investment companies. Part B2, Head 14 (2) re-enacts Section 260(3) and therefore has been disapplied by this head.

[Part B2, Head 14 (1) applies]

Head 12 Document containing offer to state whether shares will be allotted where issue not fully subscribed

Part B2, Head 106 [equivalent of Section 22 of the Companies (Amendment) Act, 1983] shall not apply to an investment company.

Explanatory Note

This head is currently disapplied to an investment company by Section 260(3) of the Companies Act, 1990.

Head 13 Allotment

Part B2, Head 105 [equivalent of Section 53 of the Companies Act, 1963] and Part A3 Head 5 (12) [equivalent of Section 58 of the Companies Act, 1963] shall not apply to an investment company.

Explanatory Note

Restatement. These heads are currently disapplied to an investment company by Section 260(2) of the Companies Act, 1990.

Head 14 Pre-emption rights

Part A3, Head 5 [equivalent of Section, 23-25 of the Companies (Amendment) Act, 1983] shall not apply to an investment company.

Explanatory Note

Restatement. These provisions are currently disapplied to an investment company by Section 260(3) of the Companies Act, 1990

[Part B2, Heads 17 to 20 apply]

Head 15 Experts' reports on non-cash consideration

Part B2, Heads 21 to 24 [equivalents of Sections 30-33 of the Companies (Amendment) Act, 1983] shall not apply to an investment company.

Explanatory Note

Restatement. These provisions are currently disapplied to an investment company by Section 260(3) of the Companies Act, 1990.

[Part B2, Heads 25 to 31 apply]

Head 16 Financial assistance

Part B2, Head 33 [equivalent of Sections 60 of the Companies Act, 1963] shall not apply to an investment company.

Explanatory Note

Restatement of Section 260(2) of the Companies Act, 1990.

Part B9 - Investment Companies

[Part B2, Heads 33 and 34 apply]

Head 17 Disclosure of interests in shares

Part B2, Head 36 [equivalent of Sections 53 and 64 of the Companies Act, 1990] shall not apply to an interest of a person subsisting by virtue of his holding units in an investment company.

Explanatory Note

This refers to Part B2, Head 36, as being the equivalent of Section 53 of the 1990 Act (Disclosure of Director's interest). However, Part B2, Head 36 relates to disclosure of major shareholdings, not specifically by directors.

It is not proposed to change the fundamental position relating to major shareholdings in investment companies, although a proposal to clarify the position regarding indirect interests in underlying (investee) companies may be submitted by the IFSC Funds Legislative Sub-group.

Head 33(4)(b) of Part A5 amends Section 55 of the 1990 Act by including an interest in a Part XIII Company in the list of interests to be disregarded for the purposes of Section 54 and Sections 56 to 58 of that Act. This is the provision which gives effect to the Review Group's recommendation at 16.8.7. In view of the fact that provisions relating to investment companies are to be contained, to the extent possible, in Part B9, it may be desirable to move sub-paragraph (4)(b)(i) of Head 33 of Part A5 to Part B9, as a separate head.

Head 18 Enforcement Provisions

Part B2, Head 37, shall not apply to an investment company.

Explanatory Note

Restatement. Currently disapplied by Section 260(5) of the Companies Act, 1990.

Head 19 Agreement to require interests in a PLC

Part B2, Head 38 shall not apply to an investment company.

Explanatory Note

Restatement. Currently disapplied by Section 260(5) of the Companies Act, 1990.

Head 20 Obligations of Disclosure arising under Part B2, Head 39 [equivalent of Section 73 of the Companies Act, 1990]

Part B2, Head 39 shall not apply to an investment company.

Explanatory Note

Restatement. Head 39 of Part B2 is a restatement of Section 74 of the Companies Act, 1990 which is currently disapplied from investment companies by Section 260(3) of the Companies Act, 1990.

Head 21 Obligations of Persons acting together to keep each other informed

Part B2, Head 39 shall not apply to an investment company.

Explanatory Note

Restatement. Head 39 of Part B2 is a restatement of Section 75 of the Companies Act, 1990 which is currently disapplied from investment companies by Section 260(5) of the Companies Act, 1990.

Head 22 Interest in shares by attribution

Part B2, Head 37 shall not apply to an investment company.

Explanatory Note

Restatement. Head 37 of Part B2 is a restatement of Section 76 of the Companies Act, 1990 which is currently disapplied from investment companies by Section 260(3) of the Companies Act, 1990.

Head 23 Interest in shares which are to be notified

Part B2, Head 38, shall not apply to an investment company.

Explanatory Note

Restatement. Head 38 of Part B2 is a restatement of Section 77 of the Companies Act, 1990 which is currently disapplied from investment companies by Section 260(3) of the Companies Act, 1990.

Head 24 Register of interests in shares

Part B2, Head 40, shall not apply to an investment company.

Explanatory Note

Restatement. Head 39 of Part B2 is a restatement of Section 80 of the Companies Act, 1990 which is currently disapplied from investment companies by Section 260(3) of the Companies Act, 1990.

Head 25 Company investigations

Part B2, Head 42, shall not apply to an investment company.

Explanatory Note

Restatement. Head 42 of Part B2 is a restatement of Section 81 of the Companies Act, 1990 which is currently disapplied from investment companies by Section 260(3) of the Companies Act, 1990.

Head 26 Registration of interest disclosed under Part B2, Head 42 [equivalent of Section 81 of the Companies Act, 1990]

Part B2, Head 43, shall not apply to an investment company.

Explanatory Note

Restatement. Head 43 of Part B2 is a restatement of Section 82 of the Companies Act, 1990 which is currently disapplied from investment companies by Section 260(3) of the Companies Act, 1990.

Head 27 Company Investigations on requisitions by members

Part B2, Head 44, shall not apply to an investment company.

Explanatory Note

Restatement. Head 44 of Part B2 is a restatement of Section 83 of the Companies Act, 1990 which is currently disapplied from investment companies by Section 260(3) of the Companies Act, 1990.

Head 28 Company Report to members

Part B2, Head 45, shall not apply to an investment company.

Explanatory Note

Restatement. Head 45 of Part B2 is a restatement of Section 84 of the Companies Act, 1990 which is currently disapplied from investment companies by Section 260(3) of the Companies Act, 1990.

Head 29 Penalty for failure to provide information

Part B2, Head 46, shall not apply to an investment company.

Explanatory Note

Restatement. Head 46 of Part B2 is a restatement of Section 85 of the Companies Act, 1990 which is currently disapplied from investment companies by Section 260(3) of Companies Act, 1990.

Head 30 Removal of entries from register

Part B2, Head 47, shall not apply to an investment company.

Explanatory Note

Restatement. Head 47 of Part B2 is a restatement of Section 86 of the Companies Act, 1990 which is currently disapplied from investment companies by Section 260(3) of the Companies Act, 1990.

Head 31 Entries, when not to be removed

Part B2, Head 48, shall not apply to an investment company.

Explanatory Note

Restatement. Head 48 of Part B2 is a restatement of Section 87 of the Companies Act, 1990 which is currently disapplied from investment companies by Section 260(3) of the Companies Act, 1990.

Part B9 - Investment Companies

Head 32 Inspection of register and reports

Part B2, Head 49, shall not apply to an investment company.

Explanatory Note

Restatement. Head 49 of Part B2 is a restatement of Section 88 of the Companies Act, 1990 which is currently disapplied from investment companies by Section 260(3) of the Companies Act, 1990.

[Part B2, Head 50 applies]

Head 33 Restriction on distribution of assets

Part B2, Head 57, shall not apply to an investment company.

Explanatory Note

Restatement. Head 57 of Part B2 is the equivalent of Section 46 of the Companies (Amendment) Act, 1983 which is currently disapplied from investment companies by Section 260(3) of the Companies Act, 1990.

Head 34 Relevant accounts

Part B2, Head 58, shall not apply to an investment company.

Explanatory Note

Restatement. Head 58 of Part B2 is the equivalent of Sections 6 and 49 of the Companies (Amendment) Act, 1983 which is currently disapplied from investment companies by Section 260(3) of the Companies Act, 1990.

Head 35 Limitation on reduction by a PLC of its allotted share capital

Part A3, Head 17, shall not apply to an investment company.

Explanatory Note

Restatement. Head 17 of Part A3 is the equivalent of Section 72 of the Companies Act, 1963 which is currently disapplied from investment companies by Section 260(2) of Companies Act, 1990.

Head 36 Power of company to purchase own shares.

- (1) Subject to Subhead (2), the purchase by an investment company of its own shares shall be on such terms and in such manner as may be provided by its articles.
- (2) An investment company shall not purchase its own shares, for the purposes referred to in Part B9, Head 5 (3) (b) (ii) [equivalent of Section 253(2)(b)(ii) of the Companies Act, 1990], unless they are fully paid, but nothing in this subhead shall prevent a purchase being made in accordance with Part B9, Head 37(3) [equivalent of Section 255(3) of the Companies Act, 1990, as amended by Section 24 of the Investment Funds, Companies and Miscellaneous Provisions Act, 2005.]
- (3) For the avoidance of doubt, nothing in the Companies Acts shall require an investment company to create any reserve account.
- (4) Part A3, Head 15 [equivalent of Section 60 of the Companies Act, 1963], Head 25 [equivalent of Section 69 of the Companies Act, 1963], Head 26 [equivalent of Section 70 of the Companies Act, 1963], Head 17 [equivalent of Section 72 of the Companies Act, 1963] and Head 36 [equivalent of Section 41 of the Companies (Amendment) Act, 1983] shall not apply to an investment company.

Explanatory Note

Restatement of Section 254 of the Companies Act, 1990, as amended by Section 23 of the Investment Funds, Companies and Miscellaneous Provisions Act, 2005.

Subhead (4) – these provisions are currently disapplied by Section 260(2) and (3) of the Companies Act, 1963.

Head 37 Treatment of purchased shares

- (1) Shares of an investment company which have been purchased by the company shall be cancelled and the amount of the company's issued share capital shall be reduced by the amount of the consideration paid by the company for the purchase of the shares.

(2)

(a) Where a company has purchased or is about to purchase any of its own shares, it shall have the power to issue an equal number of shares in place of those purchased and for the purposes of Section 68 of the Finance Act, 1973, the issue of those replacement shares shall constitute a chargeable transaction if, but only if, the actual value of the shares so issued exceeds the actual value of the shares purchased at the date of their purchase and, where the issue of shares does constitute a chargeable transaction for those purposes, the amount on which stamp duty on the relevant statement relating to that transaction is chargeable under Section 69 of the Finance Act, 1973, shall be the difference between—

- (i) the amount on which the duty would be so chargeable if the shares had not been issued in place of shares purchased under this head, and
- (ii) the value of the shares purchased at the date of their purchase.

(b) Where new shares are issued before the purchase of the old shares, the new shares shall not, so far as relates to stamp duty, be deemed to have been issued in pursuance of paragraph (a) unless the old shares are purchased within one month after the issue of the new shares.

(3) Notwithstanding Subhead (1), an umbrella fund may, for the account of any of its sub-funds, and in accordance with conditions imposed by the Bank pursuant to Part B9, Head 8 [equivalent of Section 257 of the Companies Act 1990], acquire by subscription or transfer for consideration, shares of any class or classes, howsoever described, representing other sub-funds of the same umbrella fund provided that the acquisition is for a purpose otherwise than that provided for in Part B9, Head 5 (3) (b) (ii) [equivalent of Section 253(2)(b)(ii) of the Companies Act, 1990].

Explanatory Note

Restatement of Section 255 of the Companies Act, 1990, as amended by Section 24 of the Investment Funds, Companies and Miscellaneous Provisions Act, 2005.

Query: For Parliamentary Counsel – does term chargeable transaction need to be defined or definite link to Revenue law? Section 117 Stamp Duties Consolidation Act, 1978.

Head 38 Acquisition of own shares and shares in holding company

Part A3, Heads 38 to 48 [equivalent of Part XI of the Companies Act, 1990] shall not apply to an investment company.

Explanatory Note

These provisions are currently disapplied to an investment company by Section 260(5) of the Companies Act, 1990.

Chapter 4

Distribution by an Investment Company

Head 39 Distribution of Profits

Part A3, Heads 49 to 55, shall not apply to an investment company.

Explanatory Note

These provisions are currently disapplied to an investment company by Section 260(3) of the Companies Act, 1990.

Head 40 Other distributions of investment companies

- (1) Subject to the following provisions of this head, an investment company may also make a distribution at any time out of its accumulated, realised revenue profits, so far as not previously utilised by distribution or capitalisation, less its accumulated revenue losses (whether realised or unrealised), so far as not previously written off in a reduction or reorganisation of capital duly made—
 - (a) if at that time the amount of its assets is at least equal to one and a half times the aggregate of its liabilities; and
 - (b) if, and to the extent that, the distribution does not reduce that amount to less than one and a half times that aggregate.
- (2) In Subhead (1) “liabilities” includes any provision (within the meaning of Part A6) except to the extent that that provision is taken into account for the purposes of that subhead in calculating the value of any asset of the company in question, and Part B2, Head 57 [equivalent of Section 46(4) of the Companies Act, 1983] shall apply for those purposes as it applies for the purposes of that head.
- (3) In this Part “investment company” means a public limited company which has given notice in writing (which has not been revoked) to the Registrar of its intention to carry on business as an investment company (the “requisite notice”) and has, since the date of that notice complied with the requirements set out in Subhead (4).
 - (4) The requirements referred to in subhead (3) are—
 - (a) that the business of the company consists of investing its funds mainly in securities, with the aim of spreading investment risk and giving members of the company the benefit of the results of the management of its funds;
 - (b) that none of the company’s holdings in companies other than companies which are for the time being investment companies represents more than 15 per cent by value of the investing company’s investment;
 - (c) that distribution of the company’s capital profits is prohibited by its memorandum or articles of association;
 - (d) that the company has not retained, otherwise than in compliance with this Part, in respect of any financial year, more than 15 per cent. of the income it derives from securities.
 - (5) An investment company may not make a distribution by virtue of Subhead (1) unless its shares are listed on a recognised stock exchange and, during the period beginning with the first day of the financial year immediately preceding the financial year in which the proposed distribution is to be made or, where the distribution is proposed to be made during the company’s first financial year, the first day of that financial year and ending with the date of the distribution (whether or not any part of those financial years falls before the appointed day), it has not—
 - (a) distributed any of its capital profits; or
 - (b) applied any unrealised profits or any capital profits (realised or unrealised) in paying up debentures or any amounts unpaid on any of its issued shares.
 - (6) An investment company may not make a distribution by virtue of Subhead (1) unless the company gave the requisite notice—
 - (a) before the beginning of the appropriate period referred to in Subhead (5); or
 - (b) where that period began before the appointed day, as soon as may be reasonably practicable after the appointed day; or

- (c) where the company was incorporated on or after the appointed day, as soon as may be reasonably practicable after the date of its incorporation.
- (7) A notice by a company to the Registrar under Subhead (3) may be revoked at any time by the company on giving notice to the Registrar that it no longer wishes to be an investment company within the meaning of this head and, on giving such notice, the company shall cease to be such an investment company.
- (8) In determining capital and revenue profits and losses for the purposes of this head an asset, which is not a fixed asset or a current asset, shall be treated as a fixed asset.
- (9) An investment company shall include the expression "investment company" on its letters and order forms.
- (10) Where a company fails to comply with Subhead (9), the company and every officer of the company who is in default shall be guilty of a category three offence
- (11) Proceedings in relation to an offence under this head may be brought and prosecuted by the Registrar.
- (12) For the purposes of paragraph (b) of Subhead (4)—
- (a) "holding" means the shares or securities (whether of one class or more than one class) held in any one company;
- (b) holdings in companies which are members of a group (whether or not including the investing company) and are not excluded from the said paragraph (b) shall be treated as holdings in a single company;
- (c) where the investing company is a member of a group, money owed to it by another member of the group shall be treated as a security of the latter held by the investing company and accordingly as, or as part of, the holding of the investing company in the company owing the money, and for the purposes of this subhead, "group" means a company and all companies which are its subsidiaries within the meaning of Part A1, Head 6(1) [equivalent of Section 155 of the Companies Act, 1963].

Explanatory Note

Restatement of Section 47 of the Companies (Amendment) Act, 1983.

CRO have confirmed that no such companies are registered with them under Subhead (3).

Briefing:

General

Article 15(4) of the Directive, by way of derogation from the provisions of Art 15(1) to (3) which are given expression in Sections 45 and 46, permits "investment companies with fixed capital" to be treated on a different basis from other public company as far as dividend declarations are concerned. This section takes advantage of this permitted derogation. To all intents and purposes, the investment companies referred to in Article 15 of the Directive are equivalent to investment trust companies as defined in Section 79(7) of the Corporation Tax Act, 1976 and recognised by the Stock Exchange as a special entity. The essential features of an investment company stipulated by the Directive are

- (i) that the business of the company consists of investing its funds mainly in securities with the aim of spreading investment risks and giving members of the company the benefit of the results of the management of its funds,*
- (ii) that the expression "investment company" is included on its documents,*
- (iii) that it offers its shares for subscription by the public.*

In formulating the provision it is thought desirable to insert other criteria for such companies which reflect rules contained in the Stock Exchange Yellow Book (Admission of securities to listing). These are :-

- (i) That no one of the company's holdings in companies other than investment companies represents more than 15 per cent by value of its investments,*
- (ii) That the distribution of capital profits is prohibited by the company's Memorandum or Articles of Association,*
- (iii) That the company does not retain more than 15 per cent of the income it derives from securities,*

(iv) That the company has its shares listed on the Stock Exchange (and accordingly, complies with the conditions in Chapter 9 of the Stock Exchange Yellow Book).

Moreover, it is also being provided that such a company should notify its intention to carry on business as an investment company. There is no investment company which fits that definition at present but there are, however, other forms of investment companies. This section provides that the derogation allowed by the Directive can be applied to either new companies, or existing companies which change their form to meet the criteria set out. The central feature of this section is the option which it gives to such investment companies to distribute their profits either under the rules set out in Sections 45 and 46 or under the separate rules set out in Subsection (1) of this Section. The distribution option in this section reflects a fear which arose during the negotiation of the Directive that the activities of investment companies with a fixed capital could be unduly jeopardised by the general thrust of the restrictions in the Directive on the distribution of profits. Accordingly, the Community decided to introduce special rules with regard to the distribution of dividends of investment companies. The principal reason for this was that it was felt only fair that such companies should be allowed to pass on dividends received to their shareholders, as their essential function is portfolio management, and this might prove impossible if there has been a decline in the value of some of the investment company's holdings. Such a decline might entail that the investment company's net assets were below its paid-up share capital and undistributable reserves for the purposes of Section 46. In addition, the requirements for investor protection were seen to be slightly different in this situation as, primarily, the only liabilities that such companies have is the money borrowed to make investments.

Subsection (1)

This subsection makes statutory provision for the derogation in respect of the distribution of profits by investment companies provided for in Article 15.4 of the Second Directive.

Being public limited companies and this retirement is specified in Subsection(3)— investment companies are, of course, subject to the provisions of Section 46. Accordingly, by virtue of Sections 45 and 46 taken together, an investment company may make a distribution at any time out of its accumulated realised revenue and capital profits so far as not previously utilised by distribution or capitalisation less its accumulated realised revenue and capital losses so far as not written off in a reduction or reorganisation of capital provided that at that time the amount of its net assets is not less than the aggregate of its called up share capital and its undistributable reserves; and to the extent that the distribution does not reduce the amount of its assets to less than that aggregate. The option available to investment companies under this subsection is that they may also, i.e. as an alternative, make a distribution at any time from accumulated realised revenue profits so far as not previously utilised by distribution or capitalisation, less accumulated revenue losses (whether realised or unrealised) insofar as not previously written off in a reduction or reorganisation of capital duly made:-

- (a) if at that time the amount of assets is at least equal to 1½ times the aggregate of liabilities; and
- (b) if, and to the extent that, the distribution does not reduce that amount to less than 1½ times that aggregate.

The central feature of this approach is that regard is only had to revenue gains and losses. Moreover, in determining the company's financial margin of safety, for purposes of this provision regard is had to liabilities and not share capital and undistributable reserves.

It should be noted, finally, that the arrangement in this subsection is more restrictive in some senses than the general distribution provisions for public limited companies under sections 45 and 46. This is so because:

- Under this subsection only net realised revenue profits are distributable and,

- The asset ratio requires that assets must be maintained at or above 1½ times liabilities (whereas for public limited companies generally under Section 46 net assets must be maintained at a level equal to the aggregate of called-up share capital and undistributable reserves). This section takes account of the nature of the activities of investment companies.

It is recognised that the provisions in this section are as stringent but since there are no public investment companies as defined in existence no particular entity is affected. If such public companies were to develop it is only proper having regard to the nature of their activities that the distribution derogation be applied with some stringency.

Subsection (2)

This subsection defines “liabilities” for the purposes of calculating the ratio set out in Subsection (1). The definition of liabilities includes any “provision” within the meaning of the Sixth Schedule but excludes the amount of any provision taken into account in the calculation of the value of an asset. This is to avoid doubt by catering for differences in approach in balance sheets where, for example, one company might list its assets at cost and show a corresponding entry for depreciation under a liability heading, while another company would list its assets in the balance sheet at their net book value. The inclusion of uncalled share capital as an asset for the purposes of the calculation in Subsection (1) is prohibited by the application of Subsection (4) of Section 46 to this section.

Subsection (3)

This subsection defines “investment company” as a public limited company which has given the requisite notice in writing (which has not been revoked) to the registrar of its intention to carry on business as an investment company and has since the date of that notice complied with the requirements set out in Subsection (4) following. An investment company must fulfil certain requirements to have its status recognised as such for the purposes of this section. In brief, these relate to:

- (i) the nature of its business,*
- (ii) the spread of its holdings,*
- (iii) prohibition of the distribution of capital profits,*

- (iv) retention of income from securities,*
- (v) listing of the company on the stock exchange,*
- (vi) the use of the expression “investment company” on its letters and order forms.*

[The briefing material on Subsections (4), (5) and (9) of this section expands further on the rationale for the above requirements.] This subsection also defines the “requisite notice” for the purposes of Subsection (6).

Chapter 5

Uncertificated Securities

[Chapter applies as per PLC – Heads 60 to 61 of Part B2 apply]

Chapter 6

Corporate Governance

[Part B2, Heads 63 to 68 apply]

Head 41 Inspection of register of members

Part A4, Head 38 [equivalent of Section 119 of the Companies Act, 1963] shall not apply to an investment company.

Explanatory Note

Section 119 is currently disapplied by Section 260 (2) of the Companies Act, 1990.

Head 42 Audit Committees

Part A4 Head 34 [equivalent of Section 205B of the Companies Act, 1990] shall not apply to an investment company.

Chapter 7

Duties of Directors and Other Officers

Head 43 Obligation to convene extraordinary general meeting in event of serious loss of capital

Part B2, Head 67 [equivalent of Section 40 of the Companies (Amendment) Act, 1983] shall not apply to an investment company.

Explanatory Note

Section 40 of the Companies Act, 1983 is expressly disappplied to an investment company by Section 260(3) of the Companies Act, 1990 – no requirement for an investment company to convene an EGM in event of serious loss of capital.

[Part B2, Heads 68 and 69, apply]

Head 44 Directors' Compliance Statement

Part A5, Head 7 shall not apply to an investment company.

Explanatory Note

Part A5, Head 7 is an amended re-enactment of Section 205E of the Companies Act, 1990 as inserted by Section 45 of the Companies (Auditing and Accounting) Act, 2003. The effect of disapplying Part A5, Head 7 under this head is that directors of an investment company are not required to make a directors' compliance statement.

Chapter 8

Accounts, Audits and Annual Return

Head 45 Annual Return

Part A6, Head 52 [equivalent of Section 125 of Companies Act, 1963] shall not apply to an investment company.

Explanatory Note

Restatement: Section 119 is currently disapplied by Section 260(2) of the Companies Act, 1990.

Head 46 Information to be included in directors' report regarding acquisition by company of own shares.

Part A6, Head 40 [equivalent of Section 14 of the Companies (Amendment) Act, 1986] shall not apply to an investment company.

Explanatory Note

Section 14 is currently disapplied by Section 260(4) of the Companies Act, 1990.

Head 47 Application of Part A6, Head 12 [equivalent of Section 148 of the Companies Act, 1963]

(1) Notwithstanding Part A6 Head 12(3) [equivalent of Section 148(2) of the Companies Act, 1963 (inserted by the European Communities (International Financial Reporting Standards and Miscellaneous Amendments) Regulations 2005 (S.I. No. 116 of 2005))] an investment company may, in respect of its individual accounts, opt to prepare those accounts in accordance with both of the following, namely—

- (a) an alternative body of accounting standards; and
- (b) Part A6 Head 14 [equivalent of Section 149 of the 1963 Act], as if the references in that Head A14 to international financial reporting standards were references to that alternative body of accounting standards.

(2) In the application of Subheads (4), (5) and (6) of Part A6 Head 12 [equivalent of Section 148 of the 1963 Act] to an investment company which has opted under Subhead (1) to prepare its accounts in accordance with an alternative body of accounting standards; and

- (a) the reference in that subhead (4) to international financial reporting standards shall be read as a reference to that alternative body of accounting standards, and
- (b) there shall be substituted for 'IFRS', in each place where it occurs in those Subheads (4), (5) and (6), 'ABAS' (which shall be read as referring to that alternative body of accounting standards).

(3) For the purposes of this head, accounts shall not be regarded as having been prepared in accordance with an alternative body of accounting standards unless the accounts concerned would, were they to have been prepared by a company or undertaking registered in the relevant jurisdiction, be regarded as having been prepared in accordance with those standards.

(4) In this head—

'alternative body of accounting standards' means standards that accounts of companies or undertakings must comply with that are laid down by such body or bodies having authority to lay down standards of that kind in—

- (a) United States of America;
- (b) Canada;
- (c) Japan; or
- (d) any other prescribed state or territory, as may be prescribed;

'relevant jurisdiction' means the state or territory in which the alternative body of accounting standards concerned have effect.

- (5) Before making regulations for the purposes of Subhead (4), the Minister—
- (a) shall consult with the Bank; and
 - (b) may consult with any other persons whom the Minister considers should be consulted.
- (6) If particular regulations for the purposes of Subhead (4) are proposed to be made at a time subsequent to [the commencement of Part 2 of the Companies (Auditing and Accounting) Act, 2003], then, before making those regulations, the Minister shall also consult with the Irish Auditing and Accounting Supervisory Authority.

Explanatory Note

Restatement of Section 28 of the Investment Funds, Companies and Miscellaneous Provisions Act, 2005.

Chapter 9

Debentures & Charges

[Part B2, Heads 84 and 85 apply]

Chapter 10

Reorganisations

[Part B2, Heads 86 and 87 apply]

Chapter 11

Strike-off and Restoration

[Part B2, Heads 88 and 89 apply].

Chapter 12

Winding-up

Head 48 Company may be required to contribute to related debts of a related company.

Part A11, Head 38 [equivalent of Section 140 of the Companies Act, 1990] (whether as regards a case in which the investment company is being wound up or a case in which it is a related company (within the meaning of that head) shall not apply to an investment company.

Explanatory Note

Restatement. This provision is currently disapplied to an investment company by Section 260(5) of the Companies Act, 1990.

Head 49 Circumstances in which company may be wound up by the court.

- (1) Part A11, Head 10 [equivalent of Section 213 of the Companies Act, 1963] will be amended by the addition of the following paragraph after paragraph (e) of that head:

If the court is of opinion that it is just and equitable that the company, being an investment company within the meaning of this Part [the equivalent of Part XIII of the Companies Act, 1990] or the European Communities (Undertakings for Collective Investment in Transferable Securities) Regulations 1989 (S.I. No.78 of 1989) should be wound up and the following conditions are complied with –

- (i) in the case of an investment company within the meaning of this Part [the equivalent of Part XIII of the Companies Act, 1990] –
- (l) the petition for such winding-up has been presented by the trustee of the company, that is to say, the person nominated by the Bank under Head 8(4)(c) of this Part [the equivalent of Section 257(4)(c) of the Companies Act, 1990] in respect of that company,

(ll) the said trustee has notified the investment company of its intention to resign as such trustee and six or more months have elapsed since the giving of that notification without a trustee having been appointed to replace it,

(III) the court, in considering the said petition, has regard to –

- (A) any conditions imposed under Head 8 of this Part [the equivalent of Section 257 of the Companies Act, 1990] in relation to the resignation from office of such a trustee and the replacement of it by another trustee, and
- (B) whether a winding-up would best serve the interests of shareholders in the company;

and

(IV) the petition for such winding-up has been served on the company (if any) discharging, in relation to the first-mentioned company, functions of a company referred to in conditions imposed under Head 8 of this Part [the equivalent of Section 257 of the Companies Act, 1990] as a “management company”;

and

- (ii) in the case of an investment company within the meaning of the European Communities (Undertakings for Collective Investment in Transferable Securities) Regulations, 1989, such conditions as the Minister may prescribe by regulations.”

Explanatory Note

This is a slightly amended re-enactment of paragraph (fa) of Section 213 of the Companies Act, 1963 as inserted by Section 93(b) of the Company Law Enforcement Act, 2001.

As Part A11 only applies to private companies, paragraph (fa) was excluded from the amended re-enactment of Section 213 re-enacted under Head 10 of Part A11. The purpose of this head, therefore, is to restore paragraph (fa) and maintain the effect of Section 213 as it applies to investment companies.

Head 50 Restoration by the court

The reference to “20 years” in Part A12, Head 10 (1) shall, in respect of the dissolution of an investment company or of a company to which the UCITS Regulations apply, be replaced by a reference to “2 years”.

Explanatory Note

This amendment is designed to improve the efficiency of the procedure for the dissolution of investment companies, both UCITS and non-UCITS. It is expected that the amended provision will facilitate the dissolution of investment companies by way of voluntary strike-off rather than by a members' voluntary winding-up, which should mean that the revocation of authorisation of an investment company can be completed by the Financial Regulator in a shorter period of time than would be the case if a liquidator was appointed.

Chapter 13

Compliance, Investigation and Enforcement

Head 51 Offences

Where a company contravenes—

- (a) any of the provisions of this Part; or
- (b) any regulations made in relation thereto (whether under this Part or under any other enactment); or
- (c) any condition in relation to its authorisation or business imposed by the Bank under Part B9, Head 8 [equivalent of Section 257 of the Companies Act, 1990],

the company and every officer thereof who is in default shall be guilty of an offence .

Explanatory Note

Restatement of Section 262 of the Companies Act, 1990.

Chapter 14

Regulatory and Advisory Bodies

Head 52 **Power to make supplementary necessary regulations.**

The Minister may make such regulations as he considers necessary for the purposes of giving full effect to the provisions of this Part.

Explanatory Note

Restatement of Section 261 of the Companies Act, 1990.

Chapter 15

Market Abuse

[Part B2, Heads 90 to 95 apply]

Chapter 16

Public Offers of Securities

Head 53 Disapplication of Chapter 13 of Part B2 to certain types of investment company

Part B2, Heads 96 to 112 shall not apply to the issue of securities in an investment company to which Part 9, Head 5(b)(ii) [equivalent of Section 253(2)(b)(ii) of the 1990 Act] applies.

Explanatory Note

The provisions relating to the offer of securities to the public provided for under Chapter 13 of Part B2 only apply to 'close –ended funds'. This head exempts open-ended non-UCITS investment companies from those provisions. [Query UCITS]

Chapter 17

Transparency Requirements
Regarding Issuers of Securities
Admitted to Trading on Certain
Markets

Head 54 Disapplication of Chapter 14 of Part B2 to certain types of investment company

Part B2, Heads 113-117 shall not apply to the issue of securities in an investment company to which Part B9, Head 5(3)(b)(ii) [equivalent of Section 253(2)(b)(ii) of the 1990 Act] applies.

Explanatory Note

The provisions relating to the transparency obligations imposed upon publicly quoted companies provided for under Chapter 14 of Part B2 only apply to 'close-ended funds'. This head exempts open-ended non-UCITS investment companies from those provisions. [Query UCITS]

Chapter 18

Umbrella Funds and Sub-Funds

Head 55 Segregated liability of investment company sub-funds

- (1) Notwithstanding any statutory provision or rule of law to the contrary, but subject to Subhead (2), any liability incurred on behalf of or attributable to any sub-fund of an umbrella fund shall be discharged solely out of the assets of that sub-fund, and no umbrella fund nor any director, receiver, examiner, liquidator, provisional liquidator or other person shall apply, nor be obliged to apply, the assets of any such subfund in satisfaction of any liability incurred on behalf of or attributable to any other sub-fund of the same umbrella fund, whether such liability was incurred before, on or after the date this head commences.
- (2) Subhead (1) shall not apply to an umbrella fund which was authorised and commenced trading prior to the date this head commences unless -
- (a) the members of the umbrella fund shall have resolved by special resolution that the provisions of Subhead (1) should apply to that umbrella fund; and
 - (b) the special resolution has taken effect in accordance with Subhead (4).
- (3) For the purposes of Subhead (2), an umbrella fund shall be deemed to have commenced to trade prior to the date this head commences if—
- (a) shares, other than the subscriber shares issued for the purposes of incorporation of the umbrella fund, were issued in any sub-fund of that umbrella fund prior to that commencement date and one or more of those shares remains in issue on that commencement date; or
 - (b) the umbrella fund, or any person acting on its behalf, entered into an agreement with a third party prior to that commencement date, which remains in force on that commencement date and pursuant to which the assets of any sub-fund may be applied in satisfaction of any liability incurred on behalf of or attributable to any other sub-fund of the same umbrella fund.
- (4) If—
- (a) no application to the court is made pursuant to Part B9, Head 57 [equivalent of Section 256C of the Companies Act, 1990], a special resolution passed pursuant to Subhead(2) shall take effect on the date on which such resolution is passed or the 31st day following the date of service of notice on creditors issued pursuant to Subhead (5)(b), whichever is the later; or
 - (b) an application is or applications are made to the court pursuant to Part B9, Head 57 [equivalent of Section 256C of the Companies Act, 1990], a special resolution pursuant to Subhead (2) shall not take effect until—
 - (i) in the event that all applications made are withdrawn, the day on which such resolution is passed or the day next following the withdrawal of the last outstanding application, whichever is the later, subject to this day being no earlier than the 31st day following the date of service of notice on creditors, and
 - (ii) in the event that all applications made are not withdrawn, whichever of the following is the later, that is to say, the later of the day on which such resolution is passed, and:
 - (l) where an order is granted by the court pursuant to Part B9, Head 57 [equivalent of Section 256C of the Companies Act, 1990] or on appeal pursuant to section Part B9, Head 58 [equivalent of Section 256D of the Companies Act, 1990], the date specified in that order or, if no such date is specified, the day next following the date on which the period for which the order is specified to remain in force expires or, as appropriate, following the day on which it otherwise ceases to be in force, or

(II) where no appeal against any decision of the court is lodged pursuant to Part B9, Head 58 [equivalent of Section 256D of the Companies Act, 1990], the day next following the date on which the time period for such an appeal in relation to the last such determination of the court shall have elapsed, or

(III) where an appeal is lodged against any decision of the court pursuant to Part B9, Head 58 [equivalent of Section 256D of the Companies Act, 1990], the day next following the date on which the last outstanding such appeal is disposed of or withdrawn, unless a court has otherwise ordered under Part B9, Head 57 [equivalent of Section 256C of the Companies Act, 1990] or Part B9, Head 58 [equivalent of Section 256D of the Companies Act, 1990].

- (5) Any notice of a meeting to consider a special resolution of the type referred to in Subhead (2) shall be—
- (a) accompanied by audited accounts for the umbrella fund which include a statement of the assets and liabilities of each sub-fund of the umbrella fund and which are prepared as at a date which is not more than four months before the date on which the notice convening the meeting is served (hereafter referred to in this head and Part B9, Head 56 [equivalent of Section 256B of the Companies Act, 1990] as 'statement of assets and liabilities');
 - (b) given to all creditors of the umbrella fund accompanied by a copy of the statement of assets and liabilities, in accordance with the provisions of Part B9, Head 56 [equivalent of Section 256B of the Companies Act, 1990]; and
 - (c) delivered to the Registrar, accompanied by the statement of assets and liabilities, no later than the third day after the date on which the notice is first sent to members of the umbrella fund.

Explanatory Note

Equivalent of Section 256A of the Companies Act, 1990, as inserted by Section 25 of the Investment Funds, Companies and Miscellaneous Provisions Act, 2005.

Head 56 Notice to creditors of special resolution under Part B9, Head 55 [Equivalent of s 256A of Companies Act 1990]

- (1) The requirement in Part B9, Head 55 [equivalent of Section 256A of the Companies Act, 1990] to give all creditors of the umbrella fund notice of a meeting to consider a special resolution shall be met if—
- (a) a notice in writing, accompanied by the statement of assets and liabilities, is sent to each relevant creditor of a subfund; and
 - (b) a notice is published in at least one national newspaper, stating that the umbrella fund intends to avail of in Part B9, Head 55(1) [equivalent of Section 256A(1) of the Companies Act, 1990] and that an application may be made in accordance with Head 57 Part B9, [equivalent of Section 256C of the Companies Act, 1990], for an order pursuant to that head.
- (2) For the purpose of this head, a relevant creditor of a sub-fund is any creditor for whom provision was made, in accordance with the articles of association, in the net asset value of the sub-fund calculated—
- (a) in the case of a sub-fund in respect of which the net asset value is not calculated on a daily basis, as at the last valuation point for that sub-fund prior to the date of service of the notice pursuant to in Part B9, Head 55(5)(b) [equivalent of Section 256A(5)(b) of the Companies Act, 1990]; and
 - (b) in the case of a sub-fund in respect of which the net asset value is calculated on a daily basis, as at the second last valuation point for that sub-fund.

Explanatory Note

Equivalent of Section 256B of the Companies Act, 1990 as inserted by Section 25 of the Investment Funds, Companies and Miscellaneous Provisions Act, 2005.

Head 57 Application to court opposing special resolution under Part B9, Head 55 [equivalent of Section 256A of the Companies Act, 1990]

- (1) An application may be made to the court in accordance with this head for an order preventing any resolution passed or proposed to be passed pursuant to Part B9, Head 55(2) [equivalent of section 256A(2) of the Companies Act, 1990] from taking effect in relation to any umbrella fund to which that head applies.
- (2) An order under this head may be granted only if the court considers that it would be just and equitable to do so.
- (3) Each order granted pursuant to this head shall specify the period in respect of which the order shall remain in force and, without prejudice to the powers of the court to specify such period, may specify that the order shall cease to be in force on the date on which the applicant ceases to be a creditor of the umbrella fund or the date on which the applicant consents to the application of Part B9, Head 56(1) [Equivalent of section 256A(1) of Companies Act 1990] to that umbrella fund, whichever is the later.
- (4) An application under this head may only be made by a relevant creditor or relevant creditors constituting not less than 1 per cent in number of the creditors of any sub-fund, or whose debts account for not less than 1 per cent in value of the debts owed by any sub-fund, in each case as provided for in the net asset value of that sub-fund referred to in Part B9, Head 56 [equivalent of Section 256B of the Companies Act, 1990].
- (5) Any application pursuant to this head must be made by a relevant creditor within 28 days after the date of service of the notice referred to in Part B9, Head 55 (5)(b) [equivalent of Section 256A(5)(b) of the Companies Act, 1990], and may be made on behalf of the creditors entitled to make the application by one or more of their number as they may appoint in writing for such purpose.

- (6) Notice of an application to the court for the purposes of this head shall be sent by the relevant creditor or relevant creditors to the umbrella fund and to the Bank within two days after the date on which the application is made, and the umbrella fund and the Bank shall each be entitled to make representations to the court before an order is made.
- (7) In considering whether it is just and equitable to make an order pursuant to this head, the court shall have regard to the following matters -
 - (a) the terms of any agreement or arrangement between the creditor or creditors and the umbrella fund or its delegates;
 - (b) the course of dealings between the creditor or creditors and the umbrella fund or its delegates;
 - (c) the conduct of the umbrella fund or its delegates towards the creditor or creditors;
 - (d) the extent to which the umbrella fund or its delegates represented to the creditor or creditors that it would have recourse to the assets of any other subfund to discharge the liabilities owed to the creditor or creditors;
 - (e) the extent to which it was reasonable for the relevant creditor or relevant creditors to expect to have recourse to the assets of any other sub-fund; and
 - (f) any other matters which the court shall deem relevant.

Explanatory Note

Restatement of Section 256C of the Companies Act, 1990 as inserted by Section 25 of the Investment Funds, Companies and Miscellaneous Provisions Act, 2005.

Head 58 Appeal from court order under Part B9, Head 57 [equivalent of Section 256C of the Companies Act, 1990]

- (1) Any creditor who has made an application pursuant to Part B9, Head 57 [equivalent of Section 256C of the Companies Act, 1990], or the umbrella fund in respect of which the application is made, may appeal to the Supreme Court against any decision of the court in respect of that application.
- (2) Notice of any such appeal must be lodged within five days after the date on which the order is perfected by the court.
- (3) Notice of any appeal lodged by the umbrella fund shall be sent to the Central Bank and to the relevant creditor or relevant creditors who made the application pursuant to Part B9, Head 57 [equivalent of Section 256C of the Companies Act, 1990] within two days after the date on which the appeal is made.
- (4) Notice of any appeal by the party which made the application pursuant to Part B9, Head 57 [equivalent of Section 256C of the Companies Act, 1990] shall be sent to the Central Bank and to the umbrella fund within two days after the date on which the appeal is made.

Explanatory Note

Restatement of Section 256D of the Companies Act, 1990, as inserted by Section 25 of the Investment Funds, Companies and Miscellaneous Provisions Act, 2005.

Head 59 Requirements to be complied with by, and other matters respecting, an umbrella fund to which Part B9, Head 55 [equivalent of Section 256A of the Companies Act, 1990] applies

- (1) Every umbrella fund to which Part B9, Head 55 [equivalent of Section 256A of the Companies Act, 1990] applies shall be required to include the words 'An umbrella fund with segregated liability between sub-funds' in all its letterheads and in any agreement entered into in writing with a third party, and shall be obliged to disclose that it is a segregated liability umbrella fund to any third party with which it enters into an oral contract.
- (2) There shall be implied in every contract, agreement, arrangement or transaction entered into by an umbrella fund to which Part B9, Head 55 [equivalent of Section 256A of the Companies Act, 1990] applies the following terms, that—
 - (a) the party or parties contracting with the umbrella fund shall not seek, whether in any proceedings or by any other means whatsoever or wheresoever, to have recourse to any assets of any subfund of the umbrella fund in the discharge of all or any part of a liability which was not incurred on behalf of that sub-fund;
 - (b) if any party contracting with the umbrella fund shall succeed by any means whatsoever or wheresoever in having recourse to any assets of any sub-fund of the umbrella fund in the discharge of all or any part of a liability which was not incurred on behalf of that sub-fund, that party shall be liable to the umbrella fund to pay a sum equal to the value of the benefit thereby obtained by; and

- (c) if any party contracting with the umbrella fund shall succeed in seizing or attaching by any means, or otherwise levying execution against, any assets of a sub-fund of an umbrella fund in respect of a liability which was not incurred on behalf of that subfund, that party shall hold those assets or the direct or indirect proceeds of the sale of such assets on trust for the umbrella fund and shall keep those assets or proceeds separate and identifiable as such trust property.
- (3) All sums recovered by an umbrella fund as a result of any such trust as is described in Subhead (2)(c) shall be credited against any concurrent liability pursuant to the implied term set out in Subhead (2)(b).
- (4) Any asset or sum recovered by an umbrella fund pursuant to the implied term set out in Subhead (2)(b) or (c) or by any other means whatsoever or wheresoever in the events referred to in those paragraphs shall, after the deduction or payment of any costs of recovery, be applied so as to compensate the sub-fund affected.
- (5) In the event that assets attributable to a sub-fund to which Head 55 of this Part [equivalent of Section 256A of the Companies Act, 1990] applies are taken in execution of a liability not attributable to that sub-fund, and in so far as such assets or compensation in respect thereof cannot otherwise be restored to that sub-fund affected, the directors of the umbrella fund, with the consent of the custodian, shall certify or cause to be certified, the value of the assets lost to the sub-fund affected and transfer or pay from the assets of the sub-fund or sub-funds to which the liability was attributable, in priority to all other claims against such sub-fund or sub-funds, assets or sums sufficient to restore to the sub-fund affected, the value of the assets or sums lost to it.
- (6) Without prejudice to the other provisions of Part B9, Heads 55 [equivalent of Section 256A of the Companies Act, 1990] to Part B9, Head 58 [equivalent of Section 256D of the Companies Act, 1990] and this head, a sub-fund of an umbrella fund is not a legal person separate from that umbrella fund, but an umbrella fund may sue and be sued in respect of a particular subfund and may exercise the same rights of set-off, if any, as between its sub-funds as apply at law in respect of companies and the property of a subfund is subject to orders of the court as it would have been if the sub-fund were a separate legal person.
- (7) Nothing in Part B9, Heads 55 [equivalent of Section 256A of the Companies Act, 1990] to Part B9, Head 58 [equivalent of Section 256D of the Companies Act, 1990] and this head shall prevent the application of any enactment or rule of law which would require the application of the assets of any sub-fund in discharge of some or all of the liabilities of any other subfund on the grounds of fraud or misrepresentation and, in particular, by reason of the application of—
- (a) Part A11, Head 43 [equivalent of Section 286 of the Companies Act, 1963]; and
- (b) Part A8, Head 16 [equivalent of Section 139 of the Companies Act, 1990].
- (8) A sub-fund may be wound up in accordance with the provisions of Part A11, Head 10 (e) and Part A11, Head 20 [equivalent of Section 213(e) and Section 251(1)(c) of the Companies Act, 1963] as if the sub-fund were a separate company, provided always that the appointment of the liquidator or any provisional liquidator and the powers, rights, duties and responsibilities of the liquidator or any provisional liquidator shall be confined to the subfund or sub-funds which is or are being wound up.
- (9) For the purposes of Subhead (8), all references made in Part A11, Head 10 (e) and Part A11, Head 20 [equivalent of Sections 213(e) and 251(1)(c) of the Companies Bill 1963] and all relevant provisions of this Act relating to the winding up of a company pursuant to Part A11, Head 10 (e) and Part A11, Head 20 [equivalent of Sections 213(e) and 251(1)(c) of the Companies Act, 1963] to one of the following words shall be construed as follows—
- (a) 'company' shall be read as referring to the sub-fund or sub-funds which is or are being wound up;
- (b) a 'member' or 'members' shall be read as referring to the holders of the shares in that sub-fund or sub-funds; and
- (c) 'creditors' shall be read as referring to the creditors of that sub-fund or subfunds.”.

Explanatory Note

Restatement of Section 256E of the Companies Act, 1990, as inserted by Section 25 of the Investment Funds, Companies and Miscellaneous Provisions Act, 2005.

Head 60 Netting Arrangements

The Netting of Financial Contracts Act, 1995 is amended, in Section 1, by the substitution of the text in the table to this head, for the definition of “party”.

“Party’ means a person constituting one of the parties to an agreement and, in every context, includes, and shall be deemed always to have included, in respect of any agreement-

- (a) any number of legal or natural persons sharing a single, identical interest in the agreement where there is no differentiation in the rights and obligations of each such person therein; and
- (b) the participants in-
 - (i) a common contractual fund authorised pursuant to the Investment Funds, Companies and Miscellaneous Provisions Act, 2005 or the UCITS Regulations, and
 - (ii) a sub-fund of a common contractual fund referred to in paragraph (i),

whether or not a party described in (i) or (ii) is acting through a manager or other agent.

Explanatory Note

An extension of netting legislation is proposed in Head 57, to encompass netting agreements to which CCFs are party and clarify the position regarding certain other netting agreements with a view to facilitating the participation of CCFs and certain other structures in the financial markets on an equivalent basis with other collective investment undertaking structures.

Chapter 19

Common Contractual Funds

Head 61 Interpretation of this Chapter

- (1) In this Chapter, unless the context otherwise requires “common contractual fund” means a collective investment undertaking, being an unincorporated body established by a management company, under which the participants by contractual arrangement participate and share in the property of the collective investment undertaking as co-owners, provided—
- (a) it is expressly stated in its deed of constitution to be established pursuant to this Bill;
 - (b) it holds an authorisation issued in accordance with this Bill; and
 - (c) it is not established pursuant to Council Directive No. 85/611/EEC of 20 December 1985 as amended from time to time.

“**deed of constitution**” or “**deed**” means the deed under which the common contractual fund is constituted, and references to the deed of constitution of a common contractual fund shall be construed accordingly;

“**sub-fund**” means a separate portfolio of assets maintained by a common contractual fund in accordance with its deed of constitution;

“**unit-holder**” means the holder of one or more units of a common contractual fund and references to a unit-holder in such a common contractual fund shall be construed accordingly;

“**units**” means instruments granting an entitlement to share in the investments and relevant income of a common contractual fund;

“**umbrella fund**” means a common contractual fund which is divided into a number of sub-funds.

- (2) Any reference in this Chapter to a management company of a common contractual fund or to a custodian of such a common contractual fund shall be construed as a reference to the person in whom are vested the powers of management relating to property of the fund for the time being or, as the case may be, to the person in whom such property is entrusted for safe-keeping.
- (3) Any reference in this Chapter to an authorisation, in relation to a common contractual fund, standing revoked under this Bill shall be construed as a reference to an authorisation standing revoked under Regulation 102 of the UCITS Regulations as applied by Head 73 of this Part.
- (4) For the purposes of the application by Head 73 of this Part of certain provisions of the UCITS Regulations to common contractual funds, the said provisions shall be construed as one with this Chapter.

Explanatory Note

A re-enactment of Section 6 of the Investment Funds, Companies and Miscellaneous Provisions Act, 2005.

Head 62 Non-application of this Part to certain undertakings

- (1) The provisions of this Chapter shall not apply to an undertaking for collective investment in transferable securities (within the meaning of the UCITS Regulations) that is authorised—
 - (a) under the UCITS Regulations; or
 - (b) by a competent authority in another Member State of the European Union in accordance with Council Directive No. 85/611/EEC of 20 December 1985, as amended from time to time.
- (2) A common contractual fund shall not be subject to the provisions respecting—
 - (a) a partnership under the Partnership Act 1890, the Limited Partnerships Act 1907 or the Investment Limited Partnerships Act, 1994, or
 - (b) a unit trust scheme under the Unit Trusts Act, 1990.

Explanatory Note

A re-enactment of Section 7 of the Investment Funds, Companies and Miscellaneous Provisions Act, 2005.

Head 63 Authorisation of non-UCITS common contractual funds

- (1) The Bank shall authorise a common contractual fund if, but only if—
 - (a) the Bank is satisfied that—
 - (i) the competence of the management company and custodian in respect of matters of the kind with which they would be concerned in relation to a common contractual fund, and
 - (ii) their probity, are such as to render them suitable to act as management company and custodian respectively, under the common contractual fund;
 - (b) the management company of the common contractual fund—
 - (i) is a body corporate that has its registered office and head office in the State, and
 - (ii) has, in the opinion of the Bank, sufficient financial resources at its disposal to enable it to conduct its business effectively and meet its liabilities;
 - (c) the custodian of the common contractual fund—
 - (i) either has its registered office in the State or has established a place of business in the State if its registered office is in another Member State,
 - (ii) has, in the opinion of the Bank, sufficient financial resources at its disposal to enable it to conduct its business effectively and meet its liabilities, and
 - (iii) can satisfy the Bank that it has the appropriate expertise and experience to perform its functions under this Chapter;

- (d) the Bank is satisfied that the common contractual fund is organised such that the effective control over the affairs of the management company and of the custodian of the common contractual fund will be exercised independently of one another;
- (e) the Bank has approved the deed of constitution and the deed of constitution contains a covenant providing that the common contractual fund will be carried on in compliance with the provisions of this Bill;
- (f) a copy of the deed of constitution is deposited with the Bank; and
- (g) the name of the common contractual fund is not, in the opinion of the Bank, undesirable.

- (2) An application for authorisation of a common contractual fund shall be made in writing jointly by the proposed management company and custodian of the proposed common contractual fund and shall contain such information as the Bank may specify for the purpose of determining the application (including such additional information as the Bank may specify in the course of determining the application).
- (3) The authorisation of a common contractual fund by the Bank shall not constitute a warranty by the Bank as to the performance of the common contractual fund and the Bank shall not be liable for the performance or default of the common contractual fund.

Explanatory Note

A re-enactment of Section 8 of the Investment Funds, Companies and Miscellaneous Provisions Act, 2005.

Head 64 Public information and reporting on authorisation of common contractual funds

- (1) The Bank shall establish and maintain a register of common contractual funds.
- (2) The Bank shall ensure that the register is kept at a specified office of the Bank and is made available for inspection by members of the public during the ordinary business hours of that office.

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- (3) If the register is kept in a form that is not immediately legible, the Bank shall make available a version of it that is in legible form.
- (4) A person who, during the ordinary business hours of the Bank, attends the office at which the Bank keeps the register is entitled—
- (a) to inspect the register without charge, and
 - (b) on payment of a fee (if any) prescribed under Section 33K of the Central Bank Act, 1942, for the purposes of this subhead, to obtain a copy of any entry in the register.
- (5) The Bank shall, within 21 days after the date of the authorisation by it under Head 63 of this Part of a common contractual fund, publish a notice to that effect in *Iris Oifigiúil*.
- (6) The Bank shall publish from time to time, but not less frequently than once a year, in such manner as it thinks fit, the names of all common contractual funds which have been authorised by it under Head 63 of this Part and whose authorisation has not been revoked under this Chapter.
- (7) The Bank shall include in its annual report to the Minister for Finance a report on the performance of its functions under this Chapter.
- (8) The Bank shall give to the Minister, a copy of the report on the performance of its functions under this Chapter referred to in Subhead (7).
- (2) The power to impose conditions referred to in Subhead (1) shall include power to impose such conditions from time to time in respect of the manner in which the business of a common contractual fund authorised under Head 63 of this Part shall be operated as the Bank considers appropriate.
- (3) Conditions imposed under this head may be imposed generally or on a particular common contractual fund, or by reference to a particular class or classes of common contractual fund, or by reference to any other matter the Bank considers appropriate and prudent for the purposes referred to in Subhead (1).
- (4) Without prejudice to the generality of Subheads (1), (2) and (3), conditions imposed by the Bank on a common contractual fund may make provision for any or all of the following matters—
- (a) the prudential requirements of the investment policies of the common contractual fund;
 - (b) borrowing policies of the common contractual fund;
 - (c) prospectuses and other information disseminated in relation to the common contractual fund;
 - (d) the safe-keeping of the assets of the common contractual fund;
 - (e) such other supervisory and reporting requirements and conditions relating to its business as the Bank considers appropriate and prudent.
- (5) The Bank may amend or revoke a condition imposed by it under this head.
- (6) The management company and custodian of a common contractual fund shall comply with any conditions imposed by the Bank in relation to that common contractual fund.

Explanatory Note

A re-enactment of Section 9 of the Investment Funds, Companies and Miscellaneous Provisions Act, 2005.

Head 65 Powers of Bank

- (1) Notwithstanding any other powers which may be available to the Bank under any other enactment, the Bank may impose such conditions for the authorisation of a common contractual fund under Head 63 of this Part as it considers appropriate and prudent for the purposes of the orderly and proper regulation of the business of common contractual funds.

Explanatory Note

A re-enactment of Section 10 of the Investment Funds, Companies and Miscellaneous Provisions Act, 2005.

Head 66 Refusal of authorisation

- (1) Where the Bank decides to refuse authorisation of a common contractual fund, it shall notify the management company and the custodian of the common contractual fund of its decision and of the reasons therefor.
- (2) The management company may apply to the Court for a review of the decision in accordance with Regulation 105 of the UCITS Regulations (as applied by Head 73 of this Part).
- (3) The management company shall have the same right to apply to the Court as in Subhead (2) if a decision on authorisation under Head 63 of this Part has not been taken by the Bank within 6 months of the submission of an application for authorisation which includes the information (other than any additional information sought by the Bank) specified by the Bank under Head 63 (2) of this Part.

Explanatory Note

A re-enactment of Section 11 of the Investment Funds, Companies and Miscellaneous Provisions Act, 2005.

Head 67 Alteration in deed of constitution of, or change in name of, common contractual fund

- (1) No alteration in the deed of constitution of a common contractual fund or change in the name of such a common contractual fund shall be made without the approval of the Bank and—
 - (a) any person who makes such an alteration or change without such approval shall be guilty of a category three offence; and
 - (b) any such alteration made without the approval of the Bank is void.
- (2) Within 21 days after the making of an alteration in the deed of constitution of a common contractual fund or a change in the name of a common contractual fund, the management company of the common contractual fund shall deposit with the Bank a copy of the deed of constitution as so altered or containing the alterations or (as the case may be) particulars of the change in name.

- (3) Where the management company of a common contractual fund fails to comply with Subhead (2), it shall be guilty of a category three offence.

Explanatory Note

A re-enactment of Section 12 of the Investment Funds, Companies and Miscellaneous Provisions Act, 2005.

Head 68 Replacement of management company or custodian

- (1) The deed of constitution shall specify the conditions for the replacement of the management company or custodian of the common contractual fund with another management company or custodian and shall contain provisions to ensure the protection of unit-holders in the event of any such replacement.
- (2) Neither the management company nor the custodian may be replaced without the approval of the Bank.

Explanatory Note

A re-enactment of Section 13 of the Investment Funds, Companies and Miscellaneous Provisions Act, 2005.

Head 69 Obligation on management companies under common contractual funds to purchase units

- (1) Subject to Regulation 63 of the UCITS Regulations, as applied by Head 73 of this Part, whenever the unit-holder in a common contractual fund, or the unit-holder in a common contractual fund the authorisation of which stands revoked under this Chapter, so requests, the management company of the common contractual fund shall, in accordance with the provisions of the deed of constitution of the fund and any relevant conditions imposed by the Bank, redeem out of the assets of the common contractual fund such number of the units of the common contractual fund held by the unit-holder as that person may specify at the price for the time being at which the management company redeems units of the common contractual fund.

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- (2) Subhead (1) shall not apply to the extent the Bank may specify in a condition imposed by it under Head 65 of this Part.
 - (3) A management company which contravenes Subhead (1) shall be guilty of a category two offence.

Explanatory Note

A re-enactment of Section 14 of the Investment Funds, Companies and Miscellaneous Provisions Act, 2005.

Head 70 Prohibition of certain transactions and making of certain profits by management companies, etc

- (1) Neither a management company of a common contractual fund (the “corporate body”) nor a subsidiary or a holding company of that corporate body or a subsidiary of the holding company of that corporate body or a director or person engaged in the management of such corporate body or company shall carry out transactions for it, him or herself, or make a profit for it, him or herself from transactions, in any assets held under the scheme save in accordance with the deed of constitution and any conditions imposed by the Bank.
- (2) A person who contravenes this head shall be guilty of a category two offence.

Explanatory Note

A re-enactment of Section 15 of the Investment Funds, Companies and Miscellaneous Provisions Act, 2005.

Head 71 Assets of common contractual funds

- (1) The assets of a common contractual fund shall belong exclusively to the common contractual fund and the assets shall be entrusted to a custodian for safe-keeping in accordance with conditions imposed by the Bank under Head 65 of this Part.
- (2) Where a common contractual fund is established as an umbrella fund, the assets shall belong exclusively to the relevant subfund and shall not be used to discharge directly or indirectly the liabilities of, or claims against, any other sub-fund and shall not be available for any such purpose.

- (3) The liabilities of a unit-holder, as such a holder, shall be limited to the amount agreed to be contributed by him or her for the subscription of units.
- (4) The provisions of the deed of constitution shall be binding on the unit-holder and all persons claiming through the unit-holder as if such persons had been party to the deed.

Explanatory Note

A re-enactment of Section 16 of the Investment Funds, Companies and Miscellaneous Provisions Act, 2005.

Head 72 Liability of custodians of common contractual funds

- (1) The custodian shall exercise due care and diligence in the discharge of its duties and shall be liable to the unit-holders and management company for any loss arising from the negligence, fraud, bad faith, wilful default or recklessness in the performance of those duties.
- (2) Unit-holders may enforce this liability either directly or indirectly through the management company.

Explanatory Note

A re-enactment of Section 17 of the Investment Funds, Companies and Miscellaneous Provisions Act, 2005.

Head 73 Application of certain provisions of UCITS Regulations

- (1) Regulations 63, 77 to 85 and 98 to 105 of the UCITS Regulations shall apply to a common contractual fund as they apply to the bodies to which those Regulations relate subject to the following modifications and any other necessary modifications—
 - (a) a reference in those Regulations to a term or expression specified in the second column of the Table to this head at any reference number shall be construed, where the context admits, as a reference to the term or expression specified in the third column of the said Table at that reference number; and
 - (b) references to cognate terms or expressions in those Regulations shall be construed accordingly;

- (c) references to “the articles” and “the Directive” in those Regulations shall be disregarded;
- (d) the words “and the other information provided for in Schedule 2 to these Regulations” in Regulation 79 and the first sentence of Regulation 80 of those Regulations shall be disregarded and Regulation 80 shall have effect as if there were inserted the words “in the half-yearly report” after the words “the figures”;
- (e) paragraph (4)(d) of Regulation 102 shall be disregarded;
- (f) references to “simplified prospectus” in Regulations 82 and 83 shall be disregarded.

(2) In Subhead (1), “common contractual fund” includes a common contractual fund, the authorisation of which stands revoked under Regulation 102 of the UCITS Regulations as applied and adapted by thishead.

Head 74 Offences in relation to certain bodies

Where an offence under this Chapter is committed by a body corporate and is proved to have been so committed with the consent or approval of, or to have been facilitated by any wilful neglect on the part of any person being a director, manager, secretary, member of any committee of management or other controlling authority of such body or official of such body, that person shall also be guilty of an offence of the same category.

Explanatory Note

A re-enactment of Section 19 of the Investment Funds, Companies and Miscellaneous Provisions Act, 2005.

Ref. No.	Term or expression referred to in UCITS Regulations	Construction of term or expression for purposes of this section
(1)	(2)	(3)
1.	“Regulation 14”	“Head 66 of Part B9 of the Companies Consolidation Act 2007”
2.	“Regulation 59”	“Head 69 of Part B9 of the Companies Consolidation Act 2007”
3.	“these Regulations”	“Chapter 19 of Part B9 of the Companies Consolidation Act 2007”
4.	“repurchase”	“purchase”
5.	“UCITS”	“common contractual fund”
6.	“section 8 of the Unit Trusts Act 1990”	“Head 68 of Part B9 of the Companies Consolidation Act 2007”

Explanatory Note

A re-enactment of Section 18 of the Investment Funds, Companies and Miscellaneous Provisions Act, 2005.

Head 75 Offences under provisions of this Chapter

- (1) A person who contravenes any provision of this Chapter and for which contravention no offence is created by any other provision of this Chapter shall be guilty of a category three offence.
- (2) Summary proceedings in relation to an offence under this Chapter may be brought and prosecuted by the Bank.
- (3) Notwithstanding Section 10 (4) of the Petty Sessions (Ireland) Act, 1851, summary proceedings for an offence under this Chapter may be instituted within 3 years from the date of the offence.

Explanatory Note

Subhead (1) re-enacts Section 20 of the Investment Funds, Companies and Miscellaneous Provisions Act, 2005.

Subheads (2) and (3) re-enact Sections 21 (3) and (4) of the Investment Funds, Companies and Miscellaneous Provisions Act, 2005.

Part B10 – Miscellaneous Provisions

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Part B10 – Miscellaneous Provisions

Chapter 1

Directors

Head 1 Particulars relating to directors to be shown on all business letters of certain companies

Head 20 of Part A4 shall apply to the following companies -

- (a) every company registered under the Companies Acts, 1963-2006 or under the Companies (Consolidation) Act, 1908, unless it was registered before the 23rd day of November, 1916; and
- (b) every company licensed under the Moneylenders Act, 1933, whenever it was registered or whenever it established a place of business.

Explanatory Note

Part A4 Head 20 is the equivalent of Section 196 (3) of the Companies Act, 1963. Language – “former companies”.

Head 2 Directors’ report to contain Disclosure Issue Notice

The directors’ report referred to in Head 37 (1) of Part A6 shall contain a copy of any Disclosure Issue Notice issued under Section 33AK of the Central Bank Act, 1942 during the financial year ending with the relevant balance sheet date.

Explanatory Note

This head is based on Subsection 158 (6B) of the Companies Act, 1963.

Head 3 Application of requirement to give approval to contracts of employment of directors under Head 27, Part A5

No approval is required to be given under Head 27 of Part A5 by any body corporate unless it is a company within the meaning of this Bill or registered under Part B8 [equivalent of Part IX of the Companies Act, 1963] or if it is a wholly owned subsidiary of any body corporate, wherever incorporated.

Explanatory Note

This head is based on Ssection 28(6) of the Companies Act, 1990.

Chapter 2

Shares

Head 4 Application of premiums received on issue of shares before the operative date

Where a company has, before the operative date, issued any shares at a premium, Part A3, Head 6 (5) shall apply as if the shares had been issued after the operative date, so however that any part of the premiums which has been so applied does not, at the operative date, form an identifiable part of the company's reserves within the meaning of the Schedules to Part A6, shall be disregarded in determining the sum to be included in the share premium account.

Explanatory Note

This head is based on Section 62 (3) of the Companies Act, 1963.

Head 5 Holding by subsidiary of shares in its holding company

Head 46 of Part A3, Head 16 of Part B3 and Head 21 of Part B4 [equivalent of Section 224 of the Companies Act, 1990] shall not apply to shares subscribed for, purchased or held by a subsidiary in its holding company pursuant to Section 9 (1) of the Insurance Act, 1990, save that the subsidiary shall not exercise any voting rights in respect of the shares, membership or other interests and any purported exercise of those rights shall be void.

Explanatory Note

This head is based on Section 224 (6) of the Companies Act, 1990.

Chapter 3

Reorganisation

Head 6 Restriction of the meaning of “company” for the purposes of Head 4 of Part A9

Notwithstanding the definition in Head 1 (1) of Part A9, “company” in Head 4 of Part A9 does not include any company other than a company within the meaning of this Bill.

Explanatory Note

This head is based on Section 203 (5) of the Companies Act, 1963.

Chapter 4

Winding-Up

Head 7 Application of Part A10

Part A10 applies to any body liable to be wound up under this Bill.

Explanatory Note

This head is based on Subsection 4(6) of the Companies (Amendment) Act, 1990.

Head 8 Saving for enactments providing for winding-up under former Companies Acts

Nothing in this Bill shall affect the operation of any enactment which provides for any partnership, association or company being wound up, or being wound up as a company or as an unregistered company under the Companies Acts 1963-2006, the Companies (Consolidation) Act, 1908 or any enactment repealed by those Acts.

Explanatory Note

This head is based on Section 350 of the Companies Act, 1963.

Head 9 Provisions as to winding-up proceedings commenced before the operative date

- (1) The provisions of this Bill relating to winding-up (other than Subheads (2) and (3) of this head) shall not apply to any company of which the winding-up commenced before the operative date but every such company shall be wound up in the same manner and with the same incidents as if this Bill (apart from the enactments aforesaid) had not been passed, and for the purposes of the winding-up, the Act or Acts under which the winding-up commenced shall be deemed to remain in full force.
- (2) An office copy of every order staying the proceedings in a winding-up commenced as aforesaid, shall forthwith be forwarded by the company or by such person as the court may direct, to the Registrar for registration.

- (3) If a company fails to comply with Subhead (2), the company and every officer of the company who is in default shall be guilty of a category three offence, and if any other person fails to comply with Subhead (2) such person shall be guilty of a category three offence.

Explanatory Note

This head is based on Section 398 of the Companies Act, 1963.

Chapter 5

Bodies Incorporated Outside the State

Head 10 Proof of incorporation of companies incorporated outside the State

A copy of any Act by which a corporation is incorporated, purporting to be published by the Government publishers of any country prescribed by the Minister for the purposes of this head, shall, without further proof, be prima facie evidence of the incorporation of that corporation.

Explanatory Note

This head is based on Section 388 of the Companies Act, 1963.

Head 11 Extension of powers of investigation to certain bodies incorporated outside the State

Heads 3 to 5, 7, 8, 10 and 65 of Part A13 [equivalent of Sections 8 to 11, 13, 18 and 22 of the Companies Act, 1990] shall apply to all bodies corporate incorporated outside the State which are carrying on business in the State or have at any time carried on business therein as if they were companies registered under this Bill, subject to any necessary modifications.

Explanatory Note

This head is based on Section 17 of the Companies Act, 1990.

Chapter 6

Auditors

Head 12 Qualification for appointment as auditor of a society or a friendly society

- (1) None of the following persons shall be qualified for appointment as a public auditor of a society—
- (a) an officer or servant of the society;
 - (b) a person who has been an officer or servant of the society within a period in respect of which accounts would fall to be audited by him if he were appointed auditor of the society;
 - (c) a parent, spouse, brother, sister or child of an officer of the society;
 - (d) a person who is a partner of or in the employment of an officer of the society;
 - (e) a person who is disqualified under this subhead for appointment as a public auditor of any other society that is a subsidiary or holding company of the society or a subsidiary of the society's holding company;
 - (f) a person who is disqualified under Subhead (2) for appointment as auditor of a company that is a subsidiary or holding company of the society;
 - (g) a body corporate.
- (2) None of the following persons shall be qualified for appointment as a public auditor of a friendly society—
- (a) an officer or servant of the friendly society;
 - (b) a person who has been an officer or servant of the friendly society within a period in respect of which accounts would fall to be audited by him if he were appointed auditor of the friendly society;
 - (c) a parent, spouse, brother, sister or child of an officer of the friendly society;
 - (d) a person who is a partner of or in the employment of an officer of the friendly society;
 - (e) a body corporate.
- (3) A person shall not, by virtue of subhead(1) or (2), be disqualified for appointment as public auditor of a society or a friendly society at any time during the period of 2 years from the commencement of this head, if on such commencement he stands duly appointed as public auditor of the society or friendly society, as the case may be.
- (4)
- (a) In this head, "society" means a society registered under the Industrial and Provident Societies Acts, 1893 to 1978;
 - (b) In this head "friendly society" means a society registered under the Friendly Societies Acts, 1896 to 1977;
 - (c) References in this head to an officer or servant do not include references to an auditor or a public auditor.
- (5)
- (a) The Director of Corporate Enforcement may demand of a person acting as a public auditor, or purporting to be qualified to so act, the production of evidence of his qualifications under head 103 (1) of Part A6 in respect of any time or period during which he so acted or purported to be qualified to so act, and if the person refuses or fails to produce the evidence within 30 days of the demand, or such longer period as the Director may allow, he shall be guilty of a category three offence;
 - (b) In a prosecution for an offence under this subhead, it shall be presumed, until the contrary is shown by the defendant, that the defendant did not, within 30 days or any longer period allowed after the day on which the production was demanded, produce evidence in accordance with paragraph (a).

Explanatory Note

This head is based on Sections 187 (3)-(5), (10) and (12) of the Companies Act, 1990.

Head 13 Prohibition on acting in relation to audit while disqualification order is in force

In Head 106 of Part A6—

“company” has the meaning assigned to it by Head 41 of Part A13 [equivalent of Section 159 of the Companies Act, 1990], and also includes any society registered under the Industrial and Provident Societies Acts, 1893 to 1978;

“disqualification order” has the meaning assigned to it by Head 41 of Part A13 [equivalent of Section 159 of the Companies Act, 1990].

Explanatory Note

This head is based on Subsection 195 (3) of the Companies Act, 1990.

Head 14 Restriction of Section 58 of the Solicitors Act 1954

Notwithstanding Section 58 of the Solicitors Act, 1954, a person to whom Head 102(1)(a) of Part A6 [previously paragraphs (a) and (b) of subsection (1) of Section 162 – now repealed] applies may draw or prepare any document for the purposes of this Bill other than a deed, constitution, memorandum of association or articles of association.

Explanatory Note

This head is based on Section 397 of the Companies Act, 1963.

Chapter 7

Investment companies, insurance companies, licensed banks and other financial institutions

Head 15 Special provisions where a company is an investment company

- (1) Paragraph 36 of the First Schedule to Part A6 [equivalent of paragraph 22 of the Schedule to the Companies (Amendment) Act, 1986] shall not apply to the amount of any profit or loss arising from a determination of the value of any investments of an investment company on any basis mentioned in subparagraph 33 (3) of the First Schedule to Part A6 [equivalent of paragraph 19 (3) of the Schedule to the Companies (Amendment) Act, 1986].
- (2) Any provisions made by virtue of subparagraphs (1) or (2) of paragraph 21 of the First Schedule to Part A6 [equivalent of subparagraph (1) or (2) of paragraph 7 of the Schedule to the Companies (Amendment) Act, 1986] in the case of an investment company in respect of any fixed asset investments need not be charged to the company's profit and loss account if they are either—
 - (a) charged against any reserve account to which any amount excluded by Subhead (1) from the requirements of the said paragraph 36 of the First Schedule to Part A6 [equivalent of paragraph 22 of the Schedule to the Companies (Amendment) Act, 1986] has been credited; or
 - (b) shown as a separate item in the company's balance sheet under the sub-heading "other reserves".
- (3) For the purposes of this head as it applies in relation to any company, "fixed asset investment" means any asset falling to be included under any item shown in the company's balance sheet under the subdivision "financial assets" under the general item "fixed assets".
- (4) Any distribution made by an investment company which reduces the amount of its net assets to less than the aggregate of its called-up share capital and undistributable reserves shall be disclosed in a note to the company's financial statements.

- (5) In this head, "net assets" means the aggregate of the company's assets less the aggregate of its liabilities, and "liabilities" includes—
 - (a) any provision for liabilities within the meaning of paragraph 79 of the First Schedule to Part A6 [equivalent of paragraph 70 of the Schedule to the Companies (Amendment) Act, 1986] that is made in entity financial statements; and
 - (b) any provision that is made in IFRS entity financial statements.
- (6) A company shall be treated as an investment company for the purposes of this head in relation to any financial year of the company if—
 - (a) during the whole of that year, it was an investment company within the meaning of Part B9;
 - (b) it was not at any time during that year, prohibited by Head 40 of Part B9 [equivalent of Section 47 of the Companies (Amendment) Act, 1983] from making a distribution.

Explanatory Note

This head is based on paragraphs 56-58 of the Schedule to the Companies (Amendment) Act, 1986.

Head 16 Realised profits of assurance companies

- (1) In the case of an assurance company carrying on life assurance business, or industrial assurance business or both, any amount properly transferred to the profit and loss account of the company from a surplus in the fund or funds maintained by it in respect of that business and any deficit in that fund or those funds shall be respectively treated for the purposes of Part A3 as a realised profit and a realised loss, and, subject to the foregoing, any profit or loss arising on the fund or funds maintained by it in respect of that business shall be left out of account for those purposes.
- (2) In Subhead (1)—

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- (a) the reference to a surplus in any fund or funds of an assurance company is a reference to an excess of the assets representing that fund or those funds over the liabilities of the company attributable to its life assurance or industrial assurance business, as shown by an actuarial investigation; and
- (b) the reference to a deficit in any such fund or funds is a reference to the excess of those liabilities over those assets, as so shown.
- (3) In this head—
- “actuarial investigation” means an investigation to which Section 5 of the Assurance Companies Act, 1909 applies;
- “life assurance business” and “industrial assurance business” have the same meanings as in Section 3 of the Insurance Act, 1936.
- (b) its value is not greater, and its terms no more favourable, in respect of the person for whom it is made, than that or those which—
- (i) the company ordinarily offers, or
- (ii) it is reasonable to expect the company to have offered,
- to or in respect of a person of the same financial standing but unconnected with the company.
- (3) Subject to Heads 25 (11) and 26 (6) of Part A6 [equivalent of Section 45 of the Companies Act, 1990], a company which is, or is the holding company of, a licensed bank shall, before its annual general meeting, make available, at the registered office of the company for not less than the period of 15 days ending with the date of the meeting, for inspection by members of the company, a statement containing the particulars of transactions, arrangements and agreements which the company would, but for Head 25 (13) of Part A6 [equivalent of section 41 (6) of the Companies Act, 1990], be required by heads 25 (1) or (2) of Part A6 [equivalent of Subsections (1) and (2) of section 41 of the Companies Act, 1990] to disclose in its statutory financial statements for the last complete financial year preceding that meeting and such a statement shall also be made available for inspection by the members at the annual general meeting.

Explanatory Note

This head is based on Section 48 of the Companies (Amendment) Act, 1983.

Head 17 Provisions relating to licensed banks

- (1) Subject to Heads 25 (11) and 26 (6) of Part A6 [equivalent of Section 45 of the Companies Act, 1990], a company which is, or is the holding company of, a licensed bank, shall maintain a register containing banks, a copy of every transaction, arrangement or agreement of which particulars would, but for Head 25 (13) of Part A6 [equivalent of Section 41 (6) of the Companies Act, 1990], be required by heads 25 (1) or (2) of Part A6 and heads 26 (1) and (2) of Part A6 [equivalent of subsections (1) and (2) of section 41 of the Companies Act, 1990] to be disclosed in the company's statutory financial statements for the current financial year and for each of the preceding ten financial years (but excluding any financial year ending prior to the passing of this Bill) or, if such a transaction, arrangement or agreement is not in writing, a written memorandum setting out its terms.
- (2) Subhead (1) shall not require a company to keep in its register, a copy of any transaction, arrangement or agreement made for a connected person if—
- (a) it is entered into in the ordinary course of the company's business; and
- (b) its value is not greater, and its terms no more favourable, in respect of the person for whom it is made, than that or those which—
- (i) the company ordinarily offers, or
- (ii) it is reasonable to expect the company to have offered,
- to or in respect of a person of the same financial standing but unconnected with the company.
- (4) Subhead (3) shall not require the inclusion in the statement of particulars of any transaction, arrangement or agreement if—
- (a) it is entered into in the ordinary course of the company's business; and
- (b) its value is not greater, and its terms no more favourable, in respect of the person for whom it is made, than that or those which—
- (i) the company ordinarily offers, or
- (ii) it is reasonable to expect the company to have offered,
- to or in respect of a person of the same financial standing but unconnected with the company.

- (5) It shall be the duty of the auditors of the company to examine any such statement before it is made available to the members of the company in accordance with Subhead (3) and to make a report to the members on that statement; and the report shall be annexed to the statement before it is made so available.
- (6) A report under Subhead (5) shall state whether in the opinion of the auditors the statement contains the particulars required by Subhead (3) and, where their opinion is that it does not, they shall include in the report, so far as they are reasonably able to do so, a statement giving the required particulars.
- (7) Subhead (3) shall not apply in relation to a licensed bank which is for the purposes of Part A1, Head 15 [equivalent of Section 150 of the Companies Act, 1963] the wholly owned subsidiary of a company incorporated in the State.
- (8) Where a company fails to comply with Subhead (1) or (3), the company and every person who at the time of that failure is a director of the company, shall be guilty of a category two offence.
- (9) It shall be a defence in proceedings for an offence under Subhead (8) for the defendant to prove that he took all reasonable steps for securing compliance with Subheads (1) or (3), as the case may be.

Explanatory Note

This head is based on Section 44 of the Companies Act, 1990.

Head 18 Scope of Heads 4 and 6 of Part B7

Heads 4 and 6 of Part B7 shall not apply to companies that are credit institutions and financial institutions within the meaning of Council Directive 89/117/EEC.

Explanatory Note

This head is based on Regulation 11 (6) of the European Communities (Branch Disclosures) Regulations 1993.

Head 19 Certification of copies or extracts of documents kept by the Central Bank and Financial Services Authority of Ireland

A document purporting to be a copy of, or extract from, any document kept by the Central Bank and Financial Services Authority of Ireland and that is certified by—

- (a) the Chief Executive of the Irish Financial Services Regulatory Authority; or
- (b) any person authorised by the Chief Executive of the Irish Financial Services Regulatory Authority,

to be a true copy of, or extract from, the document so kept is, without proof of the official position of the person purporting to so certify, admissible in evidence in all legal proceedings as of equal validity with the document so kept.

Explanatory Note

This head is based on Section 110A (8A) of the Company Law Enforcement Act, 2001.

Head 20 Validity of regulations made under the Credit Union Act 1966 by the Credit Union Act 1997

- (1) Notwithstanding the repeal of Section 35 (1) (i) of the Credit Union Act, 1966 by the Credit Union Act, 1997, the specified regulations made under that section continue, and shall be deemed always to have continued, to have full force and effect from the coming into operation of the specified regulations until the passing of this Bill.
- (2) Nothing in this head shall affect any proceedings commenced in any court concerning the validity of the specified regulations where those proceedings were commenced before the passing of this Bill.
- (3) In this head, “specified regulations” means—
 - (a) the Industrial and Provident Societies (Financial Limits) Regulations 1985, (S.I. No. 392 of 1985); and

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- (b) the Industrial and Provident Societies
(Financial Limits) (Amendment)
Regulations, 1990 (S.I. No. 246 of 1990).

Explanatory Note

This head is based on Section 86 of the Investment Funds, Companies and Miscellaneous Provisions Act, 2005.

Chapter 8

Exercise of indirect control

Head 21 Exercise of indirect control by a PLC

For the purposes of Chapter 6 of Part A3 [equivalent of Part XI of the Companies Act, 1990], a PLC exercises its control indirectly where the control of a subsidiary is exercised through another subsidiary, pursuant to Head 6 (1) (b) of Part A1 [equivalent of Section 155 (1) (b) of the Companies Act, 1963].

Explanatory Note

This head is based on Regulation 4 (3) of the European Communities (Public Limited Companies Subsidiaries) Regulations, 1997.

Chapter 9

Registration of charges on land

Head 22 Effect of provisions of former Companies Acts on registration of charges on land

Paragraph 10 (1) (d) of the Companies Act 1907; paragraph 93 (1) (d) of the Companies (Consolidation) Act, 1908; and paragraph 99 (2) (d) of the Companies Act, 1963 (by virtue whereof charges created on land by a company required registration under those Acts respectively), shall be deemed never to have applied to a charge for any rent or other periodical sum issuing out of the land.

Explanatory Note

This head is based on Section 108 of the Companies Act, 1963.

Chapter 10

Partnerships

Head 23 Definition and interpretation of “partnership” and “limited partnership”

(1) In this Part:

“partnership” has the same meaning as in the Partnerships Act, 1890;

“limited partnership” means a partnership to which the Limited Partnerships Act 1907, applies.

(2) Save as otherwise provided, in this Part the term “partner” shall not include a limited partner.

Explanatory Note

The definitions in Subhead(1) are taken from paragraph 3 (1) of the European Communities (Accounts) Regulations, 1993.

Subhead (2) is based on paragraph 8 (1) of the European Communities (Accounts) Regulations, 1993.

Head 24 Prohibition of partnerships with more than twenty members

(1) No company, association or partnership consisting of more than twenty persons shall be formed for the purpose of carrying on any business (other than the business of banking), that has for its object the acquisition of gain by the company, association or partnership, or by the individual members thereof, unless—

- (a) it is registered as a company under this Bill;
- (b) it is formed in pursuance of some other statute; or
- (c) it is a partnership formed for the purpose of—
 - (i) carrying on practice as accountants in a case where each partner is a person who is qualified under 102(1)(a) of Part A6 [previously paragraphs (a) and (b) of Subsection (1) of Section 162 of the Companies Act, 1963 – now repealed],

(ii) carrying on practice as solicitors in a case where each partner is a solicitor,

(iii) carrying on or promoting the business of thoroughbred horse breeding and which is a partnership to which the Limited Partnerships Act, 1907, relates (subject to subsection (2)) or

(iv) the provision of investment and loan finance and ancillary facilities and services to persons engaged in industrial or commercial activities, which consists of not more than 50 partners, and which is a partnership to which the Limited Partnerships Act 1907 relates.

(2) The provisions of Section 4 (2) of the Limited Partnerships Act, 1907 shall not apply to the partnerships specified in paragraph (1)(c) of this head nor to a partnership specified in an order made pursuant to Subhead (4) of this head.

(3) This head does not apply to an investment limited partnership for the purposes of the Investment Limited Partnerships Act, 1994.

(4) The Minister may, by an order made under this head declare that the provisions of this head shall not apply to a partnership that is of a description, and that has been or is formed for a purpose, specified in the order.

(5) Every order made under Subhead (5) of this head shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the order is passed by either House within the next 21 days on which that House has sat after the order is laid before it, the order shall be annulled accordingly, but without prejudice to the validity of anything previously done thereunder.

(6) The Minister may revoke or amend an order made under this head, including this Subhead.

Explanatory Note

This head is based on Section 376 of the Companies Act 1963, as amended by Section 13 of the Companies (Amendment) Act, 1983, the Companies (Amendment) Act, 1982 (Section 13(2)) Order 1988 and the Companies (Amendment) Act, 1982 (Section 13(2)) Order 2004.

Subhead (3) re-enacts Section 4(4) of the Investment Limited Partnerships Act, 1994.

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Subheads (4)-(6) re-enact Sections 13(2)-(4) of the Companies (Amendment) Act, 1983.

Head 25 Prohibition of banking partnerships with more than ten members

No company, association or partnership consisting of more than ten persons shall be formed for the purpose of carrying on the business of banking, unless it is registered as a company under this Bill, or is formed in pursuance of some other statute.

Explanatory Note

This head is based on Section 372 of the Companies Act, 1963.

Head 26 Signing of statutory financial statements in the case of a banking company registered after 15 August 1879

In the case of a banking company registered after 15 August 1879, the statutory financial statements must be signed for the purposes of Head 36 of Part A6 by the secretary and where there are more than 3 directors of the company, by at least 3 of those directors, and where there are not more than 3 directors, by all the directors.

Explanatory Note

This head is based on Section 156 (2) of the Companies Act 1963.

Head 27 Financial Statements, Annual Return and Audit of a designated partnership

- (1) The term “designated partnerships” refers to the following partnerships -
- (a) Partnerships where all the partners thereof who do not have a limit on their liability are -
 - (i) companies limited by shares or by guarantee, or
 - (ii) bodies not governed by the law of the State but equivalent to those in subparagraph (i), or

- (iii) any combination of the types of bodies referred to in subparagraphs (i) and (ii); and
- (b) Unlimited companies and partnerships where all the members thereof who do not have a limit on their liability are -
 - (i) partnerships of the type referred to in paragraph (a) that are governed by the laws of a Member State, or
 - (II) unlimited companies, all the members whereof are bodies of the types set out in subparagraphs (i) to (iii) of paragraph (a), or
 - (III) bodies governed by the laws of a Member State that are of a legal form comparable to those referred to in paragraph (i), or
 - (ii) any combination of the types of bodies referred to in subparagraph (a) and subparagraphs (a) and (b) of paragraph (1).
- (2) The term “non-designated partnership” refers to all partnerships that are not designated partnerships.
- (3) The provisions of Part A6 shall apply to a designated partnership, subject to the exclusions and qualifications contained in this Chapter, with any modifications necessary to account for the fact that such bodies are unincorporated.
- (4) Any reference in Part A6 to directors shall, in the case of a designated partnership, be construed as a reference to the partners of such partnerships and any duties, obligations or discretion imposed on or granted to such directors shall be deemed to be imposed on or granted to such partners.
- (5) Any reference in Part A6 to voting rights means, with regard to the partners in a designated partnership, the rights conferred on partners to vote on matters concerning, or otherwise direct, the overall policy of the undertaking.

Explanatory Note

Subhead (1) and (3) are based on Regulation 6 and paragraph 7 (3) of the European Communities (Accounts) Regulations, 1993.

Subhead (4) is based on Regulation 11 of the European Communities (Accounts) Regulations 1993, It also implements Regulation 3 (2) of the European Communities (Companies: Group Accounts) Regulations, 1992.

Subhead(5) re-enacts Regulations 3 (4) and (5) of the European Communities (Companies: Group Accounts) Regulations, 1992.

Head 28 Approval and signing of statements by designated partnerships

- (1) Head 36 of Part A6 shall apply to a designated partnership, subject the condition that the statutory financial statements of a designated partnership shall be approved by the partners and shall be signed on behalf of the partners by two of the partners authorised by the partners to do so.
- (2) In the case of designated partnerships, the statement required by Head 63 (1) of Part A6 [equivalent of Subsection 18 (2) of the 1986 Act shall be in a position on the balance sheet immediately above the signatures required by Subhead (1).
- (3) The report required to be prepared under Head 37 of Part A6 shall be signed on behalf of the partners by two of the partners authorised by the partners to so do.
- (4) Where, in the case of a designated partnership, the partners decide to give the information specified in Head 27 (1) of Part A6 [equivalent of subsection 16 (1) of the Companies (Amendment) Act, 1986], by way of a separate statement in accordance with Head 29 (1) of Part A6 [equivalent of Section 16 (3) of the Companies (Amendment) Act, 1986], the said statement shall be signed on behalf of the partners by two of the partners and a copy of that statement, certified by two of the partners to be a true copy of such a statement shall be returned to the Registrar with the accounts for that particular financial year.

Explanatory Note

Subhead (1) is based on Regulation 10 of the European Communities (Accounts) Regulations, 1993.

Subhead (2) is based on Regulation 13 (5) of the European Communities (Accounts) Regulations, 1993.

Subhead (3) is based on Regulation 14 (2) of the European Communities (Accounts) Regulations, 1993.

Subhead (4) is based on Regulation 15 of the European Communities (Accounts) Regulations, 1993.

Head 29 Partners' report

Chapter 9 of Part A6 shall apply to a designated partnership subject to the condition that the report required to be prepared thereunder shall be known as a "partners' report".

Explanatory Note

This head is based on Regulation 14 of the European Communities (Accounts) Regulations, 1993.

Head 30 Application of Head 65 of Part A6

- (1) Subject to Subhead (2), Head 65 of Part A6 [equivalent of subsection 17 (2) of the Companies (Amendment) Act, 1986] shall apply to a designated partnership.
- (2) In the case of a designated partnership—
 - (a) the reference in Head 65 of Part A6 [equivalent of Section 17 of the Companies (Amendment) Act, 1986] to the provisions of Head 55 of Part A6 [equivalent of Section 7 of the Companies (Amendment) Act, 1986] shall be construed as a reference to the corresponding provision in this Chapter; and
 - (b) paragraph 65 (1) (a) of Part A6 [equivalent of Section 17 (1) (a) of the Companies (Amendment) Act, 1986] shall not apply, but all the partners including, in the case of a limited partnership, a limited partner must declare in writing, their consent to the exemption in respect of a financial year before the partnership can stand exempted from the requirement in respect of that year; and
 - (c) the notification procedure referred to in paragraph 65 (1) (b) of Part A6 [equivalent of Head 17 (1) (b) of the Companies (Amendment) Act, 1986] shall not apply, but a certified copy of the guarantee referred to in that subhead in respect of a financial year must be forwarded to all the partners including, in the case of a limited partnership, a limited partner before the partnership can stand exempted from the requirement in respect of that year; and

(d) paragraphs 65 (1) (f) and (g) [equivalent of Section 17 (1) (d) and (f) [of the Companies (Amendment) Act, 1986] shall not apply but the partners shall, in respect of each financial year for which it avails of the exemption, return to the Registrar, in lieu of the accounts referred to in Part A6 Head 55(1) [equivalent of Regulation 20 of the European Communities (Accounts) Regulations 1993]:

- (i) a notice stating that the partnership has availed of the exemption under the said Head 65 of Part A6 [equivalent of Section 17 of the Companies (Amendment) Act 1986],
- (ii) the declarations referred to in paragraph (h) in respect of that financial year,
- (iii) a certified copy of the guarantee referred to in paragraph (c) for that financial year,
- (iv) the group accounts of the parent undertaking prepared in accordance with the Seventh Council Directive or international financial reporting standards and audited in accordance with Article 37 of the Seventh Council Directive.

Explanatory Note

This head is based on Regulation 16 of the European Communities (Accounts) Regulations, 1993.

Head 31 Group financial statements of partnerships

Head 19 of Part A6 [equivalent of Regulation 7 of the European Communities (Companies: Group Accounts) Regulations, 1992] shall apply to a parent undertaking that is a designated partnership as it applies to private companies under that head.

Explanatory Note

This head is based on Regulation 17 of the European Communities (Accounts) Regulations, 1993.

Head 32 Application of Head 34 of Part A4 to partnerships

Head 34 of Part A4 shall apply to a designated partnership, subject to the conditions set out in Part B10, Head 27 (4) and (5).

Explanatory Note

This head is based on Sections 205B (14) and (15) of the Companies Act, 1990.