



**AN BILLE UM CHOMHPHÁIRTÍOCHTAÍ TEORANTA
INFHEISTÍOCHTA, 1994
INVESTMENT LIMITED PARTNERSHIPS BILL, 1994**

*Mar a ritheadh ag Dáil Éireann
As passed by Dáil Éireann*

ARRANGEMENT OF SECTIONS

PART I

PRELIMINARY

Section

1. Short title.
2. Commencement.
3. Interpretation.
4. Savings and disapplications of laws and enactments.

PART II

CONSTITUTION

5. Constitution of investment limited partnership.
6. Modification of general law and liability of limited partner for debts of investment limited partnership.

PART III

FORMATION

7. Conditions for authorisation.
8. Application for, and grant of, authorisation.
9. Notification of refusal of authorisation and application to court.
10. Records of investment limited partnership and statements filed.

PART IV

ADMINISTRATION

Section

11. Variation of partnership agreement and change in general partner or custodian.
12. Registered office and name.
13. Register.
14. Prospectus.
15. Accounts.
16. Annual report and duty of auditor.
17. Debts and obligations incurred by general partner.
18. Admission of limited partners and assignment of interest.
19. Differences as to business of investment limited partnership, inspection of books and contracts with partners.
20. Return of capital.
21. Assignment.
22. Cessation of limited partner on assignment.
23. Bankruptcy Act, 1988.
24. Obligations of custodian.

PART V

POWERS OF THE BANK

25. Maintenance of records and powers of authorised persons.
26. Appointment and powers of inspectors.
27. Obligation of general partner and custodian to furnish information.
28. Change in particulars.
29. Revocation of authorisation.
30. Replacement of general partner and custodian.
31. Notification by Bank of revocation or replacement.
32. Application to court in case of refusal of authorisation, revocation of authorisation or replacement of general partner or custodian.
33. Directions by the Bank.

Section

- 34. Power of court in case of failure to comply with requirement or condition.
- 35. Personal liability of officers of general partner where failure to keep proper books or records.
- 36. Authorisation not a warranty by the Bank.

PART VI

DISSOLUTION

- 37. Investment limited partnership not terminated by change in limited partners.
- 38. Notice of dissolution.

PART VII

MISCELLANEOUS

- 39. Offences.
- 40. Penalties.
- 41. Offence by body corporate and bringing of proceedings.
- 42. Hearing of proceedings other than in public.
- 43. Law of other states.
- 44. Report by Bank.
- 45. Expenses.

ACTS REFERRED TO

Bankruptcy Act, 1988	1988, No. 27
Central Bank Act, 1971	1971, No. 24
Central Bank Acts, 1942 to 1989	
Companies Act, 1963	1963, No. 33
Companies Acts, 1963 to 1990	
Limited Partnerships Act, 1907	
Partnership Act, 1890	
Petty Sessions (Ireland) Act, 1851	



AN BILLE UM CHOMHPHÁIRTÍOCHTAÍ TEORANTA
INFHEISTÍOCHTA, 1994
INVESTMENT LIMITED PARTNERSHIPS BILL, 1994

BILL

entitled

5

AN ACT TO PROVIDE IN THE PUBLIC INTEREST AND IN
THE INTERESTS OF INVESTORS FOR THE ESTAB-
LISHMENT, AUTHORISATION AND REGULATION OF
INVESTMENT LIMITED PARTNERSHIPS AND FOR
RELATED MATTERS.

10

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

PART I

PRELIMINARY

- Short title. 1.—This Act may be cited as the Investment Limited Partnerships Act, 1994. 15
- Commencement. 2.—This Act shall come into operation on such day as the Minister shall fix by order.
- Interpretation. 3.—In this Act unless the context otherwise requires—
- “the Act of 1890” means the Partnership Act, 1890;
- “the Bank” means the Central Bank of Ireland; 20
- “the court” means the High Court;
- “custodian” means a person maintaining a place of business in the State, appointed pursuant to the partnership agreement, approved by the Bank under *section 8* of this Act and discharging its functions in accordance with *section 5 (1) (c)* hereof; 25
- “general partner” means a person who has been admitted to an investment limited partnership as a general partner in accordance with the partnership agreement, and who shall be personally liable for the debts and obligations of the investment limited partnership;
- “investment limited partnership” means a partnership which holds a certificate of authorisation issued in accordance with this Act; 30

“limited partner” means a person who has been admitted to an investment limited partnership as a limited partner in accordance with the partnership agreement and who shall, at the time of entering into such partnership, contribute or undertake to contribute a stated amount to the capital of the partnership and, except as provided by sections 6, 12, 20 and 38 of this Act, shall not be liable for the debts or obligations of the investment limited partnership beyond the amount so contributed or undertaken;

“partner” means a limited partner or a general partner;

“partnership agreement” means any valid written agreement of the partners governed by the law of the State and subject to the exclusive jurisdiction of the courts of the State, as to the affairs of an investment limited partnership and the conduct of its business as may be amended, supplemented or restated from time to time;

“property” means real or personal property of whatever kind (including securities) and wherever located;

“the Minister” means the Minister for Enterprise and Employment.

4.—(1) Subject to the provisions of this Act, the Act of 1890, and the rules of equity and of common law applicable to partnerships, except so far as they are inconsistent with the express provisions of the last-mentioned Act, shall apply to investment limited partnerships.

Savings and
disapplications of
laws and
enactments.

(2) The provisions of the Limited Partnerships Act, 1907, shall not apply to investment limited partnerships.

(3) In the case of any investment limited partnership with two or more general partners, provisions of this Act requiring or authorising a thing to be done by or to a general partner shall be satisfied, except where the context otherwise indicates, by it being done by or to any one general partner.

(4) For the avoidance of doubt, the provisions of section 376 of the Companies Act, 1963 shall not apply to an investment limited partnership.

PART II

CONSTITUTION

5.—(1) An investment limited partnership may be formed by two or more persons and shall—

Constitution of
investment limited
partnership.

(a) have as its principal business, to be expressed in the partnership agreement establishing the investment limited partnership, the investment of its funds in property;

(b) consist of one or more general partners and one or more limited partners;

(c) have appointed a custodian or custodians being a person or persons maintaining a place of business in the State, and approved by the Bank under section 8 of this Act, in whom the assets of the investment limited partnership shall be entrusted for safe keeping, who is charged with verifying that the business of an investment limited partnership is conducted in accordance with the partnership agreement

and with such powers or duties of a custodian with regard to the investment limited partnership as are specified by the Bank and in *section 24*;

- (d) have specified in the partnership agreement, the conditions under which there may be effected, and the procedure to be followed with respect to, the replacement of a general partner or a custodian to the partnership with another general partner or custodian including a replacement by the Bank under *section 30* and the admission of additional general partners or custodians and shall contain provision to ensure the protection of limited partners in the event of any such replacement; 5 10
- (e) comply with such further and other requirements made by the Bank from time to time under *section 7* hereof;
- (f) hold a certificate of authorisation issued in accordance with *Part III* of this Act. 15

(2) A body corporate with or without limited liability may be a general partner or a limited partner and a partnership may be a limited partner.

(3) The contribution made by a limited partner to the capital of the investment limited partnership may be satisfied in cash or other property provided that in the case of a non-cash contribution, the value of the relevant property shall, for the purposes of satisfying the obligation to contribute to the capital of the investment limited partnership, be the fair market value of the property at the time of transfer of the property to the investment limited partnership. 20 25

(4) For the avoidance of doubt, the contribution made by a limited partner to the capital of the investment limited partnership shall not be satisfied by the provision of any services or loans by the limited partner. 30

Modification of
general law and
liability of limited
partner for debts of
investment limited
partnership.

6.—(1) A limited partner shall not take part in the conduct of the business of the investment limited partnership and in particular shall not have power to contract on behalf of the investment limited partnership and all letters, contracts, deeds, instruments and documents whatsoever shall be entered into by the general partner on behalf of the investment limited partnership. 35

(2) If a limited partner takes part in the conduct of the business of the investment limited partnership in its dealings with persons who are not partners, that limited partner shall be liable in the event of the insolvency of the investment limited partnership for debts of the investment limited partnership incurred during the period that he so participates in the conduct of the business as though he were for such period a general partner. 40

(3) A limited partner shall be liable by virtue of *subsection (2)* only in respect of debts or obligations incurred by the investment limited partnership in favour of a person who at the time the debt or obligation was so incurred reasonably believed, based upon the conduct of the limited partner, that the limited partner was a general partner and whether or not such debts or obligations have since been assigned or otherwise transferred to another person. 45 50

(4) A limited partner does not take part in the conduct of the business of an investment limited partnership within the meaning of

this Act solely by doing any one or more of the following, irrespective of the frequency of such acts:

- 5 (a) being a contractor for, or being an agent or employee of, the investment limited partnership or a general partner or acting as a director, officer or shareholder of a general partner which is a body corporate;
- (b) consulting with and advising a general partner with respect to the business of the investment limited partnership;
- 10 (c) investigating, reviewing, or being advised as to the accounts or business affairs of the investment limited partnership or exercising any right conferred by this Act;
- (d) acting as surety or guarantor or providing any other form of security for the investment limited partnership either generally or in respect of specific obligations;
- 15 (e) voting as a limited partner on one or more of the following matters:
 - (i) the dissolution and winding up of the investment limited partnership;
 - 20 (ii) the purchase, sale, exchange, lease, mortgage, pledge, or other acquisition or transfer of any asset or assets by or on behalf of the investment limited partnership;
 - (iii) the incurring or renewal of any indebtedness of the investment limited partnership;
 - 25 (iv) a change in the objectives or policies of the investment limited partnership;
 - (v) the admission, removal or withdrawal of a general or limited partner or custodian and the continuation of the business of the investment limited partnership thereafter;
 - 30 (vi) transactions in which one or more of the general partners have an actual or potential conflict of interest with one or more of the limited partners.

35 (5) *Subsection (4)* shall not import any implication that the possession or exercise of any other power by a limited partner will necessarily constitute the taking part by such limited partner in the business of the investment limited partnership.

PART III

FORMATION

40 7.—(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 authorisation of an investment limited partnership as it considers appropriate and prudent for the purposes of the orderly and proper regulation of investment limited partnerships.

Conditions for
authorisation.

45 (2) (a) Conditions imposed under *subsection (1)* may be imposed generally, or by reference to particular investment limited

partnerships, 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 limited partnerships.

- (b) The Bank may impose such conditions on general partners or custodians or investment limited partnerships as it considers appropriate and prudent for the purposes of the orderly and proper regulation of general partners, custodians or investment limited partnerships or all of these. 5 10
- (3) (a) The power to impose conditions referred to in *subsection (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 limited partnerships. 15
- (b) The Bank may amend or revoke a condition imposed by it under this section.
- (4) Without prejudice to the generality of *subsections (1), (2) and (3)* hereof, conditions imposed by the Bank on an investment limited partnership may make provision for any or all of the following matters: 20
- (a) the investment policies of the investment limited partnership, including its policies regarding diversification and gearing and including the type of property in which an investment limited partnership may invest; 25
- (b) the issuing and content of prospectuses and other information disseminated by the investment limited partnership;
- (c) the criteria for appointment of any custodian under *section 5*;
- (d) the vesting of the assets or specified assets of the investment limited partnership in a custodian; 30
- (e) the periodicity and contents of reports issued by the investment limited partnership;
- (f) such other supervisory and reporting requirements and conditions relating to its business as the Bank considers appropriate and prudent to impose on the investment limited partnership from time to time for the purposes referred to in the aforesaid subsections. 35
- (5) An investment limited partnership, general partner and custodian shall comply with any conditions relating to its authorisation or business imposed by the Bank which are applicable to them. 40
- (6) A company incorporated outside the State shall not be considered solely by reason of being a limited partner in an investment limited partnership as having established a place of business within the State within the meaning of Part XI of the Companies Act, 1963. 45
- (7) Where a general partner or a custodian, as appropriate, of an investment limited partnership fails to comply with *subsection (5)*, it shall be guilty of an offence.

8.—(1) The Bank shall not authorise an investment limited partnership unless the proposed general partners or any one of them under the partnership agreement, or the proposed custodians, satisfies the Bank as to their competence and probity or if, in the opinion of the Bank, they are not of sufficiently good repute or lack the experience required for the performance of their duties.

Application for, and grant of, authorisation.

(2) No single person shall act as both general partner and custodian.

(3) The application by a partnership for authorisation as an investment limited partnership shall be made in writing by the person proposed as general partner under the partnership agreement to the Bank subject to *subsection (5)*.

(4) The application shall be in such form as the Bank may prescribe and shall be accompanied by a payment to the Bank of an authorisation fee of such amount as the Minister shall from time to time by regulation prescribe, a copy of the partnership agreement together with a statement signed, subject to *subsection (5)* hereof by or on behalf of a person proposed as general partner under the partnership agreement containing the following particulars, together with such further particulars or information as the Bank may specify for the purposes of determining the application together with such additional information as the Bank may specify in the course of determining the application:

- (a) the name of the investment limited partnership;
- (b) a statement of the general nature of the investment objectives of the investment limited partnership;
- (c) the address in the State of the registered office and the principal place of business in the State of the investment limited partnership;
- (d) the term, if any, for which the investment limited partnership is entered into or, if for unlimited duration, a statement to that effect and the date of its commencement;
- (e) the full name and address of the person proposed under the partnership agreement as general partner and if more than one, of each of them, specifying each of them as a general partner and in the case of such a general partner which is a body corporate not incorporated under the laws of the State, a statement that the proposed general partner has complied with the requirements of section 352 of the Companies Act, 1963, and its registration number;
- (f) the full name and address of the proposed custodian appointed under the terms of the partnership agreement in whom the assets of the investment limited partnership shall be entrusted for safe keeping.

(5) If a person required by *subsection (4)* hereof to execute and deliver a statement fails to do so, any other partner, and any assignee of a partnership interest, who is or may be affected by the failure or refusal, may petition the court to direct such person as the court sees fit, to sign the statement and deliver the same on behalf of the person in default.

(6) Upon receipt of these particulars and such other matters as required by the Bank, the Bank may issue a certificate of authorisation for the time being of the investment limited partnership, and a certificate so issued shall be conclusive evidence of compliance with all the requirements of this Act in respect of the formation and authorisation of an investment limited partnership.

(7) No proposed limited partner of a partnership in relation to which an application for authorisation as an investment limited partnership has been made shall have the benefit of limited liability in relation to the debts of that partnership until the date of the issuing of the certificate of authorisation.

5

(8) The Bank may refuse to authorise an investment limited partnership by a name which is, in the opinion of the Bank, undesirable, but an appeal against a refusal so to authorise shall lie to the Court.

(9) Upon application to the Bank in accordance with this section, the Bank may refuse to authorise the investment limited partnership if—

- (a) the applicant fails to fulfil the requirements set down in this Act or set down by the Bank under this Act;
- (b) the applicant has not satisfied the Bank that it will be in a position to comply with any conditions imposed by the Bank under this Act;
- (c) the Bank is not satisfied that authorisation would be in the interests of the proper and orderly regulation of investment limited partnerships.

Notification of refusal of authorisation and application to court.

9.—(1) Where the Bank decides to refuse an application for authorisation of an investment limited partnership under *section 8*, it shall notify the proposed general partner making the application of its decision and of the reasons therefor.

20

(2) Where the Bank refuses, or fails to take a decision on, an application for authorisation of an investment limited partnership within three months of the submission of an application properly made in accordance with the requirements of *section 8*, any proposed general partner may apply to the Court in accordance with *section 32*.

25

Records of investment limited partnership and statements filed.

10.—(1) The Bank shall maintain a record of each investment limited partnership authorised under this Act and all the statements filed in relation to such investment limited partnership and section 370 of the Companies Act, 1963 shall apply to the partnership agreement the particulars filed by the investment limited partnership under *section 8 (4) (e)* and *8 (4) (f)*, any prospectus of an investment limited partnership and any statement filed in relation to an investment limited partnership under *section 16*, as it applies to documents kept by the registrar pursuant to the Companies Acts, 1963 to 1990 save that references to the registrar therein shall be construed as references to the Bank.

30

35

(2) The Bank may, from time to time, publish in *Iris Oifigiúil* a list of investment limited partnerships, with such details of the matters specified in *subsection (1)* as it considers appropriate.

40

PART IV

ADMINISTRATION

Variation of partnership agreement and change in general partner or custodian.

11.—(1) Notwithstanding any provision therein to the contrary, a partnership agreement may only be varied by instrument in writing signed by or on behalf of each of the partners to the partnership agreement.

45

(2) No alteration in the partnership agreement or change in the name of the investment limited partnership shall be made or take effect without the prior approval of the Bank.

5 (3) A general partner or custodian of an investment limited partnership may not be replaced by another general partner or custodian, nor may additional general partners be admitted to such partnership or additional custodians be appointed, without the prior approval of the Bank.

10 (4) Where a person is admitted to partnership as a general partner or causes or permits a general partner to be admitted to partnership of an investment limited partnership without the prior approval of the Bank, he shall be guilty of an offence.

15 12.—(1) An investment limited partnership shall at all times maintain a registered office in the State and a principal place of business in the State which may be at the same address, to which all communications and notices may be addressed. Registered office and name.

20 (2) Every investment limited partnership shall use the words "investment limited partnership" or the abbreviation "ilp" or in the Irish language "comhpháirtíocht theoranta infheistíochta" or the abbreviation "cti" at the end of its name, and those words and that abbreviation may be used interchangeably.

(3) The name or a distinctive part of the name of a limited partner shall not form or be used as part of the name of an investment limited partnership.

25 (4) A limited partner who knowingly permits his name or any distinctive part thereof to be used in the name of an investment limited partnership will be liable as if a general partner to any person who extends credit to that investment limited partnership without actual knowledge that the limited partner is not a general partner.

30 (5) If default is made in compliance with the requirements of subsection (1) or (2) any partner who is in default shall be guilty of an offence.

35 13.—(1) The general partner shall maintain or cause to be maintained at the registered office of the investment limited partnership a register of the names and addresses, amounts and dates of the contribution or contributions of each partner or the amounts undertaken to be contributed and the amounts and dates of any payments representing a return of any part of the contribution of any partner which register shall be updated within five days of the change in the particulars therein. Register.

(2) The register described in subsection (1) shall be open to inspection by any partner or custodian of the investment limited partnership during business hours.

45 (3) The register described in subsection (1) shall be *prima facie* evidence of the matters which are by subsection (1) directed to be inserted therein.

50 (4) If default is made in compliance with the requirements of this section each general partner shall upon summary conviction incur a penalty of £1,000 for each day that such default continues and shall indemnify any person who thereby suffers any loss.

Prospectus.

14.—(1) Where the Bank, in exercise of the powers conferred upon it by *section 7 (4) (b)* requires the issuing by an investment limited partnership of a prospectus and an investment limited partnership fails to comply with that requirement or a prospectus so issued fails to comply with the contents so required of that prospectus, if any, the general partner shall be guilty of an offence. 5

(2) The Companies Acts, 1963 to 1990 shall not apply in relation to a prospectus published by an investment limited partnership.

(3) The general partner shall be liable to any person suffering loss in reliance upon a prospectus which is in any material respect inaccurate or which omits material information required by the Bank under *section 7 (4) (b)*. 10

Accounts.

15.—(1) The Bank may exempt an investment limited partnership from the provisions of S.I. No. 396 of 1993, where its sole business is the investment of its funds in property with the aim of spreading investment risk and giving its partners the benefit of the management of its assets. 15

(2) The Bank may impose such conditions as to form, content and periodicity of accounts of an investment limited partnership as it deems appropriate. 20

Annual report and
duty of auditor.

16.—(1) An investment limited partnership shall cause to be published and filed with the Bank an annual report the contents of which shall be prescribed by the Bank.

(2) The accounts of an investment limited partnership and the accounting information given in the annual report must be audited by one or more persons empowered to audit accounts in accordance with the Companies Acts and the auditor's report, including any qualifications, shall be produced in full in the annual report. 25

(3) If the auditor of an investment limited partnership—

(a) has reason to believe that the information provided to investors or to the Bank in the reports or other documents of the investment limited partnership does not truly describe the financial situation and the assets and liabilities thereof, or 30

(b) has reason to believe that the assets of the investment limited partnership are not or have not been invested in accordance with this Act or the partnership agreement, or 35

(c) has reason to believe that there exist circumstances which are likely to affect materially the ability of the investment limited partnership to fulfil its obligations to limited partners or meet any of its financial obligations, or 40

(d) has reason to believe that there are material defects in the financial systems and controls or returns of an investment limited partnership under this Act or conditions imposed thereunder, or its accounting records, or 45

(e) has reason to believe that there are material inaccuracies in or omissions from any returns of a financial nature made by the investment limited partnership to the Bank, or

(f) proposes to qualify any certificate which he is to provide in relation to financial statements under this Act or regulations made thereunder,

he shall report the matter to the Bank in writing without delay.

5 (4) The auditor of an investment limited partnership shall, if requested by the Bank, furnish to the Bank a report stating whether in his opinion and to the best of his knowledge the investment limited partnership has or has not complied with a specified obligation of a financial nature under this Act or conditions imposed thereunder.

10 (5) Where the auditor of an investment limited partnership so requests, the Bank shall provide to the auditor in writing details of such returns of a financial nature to the Bank by the investment limited partnership as the auditor requests for the purpose of enabling him to exercise his functions under this Act.

15 (6) The auditor of an investment limited partnership shall send to the investment limited partnership a copy of any report made by him to the Bank under *subsections* (3) and (4).

20 (7) (a) Whenever the Bank is of the opinion that the exercise of its functions under this Act or the protection of the interests of limited partners so requires, it may require the auditor of an investment limited partnership to supply it with such information as it may specify in relation to the audit of the business of the investment limited partnership and the auditor shall comply with the requirement.

25 (b) The Bank may require that in supplying information for the purposes of this subsection, the auditor shall act independently of the investment limited partnership.

30 (8) No duty to which the auditor to an investment limited partnership may be subject shall be regarded as contravened, and no liability to the investment limited partnership or its partners, creditors or other interested parties, shall attach to the auditor by reason of his compliance with any obligation imposed on him by or under this section.

35 (9) Where non-performance of the publication of an annual report in approved form in accordance with *subsections* (1) and (2) occurs, each general partner shall be guilty of an offence and shall indemnify any person who thereby suffers any loss.

40 (10) An auditor who does not act in accordance with *subsection* (3), (4) or (6), shall be guilty of an offence, and shall indemnify any person who thereby suffers any loss.

(11) A general partner or custodian who supplies information which he knows to be false to an auditor under this section shall be guilty of an offence and shall indemnify any person who thereby suffers loss.

45 17.—Any debt or obligation incurred by a general partner in the conduct of the business of an investment limited partnership shall be a debt or obligation of the investment limited partnership.

Debts and obligations incurred by general partner.

Admission of limited partners and assignment of interest.

18.—(1) Notwithstanding anything provided in the partnership agreement, a person may be admitted to an investment limited partnership as a limited partner with the consent of the general partner, or if more than one general partner, of all of them, and if by assignment, subject to *subsection (2)* without any requirement to obtain the consent of the existing limited partners. 5

(2) Subject to *subsection (1)* a limited partner may assign absolutely the whole or any part of his partnership interest and an assignee shall as of the date of such assignment become a limited partner with all of the rights and obligations of the assignor relating to the investment limited partnership, including the obligation of the assignor to make contributions in respect of the partnership interest or the part thereof assigned but excluding any liability of the assignor arising pursuant to *section 6, 12 or 20*. 10

(3) A limited partner may assign the whole or any part of his partnership interest by way of mortgage or charge provided that no such assignment shall operate to constitute the assignee a partner in the investment limited partnership or relieve the assignor of any of its partnership obligations and *section 31 of the Act of 1890* shall apply to any such assignment. 15 20

Differences as to business of investment limited partnership, inspection of books and contracts with partners.

19.—(1) Subject to any express or implied term of the partnership agreement—

(a) any difference arising as to matters connected with the business of an investment limited partnership shall be decided by the general partner and if more than one by a majority of the general partners; 25

(b) a limited partner may by himself or his agents at any reasonable time inspect the books of the investment limited partnership and inquire into the state and prospects of the partnership business with such assistance as may reasonably be required of the general partner, and may advise the partners thereon. 30

(2) Notwithstanding any rules of equity or common law applicable to partnerships, but subject to conditions imposed by the Bank, a partner may enter into any contract, including for the lending of money, or transact any business with an investment limited partnership, and such partner shall have the same rights and obligations with respect thereto as a person who is not a partner. 35

Return of capital.

20.—(1) A limited partner shall not whether during his term as a limited partner of an investment limited partnership or on ceasing to be a limited partner at any time thereafter or otherwise on a dissolution of the investment limited partnership, receive out of the capital of the investment limited partnership a payment representing the return of any part of his contribution to the partnership unless at the time of and immediately following such payment the investment limited partnership is certified by the general partner, or if more than one, by a majority of the general partners, to be able to pay its debts in full as they fall due after the proposed return of contribution is made. 40 45

(2) For a period of four months from the date of receipt by a limited partner of any payment representing the return of a contribution by the limited partner or part thereof in circumstances where the certificate referred to in *subsection (1)* has not been secured, such 50

payment shall in the event of insolvency of the investment limited partnership within such period be repayable by the limited partner with simple interest at the rate of 5 per cent. per annum, or such further sum as may be fixed by regulation made by the Minister,
5 calculated on a daily basis to the extent that such contribution or part thereof is necessary to discharge a debt or obligation of the investment limited partnership incurred during the period in which the contribution represented an asset of the investment limited partnership.

10 (3) In this section "receive" and "receipt" shall include the release of any undertaking forming part of a contribution and in this context a liability to make a repayment pursuant to *subsection (2)* shall be read to refer to due performance of such undertaking.

(4) A distribution of any assets of an investment limited partnership
15 to a limited partner shall be deemed to be a return of contribution for the purposes of *subsection (1)* to the extent that a distribution to him reduces the value of his share of the investment limited partnerships calculated on the basis of the value of the net assets of the investment limited partnership, below the value shown in the register
20 maintained in accordance with *section 13* as the amount contributed or undertaken to be contributed by him.

21.—A limited partner shall cease to be a limited partner of an investment limited partnership on the absolute assignment of all of his partnership interest or on the return of the whole of his contribution
25 including the release of any undertaking to contribute to the partnership provided that, notwithstanding any term of the partnership agreement or of any other agreement to the contrary no such assignment shall relieve the assignor of any liability arising under *section 6, 12 or 20*. Assignment.

30 22.—(1) Subject to *subsections (2) and (3)*, legal proceedings in respect of any liability of or to an investment limited partnership including proceedings to enforce a foreign judgment by or against the investment limited partnership may be instituted by or against any one or more of the general partners only and no limited partner shall
35 be a party to or named in such proceedings. Cessation of limited partner on assignment.

(2) *Subsection (1)* shall be without prejudice to the right of a general partner or a creditor of an investment limited partnership or other person to join in or otherwise institute proceedings against any one or more of the limited partners who may be liable for the debts
40 of the investment limited partnership pursuant to *section 6 or 20* or to enforce the repayment of a return of contribution required by *section 20*.

(3) A limited partner may with the leave of the court, bring an action on behalf of an investment limited partnership if the general
45 partners with authority to bring such proceedings refuse to do so, and the court determines that that refusal is oppressive to the limited partner or in disregard of his interests as a limited partner.

23.—For the purposes of the application of sections 30, 31, 32 and 36 of the Bankruptcy Act, 1988, a limited partner shall not be regarded
50 as a partner of an investment limited partnership. Bankruptcy Act, 1988.

24.—(1) The custodian must—

- (a) carry out the instructions of the general partner unless they conflict with this Act or regulations made hereunder, directions of the Bank or the partnership agreement;
- (b) ensure that in transactions involving investment limited partnership's assets any consideration is remitted to it within the usual time limits; 5
- (c) ensure that an investment limited partnership's income is applied in accordance with this Act or regulations made hereunder, directions of the Bank or the partnership agreement; 10
- (d) enquire into the conduct of the general partners in the management of the investment limited partnership in each annual accounting period and report thereon to the limited partners. The custodian's report shall be delivered to the general partner in good time to enable it to include a copy of the report in the Annual Report required under *section 16*. The Report shall state whether in the custodian's opinion the general partner has managed the investment limited partnership in that period— 15
 - (i) in accordance with this Act or regulations made hereunder, directions of the Bank or the partnership agreement the limitations imposed on the investment and borrowing powers of the general partner and custodian by the partnership agreement or directions of the Bank, and 25
 - (ii) otherwise in accordance with the provisions of the partnership agreement and this Act, and

if it has not done so, in what respect in which it has not done so and the steps which the custodian has taken in respect thereof; 30
- (e) ensure that the value of the interests of the partners in the investment limited partnership is calculated in accordance with this Act and the partnership agreement;
- (f) ensure that contributions and withdrawals of contributions of partners' capital are effected in accordance with the partnership agreement and the Act; 35
- (g) carry out such additional duties as may be specified by the Bank by means of conditions imposed under *section 7 (2) (b)*. 40

(2) Any provision whether contained in the partnership agreement or in any contract with an investment limited partnership for exempting a custodian, general partner or auditor of an investment limited partnership from, or indemnifying him against any liability which would otherwise attach to him in respect of any negligence, default, breach of duty or breach of trust of which he may be guilty in relation to an investment limited partnership shall be void, so, however, that an investment limited partnership may indemnify any such custodian, general partner or auditor against any liability incurred by him in defending proceedings in which judgement is given in his favour or in which he is acquitted. 45 50

(3) A custodian who fails to comply with *subsection (1)* shall be guilty of an offence and shall indemnify any person who thereby suffers loss.

PART V

5

POWERS OF THE BANK

25.—(1) Every general partner and custodian shall keep at an office or offices within the State such books and records (including accounts) as may be specified from time to time by the Bank in the due discharge by the Bank of its statutory functions and shall notify
10 the Bank of the address of every office at which such book or record is kept for the purposes of this Act.

Maintenance of records and powers of authorised persons.

(2) (a) An appropriate person duly authorised in writing in that behalf by the Bank (in this section referred to as "an authorised person") may, for the purpose of the performance by the Bank of its statutory functions and upon
15 production of his authorisation, at all reasonable times, inspect and take copies of or extracts from, and make such enquiries as he may consider in relation to—

(i) the books and records kept pursuant to this Act by the
20 general partner or custodian, and

(ii) any books of account relating to the general partner and custodian, and

(iii) any other document relating to the business of the investment limited partnership,

25 for those purposes enter any office to which *subsection (1)* relates and any other place where he reasonably believes any books, records or other documents as aforesaid are kept.

(b) A person who has in his power, possession or procurement
30 any books, records or other documents aforesaid shall—

(i) produce them at the request of an authorised person and permit him to inspect and take copies of or extracts from them,

35 (ii) at the request of an authorised person, give any information which may be reasonably required with regard to them, and

(iii) give such other assistance and information to an authorised person as is reasonable in the circumstances.

(c) The provisions of *paragraphs (a)* and *(b)* shall apply to
40 every general partner and custodian of an investment limited partnership and the provisions of those paragraphs, other than *subparagraph (i)* of *paragraph (a)* shall apply to—

45 (i) every associated undertaking of the general partner or custodian, and

(ii) any other person associated with the investment limited partnership,

where an inspection of the accounts or other records is, in the opinion of the Bank, materially relevant to the proper appraisal of the business of an investment limited partnership during any period in respect of which an inspection or proposed inspection of the investment limited partnership relates. 5

- (d) The Bank may direct that the expenses of and incidental to an authorised person carrying out functions under this section shall be defrayed by the person to whom this section applies and in respect of whom the section is operated. 10

(3) Books and records kept pursuant to this section shall be in addition to books or records required to be kept by or under any other enactment, and shall be retained for at least such period as the Bank may specify in respect of such book or record. 15

(4) (a) In this section, *section 26* and *section 27*—

“appropriate person” means—

- (i) an officer of the Bank, or
- (ii) in relation to any particular inspection (including a proposed inspection), any other person who in the opinion of the Bank possesses appropriate qualifications or experience to carry out the inspection, or any part thereof, to which this section relates; 20

“associated undertaking” means, as appropriate—

- (i) a holding company of the general partner or custodian, 25
- (ii) a subsidiary company of the general partner or custodian,
- (iii) a company which is a subsidiary of a body corporate where the general partner or custodian concerned is also a subsidiary of a body corporate, but neither company is a subsidiary of the other, 30
- (iv) in the case of a general partner or custodian any other body corporate that is not a subsidiary of the general partner or custodian but in respect of which the company is beneficially entitled to more than 20 per cent. in nominal value of either the allotted share capital or of the shares carrying voting rights (other than voting rights which arise only in specified circumstances) in that other body corporate, 35
- (v) a partnership in which the general partner or custodian has an interest and whose business is, or at the relevant time was, in the opinion of the Bank, materially relevant to any inspection of the general partner or custodian being carried out or proposed to be carried out under this section; 40 45

“holding company” and “subsidiary company” have the meanings given to them by section 155 of the Companies Act, 1963.

- (b) References in this section to books, records or other documents or to any of them, shall be construed as including

any document or information kept in a non-legible form (by the use of electronics or otherwise) which is capable of being reproduced in a legible form and all the electronic or other automatic means, if any, by which such document or information is so capable of being reproduced to which the person whose books, records or other such documents are inspected for the purposes of this Regulation, has access.

- 5
- (5) Any person who is required to provide an authorised person with books, records or other documents under this section, or to give any information to an authorised person, and who fails to do so, or who knowingly provides an authorised person with information which is false, shall be guilty of an offence.

15 26.—(1) Without prejudice to the powers of the Bank under this Act, the Bank may apply to the court and the court may, if satisfied of the matters set forth in *subsection (2)*, appoint one or more inspectors to investigate the affairs of that investment limited partnership and, where necessary, any associated undertaking and to report thereon in such manner as the court directs.

Appointment and powers of inspectors.

- 20 (2) The court may appoint an inspector under this section where it is satisfied that there are circumstances suggesting that—

- (a) limited partners are being oppressed or their interests as limited partners disregarded,
- 25 (b) limited partners are not being given all the information relating to the affairs of the investment limited partnership which they might reasonably expect,
- (c) the affairs of the investment limited partnership are being conducted with the effect of defrauding its creditors or the creditors of any other person or in an unlawful manner,
- 30 (d) there has been persistent default by the investment limited partnership, its general partner or custodian in complying with the requirements of this Act,
- (e) persons connected with the formation or management of an investment limited partnership have in connection therewith been guilty of fraud, misfeasance or other misconduct towards it or towards the limited partners, or any one of them,
- 35 (f) the appointment of an inspector is otherwise required in the interests of the proper and orderly regulation of investment limited partnerships.
- 40

(3) The court may consider matters in exercising its discretion under this provision notwithstanding that they relate to events occurring outside the State.

- 45 (4) Before applying to the court to appoint an inspector under this section, the Bank may, if it is of the opinion that it would not be prejudicial to the interests of limited partners or creditors of the investment limited partnership, notify the general partner and custodian of the investment limited partnership concerned in writing of the action which it proposes to take and of the grounds on which it proposes to take and, in such case, the general partner shall within
- 50

such period as the Bank may set out in the notification, be entitled to give to the Bank a statement in writing explaining its activities.

(5) Where an inspector appointed under *subsection (1)* thinks it necessary for the purposes of his investigation to investigate the affairs of any other investment limited partnership or any body corporate or present or former associated undertaking of the investment limited partnership he shall apply to the court for an order to widen the scope of his investigation, which order the court may make if it thinks it necessary for the purposes of the investigation, and if granted such order, shall have power to do so, and shall report on the affairs of the investment limited partnership or body corporate or present or former associated undertaking so far as he thinks the results of the investigation are relevant to the investigation of the first mentioned investment limited partnership.

(6) Where the court appoints an inspector under *subsection (1)* it may, from time to time, give such directions as it thinks fit, whether to the inspector or otherwise with a view to ensuring that the investigation is carried out as efficiently and as cost effectively as is practicable in the circumstances.

(7) (a) It shall be the duty—

(i) of the general partner and custodian, of all officers and agents thereof, and of all agents of the investment limited partnership the affairs of which are being investigated under *subsection (1)*, including persons outside the State, and

(ii) of any other person, including those being investigated under *subsection (5)*, and including persons outside the State, who the inspector considers is or may be in possession of any information concerning the affairs of an investment limited partnership,

to produce to an inspector appointed under *subsection (1)* all books, accounts, deeds, records or other documents of, or relating to, the business of an investment limited partnership being investigated under *subsection (1)* which are in their power, possession or procurement to attend before the inspector when required to do so at a specified place and time and otherwise to give to him all assistance in connection with the investigation which they are reasonably able to give.

(b) The inspector may examine on oath or by written interrogatories on oath the custodian, general partner, officer and agents thereof, and all agents of the investment limited partnership being investigated and any such person as is mentioned in *subsection (a)* of this provision in relation to its affairs and may—

(i) administer an oath accordingly,

(ii) reduce the answers of such person to writing and require that person to sign them.

(c) If an inspector has reasonable grounds for believing that a custodian, general partner, officers or agent thereof, or an agent of the investment limited partnership being investigated or other person being investigated or other person being investigated under *subsection (5)* maintains or has

maintained either at that time or at any time in the past, an account of any description in a credit institution or an account with any other financial institution, including holdings of investment instruments, whether alone or jointly with another person and whether in the State or elsewhere, into or out of which has been paid any money which—

(i) had resulted from or been used in the financing of any transaction, arrangement or agreement relating to the business of the investment limited partnership,

(ii) has been in any way connected with any act or omission, or series of acts or omissions, which on the part of that custodian, general partner, officers or agent thereof, or an agent of the investment limited partnership, constituted misconduct (whether fraudulent or not) towards an investment limited partnership or any client or creditor of the investment limited partnership,

the inspector may require the general partner, officers or agents thereof, or the agent of the investment limited partnership to produce to him all documents in his possession or under his control relating to that account and in this subsection "credit institution account" includes an account with any person exempt by virtue of section 7 (4) of the Central Bank Act, 1971 from the requirement of holding a licence granted under section 9 of that Act.

(d) If any general partner, custodian, all officers and agents thereof and any agents of the investment limited partnership, and of all agents of the investment limited partnership or any such person as is mentioned in this subsection refuses to produce to the inspector any book or document which it is his duty under this section to produce, refuses to attend before the inspector when required to do so, or refuses to answer any question put to him by the inspector with respect to the affairs of the investment limited partnership or other person mentioned in this subsection, as the case may be, the inspector may certify the refusal under his hand to the court and the court may thereupon enquire into the case and, after hearing any witnesses who may be produced against or on behalf of the alleged offender and any statement which may be offered in defence, make any order or direction as it thinks fit including a direction to the person concerned to attend or re-attend before the inspector or produce particular books or documents or answer a particular question put to him by the inspector, or a direction that the person concerned need not produce a particular book or document or answer a particular question put to him by the inspector.

(e) In this section, any references to officers or agents shall include past as well as present officers and agents, as the case may be, and "agents", in relation to an investment limited partnership shall include a general partner, custodian, the bankers, accountants, solicitors, auditors and the financial and other advisors of the investment limited partnership.

(8) (a) The expenses of and incidental to an investigation and the fees incurred by an inspector appointed by the court under subsection (1) shall be defrayed by the Bank but the court may direct that any person dealt with in the report shall be liable, to such extent as the court may direct, to repay the Bank any expenses or fees incurred. 5

(b) Without prejudice to subsection (8) (a) of this section, any person who is—

(i) convicted on indictment of an offence on a prosecution instituted as a result of an investigation, 10

(ii) ordered to pay damages or restore any property in proceedings brought as a result of an investigation, or

(iii) awarded damages or to whom property is restored in proceedings brought as a result of an investigation, 15

may, in the same proceedings, be ordered to repay all or part of the expenses and fees, referred to in subsection (8) (a) of this section and interest as appropriate, to the Bank or to any person on whom liability has been imposed by the court under that subsection provided that, in the case of a person to whom paragraph (iii) of this subsection relates, the court shall not order payment in excess of one-tenth of the amount of the damages awarded or of the value of the property restored and interest as appropriate as the case may be, and any such order shall not be executed until the person concerned has received his damages or the property has been restored, as the case may be. 20 25

(c) The report of an inspector may, if he thinks fit, and shall, if the court so directs, include a recommendation as to the directions, if any, which he thinks appropriate, in the light of his investigation, to be given under subsection (8) (a) of this section. 30

(9) (a) An inspector appointed under this section may, and shall if the court so requires, make an interim report to the Court, and, on the conclusion of his investigation, but he may at any time in the course of the investigation, without making an interim report, inform the court of matters coming to his knowledge as a result of the investigation tending to show that an offence has been committed. 35 40

(b) On a report being presented to it under this section the court shall—

(i) forward a copy of any such report to the Bank,

(ii) if it thinks fit, furnish a copy thereof, to the general partner and the investment limited partnership and its auditors, and 45

(iii) if it thinks fit—

(a) furnish a copy thereof, on request and on payment of such fees as it may fix, to any other person who is a member of the investment limited partnership or a member of any other body 50

dealt with in the report by virtue of this section or whose interests as a creditor or client of the investment limited partnership or of any other such body appear to the court to be affected, and

5 (b) cause any such report to be printed and published.

(c) Where the court thinks so proper it may direct that a particular part of a report made by virtue of this section be omitted from a copy forwarded or furnished under subsection (9) (b) (ii) or (9) (b) (iii) (a) of this section or from the report as printed and published under subsection (9) (b) (iii) (b).

10 (10) (a) Having considered a report under subsection (9) of this section, the court may make such order as it thinks fit in relation to matters arising from that report including—

15 (i) an order of its own motion for the winding up of an investment limited partnership,

(ii) an order for the purpose of remedying any disability suffered by any person whose interests were adversely affected by the conduct of the affairs of the investment limited partnerships provided that, in making any such order, the court shall have regard to the interests of any other person who may be adversely affected by the order.

20 (b) If, in the case of any investment limited partnership liable to be wound up under this Act, it appears to the Bank from—

(i) any report made under subsection (9) of this section as a result of an application by the Bank under subsection (1), or

30 (ii) any report made by an inspector appointed by the Bank under this Act, or

(iii) any information or document obtained by the Bank under this Act,

35 that a petition should be presented for the winding up of an investment limited partnership, the Bank may, unless the investment limited partnership is already being wound up by the court, present a petition for it to be so wound up if a court thinks it just and equitable for it to be so wound up.

40 27.—(1) A general partner and custodian shall each furnish the Bank—

Obligation of general partner and custodian to furnish information.

(a) at such times as the Bank may specify from time to time, such information and returns concerning the business of the investment limited partnership or the carrying on of a business as aforesaid by such person, as the case may be, as the Bank may specify from time to time, being information and returns which the Bank considers it necessary to have for the due performance of its statutory functions;

(b) within such period as the Bank may specify, any information and returns (not being information or returns specified under paragraph (a) of this section) concerning the business of the investment limited partnership or the carrying on of that business as aforesaid by such person, as the case may be, that the Bank may request in writing, being information and returns which the Bank considers it necessary to have for the due performance of its statutory functions. 5

(2) A person shall not furnish information or returns under this section which he knows to be false. 10

(3) Subsections (1) and (2) shall apply to the business of an associated undertaking to the extent only that the information and returns sought by the Bank are, in the opinion of the Bank, materially relevant to the proper appraisal of the business of the investment limited partnership or the associated undertaking. 15

(4) Any person who is required to provide the Bank with information or returns and who fails to do so, or who knowingly provides the Bank with information which is false, shall be guilty of an offence.

Change in particulars.

28.—(1) If during the continuance of an investment limited partnership any change is made or occurs in any particulars specified in section 8 (4) (a) to (f) with respect to the investment limited partnership, a statement signed by a general partner specifying the nature of the change shall, within five days of such change, be delivered to the Bank. 20
25

(2) No change in any of the matters specified in section 8 (4) (a) to (f) shall take effect until the Bank has issued a letter consenting to such change, and no change in the name of an investment limited partnership shall take effect until an amended certificate of authorisation has been delivered by the Bank. 30

Revocation of authorisation.

29.—(1) The Bank may revoke the authorisation of an investment limited partnership if it appears to the Bank—

(a) that any of the requirements for the authorisation of the investment limited partnership are no longer satisfied,

(b) that it is undesirable in the interests of the limited partners that the investment limited partnership should continue to be authorised, 35

(c) without prejudice to paragraph (b), that the general partner or custodian of the investment limited partnership has contravened any provision of this Act or conditions imposed hereunder or, in purported compliance with any such provision, has furnished the Bank with false, inaccurate or misleading information or has contravened any prohibition or requirement imposed under this Act. 40

(2) The Bank may revoke the authorisation of an investment limited partnership at the request of the general partner or custodian, but it may refuse to do so if it considers that any matter concerning the investment limited partnership should be investigated as a preliminary to a decision on the question of whether the authorisation should be revoked or that revocation would not be in the interests of the limited partners. 45
50

(3) The Bank shall, within five days of the revocation of an authorisation, publish notice of that revocation in *Iris Oifigiúil* and in at least one national daily newspaper.

5 30.—(1) The Bank may replace a general partner or custodian with another general partner or custodian where—

Replacement of
general partner and
custodian.

- (a) it is satisfied that the general partner or custodian has failed to demonstrate the competence, probity or experience in the discharge of their functions reasonably required of them,
- 10 (b) it is satisfied that they are not of sufficiently good repute,
- (c) it is satisfied that it is undesirable in the interests of the limited partners that the person should remain as general partner or custodian,
- 15 (d) without prejudice to paragraph (c), it is satisfied that the general partner or custodian has contravened any provision of this Act or regulations made thereunder or, in purported compliance with any such provision, has furnished the Bank with false, inaccurate or misleading information or has contravened any prohibition or
- 20 requirement imposed under this Act or regulations made hereunder.

(2) Upon replacement by the Bank under this section of a general partner or custodian, that general partner or custodian as the case may be shall cease to be a partner of or custodian to the investment
25 limited partnership, without prejudice to the general partner's liabilities in respect of the debts and obligations of the partnership and the powers and duties of the general partner or custodian under the partnership agreement or this Act shall be exercised and carried out by the new general partner or custodian, as the case may be.

30 (3) The Bank may, by application to the Court, seek such interim or interlocutory relief preventing a general partner or custodian from acting as such or appointing a person to carry out their functions and the court on such application, having regard to the matters set forth in subsection (1) and the protection of the limited partners, may make
35 such order as it deems appropriate.

31.—(1) Where the Bank proposes to revoke the authorisation of an investment limited partnership other than at the request of the general partner or custodian under section 29, or to replace a general partner and custodian under section 30, it shall give the general
40 partner and custodian notice of its intention to act and, where it proposes to replace a general partner or custodian under section 30 the identity of the proposed new general partner.

Notification by
Bank of revocation
or replacement.

(2) Upon receipt of such notification, the general partner shall cause forthwith the limited partners to be informed of the receipt of
45 such notice from the Bank.

(3) A partner or custodian may, within fifteen days of the date of service of a notice pursuant to subsection (1), make written representations to the Bank which period, in the case of representations by a limited partner, the Bank may extend.

50 (4) The Bank shall have regard to any representations made in accordance with subsection (3) in determining whether to revoke the

authorisation of an investment limited partnership or to replace the general partner or custodian, as the case may be.

(5) A general partner who fails to comply with *subsection (2)* shall be guilty of an offence and shall indemnify any person who thereby suffers loss.

5

Application to court in case of refusal of authorisation, revocation of authorisation or replacement of general partner or custodian.

32.—(1) Where the Bank refuses an application for authorisation under *section 8*, fails to take a decision on an application within three months of the date hereof, revokes or refuses to revoke an authorisation under *section 29*, or determines to replace a general partner or custodian under *section 30*, any aggrieved party (including a limited partner) may apply to the Court to have the matter reviewed.

10

(2) Where an application is made under *subsection (1)*, the Court shall confirm the decision of the Bank unless it is satisfied that the procedures laid down by, or the requirements of, this Act have not been complied with in any material respect or that there was no material before the Bank on which the Bank could reasonably conclude—

15

(a) in the case of a refusal of authorisation or a failure to authorise within three months, that the criteria set forth in *section 8 (1)* or *section 8 (9)* have not been established,

20

(b) in the case of a decision to revoke the authorisation of an investment limited partnership, that the matters set forth in *section 29 (1)* have been established,

(c) in the case of a decision to replace a general partner or custodian, that the matters set forth in *section 30 (1)* have been established.

25

(3) Where the Court does not confirm the decision of the Bank on an application made to it under *subsection (2)*, it may set aside the decision of the Bank or, if the Bank has failed to take a decision within three months, direct it to take a decision within such time as the court may direct, and in any such case, remit the matter to the Bank which shall thereupon reconsider the matter and make a decision in accordance with such procedures and requirements.

30

(4) Any application under this section shall be made on notice to the Bank, the general partner and the custodian.

35

(5) Where a general partner brings an application under this section or receives notice of such an application, he shall forthwith cause the limited partners to be informed thereof, and any limited partner shall be entitled to appear before the court and be heard thereon.

(6) A general partner who fails to comply with *subsection (5)* shall be guilty of an offence.

40

Directions by the Bank.

33.—(1) Where the Bank is of the opinion that it is in the public interest to do so or in the interests of the proper and orderly regulation of investment limited partnerships, or that any of the requirements for authorising an investment limited partnership are no longer satisfied, or that the investment limited partnership, custodian or the general partner—

45

(a) has become or is likely to become unable to meet his obligations to his creditors, or

(b) has contravened this Act, or has failed to comply with any condition or requirement imposed under this Act by the Bank on the custodian or the general partner, or in purported compliance with any such provision, has furnished the Bank with false, inaccurate or misleading information, or

(c) is not maintaining adequate capital resources having regard to the volume and nature of its business, or

(d) no longer complies with the capital or other financial requirements imposed by the Bank from time to time,

the Bank may give a direction in writing to that custodian or general partner requiring it to take such steps, including the winding-up of the investment limited partnership or the suspension of the assignment of any partnership interest, as in the opinion of the Bank are necessary in the interests of the proper and orderly regulation of investment limited partnerships or for the protection of limited partners, creditors of the investment limited partnership or creditors of the partners in an investment limited partnership.

(2) For the purposes of *subsection (1)*, the Bank may take into account any matter relating to the investment limited partnership, the general partner or custodian, a director or controller of the general partner or custodian or any person employed by or associated with the general partner or custodian in connection with the investment limited partnership.

(3) Upon receipt of such a direction, the general partner shall within ten days of the date thereof, cause all limited partners of the investment limited partnership to be informed thereof.

(4) The Bank may revoke a direction under *subsection (1)* of this section unless an order under *subsection (8)* of this section has been made in respect of the direction.

(5) A custodian or partner on whom a direction has been imposed under *subsection (1)* of this section, and any limited partner of an investment limited partnership in respect of which such a direction has been issued, may apply to the Court for, and the Court may grant, an order setting aside the direction.

(6) Upon an application made to it under *subsection (5)* of this section, the court shall not set aside a direction given by the Bank unless it is satisfied that the procedures laid down by, or the requirements of, this Act have not been complied with in any material respect, or that—

(a) there was no evidence upon which the Bank could reasonably conclude that the public interest or the interests of the proper and orderly regulation of investment limited partners required such a direction, or

(b) there was no evidence upon which the Bank could reasonably conclude that the state of affairs set forth in *subsection (1)* existed, or

(c) having regard to the matters established before the court and the proper and orderly regulation of investment limited partnerships, that the direction was not reasonably proportionate to those matters so established.

(7) An application under *subsection (5)* of this section shall not be entertained after the expiry of twenty one days from the date of making of the direction.

(8) The Bank may apply to the court for, and the court may grant, an order confirming a direction given under *subsection (1)* of this section or confirming and extending the period of operation of the direction for such period as the court may consider appropriate. 5

(9) A direction to which *subsection (8)* of this section applies shall cease to have effect—

(a) where the direction was confirmed, upon the expiration of the period to which the direction relates, 10

(b) where the direction was confirmed and the period of its operation was extended, upon the expiration of that extended period,

(c) from such date as the court by order determines, 15

(d) upon the making of a winding-up order in respect of the investment limited partnership, or the dissolution of the investment limited partnership,

(e) where the court is of the opinion that the circumstances which gave rise to the direction have ceased to exist and that it would be unjust and inequitable not to make an order to that effect, from such date as the court determines, 20

which ever occurs first.

(10) (a) Where the Bank is of the opinion that even if the custodian or partner on whom a direction has been imposed appears to be able to meet his obligations to creditors, but the circumstances giving rise to the direction are unlikely to be rectified it may forthwith apply to the court for, and the court may grant an order directing the custodian or partner to prepare, in consultation with the Bank, a scheme for the orderly termination of his business and the discharge of his liabilities and to submit the final scheme to the court within three months for the court's approval; 25 30

(b) Notice of an application under *paragraph (a)* shall be given by the general partner to the limited partners; 35

(c) The court shall not grant an order under *paragraph (a)* of this section unless it is satisfied that the proper and orderly regulation of investment limited partnerships as a whole and the interests of the partners and creditors of the investment limited partnership in question together with the creditors of the custodian or partners of the investment limited partnership, requires such an order; 40

(d) The court shall not approve the terms of the scheme without hearing the Bank and may adjudicate in the event of any dispute between the parties; and 45

(e) If the custodian or partner fails to comply with the order of the court or to adhere to the scheme approved by the court, the Bank may apply to the court for and the court may make such further order as it considers appropriate, including an order of committal or a winding up order on 50

the grounds that it is just and equitable that the custodian or partner should be wound up.

(11) While a direction under this section is in force—

(a) an investment limited partnership to which it relates shall not be dissolved;

(b) the court may restrain any disposal of the assets of the investment limited partnership which will have the effect of perpetrating a fraud on the investment limited partnership, its creditors or partners.

(12) A general partner who fails to comply with *subsections (3) and (10) (b)* shall be guilty of an offence.

34.—(1) Where, on an application made in a summary manner by the Bank, the court is satisfied that there has occurred or is occurring a failure by an investment limited partnership to comply with a requirement or condition imposed under or by virtue of this Act, the court may, by order, prohibit the continuance of the failure or enforce compliance with the requirement by the investment limited partnership, general partner or custodian.

Power of court in case of failure to comply with requirement or condition.

(2) In determining whether to grant an order under this section, the court shall consider—

(a) the requirements of the orderly and proper regulation of investment limited partnerships;

(b) the interests of creditors of the investment limited partnership, the limited partners and creditors of the partners;

(c) the gravity of the non-compliance complained of.

(3) The court may grant such interim or interlocutory relief on an application under this section as in the light of the matters set forth in *subsection (2)*, as it considers appropriate.

(4) An application under this section, other than application for interim relief, shall be made on notice to the investment limited partnership, the general partner and the custodian.

(5) Upon receipt of a notice of an application under this section, the general partner shall cause the limited partners to be forthwith informed thereof.

(6) A general partner who fails to comply with *subsection (5)* shall be guilty of an offence.

35.—(1) Subject to *subsection (2)* of this section, if—

(a) an investment limited partnership is being wound up and is unable to pay all of its debts, and

Personal liability of officers of general partner where failure to keep proper books or records.

(b) the court considers that there has been a contravention of *section 16 (1)* or *section 25 (1)* which has contributed to the inability of the investment limited partnership to pay all of its debts or has resulted in substantial uncertainty as to the assets and liabilities and client money or investment

instruments of the said investment limited partnership or has substantially impeded its orderly winding up,

the court, on the application of the liquidator or the Bank or any creditor or limited partner may, if it thinks it proper to do so, declare that any one or more of the officers or former officers or both of the general partner who is or are responsible for the contravention shall be personally liable, without any limitation of liability, for all, or such part as may be specified by the Court, of the debts and other liabilities of the said investment limited partnership. 5

(2) On the hearing of an application under *subsection (1)* of this section, the person bringing the application may give evidence or call witnesses. 10

(3) (a) Where the court makes a declaration under *subsection (1)* of this section, it may give such directions as it thinks proper for the purpose of giving effect to the declaration and in particular may make provision for making the liability of any such person under the declaration a charge on any debt or obligation due from the investment limited partnership to him, or on any mortgage or charge or any interest in any mortgage or charge on any assets of the investment limited partnership held by or vested in him or any company or other person on his behalf, or any person claiming as assignee from or through the person liable under the declaration or any company or person acting on his behalf, and may from time to time make such further order as may be necessary for the purpose of enforcing any charge imposed under this subsection. 15 20 25

(b) In *paragraph (a)* of this subsection "assignee" includes any person to whom or in whose favour, by the directions of the person liable, the debt, obligation or mortgage was created, issued or transferred or the interest created but does not include an assignee for valuable consideration (not including consideration by way of marriage) given in good faith and without notice of any of the matters on the grounds of which the declaration is made. 30 35

(c) A copy of the declaration referred to in *paragraph (a)* above shall be lodged with the registrar of companies and made available for public inspection.

(4) The court shall not make a declaration under *subsection (1)* of this section in respect of a person if it considers that— 40

(a) he took all reasonable steps to secure compliance by the investment limited partnership with *section 16 (1)* or *section 25 (1)* of this Act, or

(b) he had reasonable grounds for believing and did believe that a competent and reliable person, acting under the supervision or control of a person who has been formally allocated such responsibility, was charged with the duty of ensuring that these sections were complied with and was in a position to discharge that duty. 45

(5) This section shall have effect notwithstanding that the person concerned may be liable to be prosecuted for a criminal offence in 50

respect of the matters on the ground of which the declaration is to be made or that such person has been convicted of such an offence.

(6) In this section "officer", in relation to a general partner includes a director, a person in accordance with whose directions or instructions the directors are accustomed to act, or the secretary.

(7) If—

(a) (i) an investment limited partnership is being wound up and is unable to pay all of its debts and has contravened *section 16 (1)* or *section 25 (1)* of this Act, and

(ii) the court considers that such contravention has contributed to the inability of the investment limited partnership to pay all of its debts or has resulted in substantial uncertainty as to the assets and liabilities or client money and investment instruments of the investment limited partnership or has substantially impeded the orderly winding up thereof,

every officer of the investment limited partnership who is in default shall be guilty of an offence.

(b) In a prosecution for an offence under this section, it shall be a defence for the person charged to show that—

(i) he took all reasonable steps to secure compliance by the investment limited partnership with *section 16 (1)* or *section 25 (1)*, or

(ii) he had reasonable grounds for believing and did believe that a competent and reliable person, acting under the supervision or control of the investment limited partnership who has been formally allocated such responsibility, was charged with the duty of ensuring that that section was complied with and was in a position to discharge that duty.

(8) An investment limited partnership and a person who, being a director or member of an investment limited partnership fails to take all reasonable steps to secure compliance by the investment limited partnership with the requirement of *section 16 (1)* or *section 25 (1)* of the Act or has by his own wilful act been the cause of any default by the investment limited partnership thereunder, shall be guilty of an offence:

Provided, however, that—

(a) in any proceedings against a person in respect of an offence under this section consisting of a failure to take reasonable steps to secure compliance by the investment limited partnership with the requirements of *section 16 (1)* or *section 25 (1)*, it shall be a defence to prove that he had reasonable grounds for believing and did believe that a competent and reliable person was charged with the duty of ensuring that those requirements were complied with and was in a position to discharge that duty, and

(b) a person shall not be sentenced to imprisonment for such an offence unless, in the opinion of the Court, the offence was committed wilfully.

Authorisation not a warranty by the Bank.

36.—The authorisation of an investment limited partnership by the Bank under this Act shall not constitute a warranty by the Bank as to the creditworthiness or financial standing of an investment limited partnership or its partners or custodian.

PART VI

5

DISSOLUTION

Investment limited partnership not terminated by change in limited partners.

37.—(1) Subject to the provisions of *subsection (2)* and subject to any express or implied term of the partnership agreement and notwithstanding anything contained in the Act of 1890, an investment limited partnership shall not be terminated or dissolved by—

10

- (i) a change in any one or more of the limited partners or general partners;
- (ii) the assignment of the whole or part of the partnership interest of a limited partner;
- (iii) the death, incapacity, bankruptcy, removal, resignation, dissolution or winding-up of a limited partner or a general partner, where there is more than one general partner;
- (iv) any one or more of the limited partners or the general partners granting a mortgage or charge or other form of security interest over the whole or part of its partnership interest;
- (v) a sale, exchange, lease, mortgage, pledge or other transfer of any assets of the investment limited partnership.

15

20

(2) Notwithstanding the provisions of *subsection (1)* and notwithstanding any express or implied term of the partnership agreement to the contrary and subject to *subsection (3)*—

25

- (a) the death, incapacity, retirement, bankruptcy, removal, resignation, insolvency, dissolution or winding-up of the sole or last remaining general partner, or
- (b) the withdrawal of the authorisation of the investment limited partnership,

30

shall cause the immediate dissolution of the investment limited partnership.

(3) If within thirty-five days of the date of dissolution of an investment limited partnership due to the circumstances specified in *subsection (2) (a)* the limited partners unanimously elect one or more new general partners who shall be approved by the Bank, the business of the investment limited partnership shall not be required to be wound up, but may be resumed and continued as provided for in the partnership agreement.

35

40

Notice of dissolution.

38.—(1) An investment limited partnership shall not be dissolved by an act of the partners unless a notice of dissolution is signed by a general partner, delivered to the Bank and published in *Iris Oifigiúil*.

(2) In the event of dissolution of an investment limited partnership, its affairs shall be wound up forthwith by the general partners in

45

accordance with the provisions of the partnership agreement unless the court otherwise orders on the application of a partner or creditor.

- 5 (3) Part X of the Companies Act, 1963 shall apply to the winding-up of an investment limited partnership by the court as it would to an unregistered company irrespective of the number of partners and provided that a limited partner shall not be a member for the purposes of section 345 (5) (b) or (c) of that Act except in respect of debts for which the limited partner is liable under *section 6 (2) or 12 (4)*.

- 10 (4) Where an investment limited partnership is, by the terms of the partnership agreement, for a fixed period of time, the investment limited partnership shall be deemed to be dissolved upon the expiry of that period, and the general partner shall cause a notice to be placed in *Iris Oifigiúil* to that effect and upon dissolution as aforesaid, the limited partners shall be liable for the debts and obligations
15 purportedly incurred on behalf of the investment limited partnership thereafter.

PART VII

MISCELLANEOUS

39.—Where an investment limited partnership contravenes— Offences.

- 20 (a) any of the provisions of this Act, or
(b) any regulations made in relation thereto under this Act, or
(c) any condition in relation to its authorisation or business imposed by the Bank,

any partner who is in default shall be guilty of an offence.

25 40.—A person guilty of an offence under this Act shall be liable— Penalties.

- (a) on summary conviction to a fine not exceeding £1,000 or to imprisonment for a term not exceeding 12 months or to both such fine and imprisonment, or
30 (b) on conviction on indictment to a fine not exceeding £500,000 or to imprisonment for a term not exceeding fifteen years or to both such fine and imprisonment,

and, if the contravention in respect of which he is convicted of an offence under this Act is continued after the conviction, he shall be guilty of a further offence on every day on which the contravention
35 continues and for each such offence he shall be liable on summary conviction to a fine not exceeding £1,000 or on conviction on indictment, to a fine not exceeding £500,000.

40 41.—(1) Where an offence under this Act is committed by a body corporate and is proved to have been 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 or management or other controlling authority of such body, that person shall also be guilty of an offence. Offence by body corporate and bringing of proceedings.

(2) Summary proceedings in relation to an offence under this Act may be brought and prosecuted by the Director of Public Prosecutions or the Bank.

(3) Notwithstanding section 10 (4) of the Petty Sessions (Ireland) Act, 1852, summary proceedings for an offence under this Act may be instituted within three years from the date of the offence. 5

Hearing of
proceedings other
than in public.

42.—In any application under this Act, the court may where it is satisfied that because of the nature or circumstances of the application, or otherwise in the interests of justice that it is desirable, order that the whole or any part of proceedings under this Act, may be heard otherwise than in public. 10

Law of other states.

43.—In any proceedings involving a limited partnership established under, or by its terms governed by, the law of another state, the liability of the partners, its organisation and internal affairs shall be determined according to the law of that state. 15

Report by Bank.

44.—It shall be the duty of the Bank to prepare and submit a report to the Minister, within six months after the expiration of every year, in relation to the exercise of its functions under this Act, which report the Minister shall lay before both Houses of the Oireachtas as soon as possible after receipt thereof. 20

Expenses.

45.—The expenses incurred by the Minister in the administration of this Act shall, to such extent as may be sanctioned by the Minister for Finance, be paid out of moneys provided by the Oireachtas.

1857 summary proceedings for an offence

BILLE

dá ngairtear

Acht do dhéanamh socrú, ar mhaithe leis an leas poiblí agus le leasanna infheisteoirí, le haghaidh comhpháirtíochtaí teoranta infheistíochta a bhunú, a údarú agus a rialáil agus le haghaidh nithe gaolmhara.

*An tAire Fiontar agus Fostaíochta
a thíolaic*

*Ritheadh ag Dáil Éireann,
29 Meitheamh, 1994*

BAILE ÁTHA CLIATH:
ARNA FHOILSIÚ AG OIFIG AN tSOLÁTHAIR

Le ceannach díreach ón Oifig Dhíolta Foilseachán Rialtais,
Teach Sun Alliance, Sráid Theach Laighean, Baile Átha
Cliath 2, nó trí aon díoltóir leabhar.

Clóbhualte ag CAHILL PRINTERS LIMITED.

£3.20

BILL

entitled

An Act to provide in the public interest and in the interests of investors for the establishment, authorisation and regulation of investment limited partnerships and for related matters.

*Presented by the Minister for Enterprise
and Employment*

*Passed by Dáil Éireann,
29th June, 1994*

DUBLIN:
PUBLISHED BY THE STATIONERY OFFICE

To be purchased through any bookseller, or directly
from the Government Publications Sale Office,
Sun Alliance House, Molesworth Street, Dublin 2.

Printed by CAHILL PRINTERS LIMITED.

£3.20