



AN BILLE UM IDIRGHABHÁLAITHE INFHEISTÍOCHTA, 1995
INVESTMENT INTERMEDIARIES BILL, 1995

Mar a tionscnaíodh
As initiated

ARRANGEMENT OF SECTIONS

PART I

PRELIMINARY AND GENERAL

Section

1. Short title and commencement.
2. Interpretation.
3. Service of notices.
4. Supervisory authorities.
5. Amendment of definitions.
6. Expenses.
7. Laying of regulations before Houses of the Oireachtas.

PART II

AUTHORISATION

8. Competent authority.
9. Prohibition on acting as an authorised investment business firm.
10. Grant of authorisation.
11. Requests from Commission.
12. Establishment of branches outside the State.
13. Existing investment business firms.
14. Imposition of conditions or requirements on authorised investment business firms.

Section

15. Refusal to consent to amendment of memorandum and articles of association.
16. Revocation of authorisation.
17. Register of investment business firms.
18. Asset and liability ratios and structures of authorised investment business firms.
19. Maintenance of books and records by investment business firms.

PART III

REGULATION AND SUPERVISION OF INVESTMENT BUSINESS FIRMS

20. General functions of supervisory authorities.
21. Directions by supervisory authority.
22. Winding-up on application to Court.
23. Restrictions on advertising.
24. Exemption from restrictions on advertising.

PART IV

INVESTMENT PRODUCT INTERMEDIARIES

25. Definition of investment product intermediary.
26. Definition of restricted activity investment product intermediaries.
27. Requirements for investment product intermediaries.
28. Obligations on product producers.
29. Disclosure obligations of restricted activity investment product intermediaries.
30. Issue of receipts.
31. Register of investment product intermediaries.

PART V

AUDITORS

32. Notification of changes of auditor.
33. Auditors for investment business firms which are not incorporated bodies and duties of auditors.
34. False statements to auditors.
35. Power to require a second audit.

PART VI

PROBITY, CODES OF CONDUCT AND MISCELLANEOUS PROVISIONS

Section

36. Probity and competence of employed persons.
37. Code of conduct.
38. Acquiring transactions.
39. Notification of certain transactions.
40. Approval of acquiring transactions.
41. Period for implementing acquiring transactions.
42. Imposition of conditions or requirements in respect of proposed acquiring transactions.
43. Limitation on validity of certain acquiring transactions.
44. Refusal to approve acquiring transactions.
45. Appeals to Court.
46. Inquiries into certain acquiring transactions.
47. Obligation to inform a supervisory authority of shareholdings.
48. Contravention of terms of approval of acquiring transactions.
49. Amendment of section 16 of Central Bank Act, 1989.
50. Investor compensation.
51. Bonding.
52. Client money and investment instruments.
53. Exemption from liability for damages.
54. Personal liability of officers.

PART VII

APPROVED PROFESSIONAL BODIES

55. Interpretation (*Part VII*).
56. Grant of approval to operate as an approved professional body.

Section

57. Interim approval.
58. Imposition of conditions or requirements on approved professional bodies.
59. Refusal to consent to amendment of rules, etc.
60. Appeals on refusal to grant approval, etc.
61. Revocation of approval.
62. Maintenance of books and records.
63. Authorisation of certified persons.

PART VIII

ENFORCEMENT, OFFENCES AND PENALTIES

64. Authorised officers.
65. Powers of authorised officers.
66. Appointment of inspector by Court.
67. Power of inspector to extend investigation.
68. Direction to inspector by Court.
69. Powers of inspection.
70. Expenses of and fees relating to an investigation.
71. Inspectors' reports and proceedings thereon.
72. Powers of Court following consideration of reports.
73. Appointment of inspector by a supervisory authority.
74. Power to make determinations for breaches of conditions or requirements.
75. Search and seizure.
76. Admissibility in evidence of reports of inspectors.
77. Privilege.
78. Consent to publication of information.
79. Offences and penalties.

PART IX

AMENDMENT OF COMPANIES ACT, 1990

Section

80. Amendment of Companies Act, 1990.

FIRST SCHEDULE

SECOND SCHEDULE

ACTS REFERRED TO

Bankruptcy Act, 1988	1988, No. 27
Building Societies Act, 1989	1989, No. 17
Central Bank Act, 1971	1971, No. 24
Central Bank Act, 1989	1989, No. 16
Companies Acts, 1963 to 1990	
Designated Investment Funds Act, 1985	1985, No. 16
Insurance Act, 1989	1989, No. 3
Investment Limited Partnerships Act, 1994	1994, No. 24
Partnership Act, 1890	53 & 54 Vict., c. 93
Petty Sessions (Ireland) Act, 1851	14 & 15 Vict., c. 93
Public Offices Fees Act, 1879	1879, c. 58
Solicitors Acts, 1954 to 1994	
<i>Stock Exchange Act, 1995</i>	
Trustee Savings Banks Act, 1989	1989, No. 21
Unit Trusts Act, 1990	1990, No. 37



AN BILLE UM IDIRGHABHÁLAITHE INFHEISTÍOCHTA, 1995
INVESTMENT INTERMEDIARIES BILL, 1995

BILL

entitled

- 5 AN ACT TO MAKE PROVISION IN RELATION TO INVEST-
MENT BUSINESS FIRMS AND INVESTMENT PRODUCT
INTERMEDIARIES AND FOR THE AUTHORISATION
AND SUPERVISION OF INVESTMENT BUSINESS FIRMS
10 AND INVESTMENT PRODUCT INTERMEDIARIES BY
THE CENTRAL BANK OF IRELAND AND THE MINI-
STER FOR ENTERPRISE AND EMPLOYMENT AND TO
AMEND THE COMPANIES ACT, 1990, AND TO PRO-
VIDE FOR RELATED MATTERS.

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

15

PART I

PRELIMINARY AND GENERAL

1.—(1) This Act may be cited as the Investment Intermediaries Act, 1995. Short title and commencement.

- 20 (2) This Act shall come into operation on such day or days as may be appointed by order or orders made by the Minister, either generally or with reference to any particular purpose or provision, and different days may be so appointed for different purposes and different provisions of this Act.

2.—(1) In this Act, unless the context otherwise requires— Interpretation.

- 25 “approved professional body” has the meaning assigned to it by section 55 of this Act;

“associated undertaking” means an associated undertaking within the meaning of Regulation 34 of the European Communities (Companies: Group Accounts) Regulations, 1992 (S.I. 201 of 1992);

- 30 “authorised investment business firm” means an investment business firm which has been authorised by a supervisory authority under section 10 or 13 of this Act or which is deemed to be authorised under Part IV or Part VII of this Act;

- 35 “authorisation” means an authorisation granted under section 10 or 13 of this Act, or an authorisation under Part IV or Part VII, unless otherwise specified;

“authorised officer” means a person authorised under section 64 of this Act;

"the Bank" means the Central Bank of Ireland;

"certified person" has the meaning assigned to it by *section 55* of this Act;

"the Commission" means the Commission of the European Communities;

5

"Companies Acts" means the Companies Acts, 1963 to 1990;

"competent authority" means a competent authority in a Member State, for the purposes of Council Directive 77/780/EEC of 12 December, 1977⁽¹⁾, as amended by Council Directive 89/646/EEC of 15 December, 1989⁽²⁾, or for the purposes of Council Directive No. 93/6/EEC of 15 March, 1993⁽³⁾, or for the purposes of Council Directive No. 93/22/EEC of 10 May, 1993⁽³⁾;

10

"the Court" means the High Court;

"credit institution" means a credit institution within the meaning of Article 1 of Council Directive 77/780/EEC of 12 December, 1977⁽¹⁾ as amended by Council Directive 89/646/EEC of 15 December, 1989⁽²⁾ but does not include the institutions referred to in Article 2(2) of that Directive;

15

"deposit" means a deposit with a credit institution and shall be construed as including a shareholding in as well as a deposit with a building society;

20

"deposit agent" means any person who holds an appointment in writing from a single credit institution enabling him to receive deposits on behalf of that institution and prohibiting him from acting in a similar capacity on behalf of another credit institution;

25

"deposit broker" means any person who brings together with credit institutions persons seeking to make deposits in return for a fee, commission or other reward;

"director" includes any person occupying the position of director by whatever name called and any person who effectively directs or has a material influence over the business of an authorised investment business firm and includes a shadow director within the meaning of the Companies Act, 1990;

30

"former authorised investment business firm" means an authorised investment business firm whose authorisation has been revoked;

35

"functions" includes powers and duties;

"home Member State" means—

(a) where the investment business firm or proposed investment business firm is a natural person, the Member State in which the head office of that person is situated, or

40

(b) where the investment business firm or proposed investment business firm is a legal person, the Member State in which its registered office is situated or, if under its national law it has no registered office, the Member State in which its head office is situated;

45

⁽¹⁾ O.J. No. L322 17/12/77.

⁽²⁾ O.J. No. L386 30/12/89.

⁽³⁾ O.J. No. L141 11/6/93.

"host Member State" means the Member State in which an investment business firm has a branch or provides services;

"incidental manner" has the meaning assigned to it by *section 55* of this Act;

5 "indirect acquisition" shall be construed in accordance with Council Directive 93/22/EEC of 10 May, 1993⁽¹⁾;

"indirect disposal" shall be construed in accordance with Council Directive 93/22/EEC of 10 May, 1993⁽¹⁾;

10 "indirect shareholders" shall be construed in accordance with Council Directive 93/22/EEC of 10 May, 1993⁽¹⁾;

"indirect subsidiary" shall be construed in accordance with Council Directive 93/22/EEC of 10 May, 1993⁽¹⁾;

15 "investment advice" means the giving, or offering or agreeing to give, to any person, advice on the purchasing, selling, subscribing for or underwriting of an investment instrument or on the making of a deposit or on the exercising of any right conferred by an investment instrument to acquire, dispose of, underwrite or convert an investment instrument or deposit or the giving, or offering or agreeing to give, to any person, advice on choice of a person providing investment business services, but does not include any of the following:

25 (a) advice given in a newspaper, journal, magazine or other publication, including electronic publications, where the principal purpose of the publication taken as a whole is not to lead persons to invest in any particular investment instrument or deposit or to deal with any particular provider of investment business services,

30 (b) advice given in a lecture, seminar or similar event or series of such events, where the principal purpose of the event or events taken as a whole is not to lead persons to invest in any particular investment instrument or deposit or to deal with any particular provider of investment business services and where persons engaged in the organisation or presentation of such events will earn no remuneration, commission, fee or other reward as a result of any particular decision, by a person attending such event and arising out of such attendance, in relation to investment instruments or deposits or in relation to the choice of a person providing investment business services,

40 (c) advice given in sound or television broadcasts where the principal purpose of such broadcasts taken as a whole is not to lead persons to invest in any particular investment instrument or deposit or to deal with any particular provider of investment business services,

45 (d) advice to undertakings on capital structure, industrial strategy and related matters and advice relating to mergers and the purchase of undertakings,

(e) advice given by persons in the course of the carrying on of any profession or business not otherwise constituting the business of an investment business firm, where the giving

⁽¹⁾ O.J. No. L141 11/6/93.

of such advice is a necessary part of other advice or services given in the course of carrying on that profession or business, and where the giving of investment advice is not remunerated or rewarded separately from such other advice or services; 5

“investment business firm” means any person, other than a member firm within the meaning of the *Stock Exchange Act, 1995*, who provides one or more investment business services or investment advice to third parties on a professional basis and for this purpose where an individual provides an investment business service and where that service is carried on solely for the account of and under the full and unconditional responsibility of an investment business firm or an insurance undertaking or a credit institution that activity shall be regarded as the activity of the investment business firm, insurance undertaking or credit institution itself; 10 15

“investment business services” includes all or any of the following services:

- (a) receiving and transmitting, on behalf of investors, of orders in relation to one or more investment instrument; 5
- (b) execution of orders in relation to one or more investment instrument, other than for own account; 20
- (c) dealing in one or more investment instrument for own account; 25
- (d) managing portfolios of investment instruments or deposits in accordance with mandates given by investors on a discretionary client-by-client basis where such portfolios include one or more investment instrument or one or more deposit; 30
- (e) underwriting in respect of issues of one or more investment instrument or the placing of such issues or both; 35
- (f) acting as a deposit agent or deposit broker; 40
- (g) the administration of collective investment schemes, including the performance of valuation services or fund accounting services or acting as transfer agents or registration agents for such funds; 45
- (h) custodial operations involving the safekeeping and administration of investment instruments; 50
- (i) acting as a manager of a designated investment fund within the meaning of the *Designated Investment Funds Act, 1985*; 55

“investment instruments” includes—

- (a) transferable securities including shares, warrants, debentures including debenture stock, loan stock, bonds, certificates of deposits and other instruments creating or acknowledging indebtedness issued by or on behalf of any body corporate or mutual body, government and public securities, including loan stock, bonds and other instruments creating or acknowledging indebtedness issued by or on behalf of a government, local authority or public authority, bonds or other instruments creating 50

- or acknowledging indebtedness, certificates representing securities,
- (b) non-transferable securities creating or acknowledging indebtedness issued by or on behalf of a government, local authority or public authority,
- (c) units or shares in undertakings for collective investments in transferable securities within the meaning of European Communities (Undertakings for Collective Investments in Transferable Securities) Regulations, 1989 (S.I. No. 78 of 1989), and any subsequent amendments thereto, units in a unit trust, shares in an investment company, capital contributions to an investment limited partnership,
- (d) financial futures contracts, including currency futures, interest rate futures, bond futures, share index futures and comparable contracts,
- (e) commodity futures contracts,
- (f) forward interest rate agreements,
- (g) agreements to exchange payments based on movements in interest rates, currency exchange rates, commodities, share indices and other financial instruments,
- (h) sale and repurchase and reverse repurchase agreements involving transferable securities,
- (i) agreements for the borrowing and lending of transferable securities,
- (j) certificates or other instruments which confer all or any of the following rights, namely—
- (i) property rights in respect of any investment instrument referred to in *paragraph (a)* of this definition; or
- (ii) any right to acquire, dispose of, underwrite or convert an investment instrument, being a right to which the holder would be entitled if he held any such investment to which the certificate or instrument relates; or
- (iii) a contractual right (other than an option) to acquire any such investment instrument otherwise than by subscription,
- (k) options including—
- (i) options in any instrument in *paragraphs (a) to (j)* of this definition, or
- (ii) currency, interest rate, commodity and stock options including index option contracts,
- (l) hybrid instruments involving two or more investment instruments,
- and includes any investment instrument in dematerialised form,

but this definition shall not be construed as applying to—

(I) any instrument acknowledging or creating indebtedness for, or for money borrowed to defray, the consideration payable under a contract for the supply of goods or services; or 5

(II) a cheque or other similar bill of exchange, a banker's draft or a letter of credit; or

(III) a banknote, a statement showing a balance in a current, deposit or savings account or (by reason of any financial obligation contained in it) to a lease or other disposition of property, or an insurance policy; 10

"investment limited partnership" has the meaning assigned to it by the Investment Limited Partnerships Act, 1994;

"Member State" means a Member State of the European Communities; 15

"the Minister" means the Minister for Finance;

"officer", in relation to an investment business firm, means a director, chief executive, manager or secretary, by whatever name called and, in relation to an offence, also includes any person who purports to act as an officer of the said investment business firm; 20

"Official Assignee" has the meaning assigned to it by section 3 of the Bankruptcy Act, 1988;

"prescribed" means prescribed by Regulations made by the Minister and cognate words shall be construed accordingly;

"product producer" means a firm, institution, collective undertaking or investment company of the kind referred to in section 26(1) (i) to (vi) of this Act; 25

"proposed investment business firm" means a person who is seeking authorisation from a supervisory authority to be an authorised investment business firm; 30

"qualifying capital interest" shall have the meaning assigned to it in Regulation 35 of the European Communities (Companies: Group Accounts) Regulations, 1992 (S.I. No. 201 of 1992), and any subsequent amendments thereto;

"qualifying holding" means a direct or indirect holding of shares or other interest in a proposed investment business firm or an authorised investment business firm which represents 10 per cent. or more of the capital or of the voting rights, or any direct or indirect holding of less than 10 per cent. which, in the opinion of a supervisory authority, makes it possible to control or exercise a significant influence over the management of the proposed investment business firm or authorised investment business firm in which a holding subsists; 35 40

"qualifying shareholder" means a person who has or controls a qualifying holding;

"regulated market" means a market within the meaning of Council Directive 93/22/EEC of 10 May, 1993⁽¹⁾; 45

⁽¹⁾ O.J. No. L141 11/6/93.

"related undertakings" means—

- (a) companies related within the meaning of section 140 (5) of the Companies Act, 1990, and subsequent amendments thereto, or
- 5 (b) undertakings where the business of those undertakings has been so carried on that the separate business of each undertaking, or a substantial part thereof, is not readily identifiable, or
- 10 (c) undertakings where the decision as to how and by whom each shall be managed can be made either by the same person or by the same group of persons acting in concert;

"restricted activity investment product intermediary" has the meaning assigned to it by *section 26* of this Act;

"statutory functions", in relation to the Bank, means its functions—

- 15 (a) under the Central Bank Acts, 1942 to 1989, and any enactment amending those Acts,
- (b) imposed by virtue of the ACC Bank Act, 1992 (Section 4) Regulations, 1992, (S.I. No. 373 of 1992), the ICC Bank Act, 1992 (Section 3) Regulations, 1993, (S.I. No. 24 of 1993), the European Communities (Licensing and Supervision of Credit Institutions) Regulations, 1992, (S.I. No. 395 of 1992), or the European Communities (Consolidated Supervision of Credit Institutions) Regulations, 1992, (S.I. No. 396 of 1992),
- 20 (c) under the Unit Trusts Act, 1990,
- (d) under the Building Societies Act, 1989,
- (e) under the Companies Act, 1990,
- (f) under the Trustee Savings Banks Act, 1989,
- (g) under the Investment Limited Partnerships Act, 1994,
- 30 (h) under the European Communities (Undertakings for Collective Investment in Transferable Securities) Regulations, 1989 (S.I. No. 78 of 1989), and any instruments amending that instrument,
- (i) under the *Stock Exchange Act, 1995*,
- 35 (j) under this Act, and
- (k) under any other enactment or instrument made under an enactment;

"subsidiary" means a subsidiary undertaking within the meaning of Regulation 4 of the European Communities (Companies: Group
40 Accounts) Regulations, 1992 (S.I. No. 201 of 1992);

"supervisory authority" has the meaning assigned to it by *section 4* of this Act;

"undertaking" means a body corporate, a partnership, an unincorporated body of persons or a sole trader.

(2) References in this Act 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 (whether stored electronically 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 and to which the person, whose books, records or other documents (as so construed) are inspected for the purposes of this Act, has access.

(3) References in this Act to "competence" in relation to any director or manager means competence in respect of matters in which such director or manager concerned would be expected to be competent in the discharge of his professional responsibilities.

(4) Where an investment business firm is constituted as an unincorporated body of persons, in this Act—

(a) references to "memorandum and articles of association" or to "memorandum of association" or "articles of association" shall be construed as references to the partnership agreement or other constitutional document of the body of persons concerned,

(b) references to "director" shall be construed as references to every member, officer, partner or other person holding any proprietary voting or other interest in the body of persons concerned and includes any person who effectively directs or has a material influence over the business of the body of persons concerned, and

(c) references to "shareholder" and "qualifying shareholder" shall be construed as references to any partner, member or other person holding any proprietary, voting or other interest in the body of persons concerned.

(5) In this Act, references to an "employee" and cognate words shall be construed to include references to a person employed under a contract of service or for service and references to a person employed otherwise than under a contract of service or for service.

(6) Notwithstanding *subsection (1)* of this section, investment business firm shall not include—

(a) a person who provides investment business services only,
(i) to undertakings of which it is a subsidiary or its own subsidiaries or other subsidiaries of the same parent undertaking, or

(ii) where those services consist exclusively in the administration of employee equity participation schemes, or

(iii) in both of these circumstances, or

(b) the Bank or the National Treasury Management Agency or the Minister for Finance, or

(c) firms which provide investment business services consisting exclusively in dealing for their own account on futures or

options markets or which deal for the account of other members of those markets or make prices for them and which are guaranteed by clearing members of the same markets, and where responsibility for ensuring the performance of contracts entered into by such firms is assumed by clearing members of the same market, or

(d) An Post (including any postmaster acting on its behalf) or the Prize Bond Company Ltd. or any successor to the Prize Bond Company Ltd. as operator of the Prize Bond scheme, when any of the bodies or persons referred to in this subparagraph is acting as an agent of or otherwise for that purpose on behalf of the Minister or the National Treasury Management Agency, or

(e) insurance undertakings as defined in Article 1 of Council Directive 73/239/EEC⁽¹⁾ or Article 1 of Council Directive 79/627/EEC⁽²⁾ or undertakings carrying on the reinsurance and retrocession activities referred to in Council Directive 64/25/EEC⁽³⁾, or

(f) collective investment undertakings and the depositaries and managers of such undertakings, where they are already subject to regulation by the Bank in the State under its statutory functions, or

(g) persons whose main business is trading in commodities amongst themselves or with producers or professional users of such products and who provide investment business services only for such producers or professional users to the extent necessary for their main business, or

(h) credit institutions which provide investment business services or investment advice and which, in so doing, do not exceed the terms of authorisations under Directive No. 77/780/EEC of 12 December 1977⁽⁴⁾ as amended by Council Directive 89/646/EEC of 15 December 1989⁽⁵⁾ as amended and extended from time to time.

(7) Notwithstanding *subsection (1)* of this section, or any provision of *Part VII* of this Act, a solicitor in respect of whom a practising certificate (within the meaning of the Solicitors Acts, 1954 to 1995) is in force shall not be an investment business firm by virtue of the provision in an incidental manner of investment business services or investment advice.

(8) (a) Notwithstanding *subsection (7)* of this section, the Minister may prescribe that solicitors in respect of whom such practising certificates are in force shall be investment business firms for the purposes of this Act whenever they provide investment business services or investment advice.

(b) The Minister may make a regulation under *subsection (8)(a)* of this section only where he has formed the view that—

(i) the regulatory regime enforced by the Law Society of Ireland in respect of practising solicitors providing

⁽¹⁾ O.J. No. L228 16/8/73.

⁽²⁾ O.J. No. L63 13/3/79.

⁽³⁾ O.J. No. L56 4/4/64.

⁽⁴⁾ O.J. No. L322 17/12/77.

⁽⁵⁾ O.J. No. L386 30/12/89.

investment business services or investment advice in an incidental manner does not provide sufficiently for the proper and orderly regulation and supervision of such solicitors and the protection of investors, or that the powers of the Law Society of Ireland under its rules or otherwise, or its practice in relation to the supervision of solicitors, are inadequate for this purpose, and 5

(ii) that it is in the interests of the proper and orderly regulation and supervision of investment business services and investment advice in general and the protection of investors, that such an order be made. 10

(c) The Minister shall not make a regulation under this subsection unless he has first consulted the Law Society of Ireland, the Bank, the Minister for Justice and the Minister for Enterprise and Employment. 15

(d) A regulation under this subsection may prescribe that upon the coming into operation of such a regulation, the Law Society of Ireland shall be an approved professional body for the purposes of this Act, whether on an interim basis for such period as the Minister may prescribe or otherwise. 20

(e) For the purposes of forming a view, under this section, the Minister may appoint any person who the Minister believes is suitably qualified for the purpose to carry out such inquiries or make such inspections as the Minister may request in relation to the operations of the Law Society of Ireland, and the Law Society of Ireland shall co-operate with any such inspection or inquiries, and disclose such information as the person appointed may request. 25 30

(f) Where the Law Society of Ireland refuses to co-operate with an inspection or inquiry or to disclose information requested under *paragraph (e)* of this subsection, the person appointed by the Minister may apply to the Court for an order and the Law Society of Ireland shall comply with any such order which the Court may make. 35

(g) The Bank may be a person appointed by the Minister for the purposes of *paragraph (e)* of this subsection.

Service of notices.

3.—(1) Where a notice, direction or other document is authorised or required by or under this Act or regulations made thereunder to be served on a person, it shall, unless otherwise specified in this Act, be addressed to him and shall be served on or given to him in one of the following ways— 40

(a) where it is addressed to him by name, by delivering it to him, or 45

(b) by leaving it at the address at which he ordinarily resides or, in a case in which an address for service has been furnished, at that address, or

(c) by sending it by ordinary prepaid post addressed to him at the address at which he ordinarily resides or, in a case in 50

which an address for service has been furnished, at that address, or

- 5 (d) in the case of an officer or employee of an investment business firm whether authorised or otherwise, or a proposed investment business firm, by sending it to him by ordinary prepaid post addressed to him at the address of the principal office of that investment business firm or proposed investment business firm.

(2) Any such document may—

- 10 (a) in the case of an investment business firm whether authorised or otherwise or a proposed investment business firm or any other body corporate, be served on the secretary or other employee or officers of that investment business firm or other body corporate, or

- 15 (b) in the case of a partnership, be served on any partner, or

- (c) in the case of an unincorporated association other than a partnership, be served on any member of its governing body, or

- (d) in the case of a sole trader, be served on the sole trader.

- 20 (3) Where a condition or requirement is to be imposed, or specification made, by a supervisory authority under this Act, in respect of more than one person, a supervisory authority may, where it considers it necessary to do so, give notice of such fact by way of publication of such conditions, requirements or specifications in the *Iris*
25 *Oifigúil*.

- 30 4.—(1) In this Act “supervisory authority” means the Minister for Enterprise and Employment for the purposes of regulating investment business firms of a type referred to in subsection (2) of this section and the Bank for the purposes of regulating investment business firms of a type referred to in subsection (3) of this section. Supervisory authorities.

(2) The Minister for Enterprise and Employment shall be the supervisory authority for persons who in the course of their regular occupation do not provide any investment business service other than in relation to all or any of—

- 35 (a) units or shares in undertakings for collective investments in transferable securities within the meaning of the European Communities (Undertakings for Collective Investment in Transferable Securities) Regulations, 1989 (S.I. No. 78 of 1989), and any subsequent amendments thereto,
40

- (b) units in a unit trust,

- (c) other collective investment scheme instruments,

- (d) acting as a deposit agent or deposit broker,

- 45 (e) the transmission of orders for shares in a company listed on a stock exchange, or bonds so listed, or for prize bonds:

Provided such persons do not have or take discretionary control over client funds or investment instruments.

(3) The Bank shall be the supervisory authority for investment business firms not referred to in *subsection (2)* of this section.

(4) For the purposes of this section, discretionary control does not include the giving of instructions by an investment business firm to a product producer to switch a client's investment with the product producer to another investment with the same product producer where the investment business firm does not thereby receive funds of a client. 5

(5) Notwithstanding anything in this section, a supervisory authority may arrange with the other supervisory authority for the discharge of its functions under this Act in relation to particular investment business firms or proposed investment business firms or to classes of investment business firms or proposed investment business firms. 10

Amendment of definitions.

5.—The Minister may make Regulations for the purposes of— 15

- (a) amending definitions contained in this Act, or
- (b) specifying areas in which the supervisory authorities may exchange information with other competent authorities,

where the Minister is of the opinion that it is necessary to do so arising out of a decision of the Council of the European Communities under Article 29 of Council Directive 93/22/EEC of 10 May 1993.⁽¹⁾ 20

Expenses.

6.—(1) The expenses incurred by the Minister and the Minister for Enterprise and Employment in the administration of this Act shall, to such extent as may be sanctioned by the Minister, be paid out of moneys provided by the Oireachtas. 25

(2) The expenses incurred by the Bank in the administration of this Act shall be paid out of the general fund of the Bank except where otherwise provided in this Act or any other enactment. 30

Laying of regulations before Houses of the Oireachtas.

7.—Every regulation made under this Act 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 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. 35

PART II

AUTHORISATION

Competent authority.

8.—The Bank and the Minister for Enterprise and Employment shall be the competent authorities in the State for— 40

- (a) investment business firms for the purpose of Council Directive 93/22/EEC of 10 May 1993⁽¹⁾, and

- (b) authorised investment business firms for the purpose of Council Directive 93/6/EEC⁽¹⁾ of 15 March 1993.

⁽¹⁾ O.J. No. L141 11/6/93.

9.—It shall be an offence for a company registered in the State or any other person operating in the State to act as an investment business firm, or to claim or to hold themselves out to be an investment business firm, in the State or outside the State unless that person is acting under and within the terms of an authorisation to do so which authorisation has been given—

Prohibition on acting as an authorised investment business firm.

- (a) by a supervisory authority under *section 10* or *13* of this Act, or
- (b) by a competent authority in another Member State, for the purpose of Council Directive 93/22/EEC of 10 May, 1993⁽¹⁾ as amended or extended from time to time,

that person is deemed to have been authorised under *Part IV* or *Part VII* of this Act.

10.—(1) Subject to the provisions of this Act, a supervisory authority may grant or refuse to grant to any person applying to it under this section an authorisation to operate as an authorised investment business firm.

Grant of authorisation.

(2) The grant of an authorisation under *subsection (1)* of this section may be given unconditionally or it may be given subject to such conditions or requirements or both as the supervisory authority considers fit.

(3) Whenever a supervisory authority refuses to grant authorisation to a proposed investment business firm under this section it shall serve notice on the proposed investment business firm of its intention to refuse to authorise it and stating the reasons therefor and the proposed investment business firm may within 21 days of receipt of such notice appeal to the Court against the decision.

(4) An application for authorisation under *subsection (1)* of this section shall be in such form and contain such particulars as the supervisory authority shall specify from time to time and, without prejudice to the generality of the aforesaid, shall include such particulars or information as the supervisory authority may request in relation to:

(a) the type of business to be carried on or likely to be carried on by the proposed investment business firm;

(b) any person or persons having a qualifying shareholding or having control or ownership of the proposed investment business firm including any natural or legal person whose shareholding or other commercial relationship with the proposed investment business firm might influence the conduct of the proposed investment business firm to a material degree; and

(c) the memorandum of association and articles of association of the proposed investment business firm.

(5) A proposed investment business firm shall not be authorised by the supervisory authority under this section unless—

(a) it is a company incorporated by statute or under the Companies Acts, or is incorporated in a country which is not

⁽¹⁾ O.J. No. L141 11/6/93.

a Member State or is a company made under Royal Charter or it draws up a partnership agreement, where it is constituted as an unincorporated body of persons, if such an agreement does not already exist, or is a sole trader and the proposed investment business firm has made arrangements to ensure that its activities will be carried out in such a manner that the requirements of Article 3 (3) of Council Directive No. 93/22/EEC of 10 May 1993⁽¹⁾, are complied with, 5

(b) it satisfies the supervisory authority that, where applicable, the memorandum of association and articles of association of the proposed investment business firm contain sufficient provision so as to enable it to operate in accordance with this Act, and in accordance with any condition or requirement, or both, as the supervisory authority may impose, 10 15

(c) it has the minimum level of capital which shall be specified by the supervisory authority,

(d) it satisfies the supervisory authority as to the probity and competence of each of its directors and managers, 20

(e) it satisfies the supervisory authority as to the suitability of each of its qualifying shareholders,

(f) it satisfies the supervisory authority as to the organisational structure and management skills of the proposed investment business firm and that adequate levels of staff and expertise will be employed to carry out its proposed activities, 25

(g) it satisfies the supervisory authority that it has and will follow established procedures to enable the supervisory authority to be supplied with all information necessary for its supervisory functions and to enable the public to be supplied with any information which the supervisory authority may specify, 30

(h) it satisfies the supervisory authority that the organisation of its business structure is such that it and any of its associated or related undertakings, where appropriate and practicable, are capable of being supervised adequately by the supervisory authority, 35

(i) it satisfies the supervisory authority that:

(I) where the proposed investment business firm is a natural person or a partnership, its head office and the place in which it actually carries on its business is in the State, 40

(II) where the proposed investment business firm is incorporated, its registered office and head office are in the State, or 45

(III) it is a branch of an investment business firm which has its head office or its registered office in a country which is not a Member State,

⁽¹⁾ O.J. No. L141 11/6/93.

(j) it satisfies the supervisory authority as to its conduct of business, its financial resources and any other matters as the supervisory authority considers necessary in the interests of the proper and orderly regulation and supervision of authorised investment business firms or in the interests of the protection of investors.

(6) A supervisory authority may set out conditions or requirements or both in order to monitor the solvency of an authorised investment business firm which is constituted as an unincorporated body of persons or which is a natural person, including monitoring the solvency of its proprietors.

(7) A supervisory authority may impose conditions or requirements, from time to time, in respect of the level of capital to be maintained by an authorised investment business firm and where the supervisory authority is acting as a competent authority shall have regard to Council Directives 93/6/EEC of 15/03/93⁽¹⁾ and 93/22/EEC of 10/05/93⁽¹⁾.

(8) A supervisory authority may require that an appointment as a director of an authorised investment business firm or proposed investment business firm or to the post of chief executive or manager or post equivalent thereto, on or after the granting of an authorisation under this section, shall be subject to the prior approval in writing of the supervisory authority which said approval shall not be given unless the authorised investment business firm or proposed investment business firm satisfies the supervisory authority as to the probity and competence of the proposed appointee.

(9) The supervisory authority may direct an authorised investment business firm to alter its memorandum of association or articles of association in the interest of the proper and orderly regulation and supervision of investment business firms or the protection of investors or both.

(10) An authorisation granted under *subsection (1)* of this section by the supervisory authority shall specify the classes of investment business services which may be provided by the authorised investment business firm concerned and the authorisation may specify additional services which an authorised investment business firm may provide, including those set out in Annex C to Council Directive 93/22/EEC of 10 May 1993⁽¹⁾ as amended or extended from time to time, and the supervisory authority may amend or vary the classes of investment business services or other services which may be so provided and such authorisation shall be taken as authorisation of the said authorised investment business firm for the purposes of the Council Directive.

(11) The supervisory authority may at any time prior to the grant or refusal of an authorisation request further information from the proposed investment business firm or may instruct an authorised officer to make such inquiries or carry out such investigations as may be necessary for the purpose of evaluating properly an application under this section, and such inquiries or investigations shall be carried out in accordance with this Act.

(12) (a) In the case of an investment business firm, a supervisory authority acting as a competent authority shall apply this Act, having regard to the division of responsibilities

⁽¹⁾ O.J. No. L141 11/6/93.

between the home and host Member States of the investment business firm concerned, which are set out in Council Directive 93/22/EEC of 10 May 1993⁽¹⁾ and Council Directive 93/6/EEC of 15 March, 1993⁽¹⁾ and the relevant sections of this Act shall be construed accordingly. 5

(b) Subject to the provisions of this section, investment business firms shall be subject to such conditions or requirements or both as may be imposed on them by the supervisory authority in the interests of any or all of the following, namely: 10

(i) the proper and orderly regulation and supervision of investment business firms,

(ii) the protection of investors or clients or both.

(13) The supervisory authority may impose requirements on a proposed investment business firm or an authorised investment business firm to organise its business or corporate structure or control of any associated undertaking or related undertaking not supervised by the supervisory authority such that the investment business firm when authorised under this Act and, where appropriate and practicable, the business of any associated undertaking or related undertaking, either collectively or individually, is capable of being supervised to the satisfaction of the supervisory authority under this Act. 15 20

(14) A proposed investment business firm shall be informed whether or not authorisation has been granted—

(a) within six months of the date of receipt of the application or within six months of the coming into operation of this section, whichever is the later, or 25

(b) where additional information in relation to the application has been sought by the supervisory authority, within a period of six months after the receipt by the supervisory authority of the additional information or the period of twelve months after the receipt of the application, whichever is the sooner. 30

(15) A supervisory authority may impose conditions or requirements or both on an authorised investment business firm which is constituted as an unincorporated body of persons or which is a sole trader, in order to achieve an equivalent level of supervision to that pertaining to an authorised investment business firm which is constituted as a corporate body. 35

(16) It shall be an offence for a proposed investment business firm or any other person to apply for authorisation under this section knowingly or recklessly using false or misleading information, or knowingly or recklessly making false or misleading statements, in relation to an application for an authorisation under this section. 40

Requests from
Commission.

11.—Notwithstanding any other provision of this Act, a supervisory authority acting as competent authority shall comply with requests from the Commission to limit or suspend decisions where— 45

(a) a proposed investment business firm which is the direct or indirect subsidiary of a parent governed by the law of a State which is not a Member State of the European 50

⁽¹⁾ O.J. No. L141 11/6/93.

Community seeks authorisation from the supervisory authority acting as a competent authority, or

- 5 (b) an undertaking which is governed by the law of a State which is not a Member State acquires a holding in any authorised investment business firm such that the latter would become its subsidiary.

10 12.—(1) When an authorised investment business firm wishes to establish a branch in another Member State it shall notify in writing the supervisory authority setting out the address of the proposed branch from which documents may be obtained, the names of the proposed managers and a programme of operations setting out *inter alia* the types of business envisaged and the proposed organisational structure of the branch.

Establishment of branches outside the State.

15 (2) Subject to *subsection (3)* of this section, the supervisory authority acting as a competent authority may communicate information referred to in *subsection (1)* of this section to the relevant competent authority in that other Member State in accordance with the provisions of Council Directive 93/22/EEC of 10 May, 1993⁽¹⁾, within three months of receiving all information requested of the authorised investment business firm, and shall inform the authorised investment business firm accordingly.

25 (3) Where the supervisory authority acting as a competent authority does not communicate the information in the manner referred to in *subsection (2)* of this section, the supervisory authority shall give reasons for the refusal to the authorised investment business firm and the authorised investment business firm shall be entitled to appeal to the Court against that decision.

30 (4) When an authorised investment business firm wishes to carry on business within the territory of another Member State for the first time under the freedom to provide services it shall notify the supervisory authority in writing setting out the Member State in which it intends to operate and a programme of operations stating in particular the investment service or services it intends to provide.

35 (5) Where an authorised investment business firm wishes to change any particulars supplied under *subsection (1)* of this section, it shall notify the supervisory authority acting as a competent authority, in writing, of any such changes and allow at least one month from the date of the notification before carrying out the changes so as to allow the supervisory authority acting as a competent authority to exercise its functions under this Act.

45 (6) The supervisory authority shall communicate the information referred to in *subsection (4)* of this section to the relevant competent authority in that other Member State in accordance with the provisions of Council Directive 93/22/EEC of 10 May 1993⁽¹⁾ within one month of receiving all information referred to in *subsection (4)* of this section.

50 (7) Where an authorised investment business firm wishes the content of the information communicated in accordance with *subsection (5)* of this section to be amended it shall give notice of the amendment in writing to the supervisory authority and to the competent authority in the host Member State before implementing the change

⁽¹⁾ O.J. No. L141 11/6/93.

to allow the competent authority of that Member State to exercise its obligations under Council Directive 93/22/EEC of 10 May 1993⁽¹⁾.

Existing investment
business firms.

13.—(1) Notwithstanding *section 9* of this Act, a person who is an investment business firm on the day immediately prior to the coming into operation of this section and which is not deemed to be authorised under *Part IV* or *Part VII* of this Act may stand authorised, on the coming into operation of this section, as an authorised investment business firm until a supervisory authority has granted or refused authorisation to it: 5

Provided that, no later than three months after the coming into operation of this Part of this Act, it applies to the supervisory authority under *section 10* of this Act for authorisation, and, in that section, references to a proposed investment business firm shall be construed accordingly. 10

(2) Pending a decision by the supervisory authority to authorise an investment business firm to whom *subsection (1)* of this section refers, or during the three months referred to in *subsection (1)* of this section, or during both such times, the supervisory authority may do all or any of the following, namely: 15

(a) impose such conditions or requirements or both as it thinks fit relating to the proper and orderly regulation and supervision of the investment business firm or in relation to the protection of investors, including conditions or requirements, or both, which relate to matters in an associated undertaking, a related undertaking, or in both, 20 25

(b) issue directions under this Act.

(3) A person to whom *subsection (1)* of this section refers may appeal to the Court against the conditions or requirements imposed under this section. 11

(4) On hearing an application under *subsection (3)* of this section, the Court may confirm, vary or rescind any condition or requirement imposed under this section. 30

(5) Notwithstanding that *section 10 (5) (i)* of this Act has not been complied with and, pending the implementation of Council Directive 93/22/EEC of 10 May 1993⁽¹⁾, in each Member State, a supervisory authority may authorise an investment business firm where it is satisfied that the firm concerned is subject to an adequate level of prudential supervision in its home Member State, and the supervisory authority may impose conditions or requirements on that firm or an associated or related undertaking, or issue directions under this Act, and such persons shall stand authorised for the purposes of *section 10* of this Act, pending the implementation of Council Directive 93/22/EEC of 10 May 1993⁽¹⁾ in its home member state. 35 40

Imposition of
conditions or
requirements on
authorised
investment business
firms.

14.—(1) Without prejudice to *section 10* of this Act, where the supervisory authority grants an authorisation under that section, it may do all or any of the following, namely: 45

(a) make its authorisation subject to such conditions or requirements, or both, as it considers fit, relating to the proper and orderly regulation and supervision of an authorised investment business firm, 50

⁽¹⁾ O.J. No. L141 11/6/93

(b) impose conditions or requirements or both which relate to matters in an associated undertaking or a related undertaking,

5 (c) at any time impose conditions or requirements or both on an authorised investment business firm and either amend or revoke any condition or requirement imposed under this paragraph or under *paragraph (a) or (b)* of this subsection:

10 Provided the said conditions or requirements do not contravene any guidelines in that behalf which may be issued by the Minister to the supervisory authority from time to time in the interests of the proper and orderly regulation of investment business firms or the protection of investors or both and that the guidelines are published in the *Iris Oifigiúil*.

15 (2) Any condition or requirement referred to in *subsection (1)* of this section may be imposed in relation to any or all of the following, namely:

(a) an authorised investment business firm,

(b) all authorised investment business firms,

20 (c) a class of authorised investment business firms,

(d) a specified period of time or times,

(e) an associated undertaking or related undertaking,

25 (f) any matter, as the supervisory authority may consider appropriate, in the interests of the proper and orderly regulation and supervision of investment business firms and the protection of investors.

(3) An authorised investment business firm may appeal to the Court against the imposition of any condition or requirement imposed under *subsection (1)* of this section and, on hearing an appeal under this section, the Court may confirm, vary or rescind any condition or requirement imposed under this section.

(4) Without prejudice to the generality of *subsections (1) to (3)* of this section, a supervisory authority may impose conditions or requirements on an authorised investment business firm—

35 (a) concerning the level of training, qualifications or professional competence of managers, officers or employees, or

40 (b) concerning the provision of information to the supervisory authority or such other person as may be specified by the supervisory authority, pursuant to Article 20 of Council Directive 93/22/EEC of 20 May 1993⁽¹⁾.

⁽¹⁾ O.J. No. L141 11/6/93.

Refusal to consent to amendment of memorandum and articles of association.

15.—(1) A supervisory authority may require that any proposed amendment to the memorandum of association or articles of association of an authorised investment business firm shall not be made without the prior consent in writing of the supervisory authority.

(2) Whenever a supervisory authority refuses to consent to an amendment of or addition to the memorandum of association, or articles of association, or both of an authorised investment business firm, it shall serve notice on the authorised investment business firm concerned stating that it refuses to consent to the amendment or addition and setting out the reasons for the refusal in the notice and the authorised investment business firm may, within 21 days of receipt of such notice, appeal to the Court against the decision.

Revocation of authorisation.

16.—(1) A supervisory authority may revoke the authorisation of an authorised investment business firm where—

(a) a request is made to it in that behalf by the authorised investment business firm, or

(b) an authorised investment business firm—

(i) has failed to operate as an investment business firm within 12 months of the date on which it was authorised under this Act, or

(ii) has failed to operate as an investment business firm for a period of more than six months, or

(iii) is being wound up.

(2) Without prejudice to the power of a supervisory authority to revoke an authorisation under *subsection (1)* of this section, a supervisory authority may apply to the Court in a summary manner for an order revoking the authorisation of an authorised investment business firm in any or all of the following circumstances, namely, where—

(a) it is expedient to do so in the interests of the proper and orderly regulation and supervision of investment business firms or in order to protect investors or in any or all of these circumstances,

(b) an authorised investment business firm has been convicted on indictment of any offence under this Act or any Act under which a supervisory authority exercises statutory functions or any offence involving fraud, dishonesty or breach of trust,

(c) circumstances have materially changed since the granting of the authorisation such that, if an application for authorisation were made at the time of the application to the Court, a different decision would be taken in relation to the application for authorisation,

(d) the authorisation was obtained by knowingly or recklessly making false or misleading statements, or by knowingly or recklessly using false or misleading information,

(e) an authorised investment business firm has systematically failed to comply with a condition or requirement of this Act,

- (f) an authorised investment business firm has failed to comply to a material degree with a condition or requirement of this Act,
- 5 (g) an authorised investment business firm no longer fulfils any or all of the conditions or requirements which were imposed when the authorisation was granted or which were subsequently imposed,
- (h) an authorised investment business firm—
- 10 (i) no longer complies with capital or any other financial requirements specified by the supervisory authority from time to time, or
- (ii) is not maintaining, or is unlikely to be able to maintain, adequate capital resources or other financial resources having regard to the nature and volume of its business,
- 15 (i) an authorised investment business firm becomes unable or, in the opinion of the supervisory authority, is likely to become unable, to meet its obligations to its creditors or suspends payments lawfully due,
- 20 (j) an authorised investment business firm has infringed to a material degree a code of conduct or rules of conduct specified in or set out under *section 37* of this Act,
- 25 (k) a director, manager or qualifying shareholder of an authorised investment business firm is no longer deemed by the supervisory authority to fulfil the conditions required by *section 10* of this Act to be a director or manager or qualifying shareholder of an authorised investment business firm,
- 30 (l) an authorised investment business firm has failed to comply with a condition, requirement or direction, or any or all of these, imposed under this Act and the circumstances are such that the supervisory authority is of the opinion that the stability and soundness of the authorised investment business firm is or has been materially affected by such a failure,
- 35 (m) an authorised investment business firm has so organised its business or corporate structure such that the authorised investment business firm and, where appropriate, any related undertaking or associated undertaking, either collectively or individually, is no longer capable of being supervised to the satisfaction of the supervisory authority under this Act.
- 40

(3) When the supervisory authority proposes to revoke the authorisation of an authorised investment business firm or proposes to apply to the Court for an order to revoke the authorisation of an investment business firm, the following procedure shall apply, namely, the supervisory authority shall serve notice on the authorised investment business firm of its intention and shall state its reasons in the notice.

45

(4) Where an application is made to the Court under this section the Court may make such interim or interlocutory orders as the circumstances may require.

50

(5) Persons (being persons who were authorised investment business firms) whose authorisation has been revoked (in this section referred to as "former authorised investment business firms") shall continue to be responsible for arranging the discharge of all contracts entered into before announcement of the revocation of the authorisation, unless the supervisory authority states otherwise. 5

(6) Where the authorisation of an authorised investment business firm is revoked and the former authorised investment business firm, if a company, is not being wound up, or, if an unincorporated body of persons, is not the subject of a dissolution order, or, if a natural person, is not the subject of an adjudication of bankruptcy: 10

(a) the former authorised investment business firm shall continue to be subject to the duties and obligations imposed by this Act and any codes of conduct or rules of conduct or client money requirements or any other conditions or requirements imposed by a supervisory authority under any section of this Act until all the liabilities, duties and obligations of the said investment business firm have been discharged to the satisfaction of the supervisory authority, 15 20

(b) the former authorised investment business firm shall, as soon as possible after the revocation of the authorisation, notify the supervisory authority and such other persons, if any, as the supervisory authority indicates are to be notified, of the measures being taken to discharge without undue delay the liabilities, duties and obligations of the said investment business firm, and 25

(c) in the case where—

(i) the former authorised investment business firm has notified the supervisory authority in accordance with *paragraph (b)* of this subsection, and the supervisory authority is of the opinion that the measures being taken or proposed to be taken for the purposes of this section are not satisfactory, or 30

(ii) the former authorised investment business firm has not so notified the supervisory authority and the supervisory authority is of the opinion that the former authorised investment business firm has failed to so notify as soon as possible after the authorisation is revoked, or 35 40

(iii) the supervisory authority is of the opinion that the former authorised investment business firm has failed to take all reasonable steps to notify persons which the supervisory authority has indicated, under *paragraph (b)* of this subsection, are to be notified, 45

then, subject to *subsection (10)* of this section, the supervisory authority may give a direction in writing to the former authorised investment business firm for such period, not exceeding six months, prohibiting the former authorised investment business firm so directed from any or all of the following, namely— 50

(I) creating any liabilities,

- (II) dealing with or disposing of any assets or specified assets of the former authorised investment business firm in any manner,
- 5 (III) engaging in any transaction or class of transaction or specified transaction,
- (IV) making payments,

without the prior authorisation of the supervisory authority and the supervisory authority may further direct that former authorised investment business firm within two months of the initial direction
10 to prepare and submit to it for its approval a scheme for the orderly discharge in full of the liabilities, duties and obligations concerned.

(7) Where the authorisation of an investment business firm is revoked and the former authorised investment business firm, if a company, is being wound up, or, if constituted as an unincorporated
15 body of persons, is the subject of a dissolution order, or if a natural person is subject to an adjudication of bankruptcy then—

(a) the liquidator or the official assignee or receiver of the former authorised investment business firm shall, in addition to his duties and obligations in respect of the winding-up, dissolution or bankruptcy, be subject to the duties and obligations to which the former authorised investment business firm would be subject if it were an authorised investment business firm to which *subsection (6)* of this section relates and that subsection shall for the purposes of this section be construed accordingly,

20

25

(b) the liquidator or the official assignee or receiver shall also be subject to any conditions or requirements imposed under this Act as if the liquidator or the official assignee or receiver were an authorised investment business firm, and

30

(c) notwithstanding *paragraph (a)* of this subsection, the supervisory authority may, where authorisation is revoked and where the supervisory authority considers it appropriate in the circumstances, remove, on giving notice in writing to the liquidator, receiver or assignee of the former authorised investment business firm or the official assignee, in the case of bankruptcy, the duties and obligations imposed on the liquidator, receiver or official assignee concerned to comply with *paragraph (b)* of *subsection (6)* of this section and may impose, in writing, on that liquidator, receiver or official assignee such further duty or obligation which corresponds to that set out in *paragraph (b)* of that subsection.

35

40

(8) The supervisory authority shall publish notice of revocation of
45 an authorisation of an authorised investment business firm in the *Iris Oifigiúil* within 28 days of such revocation.

(9) A former authorised investment business firm shall cease to operate as an investment business firm and it shall be an offence for a former authorised investment business firm to operate as an
50 investment business firm.

(10) Where the supervisory authority gives a direction under *subsection (6)* of this section, it may apply to the Court, on being satisfied that the direction has not been complied with, and the Court may confirm, vary or set aside the direction on such terms and for such period as the Court thinks fit.

5

(11) The supervisory authority shall not apply to the Court to revoke an authorisation on the grounds set out in *subsection (2) (k)* of this section unless it has given an authorised investment business firm an opportunity to remove the director, manager or qualifying shareholder or otherwise deal with the concerns of the supervisory authority in relation to the probity or competence of the person concerned within such period of time as the supervisory authority may specify.

10

(12) An application under this section may be heard otherwise than in public.

15

Register of
investment business
firms.

17.—(1) A supervisory authority shall maintain a register or registers of investment business firms (to be known and in this Act to be referred to as a “Register of Investment Business Firms”) which it has authorised under *section 10* of this Act and such a register may be held in electronic form.

20

(2) Each supervisory authority shall arrange that all Registers of Investment Business Firms or a copy or copies thereof shall be open for inspection in a single location by any member of the public at all reasonable times, on the payment of such fee as the relevant supervisory authority may specify or approve, and each supervisory authority shall further ensure that a list of firms deemed to be authorised under this Act by virtue of *section 26* of this Act is maintained in the same location and is revised at such intervals as the supervisory authority deems appropriate.

25

(3) A Register of Investment Business Firms shall include the names and addresses of investment business firms and such other particulars as the supervisory authority may decide from time to time.

30

Asset and liability
ratios and structures
of authorised
investment business
firms.

18.—(1) A supervisory authority may impose a requirement on an authorised investment business firm to keep at all times a proportion of its assets in the form of liquid assets so as to enable the authorised investment business firm to meet its liabilities as they arise.

35

(2) An authorised investment business firm may keep liquid assets in addition to those required for the purpose of complying with *subsection (1)* of this section.

40

(3) For the purposes of complying with the requirements of a supervisory authority under *subsection (1)* of this section, an authorised investment business firm shall have regard to the range and scale of its business and that of any relevant associated undertaking or related undertaking and the composition and character of its assets and liabilities and those of any such undertaking.

45

(4) A supervisory authority may from time to time impose a requirement on an authorised investment business firm to maintain—

(a) a specified ratio, or

50

(b) a ratio which does not exceed a specified ratio, or

(c) a ratio which is not less than a specified ratio,

between its assets and its liabilities and the specified ratio may be expressed as a percentage of the assets or liabilities concerned.

5 (5) A requirement of a supervisory authority under this section may be expressed to apply to all or any of the following, namely—

(a) all authorised investment business firms,

(b) authorised investment business firms of a specified category or specified categories,

10 (c) the total assets or total liabilities of the authorised investment business firm or authorised investment business firms concerned,

(d) specified assets or assets of a specified kind,

(e) specified liabilities or liabilities of a specified kind,

15 (f) a specified time or times,

(g) during a specified period or periods,

and shall have effect in accordance with the specified terms of the requirement.

20 (6) A requirement under this section which is in force may be revoked by a supervisory authority or may be amended by a subsequent requirement under the relevant subsection.

25 (7) A supervisory authority may from time to time specify, as respects an authorised investment business firm, requirements as to the composition of its assets and requirements as to the composition of its liabilities.

30 (8) In determining, for the purposes of this section, the assets and liabilities of an authorised investment business firm with which another undertaking is associated or related, there shall be attributed to the authorised investment business firm, in a manner acceptable to or as may be specified by a supervisory authority, the whole or part of the assets and liabilities of whatever description of the associated undertaking or related undertaking.

35 (9) Any requirements imposed under this section by a supervisory authority acting as a competent authority may include requirements imposed for the purposes of applying Council Directive 93/6/EEC of 15 March, 1993⁽¹⁾, or other relevant European Community Directives, to the authorised investment business firm.

(10) In this section—

40 (a) "specified" means specified by a supervisory authority under this section;

(b) "liabilities" include such contingent liabilities as may be specified by a supervisory authority from time to time for the purposes of this section;

⁽¹⁾ O.J. No. L141 11/6/93.

Maintenance of books and records by investment business firms.

(c) "liquid assets" means assets specified as such for the purposes of this section by a supervisory authority.

19.—(1) (a) An investment business firm shall keep at an office or offices within the State such books and records (including books of accounts) or other documents as may be specified from time to time by a supervisory authority and shall notify the supervisory authority of the address of every office at which any such books or records are kept. 5

(b) A person who contravenes *paragraph (a)* of this subsection shall be guilty of an offence. 10

(2) A supervisory authority may specify different books, records or other documents for the purposes of this section and in relation to different investment business firms or different classes of investment business firms. 15

(3) Books and records or other documents kept pursuant to this section shall be—

(a) in addition to any books, records or other documents to be kept by or under any other enactment, and

(b) retained for at least such period as the supervisory authority may specify. 20

PART III

REGULATION AND SUPERVISION OF INVESTMENT BUSINESS FIRMS

General functions of supervisory authorities.

20.—(1) Subject to such guidelines in this regard as may be issued by the Minister in the interests of the proper and orderly regulation and supervision of investment business firms and the protection of investors and notified to a supervisory authority in writing and published, from time to time, in the *Iris Oifigiúil*, supervisory authorities shall administer the system of regulation and supervision of investment business firms in accordance with the provisions of this Act in order to promote— 25 30

(a) the maintenance of the proper and orderly regulation and supervision of investment business firms or of financial markets, or both, and

(b) the protection of investors. 35

(2) Where a supervisory authority is of the opinion that it is necessary in the interests of assessing the capacity of an investment business firm to engage in an activity for which it has sought authorisation or for which it stands authorised under *section 13* of this Act, it may commission an independent assessment of the capacity of the proposed investment business firm or of the authorised investment business firm. 40

(3) Subject to *subsection (4)* of this section, the Minister may, after consulting with the supervisory authorities, prescribe the fee to be paid to a supervisory authority by a proposed investment business firm or by an investment business firm supervised by it and the Minister may prescribe different fees for different classes of investment business firms. 45

(4) Regulations under this section may provide for such incidental or related matters as are, in the opinion of the Minister, necessary to give effect to such fees and where the Minister proposes to prescribe a fee under *subsection (3)* of this section he shall—

5 (a) publish details of the proposed fee where the fee is in respect of an application for authorisation, and

(b) consider any representations made to him within a reasonable period, being not less than two months after the date of such publication, as he shall specify at the time of publication.
10

(5) Notwithstanding any other provisions of this Act a supervisory authority shall co-operate with the other supervisory authority in the State and when acting as a competent authority shall co-operate with the competent authorities in other Member States so that the responsibilities of each supervisory and competent authority may be more effectively discharged.
15

(6) Without prejudice to the generality of *subsection (1)* of this section or to the powers of a supervisory authority under *sections 19* and *65* of this Act, a supervisory authority acting as a competent authority may verify, at the request of a competent authority in another Member State, that any investment business firm authorised by that competent authority is complying with the relevant regulatory requirements imposed by that competent authority or by the home Member State of such an investment business firm.
20

(7) A competent authority in another Member State authorised in that Member State to supervise investment business firms may, having notified the supervisory authorities, inspect or investigate the business of an investment business firm supervised by that authority which has a place of business in the State at that place of business or otherwise for the purpose of verifying any information of the type referred to in Article 23(3) of Council Directive 93/22/EEC of 10 May, 1993⁽¹⁾ in any one of the following manners—
25

(a) by inspection of the investment business firm, at that place of business or otherwise, by the authority concerned,
30

(b) by inspection of the investment business firm, at that place of business or otherwise, by a person authorised in that behalf by the authority concerned, or
35

(c) by a request from the authority concerned to a supervisory authority to carry out the inspection on its behalf of the place of business or otherwise.
40

21.—(1) Without prejudice to the power of a supervisory authority to impose conditions or requirements or both under this Act, and, without prejudice to the powers of a supervisory authority under *subsections (2)* or *(4)* of this section, where a supervisory authority considers it necessary to do so in the interests of the proper and orderly regulation and supervision of investment business firms or the protection of investors, the supervisory authority may give a direction to all or any of the following, namely—
45

Directions by
supervisory
authority.

(a) any or all authorised investment business firms,

50 (b) any or all proposed investment business firms,

⁽¹⁾ O.J. No. L141 11/6/93.

- (c) any or all investment business firms,
- (d) any or all former authorised investment business firms,
- (e) directors and those responsible for the management of authorised investment business firms,
- (f) any person purporting to act or whom the supervisory authority reasonably believes is acting as an investment business firm, 5

in relation to any matter related to the operation of an investment business firm or any matter related to an acquiring transaction within the meaning of *section 38* of this Act. 10

(2) Without prejudice to the powers of a supervisory authority under *subsection (1)* of this section, and without prejudice to the powers of a supervisory authority to impose conditions or requirements or both under this Act, where a supervisory authority is of the opinion that it is necessary to do so in the interests of the proper and orderly regulation and supervision of investment business firms or for the protection of investors or both or where an investment business firm— 15

- (a) has become or is, in the opinion of the supervisory authority, likely to become unable to meet its obligations to its creditors or its clients or both, or 20
- (b) is not maintaining or is, in the opinion of the supervisory authority, unlikely to be in a position to maintain adequate capital resources having regard to the volume and nature of its business, or no longer complies with capital or other financial requirements specified by the supervisory authority from time to time, or both, or 25
- (c) has failed to comply with any condition or requirement imposed under this Act, and the circumstances are such that the supervisory authority is of the opinion that the stability or soundness of an investment business firm is materially affected by this failure, or 30
- (d) is conducting business in such a manner as to jeopardise or prejudice monies or investment instruments held by or controlled by it on behalf of clients, or the rights and interests of those clients, 35

the supervisory authority may give a direction in writing to the investment business firm concerned to suspend for such period (not exceeding twelve months) as shall be specified in the direction any or all of the following, that is to say— 40

- (i) the provision of any investment business service or services or the provision of any investment advice,
- (ii) the making of payments to which *subparagraph (i)* of this subsection does not relate,
- (iii) the acquisition or disposal of any assets or liabilities, 45
- (iv) entering into transactions or agreements of any specified kind or entering into them except in specified circumstances or to a specified extent,

- (v) soliciting business from persons of a specified kind or otherwise than from such persons or in a specified country,
- 5 (vi) carrying on business in a specified manner or otherwise than in a specified manner,

which have not been authorised by the supervisory authority.

- (3) A direction under *subsection (1) or (2)* of this section may be given to a particular person or generally to all persons to whom those subsections apply or to a particular class of person or during a specified period of time or times, or by reference to any other matter which the supervisory authority may consider appropriate.

(4) The *First Schedule* to this Act shall apply as respects a direction by the supervisory authority under this section.

- 15 (5) Where a supervisory authority gives a direction under this section, which said direction shall have immediate effect, the supervisory authority may or, where the supervisory authority is of the opinion that the said direction is not being complied with, the supervisory authority shall apply to the Court in a summary manner for an order confirming the direction.

- 20 (6) The Court may, on an application being made under *subsection (5)* of this section, hear evidence from creditors and the Court may make, in any application under this section, such interim or interlocutory order, if any, as it considers fit.

- 25 (7) While a direction under this section is in force, no winding-up proceedings in relation to an authorised investment business firm or associated or related undertaking or, in the case of an authorised investment business firm or associated or related undertaking which is constituted as an unincorporated body of persons, no proceedings for an order of dissolution, or, in the case of an authorised investment business firm which is constituted as a sole trader, no bankruptcy proceedings, may be commenced or resolution for winding-up passed in relation to the authorised investment business firm or associated or related undertaking, and no receiver shall be appointed over the assets or over any part of the assets of the authorised investment business firm or associated or related undertaking and such assets shall not be attached, sequestered or otherwise distrained except with the prior sanction of the Court.

(8) The Court may hear proceedings or part of proceedings under this section otherwise than in public.

- 40 (9) A creditor who is affected by a direction under *subsection (2)* of this section may apply to the Court to vary or set aside that direction where it affects the interests of the creditor to a material degree.

- 22.—(1) Notwithstanding section 215 of the Companies Act, 1963, a supervisory authority may, by presenting a petition, apply to the Court to have an authorised investment business firm or former authorised investment business firm wound up on any of the following grounds, namely that—

- 45 (a) an authorised investment business firm or former authorised investment business firm is or, in the opinion of the supervisory authority, may be unable to meet its obligations to its clients or creditors,

Winding-up on application to Court.

- (b) the authorisation of the investment business firm has been revoked and the former authorised investment business firm has ceased to operate as an investment business firm,
- (c) the supervisory authority considers that it is in the interest of the proper and orderly regulation and supervision of investment business firms or is necessary for the protection of investors that the authorised investment business firm or former authorised investment business firm be wound up,
- (d) an authorised investment business firm or a former authorised investment business firm has failed to comply with any direction given by the supervisory authority under this Act.

(2) Where the petition for the winding-up of an authorised investment business firm or former authorised investment business firm is presented by a person other than the supervisory authority, a copy of the petition shall be served on the supervisory authority which shall be entitled to be heard on the petition.

(3) Where an authorised investment business firm or former authorised investment business firm is being wound up voluntarily and the supervisory authority has reason to believe that any of the grounds set out in *subsection (1)* of this section applies, then, the supervisory authority may apply to the Court to have that investment business firm wound up by the Court.

(4) Where an authorised investment business firm or former authorised investment business firm is being wound up and the supervisory authority is not a creditor any notice or document, by whatever name called, which is required to be sent to a creditor of the authorised investment business firm or former authorised investment business firm shall be sent also to the supervisory authority.

(5) An officer of the supervisory authority, or any other person, duly appointed in writing in that behalf by the Minister for Enterprise and Employment or the Governor of the Bank or by an officer designated by that Minister or that Governor for the purpose of appointing persons under this section, may attend any meeting of creditors of an authorised investment business firm or former authorised investment business firm.

(6) (a) The Minister for Enterprise and Employment or the Governor of the Bank, or an officer designated by the said Minister or Governor for that purpose, may appoint in writing an officer of a supervisory authority or any other person to be a member of any committee of inspection appointed under section 233 or 268 of the Companies Act, 1963, in respect of the authorised investment business firm or former authorised investment business firm.

(b) A person duly appointed under *paragraph (a)* of this subsection shall neither be counted in computing the minimum or maximum numbers of members of such a committee prescribed under the Companies Acts, nor be removed from membership of the committee without the consent of the supervisory authority.

(7) The rules of Court relating to the winding-up of companies shall, pending the making of rules of Court for the purposes of this subsection, apply for such purposes with such adaptations as may be necessary.

- 5 (8) In the case of an authorised investment business firm or a former authorised investment business firm which is constituted as an unincorporated body of persons, the supervisory authority may apply by petition to the Court for a decree of dissolution and for that purpose, section 35 of the Partnership Act, 1890, shall extend to the
10 supervisory authority and shall apply as if the grounds specified in subsection (1)(a) to (d) of this section were incorporated therein.

- (9) In the case of an authorised investment business firm or a former authorised investment business firm which is constituted as an individual person, the supervisory authority may apply by petition to
15 the Court for an adjudication of bankruptcy within the meaning of the Bankruptcy Act, 1988, and the Bankruptcy Act, 1988 shall apply as if the grounds specified in subsection (1) (a) to (d) of this section were acts of bankruptcy (within the meaning of the Bankruptcy Act, 1988).

- 20 23.—(1) Any person who causes to be advertised, or supplies, or offers to supply, investment business services or investment advice, or makes any other solicitation in respect of investment business services or investment advice or who holds himself out to be an investment business firm, where the provision of such services or advice
25 would be an offence under section 9 of this Act shall be guilty of an offence.

Restrictions on advertising.

- (2) Without prejudice to the generality of any section of this Act empowering a supervisory authority to impose conditions or requirements, or both, a supervisory authority may impose such conditions
30 or requirements or both, on the investment business firm concerned in respect of advertising by that investment business firm as the supervisory authority considers necessary, in the interests of—

(a) the orderly and proper regulation and supervision of authorised investment business firms, or,

- 35 (b) the protection of investors.

(3) A supervisory authority may impose a requirement on an investment business firm or all investment business firms to publish specified information or to display specified information at their premises.

- 40 (4) The Minister may prescribe information to be displayed by an authorised investment business firm at its premises.

- (5) (a) If, with respect to any investment business firm, a supervisory authority considers it expedient to do so, in the interest of the proper and orderly regulation and supervision
45 of investment business firms or the protection of investors, the supervisory authority may give such investment business firm a direction in relation to the content and form of any advertisement or other means of soliciting client money or investment instruments or business or in relation to the content and form of any advertisement relating to any service provided or business being undertaken by the investment business firm, or to
50 withdraw an advertisement or to cease advertising.

- (b) Without prejudice to the generality of *paragraph (a)* of this subsection, a direction under this section may do all or any of the following—
- (i) prohibit the issue by the investment business firm of advertisements of all descriptions or any specified description, 5
 - (ii) require the investment business firm to modify advertisements of a specified description in a specified manner,
 - (iii) prohibit the issue by the investment business firm of any advertisements which are, or are substantially, repetitions of a specified advertisement, 10
 - (iv) require the investment business firm to withdraw any specified advertisement or any advertisement of a specified description, 15
 - (v) require the investment business firm to include specified information in any advertisement to be published by it or on its behalf or in any statement to the public to be made by it or on its behalf.
- (6) If, in contravention of *subsection (1)* of this section or in contravention of a direction under this section, a person issues, or causes to be issued, an advertisement inviting persons to enter or offer to enter into an investment agreement or containing information calculated to lead directly or indirectly to persons doing so, then, subject to *subsection (9)* of this section— 20 25
- (a) he shall not be entitled to enforce any agreement to which the advertisement related and which was entered into after the issue of the advertisement, and
 - (b) the other party shall be entitled to recover any money or other property or investment instruments paid or transferred by him under the agreement, together with compensation for any loss sustained by him as a result of having paid money or transferred property or investment instruments under the agreement. 30
- (7) If, in contravention of *subsection (1)* of this section, or in contravention of a direction issued under this section, a person issues or causes to be issued an advertisement inviting persons to exercise any rights conferred by an investment or containing information calculated to lead directly or indirectly to persons doing so, then, subject to *subsection (8)* of this section— 35 40
- (a) that person shall not be entitled to enforce any obligation to which a person is subject as a result of any exercise by him after the issue of the advertisement of any rights to which the advertisement related, and
 - (b) such a person shall be entitled to recover any money or other property or investment instruments paid or transferred by him under any such obligation, together with compensation for any loss sustained by him. 45

(8) The compensation recoverable under *subsection (6) or (7)* of this section shall be such as the parties may agree or as the Court may, on the application of either party, determine.

5 (9) The Court may allow any such agreement or obligation as is mentioned in *subsection (6) or (7)* of this section to be enforced or money or property or investment instruments paid or transferred under it to be retained if it is satisfied—

10 (a) that the person against whom enforcement is sought or who is seeking to recover the money or property or investment instruments was not influenced, or not influenced to any material extent, by the advertisements in making his decision to enter into the agreement or as to the exercise of the rights in question, or

15 (b) that the advertisement was not misleading as to the nature of the investment, the terms of the agreement or, as the case may be, the consequences of exercising the rights in question and fairly stated any risks involved in those matters.

20 (10) Where a person elects not to perform an agreement or an obligation which by virtue of *subsection (6) or (7)* of this section is unenforceable against him or by virtue of either of those subsections recovers money paid or other property or investment instruments transferred by him under an agreement or obligation, he shall repay any money and return any other property or investment instruments
25 received by him under the agreement or, as the case may be, as a result of exercising the rights in question.

30 (11) Where any property or investment instruments transferred under an agreement or obligation to which *subsection (6) or (7)* of this section applies has passed to a third party the references to that property or investment instruments in this section shall be construed as references to its value at the time of its transfer under the agreement or obligation.

35 (12) If an advertisement or other solicitation to which this section relates is published and it does not include the name and address of the person who arranged with the publisher for the advertisement or solicitation, a supervisory authority may, at any time within the period of 12 months after any publication of the advertisement or solicitation, request the publisher to supply the name and address of that person to the supervisory authority and the publisher shall forthwith
40 comply with that request.

(13) A supervisory authority may—

(a) direct a person to arrange the publication of a correction of a misleading advertisement concerning services of investment business firms, or

45 (b) direct a person to arrange the publication of a correction of an advertisement which contravenes the provisions of this section, or

50 (c) direct a person to arrange the publication of the fact that an offence under this section has taken place and that a fine, if any, has been imposed, or

- (d) direct a person to arrange the publication of the fact that a determination that there has been a breach of a condition or requirement under this section has been made under *section 74* of this Act, or
- (e) arrange the publication of an advertisement correcting any misleading aspects of advertisements, published by an investment business firm,

in a manner specified by the supervisory authority.

(14) In this section "specified" means specified in a direction under this section.

(15) Any person who fails to comply with a direction or a prescription imposed under *subsections (4), (5) or (13)* of this section, or who fails to comply with a request of a supervisory authority under *subsection (12)* of this section, shall be guilty of an offence.

Exemption from restrictions on advertising.

24.—(1) *Section 23* of this Act shall not apply to a class of advertisement specified from time to time by a supervisory authority for the purpose of exempting from that section—

- (a) advertisements appearing to a supervisory authority to have a private character, whether by reason of a connection between the person issuing them and those to whom they are issued or otherwise, or
- (b) advertisements appearing to a supervisory authority to deal with investments only incidentally, or
- (c) advertisements issued to persons appearing to a supervisory authority to be sufficiently expert to understand any risks involved.

(2) An exemption under *subsection (1)* of this section shall be subject to such conditions as may be specified by a supervisory authority when granting the exemption.

PART IV

INVESTMENT PRODUCT INTERMEDIARIES

Definition of investment product intermediary.

25.—In this Act "investment product intermediary" means an investment business firm or a solicitor holding a practising certificate (within the meaning of the Solicitors Acts, 1954 to 1994) who—

- (a) acts as a deposit agent or acts as a deposit broker, or
- (b) provides a service of the reception and transmission of orders to a product producer in any of the instruments referred to in *section 4(2)(a) to (c)* or shares in a company which are listed on a stock exchange or bonds so listed or prize bonds.

Definition of restricted activity investment product intermediaries.

26.—(1) In this Act "restricted activity investment product intermediary" means a person whose only investment business service is receiving and transmitting orders in the instruments referred to in *section 4 (2) (a) to (c)* of this Act or receiving and transmitting—

- (a) orders in shares in a company which are listed on a stock exchange or bonds so listed, or
 - (b) orders in prize bonds, or
 - (c) acting as a deposit agent or as a deposit broker,
- 5 or engaging in any or all of these services and, in the course of engaging in any of these services transmits orders only to all or any of the following, namely—
- 10 (i) investment firms authorised in accordance with Directive 93/22/EEC of 10 May, 1993⁽¹⁾ by a competent authority of another Member State, or to an authorised investment business firm, not being a restricted activity investment product intermediary, or a certified person, or to a member firm, within the meaning of the *Stock Exchange Act, 1995*, in the State;
 - 15 (ii) credit institutions authorised in accordance with Directives 77/780/EEC of 12 December, 1977⁽²⁾ and 89/646/EEC of 15 December, 1989⁽³⁾;
 - 20 (iii) to such other branches of investment business firms or credit institutions authorised in a third country as the supervisory authority may approve from time to time;
 - 25 (iv) collective investment undertakings authorised under the law of a Member State of the European Union to market units in collective investments to the public, and to the managers of such undertakings;
 - (v) investment companies with fixed capital as defined in Article 15(4) of Council Directive 77/91/EEC of 13 December, 1976⁽⁴⁾ the securities of which are listed or dealt in on a regulated market in a Member State;
 - 30 (vi) the Prize Bond Company Ltd. or any successor to it as operator of the Prize Bond scheme,

and which does not hold clients' funds or securities, so that in its dealings with clients it does not become a debtor to its clients, but this shall not prevent it from—

- 35 (I) taking non-negotiable cheques or similar instruments made out to one of the undertakings mentioned at *subparagraphs (i) to (vi)* of this subsection, for the purposes of the receipt and transmission of orders, or
- 40 (II) when acting as a deposit agent, taking cash from a client for the client's account with a credit institution.

45 (2) A restricted activity investment product intermediary shall, while it remains a restricted activity investment product intermediary, and notwithstanding *section 10* of this Act, be deemed to be an authorised investment business firm for the purposes of this Act, provided that the restricted activity investment product intermediary

⁽¹⁾ O.J. No. L141 11/6/93.

⁽²⁾ O.J. No. L322 17/12/77.

⁽³⁾ O.J. No. L386 30/12/89.

⁽⁴⁾ O.J. No. L26 30/1/77.

has not had its authorisation revoked under *section 16(2)* of this Act and not re-instated and that no director, officer or manager of the restricted activity investment product intermediary has been such a director, officer or manager of an investment business firm which has had its authorisation under *section 16(2)* of this Act revoked and not re-instated. 5

(3) *Subsection (2)* of this section shall apply without prejudice to any of the powers of a supervisory authority in relation to this Act.

Requirements for
investment product
intermediaries.

27.—A person shall not act as or hold himself out to be an investment product intermediary unless he holds an appointment in writing from each product producer for which he is an intermediary, and unless— 10

(a) he is a member of any approved representative body specified for this purpose by the Minister for Enterprise and Employment whose rules require compliance with the terms of this Act, or 15

(b) he is a certified person, or

(c) he otherwise complies with the provisions of this Act, and

he effects a policy of professional indemnity insurance in a form prescribed by the Minister for Enterprise and Employment, after consultation with the Bank, indemnifying him up to such sum, in such manner, in respect of such matters and valid for such minimum period as the Minister for Enterprise and Employment may prescribe from time to time, following consultation with the Bank. 20

Obligations on
product producers.

28.—(1) A product producer may not appoint an investment product intermediary to act on its behalf in the reception or transmission of orders in the instruments referred to in *section 4(2)(a)* to (c) or shares in a company or bonds which are listed on a stock exchange, or prize bonds or in acting as a deposit agent or as a deposit broker or any or all of these, and may not pay any commission, fee or other reward to an investment product intermediary, or accept any orders transmitted by an investment product intermediary on behalf of a client, unless to the best of the product producer's knowledge and belief, having caused reasonable enquiry to be made, the investment product intermediary— 25 30 35

(a) is a member of an approved representative body specified by the Minister for Enterprise and Employment whose rules require compliance with the terms of this Act, or

(b) is a certified person, or

(c) otherwise complies with the terms of this Act and is of good character. 40

(2) A product producer may for the purposes of *subsection (1)* of this section assume that an investment product intermediary, not being a restricted activity investment product intermediary, which is authorised for that activity by a supervisory authority under *section 10* of this Act, or by a competent authority in another Member State, complies with the terms of this Act. 45

(3) It shall be an offence for a person to provide false or misleading information for the purposes of obtaining an appointment for the purposes of *section 27* of this Act.

5 (4) Where any payment in any form is made to or through an investment product intermediary, such that a receipt is required to be issued under *section 30* of this Act, the payment shall be treated as having been paid to the relevant product producer when the investment product intermediary takes receipt of the payment:

10 Provided that the investment product intermediary has a written appointment from that product producer.

15 29.—A restricted activity investment product intermediary shall state on all stationery and in all advertisements and on first entering into a business relationship with a client that it is not within its terms of authorisation to accept cash (other than in relation to acting as a deposit agent) or other funds or securities on behalf of its clients or to act on a discretionary basis in the management of client funds and, without prejudice to the generality of the aforesaid, the Minister for Enterprise and Employment may prescribe other information to be given or conditions to be satisfied by a restricted activity investment product intermediary.

Disclosure obligations of restricted activity investment product intermediaries.

25 30.—Without prejudice to any codes of conduct which may be issued or approved of by a supervisory authority under *section 37* of this Act, an investment product intermediary shall issue a receipt for each non-negotiable or negotiable instrument or other payment received for the purposes of transmitting an order or a deposit to a product producer and the receipt shall state succinctly the terms and conditions upon which a transaction was entered into and, without prejudice to the generality of the aforesaid, shall state clearly—

Issue of receipts.

30 (a) the name and address of the person furnishing the instrument or payment;

(b) the value of the instrument or payment;

(c) the date of its receipt;

(d) the name of the person to whom the instrument is payable; and

35 (e) the purpose of the payment,

and an investment product intermediary which fails to issue such a receipt shall be guilty of an offence.

40 31.—(1) A product producer shall establish and maintain a register of all its appointed investment product intermediaries at its principal office in the State, if any.

Register of investment product intermediaries.

(2) The register referred to in *subsections (1) and (4)* of this section shall be open to public inspection at reasonable times during normal working hours.

45 (3) A product producer shall provide the Minister for Enterprise and Employment with information to be included by a product producer in the register kept for the purposes of this section at such intervals as that Minister may specify.

(4) The Minister for Enterprise and Employment shall establish and maintain a register of all investment product intermediaries appointed by product producers.

(5) Where the appointment of an investment product intermediary is discontinued the product producer shall inform a supervisory authority immediately of the termination of the appointment and the circumstances surrounding the termination of the appointment. 5

PART V

AUDITORS

Notification of
changes of auditor.

32.—(1) A supervisory authority may impose a requirement in 10
writing on an authorised investment business firm—

(a) to notify the supervisory authority at least 15 days—

(i) before notices are sent to shareholders concerning the proposed appointment or re-appointment of a person to the office of auditor of an authorised investment business firm for the purposes of the Companies Acts, or 15

(ii) before the directors of an authorised investment business firm fill any casual vacancy in the office of auditor by virtue of section 160 (7) of the Companies Act, 1963, 20

of the name of the person to be so proposed, to be re-appointed or to fill that vacancy,

(b) to supply, within such period of time as the supervisory authority shall state, such information as it may request 25
concerning the person named for the purpose of *paragraph (a)* of this subsection.

(2) Where a supervisory authority is of the opinion that it would not be in the best interest of investors or in the interests of the proper and orderly regulation and supervision of investment business firms, 30
it may direct, as the circumstances require, that an authorised investment business firm does not appoint or re-appoint to the office of auditor or that the directors do not fill a casual vacancy in the office with a named person and the direction shall be complied with.

(3) Where a supervisory authority gives a direction under *subsection (2)* of this section that an authorised investment business firm shall not re-appoint a person to the office of auditor the person who has not been re-appointed may apply to the Court for an order to set aside the direction of the supervisory authority. 35

Auditors for
investment business
firms which are not
incorporated bodies
and duties of
auditors.

33.—(1) An authorised investment business firm (other than a 40
certified person or a person who does not provide investment business services) which is constituted as an unincorporated body of persons or as a sole trader shall be required to appoint an auditor to audit and make a report on its accounts on an annual basis and a person shall not be qualified for appointment as an auditor of an 45

authorised investment business firm which is constituted as an unincorporated body of persons or sole trader unless he meets the requirements of, and is not excluded by, the provisions of the Companies Acts.

- 5 (2) A supervisory authority may set out requirements in respect of the accounts and audit of an authorised investment business firm which is constituted as an unincorporated body of persons or as a sole trader including requirements which are analogous to those set out in the Companies Acts and may impose duties or obligations on
10 the auditor or on the authorised investment business firm concerned.

(3) If at any time an auditor of an authorised investment business firm and, in the case of *paragraphs (e) and (f)* of this subsection, an auditor of an investment business firm—

- 15 (a) has reason to believe that there exist circumstances which are likely to affect to a material degree the ability of the authorised investment business firm to fulfil its obligations to investors or clients or meet any of its financial obligations, or
- 20 (b) has reason to believe there are material defects in the accounting records or systems of control of the business and records, or
- (c) has reason to believe that there are material inaccuracies in, or omissions from, any returns made by an authorised investment business firm to the supervisory authority, or
- 25 (d) proposes to qualify any report or certificate which he is to provide in relation to the financial statements or returns of an authorised investment business firm under the Companies Acts, or under this Act, or
- 30 (e) has reason to believe that there are material defects in the system of any investment business firm for ensuring the safe custody of money or investment instruments of clients or has reason to believe that an investment business firm is not complying with client money requirements or rules or provisions of this Act, or
- 35 (f) has reason to believe that an investment business firm which is a certified person has breached to a material degree the rules relating to the provision of investment business services of any approved professional body by which it is regulated or supervised, or
- 40 (g) decides to resign or not to seek re-election as auditor,

the auditor shall report the matter to the relevant supervisory authority in writing without delay.

- (4) The auditor of an investment business firm, if requested to do so by a supervisory authority, shall furnish to the supervisory authority a report stating whether, in the opinion of the auditor and to the best of the knowledge of that auditor, the investment business firm has or has not complied with—
45

- 50 (a) any condition or requirement set out or imposed under this Act in relation to financial resources, money or investment instruments of clients, accounting records and specified aspects of control systems or any or all of these, or

- (b) any condition or requirement set out in or imposed under this Act,

and the supervisory authority concerned may specify that such a report be furnished to it in such form as it may specify either on an annual basis or on such other occasion as the supervisory authority may specify or both. 5

(5) Where the auditor of an investment business firm so requests, a supervisory authority may provide to the auditor, in writing, details of any information of a financial nature concerning the said investment business firm as the auditor requests for the purpose of enabling him to comply with this Act. 10

(6) An auditor of an investment business firm shall send to the investment business firm concerned a copy of any report made by him to a supervisory authority under *subsection (3) or (4)* of this section. 15

(7) An auditor of an authorised investment business firm shall communicate to a supervisory authority any matters which come to the attention of the auditor and are such as to give the auditor reasonable cause to believe that the matter is or may be of material significance for determining either whether— 20

(a) the level of competence of a person is satisfactory having regard to the matters with which they would be concerned in relation to the business of an authorised investment business firm and their probity is such as to render them suitable to carry on the business of an authorised investment business firm; or 25

(b) disciplinary action ought to be taken, or a direction given, by reason of the contravention by a person of any provision of this Act or any conditions or requirements, or both, or directions imposed by the supervisory authority under this Act. 30

(8) (a) Where a supervisory authority is of the opinion that the exercise of its functions under this Act or the protection of investors or clients or the interest of the proper and orderly regulation and supervision of investment business firms so requires, the supervisory authority may require the auditor of an investment business firm to supply it with such information as it may specify in relation to the audit of the business of the said investment business firm and the auditor shall comply with the requirement. 35 40

(b) The supervisory authority may specify that, in supplying information for the purposes of this subsection, the auditor shall act independently of an investment business firm.

(9) No duty to which an auditor of an investment business firm may be subject shall be regarded as contravened and no liability to the investment business firm or to the shareholders, creditors, investors, clients or other interested parties of any investment business firm shall attach to the auditor by reason of his compliance with any obligation imposed on him by or under this section. 45 50

(10) It shall be the duty of an auditor in preparing an audit or a report under this section to carry out such investigations as will enable him to form an opinion as to whether—

- (a) an authorised investment business firm has kept proper accounting records;
- 5 (b) an authorised investment business firm has maintained satisfactory systems of control of its business and records and systems of inspection and report thereon;
- 10 (c) an authorised investment business firm has complied with rules or requirements relating to money of clients and investment instruments referred to in *section 52* of this Act and with the provisions of *sections 52(3), 52(5), or 52(6)*;

and, where an auditor is of the opinion that an authorised investment business firm has failed to keep proper accounting records or to maintain a satisfactory system of control of its business or records, or has failed to comply with the rules or requirements of this Act referred to in *paragraph (c)* of this subsection the auditor shall so state in his report.

(11) An auditor of an authorised investment business firm shall have a right of access at all reasonable times to the books, accounts, records and vouchers of an authorised investment business firm and to all other documents relating to its affairs (including documents and records relating to clients' money and investment instruments) and shall be entitled to require from the officers, directors, managers and employees of the said authorised investment business firm such information and explanations as are within their knowledge or can be procured by them as the auditor thinks necessary for the performance of the duties of auditor.

(12) Subject to *subsection (15)* of this section, where an authorised investment business firm has a related undertaking or associated undertaking, then—

- 30 (a) if the associated undertaking or related undertaking is a body established or operating in the State it shall be the duty of the associated undertaking or related undertaking and its auditors to give to the auditors of an authorised investment business firm, as the case may be, such information and explanation and such access to documents as those auditors may reasonably require for the purpose of their duties as auditors of the authorised investment business firm concerned; and
- 35
- 40 (b) in any other case, it shall be the duty of an authorised investment business firm, if required by its auditors to do so, to take all such steps as are reasonably open to it to obtain from the related undertaking or associated undertaking such information and explanation and such access as are mentioned in *paragraph (a)* of this subsection.

45 (13) A supervisory authority, following consultation with the other supervisory authority, may set out requirements in respect of the audit of authorised investment business firms and such requirements may relate to the communication of specified matters to the supervisory authority which may include matters relating to an associated undertaking or related undertaking.

50

(14) Any report requested by a supervisory authority under this section shall be prepared at the expense of the investment business firm concerned and shall be carried out and made within such time

as may be specified by the supervisory authority or within such further time as the supervisory authority may allow.

(15) An associated undertaking or a related undertaking may apply to the Court for an order prohibiting the auditor of an authorised investment business firm from requesting particular information or classes of information under this section from that associated undertaking or related undertaking on the basis that it is unreasonable and unnecessary for the auditor to request that information. 5

False statements to
auditors.

34.—(1) An officer or employee of an investment business firm or of an associated undertaking or related undertaking who knowingly or recklessly makes a statement to which this section applies that is misleading, false or deceptive in a material particular shall be guilty of an offence. 10

(2) This section applies to any statement made to the auditors of an investment business firm (whether orally or in writing) which conveys, or purports to convey, any information or explanation which they require under this Act, or are entitled so to require, as auditors of an authorised investment business firm. 15

(3) An officer or employee of an investment business firm or an associated undertaking or related undertaking who fails to provide to the auditors of an investment business firm, within such period of time as the auditor, after consultation with a supervisory authority, may specify, being not less than two days (not including a Saturday, a Sunday or a public holiday) from the making of the relevant inquiry, any information or explanations that the auditors require as auditors of an investment business firm and that is within the knowledge of or can be procured by the officer or employee shall be guilty of an offence. 20 25

(4) In a prosecution for an offence under this section it shall be a defence for the defendant to show that it was not reasonably possible for him to comply with the requirements under *subsection (3)* of this section to which the offence relates, within the time specified in that subsection, but that the defendant complied therewith as soon as was reasonably possible after the expiration of such time. 30

(5) In this section "officer", in relation to an associated undertaking or related undertaking of an authorised investment business firm, includes an auditor. 35

Power to require a
second audit.

35.—(1) If, on the basis of the information obtained through an audit, a supervisory authority has a real and substantial concern about the audited accounts of an authorised investment business firm, the supervisory authority may direct an authorised investment business firm to submit for examination by a person appointed by the supervisory authority any or all of the following, namely— 40

(a) any accounts on which the auditor of that authorised investment business firm has reported or any information which has been verified by that auditor, or 45

(b) any information as is specified in the direction,

and the person making the examination shall report his conclusions to the supervisory authority.

(2) The person carrying out an examination under this section shall have all the powers that are available to an auditor under this Act and under the Companies Acts and it shall be the duty of the auditor of an authorised investment business firm to afford that person all such assistance as he may require.

(3) Where a report made under this section relates to accounts which under any enactment are required to be sent to, or made available for inspection by, any person or to be delivered for registration, the report, or any part of it (or a note that such a report has been made) may be similarly sent, made available or delivered by the supervisory authority.

(4) An officer or employee of an authorised investment business firm or of an associated or related undertaking who knowingly or recklessly makes a statement to a person appointed under this section that is false or misleading or deceptive in a material particular shall be guilty of an offence.

(5) If any officer, employee, shareholder or agent of an authorised investment business firm or associated undertaking or related undertaking refuses to produce to the person appointed under this section any book or document which it is his duty under this section to produce, refuses to attend before the person appointed under this section when required to do so, or refuses to answer any question put to him by the person appointed under this section with respect to the affairs of an authorised investment business firm or associated undertaking or related undertaking, the person appointed under this section may certify the refusal under his hand to the Court and the Court may thereupon inquire into the case and, after hearing any witnesses who may be produced against or on behalf of the officer, employee, shareholder or agent of the authorised investment business firm or associated or related undertaking and any statement which may be offered in defence, make any order or issue a direction as it thinks fit including a direction to the person concerned to attend or re-attend before the person appointed under this section or produce particular books or documents or answer a particular question put to him by the person appointed under this section, 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 person appointed under this section.

(6) The expenses of and incidental to an examination under this section shall be defrayed in the first instance by the supervisory authority instigating the examination.

PART VI

PROBITY, CODES OF CONDUCT AND MISCELLANEOUS PROVISIONS

36.—(1) (a) If a supervisory authority considers that the probity of any officer or employee of an authorised investment business firm is liable to render him unsuitable to act as an officer or employee of an authorised investment business firm the supervisory authority may, on notice to the person concerned and on notice to the authorised investment business firm concerned, apply to the Court to issue a direction to

Probity and competence of employed persons.

direct the authorised investment business firm concerned to have the officer concerned removed or to dismiss the employee concerned from his employment.

- (b) If a supervisory authority considers that any officer or employee of an authorised investment business firm is not competent in respect of matters of the kind with which the officer or employee would be concerned as an officer or employee of an authorised investment business firm, the supervisory authority may, on notice to the person concerned and on notice to the authorised investment business firm, apply to the Court to issue a direction to direct the authorised investment business firm concerned to have the officer or employee concerned removed or suspended for a specified period of time or to dismiss the employee concerned from their employment or to remove that employee from a particular area of employment.

(2) The Court may make such interim or interlocutory orders as it considers necessary under this section.

(3) Subject to *subsection (5)* of this section, a person who is the subject of a direction under *subsection (1)* of this section may not, without the written consent of a supervisory authority, be employed in any capacity in connection with an authorised investment business firm or any other entity which any supervisory authority supervises or regulates as part of its statutory functions.

(4) A direction under this section (to be known and in this section referred to as "a disqualification direction") shall specify the date on which it is to take effect and a copy of it shall be served on the person to whom it relates.

(5) A supervisory authority may consent to the employment of a person who is the subject of a disqualification direction and such consent may—

(a) relate to employment with any entity which the supervisory authority supervises or regulates as part of its statutory functions generally or to employment of a particular kind,

(b) be given subject to conditions or requirements or both, and

(c) be varied by the supervisory authority from time to time.

(6) Any person who accepts or continues in any employment in contravention of a disqualification direction shall be guilty of an offence.

(7) An authorised investment business firm or any entity supervised by a supervisory authority under this Act or any other enactment shall take reasonable care not to employ or continue to employ a person in contravention of a disqualification direction.

(8) A person who is the subject of a disqualification direction may apply to the Court to revoke that direction at any time.

(9) A supervisory authority may apply to the Court to revoke a disqualification direction at any time.

(10) Where a supervisory authority refuses consent under *subsection (5)* of this section, the person who is the subject of a disqualification direction may appeal to the Court against that decision and the Court may make such order as it considers necessary including making an interim or interlocutory order.

37.—(1) Subject to *subsection (2)* of this section, a supervisory authority shall draw up and issue a code of conduct for investment business firms which shall include provisions which seek to ensure that an investment business firm—

- 10 (a) acts honestly and fairly in conducting its business activities in the best interests of its clients and the integrity of the market,
- (b) acts with due skill, care and diligence in the best interests of its clients and the integrity of the market,
- 15 (c) has and employs effectively the resources and procedures that are necessary for the proper performance of its business activities,
- (d) seeks from its clients information regarding their financial situations, investment experience and objectives as regards the services requested,
- 20 (e) makes adequate disclosure of relevant material information including commissions in its dealings with its clients,
- (f) makes a reasonable effort to avoid conflicts of interests and, when they cannot be avoided, ensures that its clients are fairly treated, and
- 25 (g) complies with all regulatory requirements applicable to the conduct of its business activities so as to promote the best interests of its clients and the integrity of the market,

and the supervisory authority may impose conditions or requirements on an investment business firm or any class of investment business firm in respect of compliance with the provisions of such a code of conduct or any other code of conduct or rules of like effect.

35 (2) A code of conduct drawn up under *subsection (1)* of this section shall not apply to any class of certified person specified by the Bank in respect of which the Bank is satisfied that there are sufficient provisions in the rules of an approved professional body or elsewhere governing the conduct of such certified persons in respect of matters referred to in *paragraphs (a) to (g)* of that subsection or such other matters as the Bank deems necessary.

40 (3) Codes of conduct or rules of conduct referred to in *subsection (1)* or (2) of this section, may be applied in such a way or to such an extent as to take account of the status or experience of the person for whom the services are provided and the provisions of Council Directive 93/22/EEC of 10 May, 1993⁽¹⁾.

45 (4) Codes of conduct or rules of conduct (referred to in *subsection (1)* or (2) of this section) may include criteria for distinguishing between different categories of investment business firms or of investor for the purposes of this section.

⁽¹⁾ O.J. No. L141 11/6/93.

(5) A code of conduct drawn up by a supervisory authority under *subsection (1)* of this section may be revised from time to time by the supervisory authority.

Acquiring
transactions.

38.—(1) In this Part, “acquiring transaction” shall be construed in accordance with *subsection (2)* of this section and “disposal” shall be construed in accordance with *subsection (3)* of this section. 5

(2) In this Part “acquiring transaction” means any direct or indirect acquisition by a person or more than one person acting in concert of shares or other interest in an authorised investment business firm: 10

Provided that after the proposed acquisition—

- (a) the proportion of voting rights or capital held by the person or persons making the acquiring transaction would exceed a qualifying holding, or
- (b) the proportion of voting rights or capital held by the person or persons making the acquiring transaction would reach or exceed 20 per cent., 33 per cent. or 50 per cent., or 15
- (c) an authorised investment business firm would become a subsidiary of the acquirer. 20

(3) In this Part “disposal” means any direct or indirect disposal by a person or more than one person acting in concert of a qualifying holding or a disposal which would reduce such a qualifying holding so that the proportion of the voting rights or of the capital held by the person or persons would fall below 20 per cent., 33 per cent. or 50 per cent. or so that an authorised investment business firm would cease to be its subsidiary. 25

Notification of
certain transactions.

39.—(1) Any person who proposes to make an acquiring transaction shall notify a supervisory authority in writing of the proposal as soon as may be and shall include with the notification such information concerning the proposed acquiring transaction as may be specified by a supervisory authority from time to time. 30

(2) Any person who proposes to make a disposal shall notify a supervisory authority in writing of the proposal as soon as may be and such notification shall include such information concerning the proposed disposal as may be specified by a supervisory authority from time to time. 35

(3) On becoming aware of any proposals of the type referred to in *subsection (1)* or *(2)* of this section, the authorised investment business firm concerned shall inform the appropriate supervisory authority of such proposed acquiring transactions or disposals that cause holdings to exceed or fall below a qualifying holding or 20 per cent., 33 per cent. or 50 per cent. of the capital held or voting rights, or that cause an authorised investment business firm to become, or cease to be, a subsidiary. 40

(4) Where, having received a notification under this section, the supervisory authority is of the opinion that in order to consider, for the purposes of this section, a proposed acquiring transaction it requires further information it may, within one month of the date of 45

receipt by it of a notification, request such further information in writing from any one or more of the persons concerned with the transaction.

- 5 (5) A supervisory authority may approve of, or approve of subject to conditions or requirements or both, or may refuse to approve of an acquiring transaction.

10 40.—An acquiring transaction shall not proceed until a supervisory authority has informed the authorised investment business firm and the party making the acquiring transaction in writing that it approves of the acquiring transaction or until three months have elapsed during which the supervisory authority has not refused to approve of the acquiring transaction, whichever first occurs, such period beginning on the date on which the supervisory authority first receives a notification under section 39 of this Act, or, where the supervisory authority requests further information from the person or persons concerned under section 39(4) of this Act, the date of receipt by the supervisory authority of such information.

Approval of
acquiring
transactions.

20 41.—Where a supervisory authority approves of an acquiring transaction, it may specify in writing a period for the implementation of that transaction.

Period for
implementing
acquiring
transactions.

25 42.—(1) An approval given by a supervisory authority to a proposed acquiring transaction shall be subject to such conditions or requirements or both as the supervisory authority may impose (being conditions or requirements which in the opinion of the supervisory authority are necessary for the proper and orderly regulation and supervision of investment business firms).

Imposition of
conditions or
requirements in
respect of proposed
acquiring
transactions.

(2) A supervisory authority may, at any time, amend or revoke conditions or requirements or both referred to in subsection (1) of this section.

30 43.—Subject to section 41 of this Act, an acquiring transaction shall only be valid if it is entered into within—

Limitation on
validity of certain
acquiring
transactions.

(a) 12 months of a supervisory authority giving its approval in writing to the transaction, or

35 (b) 12 months of the end of the three month period referred to in section 40 of this Act,

and, accordingly, any purported acquiring transaction which does not comply with either paragraph (a) or (b) of this section shall be invalid and—

40 (i) titles to any shares or other interest shall not pass, and

(ii) any consequential purported exercise of powers relating to such shares or other interest shall be invalid.

45 44.—(1) A supervisory authority shall refuse to approve an acquiring transaction where it is not satisfied as to the suitability of the person proposing to make the acquiring transaction or where the supervisory authority considers that the acquiring transaction is

Refusal to approve
acquiring
transactions.

likely to be prejudicial to the sound and prudent management of an authorised investment business firm or the proper and orderly regulation and supervision of an authorised investment business firm or both.

(2) Where a supervisory authority refuses to approve an acquiring transaction or where a supervisory authority becomes aware of a proposed acquiring transaction of which it has not been notified under *section 39* of this Act a supervisory authority may issue a direction under *section 21* of this Act to the directors and those responsible for the management of an authorised investment business firm concerned.

Appeals to Court.

45.—(1) Where a supervisory authority informs a person making an acquiring transaction in accordance with *section 39* of this Act that it—

(a) refuses to give its approval to that transaction, or

(b) gives its approval subject to conditions or requirements,

an appeal may be made by that person to the Court against the refusal or the conditions or requirements attached to the approval, as the case may be, within one month of that refusal or approval being so communicated.

(2) Where the Court allows the appeal it shall direct a supervisory authority to make a decision in accordance with the determination of the Court and a supervisory authority shall make its decision within the period of three months beginning on the date of the determination of the Court.

(3) Where the Court is satisfied, because of the nature or the circumstances of the case or otherwise in the interests of justice, that it is desirable it may decide that the whole or any part of proceedings under this section may be heard otherwise than in public.

Inquiries into certain acquiring transactions.

46.—(1) A supervisory authority may carry out such inquiries and obtain such information as it considers necessary to enable it to consider a proposed acquiring transaction.

(2) Any person who wilfully or knowingly obstructs or prevents inquiries by a supervisory authority under this section or knowingly or recklessly provides false or misleading information shall be guilty of an offence.

Obligation to inform a supervisory authority of shareholdings.

47.—(1) At least once in each year, authorised investment business firms shall inform a supervisory authority of the names of direct shareholders and persons possessing qualifying holdings and the sizes of such holdings.

(2) At least once in each year, authorised investment business firms, having made best efforts to ascertain the identity of all indirect shareholders and persons possessing qualifying holdings, shall inform the relevant supervisory authority of the names of such persons.

Contravention of terms of approval of acquiring transactions.

48.—(1) Nothing in any enactment shall be construed as relieving an authorised investment business firm or other person of any of its obligations to comply with *subsections (1), (2) and (3) of section 39* of this Act.

(2) An order under section 201 or 203 of the Companies Act, 1963, in respect of a proposed amalgamation (being an acquiring transaction) shall not be made until a supervisory authority has given its approval to the acquiring transaction or the period (within which an acquiring transaction may not proceed) referred to in section 40 of this Act has elapsed without a supervisory authority having given or refused to give approval.

(3) A supervisory authority may, having regard to the proper and orderly regulation and supervision of investment business firms, the protection of investors and the requirements of Council Directive 93/22/EEC of 10 May, 1993⁽¹⁾, following consultation with the Minister, specify circumstances in which, or classes of authorised investment business firm in respect of which, the duties and functions of the supervisory authority under sections 39 to 47, or of an investment business firm, need not be exercised.

49.—(1) Section 16 of the Central Bank Act, 1989, is hereby amended by—

Amendment of
section 16 of
Central Bank Act,
1989.

(a) the insertion after subsection (2)(l) (inserted by the *Stock Exchange Act, 1995*) of:

“(m) made to any approved professional body in respect of certified persons, for the purpose of monitoring compliance by investment business firms with rules or with conditions or requirements imposed by the Bank or by a supervisory authority (as defined in the *Investment Intermediaries Act, 1995*) or both, or where the Bank considers it necessary to do so for the proper and orderly regulation of investment business firms, or made to any supervisory authority,

(n) made to a Committee appointed under section 74 of the *Investment Intermediaries Act, 1995*, or to a person nominated or approved of by a supervisory authority in accordance with section 51(2) of the *Investment Intermediaries Act, 1995*,

(o) made to an inspector appointed by the Court under Part VIII of the *Investment Intermediaries Act, 1995*,”

(b) the deletion of subsection (6) (inserted by the *Stock Exchange Act, 1995*), and the insertion of the following subsection:

“(6) In this section, ‘statutory functions’ has the meaning assigned to it by section 2 of the *Investment Intermediaries Act, 1995*,” and

(c) the insertion in subsection 2 (d) of “or insurance undertakings”, after “charged by law with the supervision of financial institutions (whether or not entitled to take money on deposit from the public)”.

(2) Notwithstanding section 16 of the Central Bank Act, 1989, a supervisory authority, where it has reasonable cause to believe that

⁽¹⁾ O.J. No. L141 11/6/93.

a criminal offence has been committed, may disclose to the Garda Síochána any information to enable further investigation of the alleged offence.

Investor
compensation.

50.—An investment business firm shall not engage in business with clients and investors unless, and in accordance with any procedures set out in codes of conduct under this Act, it informs clients and investors of— 5

(a) whether or not there is a compensation fund or protection of comparable form, and

(b) the nature and level of protection, if any, available from any such fund. 10

Bonding.

51.—(1) Subject to *subsection (5)* of this section, each authorised investment business firm (other than a person who does not provide investment business services) shall hold a bond in a specified form to the value of £50,000 or, in years subsequent to the first accounting year, 25 per cent. of turnover by reference to the previous accounting year, whichever is the greater. 15

(2) The bond referred to in this section shall provide that in the event of the inability or failure of the authorised investment business firm to meet its financial obligations in relation to any sums of money received by it from, or on behalf of, its clients, a sum of money will become available to a person nominated or approved of by a supervisory authority to be applied for the benefit of any client of the authorised investment business firm who has incurred loss or liability because of the inability or failure of the authorised investment business firm to meet such financial obligations. 20 25

(3) The person nominated or approved of by the supervisory authority shall, with the consent of the supervisory authority and up to such sum as may be specified by the supervisory authority, be indemnified out of the proceeds of the bond in respect of such reasonable expenses as are incurred in carrying out the functions provided for in *subsection (2)* of this section. 30

(4) The person nominated or approved of by the supervisory authority shall keep all proper and usual accounts, including an income and expenditure account and balance sheet, of all moneys received by him on foot of a bond and of all disbursements made by him from any such moneys and of any amount in respect of the expenses referred to in *subsection (3)* of this section. 35

(5) The Minister, following consultations with the supervisory authorities, may prescribe that— 40

(a) arrangements in relation to the bond shall be entered into only with persons of a class or classes specified in the regulations,

(b) the bond shall be in such form and valid for such minimum period as may be specified in the regulations, 45

(c) a copy of the bond shall be displayed, for the information of the public, in a prominent position in all premises occupied by an authorised investment business firm and

in which it carries on business as an authorised investment business firm, and the bond shall be mentioned in its sales literature and business note paper,

5 (d) a requirement to enter into a bond shall not apply to classes
of authorised investment business firms specified in the
regulations or in respect of portions of the business ther-
eof, and such regulations may have regard to the nature
of the business of the authorised investment business
10 firm, the creditworthiness or credit rating of the author-
ised investment business firm, the capitalization or sol-
vency of the investment business firm and the existence
of any relevant compensation scheme or guarantees,

15 (e) in regard to authorised investment business firms which,
because they are also insurance intermediaries, are
required under Part IV of the Insurance Act, 1989, to be
bonded, a single bond may, subject to such conditions as
are prescribed, apply to both investment business services
and insurance business and that the requirement to be
20 bonded under Part IV of the Insurance Act, 1989, would
thereby be met.

(6) Any amount or percentage rate in *subsection (1)* of this section
may be altered as the Minister may from time to time prescribe and
different amounts and percentages may be prescribed for different
25 classes of authorised investment business firms by reference to turn-
over or to such other matters as the Minister may consider appropri-
ate, and the Minister may specify a maximum amount for a bond.

(7) For the purposes of this section—

30 “accounting year” means the year commencing on a date prescribed
by the Minister and subsequent anniversary accounting years and
the Minister may prescribe different dates for different classes of
investment business firm;

35 “turnover” means the aggregate of all moneys required to be paid
by an investment business firm into the bank accounts required
under *section 52* of this Act, together with the value of any invest-
ment instruments of clients coming into the control of the investment
business firm, or where such accounts are not required under *section*
52 such amount as may be calculated in a manner specified by a
supervisory authority.

40 52.—(1) A supervisory authority may from time to time impose
requirements on authorised investment business firms, or may
impose requirements or may approve of rules in the rules of an
approved professional body, where it considers it necessary to do so
having examined the rules of the approved professional body and
any relevant enactment regulating the holding of moneys on behalf
45 of clients by persons regulated by that approved professional body,
with respect to clients’ money and clients’ investment instruments
and such rules or requirements (in this Act referred to as “client
money requirements”) may include conditions under which invest-
ment business firms may hold money or investment instruments, or
50 both, for clients.

Client money and
investment
instruments.

(2) Without prejudice to the generality of *subsection (1)* of this
section, client money requirements may include requirements or
rules in relation to—

- (a) the category or categories of investment business firm to whom such requirements or rules apply;
 - (b) the type or types of accounts to be opened and kept by an investment business firm arising from its business as an investment business firm; 5
 - (c) the rights, duties and responsibilities of an investment business firm in relation to money and investment instruments received, held, controlled or paid by it arising from its business as an investment business firm, including the lodgement to and withdrawal from a client account of client money and client investment instruments; 10
 - (d) the acknowledgements or statements to be issued by an investment business firm in respect of client money and client investment instruments received, held, controlled or paid by it arising from its business as an investment business firm; 15
 - (e) the circumstances in which money other than client money may be paid into accounts containing client money and the circumstances in which, and the persons for whom, money held in such accounts may be paid out; 20
 - (f) the safekeeping of client investment instruments and documents of title relating to such investment instruments;
 - (g) the use of nominee companies by investment business firms;
 - (h) client entitlements, including the treatment or retention of interest, income or profit arising from any client money or investment instrument or documents of title in such cases as may be specified; 25
 - (i) the extent to which such client money requirements apply to associated and related undertakings.
- (3) Without prejudice to the generality of *subsection (1)* of this section and notwithstanding the provisions of *subsection (2)* of this section, an authorised investment business firm shall— 30
- (a) keep at an office or offices within the State such books and records (including books of accounts) in respect of client money and client investment instruments as may be specified from time to time by a supervisory authority and notify the supervisory authority of the address of every office at which any such books or records are kept; 35
 - (b) ensure that any books or records required under this section are examined, at such intervals as may be specified by a supervisory authority, by an auditor who shall report to the supervisory authority and state whether in his opinion the provisions of the client money requirements imposed or rules approved under *subsection (1)* of this section and the provisions of this subsection have been complied with and on such other matters as may be specified in the client money requirements imposed under *subsection (1)* of this section; 40 45
- and an authorised investment business firm which does not comply with the provisions of *paragraph (a)* of this subsection or which does not ensure that books and records kept in respect of client money 50

and client investment instruments are examined by an auditor at such intervals as shall be specified by a supervisory authority shall be guilty of an offence.

5 (4) (a) A supervisory authority may specify different books and records for the purposes of this section and in relation to different investment business firms or different classes of investment business firms.

(b) Books and records to be kept pursuant to this section shall be—

10 (i) in addition to any books or other records to be kept by or under any other section of this Act or any other enactment, and

(ii) retained for at least such period as the supervisory authority may specify.

15 (5) Without prejudice to the generality of *subsection (1)* of this section and notwithstanding the provisions of *subsection (2)* of this section, an authorised investment business firm which knowingly holds client money in an account or accounts with an institution other than an institution or type of institution as may be specified
20 by a supervisory authority from time to time shall be guilty of an offence.

(6) An authorised investment business firm, other than a certified person, which fails to designate an account containing money entrusted to it or received by it for or on account of a client as an
25 account to be known as a "*section 52 account*" in all financial records maintained by it shall be guilty of an offence.

(7) No liquidator, receiver, administrator, examiner, official assignee or creditor of an investment business firm shall have or obtain any recourse or right against client money or client investment
30 instruments or documents of title relating to such investment instruments received, held, controlled or paid on behalf of a client by an investment business firm, until all proper claims of clients or of their heirs, successors or assigns against client money and client investment instruments or documents of title relating to such investment
35 instruments have been satisfied in full.

(8) A person with whom an account is kept in pursuance of client money requirements or rules under this section shall not incur any liability as constructive trustee where money is wrongfully paid from the account unless the person permits the payment with knowledge
40 that the payment is wrongful or having deliberately failed to make inquiries in circumstances in which a reasonable and honest person would have done so.

(9) It shall be an offence for a director, officer or employee of an investment business firm or any of them to misappropriate fraudu-
45 lently any money or investment instruments held, controlled or paid on behalf of a client by that investment business firm.

53.—(1) A supervisory authority or any employee or officer of a supervisory authority or any member of any Board of a supervisory authority or any member of a committee appointed under *section 74*
50 of this Act shall not be liable in damages for anything done or omit-

Exemption from liability for damages.

ted in the discharge or purported discharge of any of its functions under this Act unless it is shown that the act or omission was in bad faith.

(2) Without prejudice to the generality of *subsection (1)* of this section, the approval or revocation of approval or supervision or regulation of an approved professional body or of an approved representative body (within the meaning of *section 27 (a)* of this Act) or the approval, amendment, revocation or imposition of rules or the consent or refusal to consent to amendments of rules shall not constitute a warranty or other claim as to the solvency or performance of such bodies or of any investment business firm and neither the State nor a supervisory authority shall be liable in respect of any loss or losses arising out of the insolvency or default or performance of any investment business firm.

(3) Without prejudice to the generality of *subsection (1)* of this section, the authorisation, supervision, regulation or revocation of authorisation of an investment business firm under this Act shall not constitute a warranty as to the solvency or performance of an investment business firm and neither the State nor a supervisory authority shall be liable in respect of any loss or losses incurred through the insolvency, default or performance of the investment business firm.

Personal liability of officers.

54.—(1) If—

- (a) an authorised investment business firm is being wound up and is unable to pay all of its debts and has contravened *section 19, 52(3), 52(5) or 52(6)* of this Act, and
- (b) the Court considers that such contravention has contributed to the inability of an authorised investment business firm to pay all of its debts or has resulted in substantial uncertainty as to the amount, location, ownership or otherwise of the assets and liabilities of an authorised investment business firm or of the money or investment instruments of clients of the said authorised investment business firm or has substantially impeded its orderly winding-up,

the Court, on the application of the liquidator or receiver or a supervisory authority or any creditor or client or investor, 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 said authorised investment business firm who is or are in default 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 authorised investment business firm.

- (2) (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 an authorised investment business firm to him, or on any mortgage or charge or any interest in any mortgage or charge on any assets of an authorised investment business firm 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.

- 5 (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
10 good faith and without notice of any of the matters on the grounds of which the declaration is made.

(3) The Court shall not make a declaration under subsection (1) of this section in respect of a person if it considers that —

- 15 (a) he took all reasonable steps to secure compliance by an authorised investment business firm with section 19, 52(3), 52(5) or 52(6) 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 director who has been formally allocated such responsibility, was charged with the duty of
20 ensuring that section 19, 52(3), 52(5) or 52(6) of this Act was complied with and was in a position to discharge that duty.

- (4) This section shall have effect notwithstanding that the person
25 concerned may be liable to be prosecuted for a criminal offence in 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.

- (5) In this section "officer", in relation to an authorised investment business firm, includes a person who has been convicted of an offence under section 34 or 79 (7) of this Act or section 194 of the Companies Act, 1990 in relation to a statement concerning the keeping of proper accounting records by an authorised investment business firm concerned.
30

- (6) A person who, being a director of an authorised investment business firm, fails to take all reasonable steps to secure compliance by an authorised investment business firm with the requirements of section 19, 52 (3), 52(5) or 52(6) of this Act, or has by his own wilful act been the cause of any default by an authorised investment business firm thereunder, shall be guilty of an offence:
35

40 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 an authorised investment business firm with the requirements of this section,
45 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

- 50 (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.

PART VII

APPROVED PROFESSIONAL BODIES

Interpretation (*Part VII*).

55.—For the purposes of this Part—

“approved professional body” means a body which—

(a) is representative of a profession of solicitors, accountants or
representative of a profession with similar functions and
has functions in regard to the regulation of members of
the relevant profession, or is capable of having such func-
tions; and 5

(b) stands approved under *section 56* of this Act; 10

“certified person” means a person who—

(a) being an individual, is a member of or is regulated by an
approved professional body, or

(b) not being an individual, is a person managed and controlled
by one or more individuals each of whom is regulated by
that approved professional body or another professional
body and at least one of whom is a member of or is regu-
lated by the approved professional body concerned, 15

and has been granted and holds a valid certificate under the rules of
that professional body deeming that person to be a fit and proper
person to carry on investment business services or provide invest-
ment advice or both and specifying any conditions, limits or con-
straints on the type or the extent of such services which the person
in receipt of the certificate shall comply with and which the approved
professional body deems appropriate in the interests of the proper
regulation of certified persons and the protection of investors or, in
the case that the Law Society of Ireland is acting as an approved
professional body, a solicitor in respect of whom a practising certifi-
cate (within the meaning of the Solicitors Acts, 1954 to 1994) is in
force; 30

“in an incidental manner” means in the course of and in conjunction
with but subordinate to a professional activity other than the pro-
vision of any investment business service;

“rules” includes all of the rules, regulations, codes of practice or eth-
ics or other conditions governing the operations of a professional
body and those of its members and persons regulated by it. 35

Grant of approval
to operate as an
approved
professional body.

56.—(1) Subject to the provisions of this section, the Bank may
grant or refuse to grant to any professional body an approval to
operate as an approved professional body.

(2) The grant of an approval under *subsection (1)* of this section
may be given unconditionally or may be given subject to such con-
ditions or requirements or both as the Bank considers fit. 40

(3) Whenever the Bank refuses to approve of a professional body
under this section, it shall serve notice on that professional body, and
on the Minister, of its refusal to grant approval and state the reasons
therefor. 45

(4) An application for approval under *subsection (1)* of this

section shall be in such form and contain such particulars as the Bank shall specify from time to time and, without prejudice to the generality of the aforesaid, shall include a copy of any charters, memorandum and articles of association, or other constitutional document, of the applicant and a copy of the rules and regulations under which the applicant proposes to conduct its business insofar as they affect or touch upon the regulation of investment business firms or investment business services or investment advice.

(5) A professional body which applies for approval under this section shall not be approved of by the Bank unless—

(a) it satisfies the Bank that any charters, memorandum of association and articles of association or other constitutional document and the rules of the applicant body together with any powers granted to the body or available to it under any enactment contain sufficient provisions so as to enable it to operate in accordance with this Act and in accordance with any conditions or requirements or both as the Bank may impose;

(b) it satisfies the Bank as to the probity and competence of those of its managers who are primarily concerned with the regulation and supervision of certified persons;

(c) (i) its rules or charters or other constitutional documents contain sufficient provision for the publication of information regarding inquiries or proceedings regarding any disciplinary matter investigated by the professional body concerned where the proceedings are concerned with the provision of investment business services; or

(ii) such matters are regulated by any other enactment;

(d) it has sufficient powers under its rules or otherwise for the regulation of the carrying on of investment business services or investment advice by persons certified by it for the purposes of this Act;

(e) it has adequate arrangements and resources for the effective monitoring of the activities of certified persons and for the enforcement of rules and conditions regulating the persons regulated by it and there is sufficient provision in its rules or under any enactment to provide for the withdrawal or suspension of certificates issued;

(f) where not based in the State it satisfies the Bank that it has a similar legal status in its home Member State or third country as that of approved professional bodies in the State, and that its members or persons regulated by it in that country are entitled to act as investment business firms.

(6) The Bank may, at any time prior to the grant or refusal of approval, request further information from an applicant or may instruct an authorised officer to make such inquiries or carry out such investigation as may be necessary for the purpose of evaluating an application under this section and such inquiries or investigations shall be carried out in accordance with this Act.

(7) Any proposed amendment or addition that relates directly or

indirectly to regulation of investment business services or to investment advice to the memorandum of association or articles of association or other constitutional document or rules of an approved professional body shall be made only with the prior consent in writing of the Bank, insofar as they relate to the provision of investment business services or investment advice. 5

(8) A professional body which has made an application under this section for approval shall be informed as soon as may be after the date of receipt of the application for approval or after the entry into force of this section, whichever is the later, whether or not the approval has been granted. 10

(9) It shall be an offence for a professional body to apply for approval under this section knowingly or recklessly using false or misleading information or knowingly or recklessly making false or misleading statements. 15

(10) Subject to any enactments governing its activities, an approved professional body shall establish and maintain procedures to investigate complaints against itself and certified persons in relation to the provision of investment business services or investment advice or to codes of practice established under this Act. 20

(11) Any appointment to the post of manager of any person to be concerned primarily with the supervision of certified persons on or after the granting of an approval under this section shall be subject to the prior approval in writing of the Bank, which said approval shall not be given unless the approved professional body satisfies the Bank as to the probity and competence of the proposed appointee. 25

Interim approval.

57.—(1) Notwithstanding *section 56* of this Act, the Bank may, where it considers it appropriate in the interests of the proper and orderly regulation of investment business firms or the protection of investors or both, grant an interim approval to a professional body and that body shall be deemed to be an approved professional body, on the granting of such an interim approval for a specified period, and shall stand approved of under this Act until the Bank has granted or refused an approval to it, or until the specified period has expired: 30 35

Provided that, no later than six months after the coming into operation of this section or after the granting of an interim approval, it applies to the Bank under *section 56* of this Act for an approval.

(2) Pending a decision by the Bank to approve or not to approve of a professional body, or during any period in which an interim approval under *subsection (1)* of this section is in force, the Bank may do either or both of the following, namely— 40

(a) impose on it such conditions or requirements or both as it thinks fit relating to the proper and orderly regulation and supervision of the approved professional body or in relation to the protection of investors or in relation to both or in respect of associated undertakings or related undertakings, or both; 45

(b) issue directions under this Act.

(3) An approved professional body may, subject to any conditions or requirements laid down by the Bank, and with the consent of the 50

Bank, issue interim certificates for a period of not more than six months to any person regulated by it and provided that the person complies with any conditions or requirements laid down by the approved professional body it shall be deemed to be a certified person during the period specified by the interim certificate.

(4) The approved professional body may appeal to the Court against the imposition of any condition or requirement or the giving of any direction under this section.

(5) On hearing an application under *subsection (4)* of this section, the Court may confirm, vary or rescind any condition, requirement or direction imposed under this section.

58.—(1) Without prejudice to *section 56* of this Act, where the Bank grants an approval under that section, or consents to any proposed amendment or addition to a memorandum or article of association or rules, it may do all or any of the following, in the interests of the proper and orderly regulation and supervision of approved professional bodies or certified persons or both:

Imposition of conditions or requirements on approved professional bodies.

- (a) make its approval or consent subject to such conditions or requirements or both as it considers fit;
- (b) impose conditions or requirements or both which relate to matters in an associated undertaking or related undertaking;
- (c) at any time after its approval, impose conditions or requirements or both on an approved professional body and either amend or revoke any condition or requirement or both imposed under this paragraph or *paragraph (a)* or *(b)* of this subsection;
- (d) at any time after its approval, impose a requirement that the approved professional body add, amend or revoke rules of that approved professional body where these relate to the provision of investment business services or investment advice by certified persons or the regulation and supervision of certified persons;
- (e) where applicable, at any time after its approval, impose a requirement that the approved professional body add to or amend any memorandum of association or articles of association of that approved professional body:

Provided that the said conditions or requirements do not contravene any guidelines in that behalf which may be issued to the Bank, from time to time, by the Minister, in the interests of the proper and orderly regulation and supervision of approved professional bodies or of certified persons or both, with the consent of the Minister for Enterprise and Employment, and insofar as an approved professional body of lawyers may be concerned, the Minister for Justice, and published in the *Iris Oifigiúil*.

(2) Any condition or requirement referred to in *subsection (1)* of this section may be imposed in relation to any or all of the following, namely—

- (a) an approved professional body,
- (b) all approved professional bodies,

- (c) a class of approved professional body,
- (d) a specified period of time or times,
- (e) all certified persons,
- (f) a particular class of certified person,
- (g) an associated undertaking or related undertaking of an approved professional body, 5
- (h) any matter, as the Bank may consider appropriate, in the interests of the proper and orderly regulation and supervision of approved professional bodies and certified persons and the protection of investors or both. 10

(3) An approved professional body or certified person may appeal to the Court against the imposition of any condition or requirement imposed under *subsection (1)* of this section and, on hearing an appeal under this section, the Court may confirm, vary or rescind any condition or requirement imposed under this section. 15

Refusal to consent to amendment of rules, etc.

59.—Whenever the Bank refuses in accordance with *section 56 (7)* of this Act to consent to an amendment or addition to the memorandum of association, or articles of association, or both, or to the rules or other constitutional document of an approved professional body, it shall serve notice on the approved professional body concerned stating that it refuses to consent to the amendment or addition and setting out the reasons for the refusal in the notice. 20

Appeals on refusal to grant approval, etc.

60.—(1) A professional body on whom a notice has been served under *section 56 (3)* of this Act or an approved professional body on whom a notice has been served under *section 59* of this Act may, within 21 days of receipt of the notice, appeal to the Minister and the Minister shall consider any such appeal and may uphold or reject it. 25

(2) When considering an appeal under this section, the Minister shall consult, within three months of the commencement of the hearing of the appeal, with the Minister for Enterprise and Employment (and where appropriate with the Minister for Justice), the Bank or the professional body concerned. 30

(3) If the Minister, with the consent of the Minister for Enterprise and Employment, and where appropriate the Minister for Justice, upholds an appeal made under this section the Minister shall inform the Bank of the decision and shall publish notice of that decision in the *Iris Oifigiúil* within 28 days of such decision being communicated to the Bank and the Bank shall grant approval of the proposed approved professional body or consent to the proposed amendment of or addition to the memorandum of association, articles of association or rules of the approved professional body. 35 40

(4) An appeal under this section shall be accompanied by the prescribed fee.

(5) The Public Offices Fees Act, 1879, shall not apply to any fees charged under this section. 45

61.—(1) The Bank may revoke its approval of an approved professional body in all or any of the following circumstances, namely, where— Revocation of approval.

- 5 (a) a request has been made to it in that behalf by an approved professional body,
- (b) an approved professional body—
 - (i) has failed to operate as an approved professional body within 12 months of the date on which the approval to be an approved professional body was granted,
 - 10 (ii) has failed to operate as an approved professional body for a period of more than 6 months,
 - (iii) is being wound up.

15 (2) Without prejudice to the power of the Bank to revoke an approval under *subsection (1)* of this section, the Bank may apply to the Court, in a summary manner, for an order revoking the approval of an approved professional body in any or all of the following circumstances, namely, where—

- 20 (a) it is expedient to do so in the interest of the proper and orderly regulation of approved professional bodies or certified persons or in order to protect investors or in any or all of these circumstances;
- (b) an approved professional body has been convicted on indictment of any offence under this Act or any Act under which the Bank exercises statutory functions or any offence involving fraud, dishonesty or breach of trust;
- 25 (c) circumstances have materially changed since the granting of approval to that approved professional body such that, if an application for approval was made at the time of the application to the Court, a different decision would be taken in relation to the application for approval;
- 30 (d) the approval was obtained by knowingly or recklessly making false or misleading statements, or by knowingly or recklessly using false or misleading information;
- 35 (e) an approved professional body has failed to comply to a material degree with a requirement of this Act;
- (f) an approved professional body fails to comply with any or all of the conditions or requirements which were imposed when approval was granted or which were subsequently imposed;
- 40 (g) an approved professional body becomes unable or, in the opinion of the Bank, is likely to become unable to meet its obligations to its creditors or suspends payments lawfully due;
- 45 (h) the directors and managers of an approved professional body who are primarily concerned with the regulation of certified persons are no longer deemed by the Bank to fulfil the conditions of competence and probity required by *section 56* of this Act;

- (i) an approved professional body has so organised itself that the approved professional body and, where appropriate, any related undertaking or associated undertaking, either collectively or individually, is no longer capable of being supervised to the satisfaction of the Bank under this Act. 5

(3) When the Bank proposes to revoke the approval of an approved professional body or proposes to apply to the Court for an order to revoke approval of an approved professional body the following procedure shall apply, namely, the Bank shall serve notice on the approved professional body concerned of its intention and shall state its reasons in the said notice. 10

(4) Where an application is made to the Court under this section the Court may make such interim or interlocutory orders as the circumstances may require.

(5) Where approval of an approved professional body is revoked and where the approved professional body concerned is not a company which is being wound up— 15

- (a) the former approved professional body and its members shall continue to be subject to the duties and obligations imposed by this Act until all the liabilities, duties and obligations of the said approved professional body have been discharged to the satisfaction of the Bank, 20

- (b) the former approved professional body shall, as soon as possible, after the revocation, notify the Bank, its members and such other persons, if any, as the Bank indicates are to be notified of the measures being taken to discharge without undue delay the liabilities, duties and obligations of the said approved professional body, 25

(c) in the case where—

- (i) the former approved professional body has notified the Bank in accordance with *paragraph (b)* of this subsection and the Bank is of the opinion that the measures being taken or proposed to be taken for the purposes of that paragraph are not satisfactory, or 30 35

- (ii) the former approved professional body has not so notified the Bank and the Bank is of the opinion that the said approved professional body has failed to so notify as soon as possible after the approval is revoked, or 40

- (iii) the Bank is of the opinion that the former approved professional body has failed to take all reasonable steps to notify persons which the Bank has indicated, under *paragraph (b)* of this subsection, are to be notified, 45

then, subject to *subsection (9)* of this section, the Bank may give a direction in writing to the former approved professional body for such period, not exceeding six months, prohibiting the former approved professional body so directed from any or all of the following, 50 namely—

- (I) creating any liabilities;

- (II) dealing with or disposing of any assets or specified assets of the former approved professional body or of members in any manner;
- 5 (III) engaging in any transaction or class of transactions or specified transaction;
- (IV) making payments;

10 without the prior authorisation of the Bank, and the Bank may further direct that former approved professional body within two months of the initial direction to prepare and submit to the Bank for its approval a scheme for the orderly discharge of the liabilities, duties and obligations concerned.

(6) Where the approval of an approved professional body is revoked and the approved professional body is a company which is
15 being wound up—

(a) the liquidator of the former approved professional body shall, in addition to his duties and obligations in respect of the winding up, be subject to the duties and obligations to which the former approved professional body would be subject if it were a former approved professional body to which *subsection (5)* of this section relates and that subsection shall for the purposes of this subsection be construed accordingly;

20

(b) notwithstanding *paragraph (a)* of this subsection, the Bank may, where its approval of an approved professional body is revoked and where the Bank considers it appropriate in the circumstances, remove, on giving notice to that effect in writing to the former approved professional body, the duties and obligations imposed on the liquidator concerned to comply with *paragraph (b)* of *subsection (5)* of this section and may impose in writing on that liquidator such further duty or obligation which corresponds to that set out in *paragraph (b)* of that subsection;

25
30

(c) nothing in this subsection shall be construed as affecting any duty or obligation under this Act of any of the members of the former approved professional body concerned.

35

(7) The Bank shall publish notice of any revocation of an approval of an approved professional body in the *Iris Oifigiúil* within 28 days of revocation.

40 (8) An approved professional body whose approval has been revoked under this Act shall cease to operate as an approved professional body.

(9) Where the Bank gives a direction under *subsection (5)* of this section it may apply to the Court, on being satisfied that the direction
45 has not been complied with and the Court may confirm or set aside or vary the direction on such terms and for such period as the Court thinks fit.

(10) The Bank shall not exercise its powers under *subsection (2)(h)* of this section unless it has given the approved professional
50 body an opportunity to remove the director or manager or otherwise

deal with the concerns of the Bank in relation to the probity or competence of the person concerned within such period of time as the Bank may specify.

(11) An application under this section may be heard otherwise than in public.

Maintenance of books and records.

62.—(1) (a) An approved professional body shall keep at an office or offices approved by the Bank such books and records (including books of accounts) as may be specified from time to time by the Bank.

(b) An approved professional body shall notify the Bank of the address of every office at which any such books or records are kept.

(c) A person who contravenes *paragraph (a) or (b)* of this subsection shall be guilty of an offence.

(2) The Bank may specify different books and records for the purpose of this section in relation to different approved professional bodies or different classes of approved professional body.

(3) Books and records kept pursuant to this section shall be—

(a) in addition to any books or other records to be kept by or under any other enactment, and

(b) retained at least for such period as the Bank may specify.

Authorisation of certified persons.

63.—A certified person shall be deemed to be an authorised investment business firm under this Act: Provided that—

(a) any investment business services provided by that person are so provided, in an incidental manner and within the limits, conditions or constraints of the certificate granted by the approved professional body, and

(b) the certified person has never had an authorisation revoked under *section 16(2)* of this Act and not re-instated and that no manager or officer or director of that person has ever been a manager, officer or director of an investment business firm which has had its authorisation revoked, under *section 16(2)* of this Act and not re-instated.

PART VIII

ENFORCEMENT, OFFENCES AND PENALTIES

Authorised officers.

64.—(1) The Governor of the Bank or the Minister for Enterprise and Employment or any other person appointed by any of them for that purpose may authorise in writing such and so many persons to be authorised officers for the purposes of this Act and may revoke such authorisations.

(2) Every person who is appointed to be an authorised officer pursuant to this section shall be furnished with a certificate of appointment and shall, if so required, when exercising any power conferred on him by this Act, produce such certificate or a copy of

it duly authenticated by the Governor of the Bank or the Minister for Enterprise and Employment or such other person appointed by the Governor of the Bank or the Minister for Enterprise and Employment for that purpose and a form of personal identification.

- 5 65.—(1) The powers conferred by this section may be exercised in respect of an approved professional body or a body which has
10 applied to be an approved professional body, a proposed investment business firm, an authorised investment business firm, an investment business firm or a former authorised investment business firm, or a
15 person whom a supervisory authority has reasonable grounds to believe has provided or is providing investment business services or investment advice, or an associated undertaking or related undertaking and these persons shall be referred to in this section as “persons to whom this section applies”.
- 15 (2) An authorised officer may, for the purpose of obtaining any information which a supervisory authority may require to enable it to exercise any of its functions under this Act, do any one or more of the following things:
- 20 (a) at all reasonable times enter any premises, at which there are reasonable grounds to believe that any investment business service or any activity in connection with an investment business firm or an approved professional body is, or has been, carried on, or that books, records or other documents in relation to such business or activities are kept, and search and inspect the premises and
25 any books, records or other documents on the premises;
- 30 (b) secure for later inspection any premises or any part of a premises in which books, records or other documents are kept or there are reasonable grounds for believing that such books, records or other documents are kept;
- 35 (c) inspect and take copies of or extracts from, or, subject to a warrant being issued for that purpose by a judge of the District Court, remove for a reasonable period for further examination, any books, records or other documents which the officer finds in the course of inspection;
- 40 (d) require any person who carries on such investment business services or investment advice and any person employed in connection therewith to give to the authorised officer such information as the officer may reasonably require in relation to any entries in such books, records or other documents;
- 45 (e) require any such person to give to the officer any information which the authorised officer may require in regard to the investment business service or investment advice or in regard to the persons carrying on such investment business service or investment advice or employed in connection therewith;
- 50 (f) require any such person to give to the authorised officer any other information which the authorised officer may reasonably require in regard to such investment business service or investment advice;
- (g) require any person by or on whose behalf data equipment is or has been used or any person having charge of, or

Powers of
authorised officers.

otherwise concerned with the operation of, the data equipment or any associated apparatus or material, to afford the authorised officer reasonable assistance in relation thereto;

(h) summon, at any reasonable time, any other person employed in connection with the investment business service or investment advice to give to the authorised officer any information which the officer may reasonably require in regard to such activity and to produce to the authorised officer any books, records or other documents which are in that person's power or control;

(i) require any person employed in the premises to prepare a report on specified aspects of the business of the persons to whom this section applies or to explain entries in any documents or other materials furnished.

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

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

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

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

(4) Where any person from whom production of a book, record or other document is required claims a lien thereon the production of it shall be without prejudice to the lien.

(5) Nothing in this section shall compel the production by a barrister or solicitor of a book, record or other document containing a privileged communication made by him or to him in that capacity or the furnishing of information contained in a privileged communication so made.

(6) An investment business firm, an approved professional body and any person carrying on the business of an associated or related undertaking to which this section relates shall each furnish to a supervisory authority—

(a) at such times as the supervisory authority may specify from time to time such information and returns concerning the business to which the authorisation or business of the associated undertaking or related undertaking relates as the supervisory authority may specify from time to time (being information and returns which the supervisory authority considers it necessary to have for the due performance of its functions under this Act), and

(b) within such period as the supervisory authority may specify, any information and returns (not being information or returns specified under *paragraph (a)* of this subsection) concerning the business to which the authorisation or business of the associated undertaking or related undertaking relates that the supervisory authority may request in writing (being information and returns which the

supervisory authority considers it necessary to have for the due performance of its functions under this Act).

5 (7) This section shall apply to the business of an associated undertaking or related undertaking to the extent only that the information and returns sought by the supervisory authority are, in the opinion of the supervisory authority, materially relevant to the proper appraisal of the business of the investment business firm to which the associated or related undertaking relates.

10 (8) A requirement under this section may be imposed on a person to whom this section applies outside the State.

15 (9) The duty to produce or provide any information, document, material or explanation extends to an examiner, liquidator, receiver, official assignee or any person who is or has been an officer or employee or agent of the persons to whom this section applies, or who appears to the supervisory authority or the authorised officer to have the information, document, material or explanation in his possession or under his control.

20 (10) An authorised officer appointed under *section 64* of this Act, where he considers it necessary, may be accompanied by a member of the Garda Síochána when performing any powers conferred on an authorised officer by this Act.

(11) A person shall not obstruct or interfere with an authorised officer in the exercise of his powers under this Act.

25 (12) A person shall comply with any request or requirement of an authorised officer under this Act.

(13) In this section—

(a) “specified” means specified under this section,

30 (b) “agent”, in relation to a person to whom this section applies or any associated or related undertaking, includes past as well as present agents, as the case may be, and includes its bankers, accountants, solicitors, auditors and its financial and other advisors, whether or not those persons are officers or persons to whom this section applies.

35 (14) If any officer, employee, shareholder or agent of a person to whom this section applies refuses to produce to an authorised officer when requested to do so any book or document which it is his duty under this section to produce, or refuses to co-operate with an authorised officer when required to do so, or refuses to answer any question put to him by an authorised officer with respect to the affairs of
40 the person to whom this section applies, then the authorised officer 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 officer, employee, shareholder or agent of the person to whom this section applies and
45 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 authorised officer or produce particular books or documents or answer a particular question put to him by the authorised officer, or a direction that the person concerned
50 need not produce a particular book or document or answer a particular question put to him by the authorised officer.

Appointment of
inspector by Court.

66.—(1) Without prejudice to the powers of a supervisory authority under this Act, where the supervisory authority is of the opinion that it is in the interest of the proper and orderly regulation and supervision of investment business firms or the protection of investors that an investigation should be held into the affairs of an investment business firm, the supervisory authority may apply to the Court and the Court, as it thinks proper, may appoint one or more inspectors to investigate the affairs of that investment business firm and, where necessary, any subsidiary or other associated or related undertaking and to report thereon in such manner as the Court directs.

(2) Before applying to the Court to appoint an inspector under this section, the supervisory authority may, if it is of the opinion that it would not be prejudicial to the interests of shareholders or creditors or investors, notify the investment business firm concerned in writing of the action which it proposes to take and of the grounds on which it proposes to take it and, in such a case, the investment business firm shall, within such period as the supervisory authority may set out in the notification, be entitled to give to the supervisory authority a statement in writing explaining its activities.

Power of inspector
to extend
investigation.

67.—Where an inspector appointed under *section 66* of this Act to investigate the affairs of an investment business firm or any subsidiary or other associated or related undertaking thinks it necessary for the purposes of his investigation to investigate the affairs of any other investment business firm or any body corporate or any undertaking which is or was at any relevant time a subsidiary or an associated undertaking or related undertaking of the first-mentioned investment business firm, he shall, with the approval of the Court, have power to do so, and shall report on the affairs of the other investment business firm or body corporate or undertaking or associated undertaking or related undertaking so far as he thinks the results of his investigation are relevant to the investigation of the affairs of the first-mentioned investment business firm.

Direction to
inspector by Court.

68.—Where the Court appoints an inspector under *section 66* of this Act, 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 effectively as is practicable in the circumstances.

Powers of
inspection.

69.—(1) It shall be the duty—

(a) of all officers, shareholders, employees and agents of an investment business firm or other body the affairs of which are being investigated under *section 66* or *73* of this Act, including officers, shareholders and agents outside the State, and

(b) of any other person, including those being investigated under *section 67* of this Act, and including any person outside the State, who the inspector considers is, or may be, in possession of any information concerning the affairs of an investment business firm,

to produce to an inspector appointed under *section 66* or *73* of this Act all books, accounts, deeds, records or other documents of, or relating to, the business of the investment business firm or person

being investigated under *section 67* of this Act, which are in their control, possession or procurement, to attend before the inspector, when required to do so, and, otherwise, to give to him all assistance in connection with the investigation which they are reasonably able to give and it shall be the duty of such persons to comply with the requirement.

(2) The inspector may examine on oath or by written interrogatories on oath the officers, employees, shareholders and agents of the investment business firm being investigated or other person being investigated by the inspector and any such person as is mentioned in *subsection (1)* of this section in relation to its affairs and may—

(a) administer an oath accordingly, and

(b) take or cause to be taken the answers of such person in writing and require that person to sign them.

(3) If an inspector has reasonable grounds for believing that a director or past director or employee or past employee or agent or past agent or shareholder or past shareholder of the investment business firm or of any other person mentioned in *subsection (1)* of this section whose affairs the inspector is investigating, 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 there has been paid—

(a) any money which has resulted from or been used in the financing of any transaction, arrangement or agreement relating to the business of the investment business firm or relating to client money or investment instruments, or

(b) any money which has been in any way connected with any act or omission, or series of acts or omissions, which on the part of that director or employee or agent constituted misconduct (whether fraudulent or not) towards the investment business firm or its shareholders or any client or creditor of the investment business firm,

the inspector may require the director or past director or officer or past officer or employee or past employee or agent or past agent or shareholder or past shareholder or other person mentioned in *subsection (1)* of this section to produce to him all documents in the director's or employee's or agent's 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.

(4) If any officer, shareholder or agent of the investment business firm or any such person as is mentioned in *subsection (1)* of this section 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 business firm or other person mentioned in *subsection (1)* of this section, as the case may be, the inspector may certify the refusal under his hand to the Court and the Court may thereupon inquire into the case and, after hearing any witnesses who may be produced against or on behalf of the officer, shareholder or agent of the investment business firm or associated or related undertaking

or other person mentioned in *subsection (1)* of this section and any statement which may be offered in defence make any order or issue a direction as it thinks fit, including a direction to the person concerned to attend or re-attend before the inspector, or may make an order to produce particular books or documents or answer a particular question put to him by the inspector, or may issue 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.

(5) In this section any reference 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 business firm or other person mentioned in *subsection (1)* of this section, shall include the bankers, accountants, solicitors, auditors and the financial and other advisors of the investment business firm or other person mentioned in *subsection (1)* of this section, whether those persons are or are not officers of the investment business firm or other body or undertaking.

Expenses of and fees relating to an investigation.

70.—(1) The expenses of and incidental to an investigation and the fees incurred by an inspector appointed by the Court under *section 66* of this Act or by a supervisory authority under *section 73* of this Act shall be defrayed by the relevant supervisory authority, but the Court may direct that any person dealt with in the report shall be liable, to such extent as the Court may direct, on the application of the supervisory authority, to repay the supervisory authority any expenses or fees incurred.

(2) Without prejudice to *subsection (1)* of this section, any person who is—

- (a) convicted on indictment of an offence on a prosecution instituted as a result of an investigation,
- (b) ordered to pay damages or restore any property in proceedings brought as a result of an investigation, or
- (c) awarded damages or to whom property is restored in proceedings brought as a result of an investigation,

may, in the same proceedings, be ordered to repay all or part of the expenses and fees referred to in *subsection (1)* of this section and interest as appropriate, to the supervisory authority 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 (c)* 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.

(3) 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 (1)* of this section.

Inspectors' reports and proceedings thereon.

71.—(1) An inspector appointed under *section 66* of this Act may, and shall if the Court so requires, make an interim report to the Court and, on conclusion of the investigation, shall make a final report to the Court 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.

5 (2) On a report being presented to it under this section, the Court shall—

(a) forward a copy of any such report to the Minister and the relevant supervisory authority,

10 (b) if it thinks fit, furnish a copy thereof to the investment business firm concerned and its auditors or, if the report concerned the affairs of a certified person, furnish a copy thereof to an approved professional body, and

(c) if it thinks fit—

15 (i) furnish a copy thereof, on request and on payment of such fee as it may fix, to any other person who is a shareholder of the investment business firm concerned or a shareholder of any other body dealt with in the report by virtue of *section 66* of this Act or whose interests as a creditor or client of the investment business firm concerned or of any other such body appear to the Court to be affected, and

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

25 (3) Where the Court so thinks 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 (2)(b)* or *(2)(c) (i)* of this section or from the report as printed and published under *subsection (2) (c) (ii)*.

30 (4) The Minister may lay a report forwarded under *subsection (2)* of this section before each House of the Oireachtas if he, and the Minister for Enterprise and Employment, think it proper to do so having due regard to the exigencies of the common good and the rights of any person referred to in that report and a report so laid shall be privileged.

35 72.—(1) Having considered a report made under *section 71* of this Act, the Court may make such order as it thinks fit in relation to matters arising from that report including—

Powers of Court following consideration of reports.

(a) an order of its own motion for the winding-up or dissolution or bankruptcy of an investment business firm,

40 (b) 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 business firm 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.

45 (2) If, in the case of any investment business firm liable to be wound up or dissolved under this Act or subject to an adjudication of bankruptcy, it appears to the supervisory authority from—

(a) any report made under *section 71* as a result of an application by the supervisory authority under *section 66*, or

(b) any report made by inspectors appointed by the supervisory authority under *section 73* of this Act, or

(c) any information or document obtained by the supervisory authority under this Act,

that a petition should be presented for the winding-up or dissolution or bankruptcy of an investment business firm, the supervisory authority may, unless an investment business firm is already being wound up or dissolved or subject to an adjudication of bankruptcy, present a petition for it to be so wound up or dissolved or to be the subject of an adjudication of bankruptcy if the Court thinks it just and equitable for it to be so wound up or dissolved or subject to an adjudication of bankruptcy. 5 10

Appointment of
inspector by a
supervisory
authority.

73.—(1) Without prejudice to its powers under this Act, a supervisory authority may, subject to *subsection (2)* of this section, appoint one or more inspectors to investigate and report on any or all of the following, namely— 15

(a) the affairs and conduct of the business of an authorised investment business firm or other undertaking which is, or was at the relevant time, an associated or related undertaking of an authorised investment business firm, or any particular aspect of such business, 20

(b) compliance of the authorised investment business firm with all or any of the following:

(i) conditions or requirements or both imposed by the supervisory authority under this Act, 25

(ii) rules or codes of conduct set out or approved by the supervisory authority under this Act,

(iii) any condition or requirement of this Act,

(iv) rules or requirements set out or approved by the supervisory authority, with respect to clients' money and investment instruments, 30

(v) any other enactment,

and

(c) any other matter as the supervisory authority may consider appropriate. 35

(2) An appointment under *subsection (1)* of this section may be made by the supervisory authority if it is of the opinion that there are circumstances suggesting that it is necessary—

(a) for the effective administration of the law relating to investment business firms, or 40

(b) for the effective discharge by the supervisory authority of its statutory functions under this Act.

(3) The terms of appointment of an inspector under this section may define the scope of his investigation, whether as respects the matters or the period to which it is to extend or otherwise, and in particular may limit the investigation to matters connected with particular circumstances. 45

(4) Subject to the terms of appointment of an inspector, the powers conferred on him by this section shall extend to the investigation of any circumstances suggesting the existence of an arrangement or understanding which, though not legally binding, is or was observed or likely to be observed in practice and which is relevant to the purposes of his investigation.

(5) For the purposes of any investigation under this section, sections 67 to 71, except sections 68, 69 (3) and 70 (3), shall apply with the necessary modifications or references to the affairs of the authorised investment business firm or to those of any other person or any associated or related undertaking, so, however, that—

(a) the said sections shall apply in relation to all persons who are or have been officers or employees or agents of the authorised investment business firm or other person who appears to the inspector to have the information, document, material or explanation in his possession or under his control, and

(b) for references to the Court except in sections 67, 69(4), 70(1) and 70(2) of this Act, there shall be substituted references to the supervisory authority.

74.—(1) Without prejudice to any other powers of a supervisory authority under this Act, where it appears on the basis of information provided by an authorised officer or an inspector appointed under section 73 of this Act, that there has been a breach by an investment business firm or professional body of a condition or requirement imposed by the supervisory authority under any or all of the sections to which this section applies the supervisory authority may—

Power to make determinations for breaches of conditions or requirements.

(a) apply to the Court in a summary manner for a determination that there has been a breach of a condition or requirement, or

(b) notify the investment business firm or professional body.

(2) This section applies to the following sections, namely, sections 10(2), 10(6), 10(7), 10(8), 10(12)(b), 10(13), 10(15), 13(2)(a), 13(5), 14(1), 14(4), 15(1), 18(1), 18(4), 18(7), 23(2), 23(3), 32(1), 33(2), 37(1), 42(1), 52(1), 56(2), 57(2)(a), 57(3) and 58(1) of this Act.

(3) A notification under subsection (1)(b) of this section shall—

(a) set out reasons for the notification, and

(b) state that the supervisory authority shall apply to the Court in a summary manner for a determination that there has been a breach of a condition or requirement under all or any of the sections to which this section applies, unless the investment business firm or professional body concerned requests, in writing within 7 days of the date of the notification, that the provisions of subsections (5) to (9) of this section shall apply.

(4) The Court, on hearing evidence in any proceedings under this section, may do all or any of the following:

(a) issue a reprimand to the investment business firm or professional body,

- (b) direct that the investment business firm or professional body concerned shall pay to the supervisory authority a specified sum not to exceed £500,000, in respect of any breach of a condition or requirement,
- (c) dismiss the application or make any other order as may be appropriate, 5
- (d) make such order as to costs as it thinks fit.

(5) Where a request in writing has been made to it under *subsection (3)* of this section, the supervisory authority may appoint a Committee to inquire into whether or not there has been a breach 10 of a condition or requirement under a section referred to in *subsection (2)* of this section.

(6) A Committee appointed under *subsection (5)* of this section shall be appointed by the supervisory authority from a panel established from time to time by the Minister, with the consent of the 15 Minister for Enterprise and Employment, for that purpose and the provisions of the *Second Schedule* to this Act shall apply to the Committee and to the panel.

(7) Following an inquiry by a Committee appointed under *subsection (5)* of this section, that Committee may dismiss the application 20 or may make a determination that there has been a breach of a condition or requirement, and may do all or any of the following:

- (a) issue a reprimand to an investment business firm or professional body,
- (b) direct that an investment business firm or professional body 25 shall pay the supervisory authority a specified sum, not to exceed £500,000, in respect of any breach of a condition or requirement,
- (c) arrange for the publication of such details as it deems proper concerning a determination made under this subsection 30 in the *Iris Oifigiúil* and in one or more newspapers circulating in the State,
- (d) make such order as to costs as it thinks fit.

(8) An investment business firm may appeal to the Court against a determination of the Committee issued under *subsection (7)* of this 35 section and the Court may vary or annul the determination of the Committee.

(9) A sum due under this section may be recovered in any court of competent jurisdiction as a simple contract debt.

Search and seizure.

75.—(1) If a Judge of the District Court is satisfied on the sworn 40 information of an authorised officer or an inspector appointed under *section 73* of this Act that there are reasonable grounds for suspecting that there are on any premises any books, records or other documents—

- (a) of which production has been required under this Act, and 45
- (b) which have not been produced in compliance with that requirement,

the Judge may issue a warrant authorising any member of the Garda Síochána, together with any other persons named in the warrant and any other members of the Garda Síochána, at any time or times within one month from the date of the warrant, on production if
5 so requested of the warrant, to enter the premises specified in the information (using such force as is reasonably necessary for the purpose) and to search the premises or other place specified in the warrant and—

10 (i) take possession of any books or documents appearing to be such books or documents as aforesaid, or

(ii) to take, in relation to any books or documents so appearing, any other steps which may appear necessary for preserving them and preventing interference with them.

15 (2) Any books or documents of which possession is taken under this section may be retained for a period of three months or if within that period there are commenced any such criminal proceedings as are mentioned in *subsection (1)(a) of section 78 of this Act* (being proceedings to which the books or documents are relevant) until the
20 conclusion of those proceedings.

(3) A person who—

(a) obstructs or interferes with a member of the Garda Síochána acting under the authority of a warrant issued under this section, or

25 (b) is found on the premises or at the place specified in the warrant by a member of the Garda Síochána acting as aforesaid and who fails or refuses to give the member his name and address when required to do so or gives a name and address that is false or misleading, or

30 (c) who obstructs the exercise of an authority conferred by a warrant under this section to take possession of any books or documents,

shall be guilty of an offence.

35 (4) In this section “premises” includes any building or other land and includes a vessel, aircraft or motor vehicle.

76.—A document purporting to be a copy of a report of an inspector appointed under the provisions of this Part shall be admissible in any civil proceedings as evidence—

Admissibility in evidence of reports of inspectors.

40 (a) of the facts set out therein without further proof unless the contrary is shown, and

(b) of the opinion of the inspector in relation to any matter contained in the report.

77.—(1) Nothing in this Act shall compel the disclosure by any
45 person of any information which he would, in the opinion of the Court, be entitled to refuse to produce on the grounds of legal professional privilege or authorise the taking possession of any document containing such information which is in his possession. Privilege.

(2) The publication, in pursuance of any provision of this Part, of any report, information, book or document relating to inspectors appointed under this Part shall be privileged.

Consent to
publication of
information.

78.—(1) No information, book or document relating to a person which has been obtained under *section 75* of this Act shall, without the previous consent in writing of that person, be published or disclosed, except to an appropriate authority, unless the publication or disclosure is required for all or any of the following, namely— 5

(a) with a view to the institution of, or otherwise for the purposes of, any criminal proceedings pursuant to, or arising out of, any enactments under which the relevant supervisory authority exercises statutory functions or any criminal proceedings for an offence entailing misconduct in connection with the management of the affairs of a person or misapplication or wrongful retainer of its property, 10 15

(b) for the purpose of complying with any requirement, or exercising any power, imposed or conferred by this Act with respect to reports made by inspectors appointed thereunder by the Court or the supervisory authority,

(c) with a view to the institution by the supervisory authority of proceedings for the winding-up, dissolution or bankruptcy under this Act of the person or otherwise for the purposes of proceedings instituted by the supervisory authority for that purpose, 20 30

(d) for the purposes of proceedings under *section 75* of this Act. 25

(2) A person who publishes or discloses any information, book or document in contravention of this section shall be guilty of an offence.

(3) For the purposes of this section “appropriate authority” includes any or all of the following, namely— 30

(a) a supervisory authority,

(b) a person authorised by the Governor of the Bank or the Minister for Enterprise and Employment,

(c) a committee appointed under *section 74* of this Act,

(d) an inspector appointed under this Act, 35

(e) the Minister,

(f) any court of competent jurisdiction,

(g) the Bank or the Minister for Enterprise and Employment or any other competent authority for the purposes of Council Directives 93/22/EEC of 10 May 1993⁽¹⁾ and 93/6/EEC of 15 March 1993⁽¹⁾ or 77/780/EEC of 12 December 1977⁽²⁾ as amended by Council Directive 89/646/EEC of 15 December 1989⁽³⁾. 40

⁽¹⁾ O.J. No. L141 11/6/93.

⁽²⁾ O.J. No. L322 17/12/77.

⁽³⁾ O.J. No. L386 30/12/89.

79.—(1) A person who is guilty of an offence under *section 9*, *Offences and penalties.*
10(16), 16(9), 19(1)(b), 23(1), 23(15), 28(3), 30, 34(1), 34(3), 35(4),
36(6), 46(2), 52(3), 52(5), 52(6), 52(9), 54(6), 56(9), 75(3), 78(2),
79(4), 79(7), 79(8) of, or *paragraph 15* of the *Second Schedule* to, this
5 Act, shall be liable—

- (a) on summary conviction to a fine not exceeding £1,000 or, at the discretion of the court in the case of an individual, to imprisonment for a term not exceeding 12 months, or both, or
- 10 (b) on conviction on indictment, to a fine not exceeding £1,000,000 or, at the discretion of the court in the case of an individual, to imprisonment for a term not exceeding 10 years, or both.

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

(3) Notwithstanding section 10(4) of the Petty Sessions (Ireland) Act, 1851, summary proceedings for any offence under this Act may be instituted within two years from the date of the discovery of the
20 offence.

(4) Where an offence under this Act is committed by an investment business firm or body corporate or by an unincorporated body or person or by a sole trader and is proved to have been committed with the consent or connivance of, or to be attributable to, or to have
25 been facilitated by any neglect on the part of, any officer or employee of that investment business firm or person purporting to act on behalf of the investment business firm or body corporate or partnership, or sole trader, that officer or employee shall be guilty of an offence and shall be liable to be proceeded against and punished as if he were guilty of the first-mentioned offence, provided,
30 however, that a person shall not be sentenced to imprisonment for such an offence unless in the opinion of the Court the offence was committed wilfully.

(5) (a) Where, on an application made in a summary manner by
35 a supervisory authority, the Court is of the opinion that there has occurred or is occurring—

- (i) a contravention of this Act,
- (ii) a failure to comply with a condition or requirement imposed by the supervisory authority in relation to
40 an authorisation of an investment business firm or with a direction issued by the supervisory authority under *section 21* of this Act,

the Court may, by order, prohibit the continuance of the contravention or failure by the person or persons concerned.
45

(b) The Court when considering the application may make such interim or interlocutory order as it considers appropriate.

(c) The foregoing provisions of this section are without prejudice to the statutory functions of the supervisory authority concerned.
50

(d) Where the Court is satisfied, because of the nature or circumstances of the case or otherwise in the interests of justice, that it is desirable, the whole or any part of proceedings under this section may be held otherwise than in public.

5

(6) If the contravention, breach or failure in respect of which a person was convicted under *subsections (1) or (4)* of this section is continued after conviction, he shall be guilty of a further offence on every day on which the contravention, breach or failure continues and for each such offence the person shall be liable on summary conviction to a fine not exceeding £1,000 or on conviction on indictment to a fine not exceeding £5,000.

10

(7) A person who, in purported compliance with any provision of this Act or any regulation thereunder, provides an answer or explanation, makes a statement or produces, lodges or delivers any return, report, certificate, balance sheet or other document false in a material particular, knowing it to be false, or recklessly provides an answer or explanation, knowingly withholds or omits information, makes a statement or produces, lodges or delivers any such document false in a material particular shall be guilty of an offence.

15

20

(8) (a) An officer of an authorised investment business firm who destroys, mutilates or falsifies, or is privy to the destruction, mutilation or falsification of any record or document affecting or relating to the property or affairs of the authorised investment business firm, or makes or is privy to the making of a false entry therein, shall, unless he proves that he had no intention to defeat the law, be guilty of an offence.

25

(b) Any such person as is mentioned in *paragraph (a)* of this subsection who fraudulently disposes of, alters or makes an omission in any such record or document, or who is privy to the disposal of, altering or making of an omission in any such record or document shall be guilty of an offence.

30

(9) Where there is a contravention of a provision of this Act applicable to a partnership each partner may be charged alone or jointly with any one or more of the partners with any offence in respect of such contravention and on conviction shall be liable for the penalty thereupon imposed.

35

(10) In any proceedings for an offence under a section of this Act applicable to partnerships or sole traders it shall be a defence for a partner or sole trader charged to prove—

40

(a) that the commission of the offence was due to a mistake or the reliance on information supplied to him or to the act or default of another person, an accident or some other cause beyond his control, and

45

(b) that he took all reasonable precautions and exercised all due diligence to avoid the commission of such an offence by himself or any other person under his control.

(11) Nothing in this Act or any other enactment, and no rule of law, shall preclude the prosecution of a partner for an offence of which another partner or any other person has been previously charged or convicted.

50

PART IX

AMENDMENT OF COMPANIES ACT, 1990

80.—The Companies Act, 1990 is hereby amended—

Amendment of
Companies Act,
1990.

- 5 (a) in section 253 (which relates to the share capital of investment companies) by the insertion of the following subsection after subsection (2):

“(2A) (a) Notwithstanding subsection (2) (b) (ii), this Part shall also apply to a company to which subsection (2) 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.

- 10 (b) Regulation 30 of the UCITS Regulations, as applied by section 258, shall not be applied in respect of any company to which paragraph (a) applies.”.

and

- 25 (b) by the substitution of the following subsection for subsection (1) of section 260 (which relates to the restriction of the application of certain provisions of the Companies Act, 1963, to investment companies):

“(1) None of the following provisions of the Principal Act shall apply to an investment company, namely, sections 58, 60, 69, 70, 72, 119 and 125.”.

FIRST SCHEDULE

Section 21.

- 30 *Supplementary Provisions in Relation to a Direction by a Supervisory Authority under section 21 of this Act*

1. In this Schedule, a reference to an investment business firm includes reference to a proposed investment business firm, an authorised investment business firm, a former authorised investment business firm, a person who the supervisory authority has reasonable grounds to believe is acting as an investment business firm, an associated undertaking or related undertaking, or directors and those responsible for the management of an investment business firm.

40 2. A supervisory authority may revoke a direction given under section 21 of this Act unless an order under section 21 of this Act has been made by the Court in respect of the direction.

3. An investment business firm to whom a direction has been given under section 21 of this Act may apply to the Court for, and the Court may grant, an order varying or setting aside the direction.

45 4. Where a supervisory authority applies to the Court for an order confirming a direction under section 21 of this Act, the Court may

grant an order confirming the direction or setting it aside, or confirming it and, in the case of a direction made under *section 21(2)* of this Act and subject to *paragraph 5* of this Schedule, extending the period of its operation for such time not exceeding the period of 12 months from the date the direction commenced to have effect, as the Court may, having regard to the circumstances, consider appropriate. 5

5. In addition to, or in lieu of, an order under *section 21(2)* of this Act, the Court may make such other order in the case as may appear to it to be necessary, including an order directing any person who holds money or other assets for or on behalf of the investment business firm or client of such investment business firm, or a specified person, not to dispose of any of those assets except on such conditions and in such circumstances as are specified in the order. 10

6. A direction which has been confirmed by the Court shall terminate— 15

- (a) at the end of the period of operation specified by the Court,
- (b) on the making by the Court of an order for termination on the application of the supervisory authority,
- (c) on the making of a winding-up order in respect of the investment business firm or, where an investment business firm is constituted as an unincorporated body of persons, a dissolution order, or where an investment business firm is a sole trader, an adjudication of bankruptcy, 20
- (d) on the making by the Court of an order for termination where the Court considers that the circumstances that gave rise to the direction have ceased to exist and that it would be unjust and inequitable not to make the order, 25

whichever first occurs.

7. If a supervisory authority forms the opinion that the investment business firm to whom the direction was given is able to meet its obligations to its creditors, investors or clients but the circumstances which gave rise to the direction are unlikely to be rectified, it shall forthwith apply to the Court for, and the Court may grant, an order directing the said investment business firm to prepare, in consultation with the supervisory authority, a scheme for the orderly termination of its business and the discharge of its liabilities to its creditors, investors and clients under the supervision of the supervisory authority and to submit it to the Court within two months for approval. 30 35

8. The Court shall not approve the terms of a scheme under *paragraph 7* of this Schedule without hearing the relevant supervisory authority and, in the event of dispute about terms of the scheme, the supervisory authority or the investment business firm may apply to the Court to adjudicate on the matter. 40

9. If the investment business firm fails to comply with an order of the Court under *paragraph 7* of this Schedule or fails to adhere to the scheme approved of by the Court, the supervisory authority may apply to the Court for, and the Court may make, such further order as it considers appropriate for the winding-up of the investment business firm or, where an investment business firm is constituted as an unincorporated body of persons, for the dissolution of the investment business firm, or where an investment business firm is a sole trader, 45 50

that proceedings in bankruptcy be commenced, on the grounds that it is just and equitable that it be wound up, dissolved or cease trading.

10. The Court may by order revoke or amend an order made by it under *paragraph 4* of this Schedule.

5 11. Where a direction is given by the supervisory authority in accordance with *section 21* of this Act—

(a) the investment business firm to whom the direction has been given shall take all necessary steps to secure that its assets or client or investor assets wherever held, are not
10 depleted without the prior authorisation of the supervisory authority, and

(b) the supervisory authority may direct a credit institution or any institution exempt under *section 7* of the Central Bank Act, 1971, or any other financial institution which
15 holds an account of any description of the investment business firm including holdings of investment instruments of the investment business firm to which the direction has been given, to suspend the making of payments or other transactions from the account without the prior
20 authorisation of the supervisory authority.

SECOND SCHEDULE

Section 74.

Supplementary Provision in Relation to a Committee appointed under section 74 of this Act

25 1. Subject to *paragraphs 2* and *3* of this Schedule, on the coming into operation of *section 74* of this Act, the Minister shall, with the consent of the Minister for Enterprise and Employment, establish and maintain a panel which shall be composed of at least 7 persons.

30 2. Each of the persons appointed to the panel referred to in *paragraph 1* of this Schedule shall be a person whom the Minister and the Minister for Enterprise and Employment consider to have relevant experience or special knowledge which will enable them to carry out their functions under this Act.

3. At least two persons appointed to the panel referred to in *paragraph 1* of this Schedule shall be barristers or solicitors.

35 4. Subject to *paragraph 5* of this Schedule, a person shall remain on the panel established under this section for such period as may be specified under that paragraph unless he dies or requests the Minister that his name be removed from the panel but unless he has died shall be eligible to have his name included on the panel for a
40 further period or periods.

5. A panel established under *section 74* of this Act shall stand dissolved on the expiration of such period as may be specified by the Minister with the consent of the Minister for Enterprise and Employment, at the time he establishes it.

45 6. A member of the panel appointed to a Committee shall be paid by the Minister, following consultation with the Minister for Enterprise and Employment, such remuneration and allowances for expenses as the Minister may determine.

7. A Committee shall be composed of no less than three persons at least one of whom shall be a barrister or solicitor.

8. The Minister, with the consent of the Minister for Enterprise and Employment, may at any time remove a member from the panel for stated misbehaviour.

9. The procedures of Committees appointed under *section 74* of this Act shall be laid down, from time to time, in rules made by the Minister, with the consent of the Minister for Enterprise and Employment, and shall include a rule providing for the appointment of a chairperson.

10. A Committee shall be independent in the discharge of its functions.

11. The supervisory authority shall make available to a Committee such services, including staff, as may be reasonably required by the Committee.

12. On the completion of an inquiry and following the making of a determination under *section 74* of this Act, a Committee shall serve on the supervisory authority concerned and on the investment business firm concerned a report of its inquiry and a notification of its determination specifying the nature of the enquiry and the evidence laid before it and any other matters it thinks fit.

13. An inquiry under *section 74* of this Act may be carried out, at the request of or with the consent of the investment business firm concerned, by an examination of the relevant documents and written submissions from the supervisory authority and the investment business firm concerned in place of an oral hearing.

14. A Committee appointed for the purposes of holding an inquiry under *section 74* of this Act shall have the powers, rights and privileges vested in the High Court or a judge thereof on the hearing of an action in respect of—

(a) the enforcement of the attendance of witnesses and their examination on oath or otherwise, and

(b) the compelling of the production of documents,

and a summons signed by the chairperson of the Committee or by such other member of the Committee as may be authorised by the Committee may be substituted for and shall be equivalent to any formal procedure capable of being issued in an action of enforcing the attendance of witnesses and compelling the production of documents.

15. Where—

(a) a person on being duly summoned to attend before a Committee established for the purposes of *section 74* of this Act makes default in attending, or

(b) a person, being in attendance as a witness before a Committee, refuses to take an oath lawfully required by that Committee to be taken or to produce any document in his power or control lawfully required by that Committee to be produced by him or to answer any question to which the Committee may lawfully require an answer, or

(c) a person, being in attendance before a Committee does anything which, if the Committee were a court of law having power to commit for contempt, would be contempt of court,

5 that person shall be guilty of an offence.

16. A witness before a Committee shall be entitled to the same immunities and privileges as if he were a witness before the Court.

17. In this Schedule, "Committee" means a Committee appointed under *section 74* of this Act.

AN BILLE UM IDIRGHABHÁLAITHE
INFHEISTÍOCHTA, 1995

BILLE

(*mar a tionscnaíodh*)

dá ngairtear

Acht do dhéanamh socrú i ndáil le gnólachtaí gnó infheistíochta agus le hidirghabhálaithe táirgí infheistíochta agus le haghaidh údarú agus maoirsiú gnólachtaí gnó infheistíochta agus idirghabhálaithe táirgí infheistíochta ag Banc Ceannais na hÉireann agus ag an Aire Fiontar agus Fostaíochta agus do leasú Acht na gCuideachtaí, 1990, agus do dhéanamh socrú i dtaobh nithe gaolmhara.

*An tAire Airgeadais a thólaic,
23 Bealtaine, 1995*

INVESTMENT INTERMEDIARIES BILL,
1995

BILL

(*as initiated*)

entitled

An Act to make provision in relation to investment business firms and investment product intermediaries and for the authorisation and supervision of investment business firms and investment product intermediaries by the Central Bank of Ireland and the Minister for Enterprise and Employment and to amend the Companies Act, 1990, and to provide for related matters.

*Presented by the Minister for Finance,
23rd May, 1995*

BAILE ÁTHA CLIATH:
ARNA FHOILSIÚ AG OIFIG AN tSOLÁTHAIR

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

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.

£7.00

ISBN 0-7076-0945-3



9 780707 609454