

DÁIL ÉIREANN

AN BILLE UM CHISTÍ INFHEISTÍOCHTA, CUIDEACHTAÍ AGUS FORÁLACHA ILGHNÉITHEACHA 2005 *[LEASUITHE A RINNE AN DÁIL]*

INVESTMENT FUNDS, COMPANIES AND MISCELLANEOUS PROVISIONS BILL 2005 *[AMENDMENTS MADE BY THE DÁIL]*

Leasuithe Amendments

TITLE

1. In page 7, line 23, after “AMEND”, “THE IRISH TAKEOVER PANEL ACT 1997 AND” inserted.

SECTION 2

2. In page 8, between lines 2 and 3, the following subsection inserted:

“(2) Without prejudice to the generality of subsection (1), an order or orders under that subsection may appoint different days for the coming into operation of *section 31* so as to effect the repeal provided by that section of an enactment specified in it on different days for different purposes.”.

*[*Note: A printing error has resulted in incorrect line references in page 8 of the Bill. The line reference in this amendment relates to the actual number of lines of text contained in page 8 of the bill.]*

SECTION 9

3. In page 12, subsection (7), lines 7 to 9, all words from and including “under” in line 7 down to and including “1942” in line 9 deleted.

SECTION 21

4. In page 16, subsection (3), lines 15 and 16, “the Director of Public Prosecutions or” deleted.

SECTION 25

5. In page 17, lines 3 and 4 deleted and the following substituted:

“25.—The following sections are inserted after section 256 of the Act of 1990:”.

6. In page 21, line 34, “filed” deleted and “lodged” substituted.
7. In page 21, line 36, “delivered” deleted and “perfected” substituted.
8. In page 21, line 37, “filed” deleted and “lodged” substituted.

SECTION 28

9. In page 24, before section 28, but in Part 3, the following new section inserted:

“Insertion of new section 260A in Act of 1990.

28.—The following section is inserted after section 260 of the Act of 1990:

‘Application of section 148 of Principal Act.

260A.—(1) Notwithstanding section 148(2) of the Principal Act (inserted by the European Communities (International Financial Reporting Standards and Miscellaneous Amendments) Regulations 2005 (S.I. No. 116 of 2005)) an investment company may, in respect of its individual accounts, opt to prepare those accounts in accordance with both of the following, namely—

- (a) an alternative body of accounting standards, and
- (b) section 149A of the Principal Act,

as if the references in that section 149A to international financial reporting standards were references to that alternative body of accounting standards.

(2) In the application of subsections (4), (5) and (6) of section 148 of the Principal Act to an investment company which has opted under subsection (1) to prepare its accounts in accordance with an alternative body of accounting standards—

- (a) the reference in that subsection (4) to international financial reporting standards shall be read as a reference to that alternative body of accounting standards, and
- (b) there shall be substituted for “IFRS”, in each place where it occurs in those subsections (4), (5) and (6), “ABAS” (which shall be read as referring to that alternative body of accounting standards).

(3) For the purposes of this section, accounts shall not be regarded as having been prepared in accordance with an alternative body of accounting standards unless the accounts concerned would, were they to have been prepared by a company or undertaking registered in the relevant jurisdiction, be regarded as having been prepared in accordance with those standards.

(4) In this section—

“alternative body of accounting standards” means standards that accounts of companies or undertakings must comply with that are laid down by such body or bodies having authority to lay down standards of that kind in—

- (a) United States of America,
- (b) Canada,
- (c) Japan, or
- (d) any other prescribed state or territory,

as may be prescribed;

“relevant jurisdiction” means the state or territory in which the alternative body of accounting standards concerned have effect.

(5) Before making regulations for the purposes of subsection (4), the Minister —

- (a) shall consult with the Central Bank, and
- (b) may consult with any other persons whom the Minister considers should be consulted.

(6) If particular regulations for the purposes of subsection (4) are proposed to be made at a time subsequent to the commencement of Part 2 of the Companies (Auditing and Accounting) Act 2003, then, before making those regulations, the Minister shall also consult with the Irish Auditing and Accounting Supervisory Authority.’.”.

10. In page 24, subsection (1), lines 36 to 39, all words from and including “and” in line 36 down to and including “includes” in line 39 deleted and the following substituted:

- “(b) any measures directly applicable in the State in consequence of the 2003 Market Abuse Directive and, without prejudice to the generality of this paragraph, includes the Market Abuse Regulation, and
- (c) any supplementary and consequential measures adopted for the time being by the State in respect of”.

SECTION 29

11. In page 25, before section 29, the following new section inserted:

“Regulations (*Part 4*).

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

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

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

(3) Regulations under this section may also—

(a) make, for the purposes of those Regulations, provision analogous to that which was made by section 3 of the Companies (Amendment) Act 1999 (repealed by *section 29**) for the purposes of that Act,

(b) impose on a market operator a requirement similar to that which is imposed by Article 6(9) of the 2003 Market Abuse Directive on the person referred to in that Article 6(9).

(4) This section is without prejudice to section 3 of the European Communities Act 1972.”.

[Acceptance of this amendment involved the deletion of section 29 of the Bill.]

*[*This is a reference to the new section inserted by amendment No.12.]*

12. In page 25, before section 29, the following new section inserted:

“Repeal of Part V of
Act of 1990 and
Companies
(Amendment) Act
1999.

29.—The following are repealed:

(a) Part V of the Act of 1990, and

(b) the Companies (Amendment) Act 1999.”.

SECTION 30

13. In page 25, line 21, after “law” the following inserted:

“(being an offence expressed by that law to be an offence to which this section applies)”.

SECTION 32

14. In page 26, between lines 36 and 37, the following subsection inserted:

“(3) Rules under this section may include rules providing for the manner in which or the matters by reference to which (or both) a determination is to be made of any issue as to whether a financial interest or interests is or are significant for the purposes of the provisions of Irish market abuse law implementing Article 5(1) of Commission Directive No. 2003/125/ EC of 22 December 2003.”.

SECTION 33

15. In page 27, before section 33, the following new section inserted:

“Amendment of section 33AJ of Central Bank Act 1942. 33.—Section 33AJ (inserted by the Central Bank and Financial Services Authority of Ireland Act 2003) of the Central Bank Act 1942 is amended by substituting the following subsection for subsection (7):

‘(7) In this section, “agent” includes a person appointed or authorised by the Bank, the Governor or the Chief Executive to perform any function or exercise a power under the Central Bank Acts or any other enactment.’”.

SECTION 35

16. In page 28, subsection 1, lines 3 to 6, all words from and including “and” in line 3 down to and including “includes” in line 6 deleted and the following substituted:

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

(c) any supplementary and consequential measures adopted for the time being by a Member State (including the State) or a Member State of the EEA in respect of”.

17. In page 28, subsection (1), lines 11 and 12 deleted and the following substituted:

“individual or body (whether incorporated or unincorporated) the profession of whom, or the profession of members, officers or employees of which, gives authority to a statement made by the individual or body;”.

18. In page 28, subsection (1), lines 19 to 22, all words from and including “and” in line 19 down to and including “includes” in line 22 deleted and the following substituted:

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

(c) any supplementary and consequential measures adopted for the time being by the State in respect of”.

19. In page 28, subsection (1), line 29, after “€2,500,000” the following inserted:

“(and the means by which that limit shall be calculated, in particular in the case of a series of such offers of securities, shall be the same as that provided for by regulations under *section 46* in relation to analogous limits specified by those regulations for any purpose)”.

20. In page 28, subsection (1), lines 37 to 42, all words from and including “means” in line 37 down to and including “intermediaries;” in line 42 deleted and the following substituted:

“has the same meaning as it has in Irish prospectus law;”.

21. In page 29, lines 32 to 37, subsection (5) deleted.

SECTION 40

22. In page 33, line 2, “whose denomination per unit amounts to at least €50,000” deleted.

SECTION 43

23. In page 34, before section 43, the following new section inserted:

“Regulations (*Part*
5).

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

(a) giving effect to the 2003 Prospectus Directive, and

(b) supplementing and making consequential provision in respect of the Prospectus Regulation.

(2) Regulations under this section may contain such incidental, supplementary and consequential provisions as appear to the Minister to be necessary or expedient for the purposes of those regulations, including—

(a) provisions creating offences (but the regulations may only provide penalties in respect of a summary conviction for any such offence), and

(b) provisions revoking instruments made under other enactments.

(3) This section is without prejudice to section 3 of the European Communities Act 1972.”.

[Acceptance of this amendment involved the deletion of section 43 of the Bill.]

SECTION 44

24. In page 34, subsection (1), line 18, after “law” the following inserted:

“(being an offence expressed by that law to be an offence to which this section applies)”.

SECTION 45

25. In page 35, between lines 14 and 15, the following subsection inserted:

“(3) Summary proceedings for an offence under this section may be brought and prosecuted by the competent authority designated under Irish prospectus law.”.

SECTION 46

26. In page 36, subsection (4), line 35, after “registrar”, “of companies” inserted.

SECTION 48

27. In page 37, between lines 23 and 24, the following subsections inserted:

“(3) Rules under this section may include rules providing for the manner in which or the matters by reference to which (or both) a determination is to be made of any issue as to whether a transaction or transactions is or are of a significant size for the purposes of the provisions of Irish prospectus law implementing Article 2(2)(a) of the 2003 Prospectus Directive.

(4) The reference in *subsection (2)* to an obligation imposed on a person by Irish prospectus law includes a reference to an obligation imposed on a person by virtue of the person’s exercising a right or option provided under Irish prospectus law.”.

SECTION 53

28. In page 40, between lines 24 and 25, the following inserted:

“(n) to the extent that provision of this kind is not authorised by paragraph (e) or (f), the provision of financial assistance by a holding company or a subsidiary of it in connection with the holding company or subsidiary purchasing or subscribing for shares in the holding company on behalf of—

(i) the present or former employees of the holding company or any subsidiary of it,

(ii) an employees’ share scheme within the meaning of the Companies (Amendment) Act 1983, or

(iii) an employee share ownership trust referred to in section 519 of the Taxes Consolidation Act 1997.”.

SECTION 72

29. In page 48, before section 72, but in Part 7, the following new section inserted:

“Amendment of
Irish Takeover Panel
Act 1997.

72.—The Irish Takeover Panel Act 1997 is amended—

(a) in section 2—

(i) in paragraph (ii), by substituting ‘Act of 1990,’ for ‘Act of 1990.’, and

(ii) by adding the following paragraph after paragraph (ii):

‘(iii) a public limited company or other body corporate incorporated in the State—

(I) the only securities of which for the time being are authorised (or during the period of 5 years referred to in paragraph (b) were authorised) to be traded by a recognised stock exchange on a market regulated by that exchange are those specified in section 2A,

and

(II) which is not a company prescribed for the purposes of paragraph (c).’,

and

(b) by inserting the following section after section 2:

‘Securities for the purposes of section 2(iii) and application of that provision.

2A.—(1) The securities referred to in paragraph (iii) of section 2 are debentures or bonds or other securities in the nature of debentures or bonds, by whatever name called, that do not confer voting rights in the company or body corporate referred to in that paragraph or in any other body corporate.

(2) The cases to which paragraph (iii) of section 2 applies include the case where the authorisation for the trading of the securities concerned was given by the recognised stock exchange before the commencement of *section 72* of the Investment Funds, Companies and Miscellaneous Provisions Act 2005.*’.”.

[*This is a reference to the new section inserted by this amendment.]

30. In page 48, between lines 12 and 13, the following subsection inserted:

“(2) Subsection (7) of that section 45 is amended by substituting ‘this section’ for ‘subsection (6)’.”.

NEW SECTION

31. In page 51, between lines 26 and 27, the following new section inserted:

“Amendment of section 33AN of, and Schedule 2 to, Central Bank Act 1942.

87.—(1) Section 33AN of the Central Bank Act 1942 (inserted by the Central Bank and Financial Services Authority of Ireland Act 2004) is amended by inserting the following definitions after the definition of ‘contravene’:

‘ “designated enactment” does not include Part 4 or 5 of the Investment Funds, Companies and Miscellaneous Provisions Act 2005;

“designated statutory instrument” does not include the Market Abuse (Directive 2003/6/EC) Regulations 2005 (S.I. No.- of 2005) or the Prospectus (Directive 2003/71/EC) Regulations 2005 (S.I. No.- of 2005);’.

(2) Schedule 2 to the Central Bank Act 1942 (inserted by the Central Bank and Financial Services Authority of Ireland Act 2003) is amended—

- (a) in the item relating to the Postal and Telecommunications Services Act 1983, in column 3 of Part 1, by substituting ‘Sections 67 and 104’ for ‘Section 104’,
- (b) in the item relating to the Dormant Accounts Act 2001, in column 3 of Part 1, by substituting ‘The whole Act’ for ‘Part 3 and section 17’,
- (c) by inserting in Part 1 the following item after the item relating to the Assets Covered Securities Act 2001:

No. 28 of 2001	Company Law Enforcement Act 2001	Section 110A
No. 2 of 2003	Unclaimed Life Assurance Policies Act 2003	The whole Act
No. - of 2005	Investment Funds, Companies and Miscellaneous Provisions Act 2005	The whole Act

and

- (d) by inserting in Part 2 the following items after the item relating to the European Communities (Cross Border Payments in Euro) Regulations 2002 (S.I. No. 335 of 2002):

S.I. No. 211 of 2003	European Communities (Undertakings for Collective Investments in Transferable Securities) Regulations 2003	The whole instrument
S.I. No. 198 of 2004	European Communities (Reorganisation and Winding-Up of Credit Institutions) Regulations 2004	The whole instrument
S.I. No. 727 of 2004	European Communities (Financial Conglomerates) Regulations 2004	The whole instrument
S.I. No. 853 of 2004	European Communities (Distance Marketing of Consumer Financial Services) Regulations 2004	The whole instrument
S.I. No. 13 of 2005	European Communities (Insurance Mediation) Regulations 2005	The whole instrument
S.I. No. - of 2005	Market Abuse (Directive 2003/6/EC) Regulations 2005	The whole instrument
S.I. No. - of 2005	Prospectus (Directive 2003/71/EC) Regulations 2005	The whole instrument

SCHEDULE

32. In page 52, between lines 34 and 35, the following paragraph inserted:

“Addition of new Regulation 79A

6. The following is inserted after Regulation 79:

‘79A.—(1) Notwithstanding section 148(2) of the Companies Act 1963 (inserted by the European Communities (International Financial Reporting Standards and Miscellaneous Amendments) Regulations 2005 (S.I. No. 116 of 2005)) an investment company to which Chapter 1 or 2 of Part VI applies may, in respect of its individual accounts, opt to prepare those accounts in accordance with both of the following, namely—

(a) an alternative body of accounting standards, and

(b) section 149A of the Companies Act 1963,

as if the references in that section 149A to international financial reporting standards were references to that alternative body of accounting standards.

(2) In the application of subsections (4), (5) and (6) of section 148 of the Companies Act 1963 to an investment company which has opted under paragraph (1) to prepare its accounts in accordance with an alternative body of accounting standards—

(a) the reference in that subsection (4) to international financial reporting standards shall be read as a reference to that alternative body of accounting standards, and

(b) there shall be substituted for “IFRS”, in each place where it occurs in those subsections (4), (5) and (6), “ABAS” (which shall be read as referring to that alternative body of accounting standards).

(3) For the purposes of this Regulation, accounts shall not be regarded as having been prepared in accordance with an alternative body of accounting standards unless the accounts concerned would, were they to have been prepared by a company or undertaking registered in the relevant jurisdiction, be regarded as having been prepared in accordance with those standards.

(4) In this Regulation—

“alternative body of accounting standards” means standards that accounts of companies or undertakings must comply with that are laid down by such body or bodies having authority to lay down standards of that kind in—

(a) United States of America,

(b) Canada,

(c) Japan, or

(d) any other state or territory prescribed for the purposes of the section hereafter mentioned in this paragraph,

as are prescribed under the Companies Act 1990 for the purposes of section 260A(4) (inserted by the *Investment Funds, Companies and Miscellaneous Provisions Act 2005*) of that Act;

“relevant jurisdiction” means the state or territory in which the alternative body of accounting standards concerned have effect.’”.