

DÁIL ÉIREANN

AN BILLE UM CHISTÍ INFHEISTÍOCHTA, CUIDEACHTAÍ AGUS FORÁLACHA ILGHNÉITHEACHA 2005 —ROGHCHOISTE

INVESTMENT FUNDS, COMPANIES AND MISCELLANEOUS PROVISIONS BILL 2005 —SELECT COMMITTEE

*Leasuithe
Amendments*

SECTION 21

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

—Brendan Howlin.

SECTION 25

2. In page 17, to delete lines 3 and 4, and substitute the following:

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

—An tAire Fiontar, Trádála agus Fostaíochta.

3. In page 21, line 34, to delete “filed” and substitute “served”.

—Brendan Howlin.

4. In page 21, line 36, to delete “delivered” and substitute “perfected”.

—Brendan Howlin.

5. In page 21, line 37, to delete “appeal” and substitute “cross-appeal”.

—Brendan Howlin.

6. In page 21, line 43, to delete “appeal” and substitute “cross-appeal”.

—Brendan Howlin.

SECTION 28

7. In page 24, before section 28, but in Part 3, to insert the following new section:

“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,

[SECTION 28]

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.

[SECTION 28]

(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.’”.

—An tAire Fiontar, Trádála agus Fostaíochta.

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

“(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”.

—An tAire Fiontar, Trádála agus Fostaíochta.

SECTION 29

9. In page 25, before section 29, to insert the following new section:

“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.”.

—An tAire Fiontar, Trádála agus Fostaíochta.

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

[**This is the appropriate reference if amendment no. 10 is accepted.*]

[SECTION 29]

10. In page 25, before section 29, to insert the following new section:

“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.”

—An tAire Fiontar, Trádála agus Fostaíochta.

SECTION 30

11. In page 25, line 21, after “law” to insert the following:

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

—An tAire Fiontar, Trádála agus Fostaíochta.

SECTION 32

12. In page 26, between lines 36 and 37, to insert the following subsection:

“(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.”.

—An tAire Fiontar, Trádála agus Fostaíochta.

SECTION 33

13. In page 27, before section 33, to insert the following new section:

“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.”.

—An tAire Fiontar, Trádála agus Fostaíochta.

SECTION 35

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

- “(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”.

—An tAire Fiontar, Trádála agus Fostaíochta.

[SECTION 35]

15. In page 28, subsection (1), to delete lines lines 11 and 12 and substitute the following:

“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;”.

—An tAire Fiontar, Trádála agus Fostaíochta.

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

“(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”.

—An tAire Fiontar, Trádála agus Fostaíochta.

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

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

—An tAire Fiontar, Trádála agus Fostaíochta.

SECTION 37

18. In page 30, lines 25 to 27, to delete subsection (2) and substitute the following:

“(2) Article 2 of the Companies (Recognition of Countries) Order 1964 (S.I. No. 42 of 1964) is amended by the substitution of ‘section 250’ for ‘sections 250 and 367’.”.

—Brendan Howlin.

SECTION 40

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

—An tAire Fiontar, Trádála agus Fostaíochta.

SECTION 43

20. In page 34, before section 43, to insert the following new section:

“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—

[SECTION 43]

- (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.”.

—An tAire Fiontar, Trádála agus Fostaíochta.

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

SECTION 44

21. In page 34, subsection (1), line 18, after “law” to insert the following:

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

—An tAire Fiontar, Trádála agus Fostaíochta.

SECTION 45

22. In page 35, between lines 14 and 15, to insert the following subsection:

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

—An tAire Fiontar, Trádála agus Fostaíochta.

SECTION 46

23. In page 36, subsection (4), line 35, after “registrar” to insert “of companies”.

—An tAire Fiontar, Trádála agus Fostaíochta.

SECTION 48

24. In page 37, between lines 23 and 24, to insert the following subsections:

“(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.”.

—An tAire Fiontar, Trádála agus Fostaíochta.

SECTION 53

25. In page 40, between lines 24 and 25, to insert the following:

“(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—

[SECTION 53]

- (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.”.

—An tAire Fiontar, Trádála agus Fostaíochta.

SECTION 72

26. In page 48, before section 72, but in Part 7, to insert the following new section:

“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 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

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

‘Securities for
the purposes of
section 2(iii)
and application
of that provi-
sion.

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.*’.”.

—An tAire Fiontar, Trádála agus Fostaíochta.

[*This is the appropriate reference if this amendment is accepted.]

27. In page 48, between lines 12 and 13, to insert the following subsection:

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

—An tAire Fiontar, Trádála agus Fostaíochta.

[*SCHEDULE*]

SCHEDULE

28. In page 52, between lines 34 and 35, to insert the following paragraph:

“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

[*SCHEDULE*]

(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.’.”

—An tAire Fiontar, Trádála agus Fostaíochta.

TITLE

29. In page 7, line 23, after “AMEND” to insert “THE IRISH TAKEOVER PANEL ACT 1997 AND”.

—An tAire Fiontar, Trádála agus Fostaíochta.