



**AN BILLE UM CHISTÍ INFHEISTÍOCHTA, CUIDEACHTAÍ
AGUS FORÁLACHA ILGHNÉITHEACHA 2005
INVESTMENT FUNDS, COMPANIES AND MISCELLANEOUS
PROVISIONS BILL 2005**

EXPLANATORY AND FINANCIAL MEMORANDUM

PART 1

PRELIMINARY AND GENERAL

General

This Part contains standard provisions necessary for the interpretation, commencement and operation of the Bill.

Section 1 contains the short title and the collective citation provisions.

Section 2 contains the Bill's commencement provisions.

Section 3 contains definitions for terms used throughout the Bill. Definitions required for specific Parts of the Bill are contained in those Parts.

Section 4 provides for the laying of orders and regulations before both Houses of the Oireachtas and empowering either House to annul the order or regulation within 21 days.

Section 5 provides the authority to meet the expenses incurred by the Minister in the administration of the Act.

PART 2

COMMON CONTRACTUAL FUNDS

General

The purpose of this Part is to provide for the introduction of a new type of investment fund vehicle — the non-UCITS Common Contractual Fund (CCF). The UCITS (Undertakings for Collective Investment in Transferable Securities) Regulations already provide for the UCITS CCF. These two categories are to be treated differently as a very specific regulatory system and set of rules, deriving from EU Directives, apply to UCITS CCFs. The provisions in this Part of the Act will govern non-UCITS CCFs.

Section 6 provides for the definition of terms used in this Part. In *sub-section (1)*, the 'Bank' is defined as the Central Bank and Financial Services Authority of Ireland and will delegate responsibility for the regulation of non-UCITS CCFs to the Irish Financial Services

Regulatory Authority (IFSRA). The definition for “common contractual fund” is phrased to exclude CCFs established as UCITS which are governed by Regulations transposing the relevant EU Directives. *Sub-section (2)* clarifies the meaning of references to management company and/or custodian in this Part. *Sub-section (3)* clarifies the position of authorisations revoked under the Act as applied by the UCITS Regulations under Section 18. *Sub-section (4)* provides for the relevant provisions of the UCITS Regulations as applied by Section 18 of this Part to be jointly construed with this Act.

Section 7 provides for the non-application of this Part to certain undertakings. *Sub-section (1)* ensures that the Act will not apply to UCITS CCFs. *Sub-section (2)* includes an express statement to say that non-UCITS CCFs will not constitute a partnership under the Partnership Acts or a unit trust under the Unit Trusts Act. This ensures that they will not be subject to the provisions of those Acts.

Section 8 deals with authorisation by the Bank of non-UCITS CCFs. *Sub-section (1)* outlines the conditions under which the Bank may make authorisations. This includes requirements around the competence, establishment, expertise and independent operation of the management company and custodian of the Fund. Other provisions include those relating to the deed of constitution and the name of the Fund. *Sub-section (2)* requires that the application for authorisation be made jointly by the management company and the custodian and allows the Bank to require such information as the Bank deems necessary for processing the application. *Sub-section (3)* indicates that the approval of the Bank does not constitute a warranty by the Bank as to the performance of the Fund.

Section 9 deals with public information and reporting on the authorisation of CCFs. *Sub-section (1)* provides that the Bank maintains a register of non-UCITS CCFs and *sub-section (2)* provides that the register be open for inspection. *Sub-section (3)* provides for the publication of a notice of authorisations in the *Iris Oifigiúil* and *sub-section (4)* provides for the publication of the names of all non-UCITS CCFs at least once a year. *Sub-sections (5) and (6)* make provisions around the Bank reporting to the Minister for Enterprise, Trade and Employment on the exercise of its functions provided for in this Part and *sub-section (7)* provides for the Minister laying a copy of these reports before each House of the Oireachtas.

Section 10 provides for the powers of the Bank. *Sub-sections (1), (2) and (3)* give the Bank the power to impose such conditions as it considers appropriate and prudent for the orderly and proper regulation of the business of CCFs. These conditions may be imposed for the purpose of authorisation or operation of the CCF and may be imposed generally or in specific cases. *Subsection (4)* identifies matters in which the Bank may impose conditions and *sub-section (5)* allows the Bank to change these conditions. *Sub-section (6)* provides that management companies and custodians must comply with requirements imposed by the Bank.

Section 11 deals with refusal of authorisation. *Sub-section (1)* provides that the Bank must notify the management company and the custodian of its decision to refuse an authorisation and its reasons for doing so. *Subsection (2)* allows the management company to apply to the High Court for a review of a decision by the Bank to refuse an authorisation. This is in accordance with the UCITS Regulations applied in Section 18. Under *sub-section (3)* a similar application to the High Court may be made if the Bank has not made a decision within 6 months of the application being submitted. It

should be noted here that although an application for authorisation must come jointly from a management company and a custodian, only the management company can appeal where the Bank refuses to authorise an application or fails to do so within the 6-month period. This is because the management company is the driving force behind the project and therefore it alone is afforded this right.

Section 12 deals with alteration in the deed of constitution of, or change in the name of, a CCF. *Sub-section (1)* provides that any alteration in the deed of constitution of a CCF must be approved by the Bank and creates an offence where alteration is made without this approval. It also makes any alterations made without the Bank's approval void. *Subsection (2)* requires the management company to deposit a copy of an altered deed of constitution with the Bank and *sub-section (3)* creates an offence where the management company fails to do this.

Section 13 deals with the replacement of a management company or custodian. *Sub-section (1)* requires that the deed of constitution specify the conditions for the replacement of the management company or custodian of the CCF and *sub-section (2)* provides that any such replacement must have the approval of the Bank.

Section 14 requires a management company to redeem units in the CCF at the request of the unit-holder at the going rate. *Sub-section (3)* creates an offence where a management company fails to redeem units as requested by the unit-holder.

Section 15 prohibits management companies and its subsidiaries from making certain profits for themselves under the CCF. *Sub-section (2)* creates an offence of such prohibited profit making.

Section 16 deals with the assets of a CCF. *Sub-section (1)* provides that the assets of a CCF will belong exclusively to the CCF and shall be held by the custodian. *Sub-section (2)* provides that where a CCF is established as an umbrella fund the assets of each sub-fund shall belong exclusively to that sub-fund effectively ring-fencing them from the other sub-funds in the umbrella. This ensures that each sub-fund will have segregated liability meaning the assets of one sub-fund cannot be used to discharge liabilities incurred by another sub-fund within the umbrella. This is an important provision from the point of view of investor protection as different sub-funds may operate different investment strategies involving varying degrees of risk. *Sub-section (3)* provides that the liabilities of an investor will be limited to the amount they have agreed to invest in the CCF and *sub-section (4)* provides that the investor will be bound by the provisions in the deed of constitution of the CCF.

Section 17 deals with the liability of custodians of a CCF. *Sub-section (1)* provides for the responsibility of the custodian to the investors and the management company and makes the custodian liable for loss arising from failure in performing duties. *Sub-section (2)* provides that investors may enforce this liability through the management company.

Section 18 applies certain provisions of the UCITS Regulations to non-UCITS CCFs subject to appropriate and necessary modifications including terminology. These include Regulations 63, 77 to 85 and 98 to 105. Regulation 63 allows suspension of purchase of units in exceptional circumstances with specific conditions attached.

Regulations 77 to 85 provide for the publication of annual and half-yearly reports and requirements around time-limits, contents, transmission of reports to the Bank, offering reports to potential investors, availability of reports to the public, supply of reports to unit-holders and auditing of the reports. Regulation 98 sets out requirements around the keeping of books and records as may be specified by the Bank and 99 provides for furnishing information to the Bank. Regulation 100 allows the Bank to make an application to the High Court to prohibit failure to comply with the Regulations where the court forms the opinion there is a failure to comply. Regulation 101 provides for the replacement by the Bank of a management company or custodian in certain circumstances; this is without prejudice to the CCFs ability to replace the management company or custodian provided for in Section 13 of this Act. Regulation 102 and 103 deal with revocation of an authorisation by the Bank in certain circumstances and 104 provides for other directions to be given by the Bank. Regulation 105 provides for the High Court on application to review a decision made by the Bank.

Section 19 makes officers of a body corporate guilty of an offence where they have facilitated a body corporate in committing an offence under this Part of the Act.

Section 20 makes it an offence for a person to contravene any provision in this Part of the Act even though the Act may not have specifically created an offence of such contravention. For example, failure to comply with conditions imposed by the Bank under *Section 10* will be an offence given the duty of compliance imposed by *Section 10(6)*.

Section 21 deals with penalties. *Sub-section (1)* sets out the liability of a person guilty of an offence in the case of summary conviction and conviction on indictment including penalties applicable in cases where offences continue after conviction. *Sub-section (2)* provides that persons guilty of offences under *Section 20* shall only be liable to summary conviction. *Sub-section (3)* provides that summary proceedings may be brought by the DPP or the Bank and *sub-section (4)* allows proceedings to be initiated within 3 years of an offence being committed.

PART 3

AMENDMENTS TO PART XIII OF ACT OF 1990

General

Part 3 provides for amendments to Part XIII of the Companies Act 1990 which deals with Investment Companies. The purpose of this Part is to provide for the introduction of cross investment and segregated liability for investment funds.

Section 22 amends Section 252 of the 1990 Act by the addition of definitions required for the purpose of this Part. These include definitions of 'management company', 'sub-fund' and 'umbrella fund'.

Cross-investment for Investment Funds

Section 23 amends Section 254 of the 1990 Act but retains the provision that an investment company may not purchase its own shares unless they are fully paid up. However, it goes on to provide that this will not prevent an acquisition of shares (by subscription or transfer) for the purpose of cross investment (from one sub-fund to

another within an umbrella fund) which is provided for in *Section 24* of this Act.

Section 24 amends *Section 255* of the 1990 Act by the insertion of a new subsection (3) which provides that an umbrella fund may acquire and hold funds in any of its sub-funds for the purpose of transferring the funds to another one of its sub-funds. Essentially this allows for cross investment in investment companies. It should be noted that, an umbrella fund may, for this purpose, only acquire by *subscription or transfer for consideration* and not by purchase so there is no conflict here with *Section 254(2)* which requires that an investment company may not purchase its own shares unless they are fully paid up. Furthermore, this does not interfere with *Section 253(2)(b)(ii)* of the 1990 Act which requires an investment company to purchase shares on request of investors in the fund.

Segregated Liability for Investment Funds

Section 25 provides for segregated liability for investment funds by the insertion of *Sections 256A, B, C, D and E* after *Section 256* of the 1990 Act.

Section 256A provides a mechanism by which segregated liability will apply to umbrella funds. *Subsection (1)* provides that any liabilities of a sub-fund will be discharged solely from the assets of that sub-fund. *Subsection (2)* provides that segregated liability will not apply to umbrella funds which had commenced trading before the commencement of this Act unless the members of the umbrella resolve that it should (by special resolution). *Subsection (3)* specifies what is meant by ‘commenced trading’ and *sub-section (4)(a)* specifies the date on which the special resolution takes effect if no application is made to the court under *section 256C*. *Sub-section 4(b)* deals with cases where an application is made to the court by creditors and instances where such an application is withdrawn or not. *Sub-section (5)* specifies requirements around meetings to consider a special resolution to have segregated liability apply to the umbrella fund.

Section 256B deals with notice to creditors of a special resolution under *section 256A*. *Sub-section (1)* specifies requirements around how notification should be made to creditors in advance of a meeting to consider a special resolution to have segregated liability apply to an umbrella fund. *Sub-section (2)* outlines what is meant by ‘relevant creditor’.

Section 256C provides that creditors may apply to court for an order delaying implementation of the special resolution. *Sub-section (3)* provides that any such order should specify the period for which it is to be in force which may last until the creditor ceases to be a creditor of the sub-fund or until the creditor agrees that segregated liability may be applied to the umbrella fund. *Sub-section (5)* gives creditors 28 days within which to make an application to the court from the time of notification of the meeting to consider a special resolution. *Sub-section (6)* specifies timeframes within which the creditor must notify the umbrella fund and IFSRA of an application made to the court and allows IFSRA and the umbrella fund to make representations to the court. *Sub-section (7)* sets out matters which the court may take into account when considering if it is just and equitable for an umbrella fund to avail of segregated liability and includes such things as terms of agreement between the creditor and umbrella, conduct of the umbrella to the creditor and reasonableness of the creditor opposing the resolution.

Section 256D deals with appeals from court orders given under *section 256C*. *Sub-section (1)* allows a creditor who has applied to the court or the umbrella fund against whom the order was sought

to appeal the court's decision and *sub-section (2)* sets a timeframe within which the appeal is to be lodged. *Sub-section (3)* requires an umbrella fund to notify the creditor who made the application and IFSRA, within certain timeframes, if the umbrella is appealing the court's decision and *sub-section (4)* requires a creditor appealing such decision to notify the umbrella fund and IFSRA, again within certain timeframes.

Section 256E sets out the requirements to be complied with by umbrella funds to which section 256A applies i.e. those availing of segregated liability. *Sub-section (1)* requires a statement to that effect on letterheads used by the umbrella fund and disclosure of that fact in any other dealings with third parties. *Sub-section (2)* sets out implied terms in contracts, agreements or arrangements entered into by an umbrella fund with segregated liability. *Sub-sections (3) and (4)* deal with sums recovered in certain instances and how these should be dealt with. *Sub-section (5)* deals with situations where assets of one sub-fund are used to fulfil liabilities not attributable to that sub-fund and what action should be taken to regularise the situation (e.g. transfer of assets from the sub-fund to which liability was attributable). *Sub-section (6)* provides that a sub-fund is not a legal person separate from the umbrella but the umbrella may sue and be sued and sub-funds may be subject to orders of the court as though they were a separate legal person by virtue of being a sub-fund of the umbrella. *Sub-section (7)* provides that assets of a sub-fund may be used to discharge liabilities of another sub-fund in the umbrella in cases of fraud or misrepresentation and in the application of certain provisions of the Companies Act as specified. *Sub-section (8)* deals with winding up of a sub-fund and the confined duties and responsibilities of a liquidator to that sub-fund and *sub-section (9)* deals with interpretations for the purpose of *sub-section (8)*.

Section 26 amends Section 257(4) of the 1990 Companies Act which relates to powers of IFSRA over investment companies. The purpose of this amendment is to extend IFSRA's powers to management companies of investment funds.

Section 27 amends Section 260 of the 1990 Act. The purpose of this amendment is to disapply certain provisions of the Companies (Amendment) Act 1983 to investment companies. This arises from the provisions of cross investment for investment companies.

PART 4

MARKET ABUSE

General

The purpose of Part 4 is to make enabling provisions which need to be enacted in primary law to ensure the smooth and effective transposition of the EU Market Abuse Directive and 3 supplementary Commission Directives. The Market Abuse Directive covers insider dealing and market manipulation.

Section 28 provides for definitions used in this Part. These include the definition of the '2003 Market Abuse Directive' and 'Irish market abuse law' which encompasses measures (e.g. regulations) made to transpose the Directive and supplementary Directives which must also be taken into account.

Section 29 outlines penalties on conviction on indictment of certain offences relating to market abuse. It provides for a maximum fine of €10,000,000 and/or maximum 10 years in prison for conviction on

indictment. Summary offences will be dealt with in the transposing regulations.

Section 30 provides for civil liability for breaches of Irish market abuse law. *Subsection (1)* deals with breaches concerning the insider dealing provisions of the Directive. It provides that a person contravening those provisions will be liable to pay compensation to a party involved in the transaction who was not in possession of the relevant information for loss suffered as a result. Typically this would be a difference in share price had the information been generally available. The guilty person must also account to the company issuing the shares for any profit made from the transaction. *Subsection (2)* deals with breaches concerning market manipulation and provides that a person contravening those provisions will be liable to compensate parties dealing in shares as a result of the breach. The guilty person must also account to the company issuing the shares for any profit made from the transaction. *Subsection (3)* ensures that the provisions in (1) and (2) shall not be affected by any other cause of action against the guilty person. *Subsection (4)* gives 2 years from the date of contravention for an action to be taken.

Section 31 gives IFSRA (the competent authority designate) the power to make supplementary rules to allow them to fulfil their role as competent authority. These rules must be consistent with Irish market abuse law. IFSRA may also issue guidelines around the steps to be taken to comply with Irish market abuse law.

Section 32 provides for an amendment to the Central Bank Act of 1942 to include the Market Abuse Directive (and related Directives) in the list of Directives for which the Central Bank has responsibility to enforce. This deals with confidentiality of information obtained by IFSRA and prohibits its disclosure except in accordance with those provisions.

Section 33 allows the Minister to prescribe by provisional order any market to which market abuse law shall apply. It is important that requirements under the Market Abuse Directive should be capable of being applied to any such new market. Any such provisional order made by the Minister has to be confirmed by an Act of the Oireachtas.

PART 5

PUBLIC OFFERS OF SECURITIES

General

Part 5 amends the Companies Act 1963 dealing with Offers of Securities to the Public in anticipation of the transposition of the EU Directive dealing with Prospectuses to be published when securities are listed or offered to the public.

Section 34 provides for definitions used in this Part. These include the definition of the '2003 Prospectus Directive' and 'Irish prospectus law' which encompasses measures (e.g. regulations) made to transpose the Directive and the EU Prospectus Regulation which has direct application. It also includes a definition of 'local offer' to deal with documents issued for certain transactions not regulated by the Directive. These will be required to contain a clear warning that such offers are not prepared pursuant to the Prospectus Directive and have not been reviewed prior to issue by any regulatory authority. A number of other definitions are included in order to clarify terms used in this Part.

Section 35 deals with the construction of certain terms in the 1963 Act in cases where provisions have been amended or inserted by this Part. It provides that any such insertions or amendments by this Part shall have the same meaning as provided by this Part.

Section 36 provides for necessary repeals and revocations which are being made in anticipation of the transposition of the Prospectus Directive.

Section 37 deals with civil liability for misstatement in prospectus and provides that certain persons will be liable to pay compensation to persons who acquired securities on faith of the prospectus for loss or damage sustained because of untrue statements or omissions in the prospectus. Persons liable include, inter alia, the issuer of the prospectus, the offeror of the securities, the guarantor of the issue of the securities, directors of the issuer, promoter of the issuer and those who authorised the issue of the prospectus.

Section 38 provides for exceptions and exemptions applying to *Section 37*. Liability shall not attach to the summary of a prospectus issued. Directors will not be liable if they had not given their consent or had withdrawn consent to the issue of the prospectus. A person may not be liable if he or she had reasonable grounds to believe the statement to be true or the omission to be properly omitted. Likewise if a statement by an expert was included and the person liable had reasonable grounds to believe the expert was competent and had consented to the inclusion of the statement he or she may not be liable. Experts will not be liable as a person who authorised the issue of a prospectus purely on the basis that they consented to the issue of a prospectus although they will be liable for untrue statements made by them. In this latter scenario experts may not be liable if they had withdrawn consent to the inclusion of their statement in the prospectus before publication or if they had withdrawn their consent after publication and made their reasons publicly known to those acquiring securities. Experts may also not be liable if they had reasonable grounds to believe the statement was true.

Section 39 provides for a restriction of liability in cases where certain non-equity securities are involved.

Section 40 provides for indemnification of certain persons in cases where a director has withdrawn his or her consent, has not consented to become a director or has not consented to the issue of a prospectus and to an expert who has withdrawn his or her consent or has not given his or her consent to the issue of a prospectus. The Directors of the issuer shall be liable to such directors and experts.

Section 41 provides that an expert must give his or her consent to the inclusion of statements made by him or her in a prospectus.

Section 42 provides for penalties on conviction on indictment for offences under Irish prospectus law. This would cover a situation where securities are offered to the public or listed without issuing a prospectus.

Section 43 provides for criminal liability for untrue statements and material omissions in a prospectus.

Section 44 deals with local offers. It sets out requirements for offering documents prepared for local offers and specifies statements which must be included in various places in those documents. As

defined in *Section 34* local offers are those where the total considerations for the offer is less than €2,500,000 but does not apply to offers exempted or excluded from the Directive.

Section 45 provides that a document prepared in accordance with EU prospectus law or an offering document does not constitute an investment advertisement within the meaning of the Investment Intermediaries Act 1995.

Section 46 gives IFSRA (the competent authority designate) the power to make supplementary rules to allow them to fulfil their role as competent authority. These rules must be consistent with Irish prospectus law. IFSRA may also issue guidelines around the steps to be taken to comply with Irish prospectus law.

Section 47 is a restatement of section 44(2) of the 1963 Act amended to encompass EU prospectus requirements. Essentially, it makes a condition requiring an applicant to waive compliance with this Part or EU prospectus law void.

Section 48 amends section 53 of the 1963 Act and removes the reference to Third Schedule which is repealed in *Section 36*.

Section 49 amends section 55 of the 1963 Act and is consequent on the repeal of section 54 under *Section 36*.

Section 50 amends section 57 of the 1963 Act and simply substitutes words in order to reflect new terminology being used in the Directive.

PART 6

MISCELLANEOUS COMPANY LAW AMENDMENTS

General

This Part deals with miscellaneous amendments to the Companies Acts 1963 to 2003.

Section 51 amends section 60 of the 1963 Act. A number of these amendments implement recommendations of the Company Law Review Group (CLRG).

Sections 52 provides for electronic filing agents. This was recommended by CLRG. It allows companies to appoint electronic filing agents to file documents with the Companies Registration Office (CRO) in electronic form. Advance notice must be given to the CRO of such an appointment. *Section 53* provides that a company may revoke an authorisation to act as an electronic filing agent and this takes effect once notified to the CRO.

Sections 54 and *55* provide for the reservation of a company name with the CRO. An application may be made to the Registrar to reserve a company name and a fee must be paid and this is set-off against the costs of registration if the name is taken up. A name may be reserved for 28 days and an applicant may seek an extension of this period for another 28 days only.

Section 56 amends subsection 6B(b) of section 128 of the 1963 Act. The purpose of this amendment is to clarify that the reference to section 193 in the text being amended is to section 193 of the Companies Act 1990.

Section 57 amends section 195 of the 1963 Act. It provides that a Director of a company may notify the CRO of a change in name or address and that one notification can be used to change those details in respect of all companies to which he or she is a Director. This was recommended by CLRG.

Section 58 amends section 301(1) of the 1963 Act. It extends the period within which liquidators may comply with notices issued by the CRO to encourage more widespread use of this provision and to avoid time consuming and expensive high court applications.

Section 59 amends section 371(1) of the 1963 Act and is a similar provision to that of *Section 58* but relates to ‘company’ and ‘officer’ as opposed to liquidator.

Section 60 amends section 12B of the Companies (Amendment) Act 1982. It allows the CRO in the event of striking off a company for failure to make annual returns to advertise their intention to do so in the CRO Gazette in cases where they have no registered office address for the company. It will apply where a company fails to make an annual return for 20 consecutive years and will only relate to companies incorporated prior to 1982 as since then companies must provide a registered office from the date of its incorporation.

Section 61 amends section 19(2) of the 1990 Act. The purpose of the amendment is to extend the powers of the Office of the Director of Corporate Enforcement (ODCE) in requiring production of documents to include where circumstances suggest that the affairs of a body are or have been conducted in a way that is unfairly prejudicial to some or all of its creditors.

Section 62 amends section 21(3) of the 1990 Act. This amendment will allow ODCE to share confidential information with the Irish Auditing and Accounting Supervisory Authority (IAASA) for the purposes relevant to IAASA’s statutory functions.

Section 63 amends section 166 of the 1990 Act. The purpose of this amendment is to give the court discretion regarding whether or not directors should file certain notices (directorships and disqualifications) in civil and criminal proceedings. Currently, such filing is mandatory. In future the court can request such information where it considers it necessary. It is felt the current provision, in certain situations, could have the effect of undermining an accused person’s privilege against self-incrimination.

Section 64 amends section 242 of the 1990 Act. Currently, that section makes it an offence to *produce, lodge or deliver* a document containing false information to the CRO. This amendment extends the offence to a person who *completes or signs* such a document. This was recommended by CLRG.

Section 65 makes several amendments to the Companies Acts to replace the requirement to publish certain notices in *Iris Oifigiúil* with a requirement to publish them in the CRO Gazette. The establishment of the CRO Gazette was provided for in 2004 and facilitates Ireland’s application of the First EU Company Law Directive. Essentially it is a national centrally based electronic gazette which is held and maintained by the CRO on its website.

Section 66 is designed to address a number of incorrect references made in Schedule 2 of the Companies (Auditing and Accounting)

Act 2003. That Act amended the 1963 Act so this section deletes the incorrect references made in the 2003 Act and makes the correct amendments to the 1963 Act.

PART 7

MISCELLANEOUS AMENDMENTS

General

This Part deals with miscellaneous amendments, most of which are amendments to consumer legislation to increase the maximum level of fines on conviction to bring them up to date. The UCITS Regulations are amended to provide for cross investment and segregated liability for UCITS.

Amendment of UCITS Regulations

Section 67 provides for amendments to the UCITS Regulations as set out in the Schedule. The amendments are made to the European Communities (Undertakings for Collective Investment in Transferable Securities) Regulations (S.I. 211 of 2003) as amended. The purpose of these amendments is to provide for cross investment and segregated liability for UCITS investment companies consistent with the changes made for investment companies in Part 3 of this Act.

Section 68 amends section 26 of the Prices Act 1958 to increase the maximum penalties on conviction under the Prices Acts.

Section 69 amends section 23 of the Restrictive Practices Act 1972 to increase the maximum penalties on conviction under the Restrictive Practices Acts.

Section 70 amends section 17 of the Consumer Information Act 1978 to increase the maximum penalties on conviction under that Act.

Section 71 amends section 6 of the Sale of Goods and Supply of Services Act 1980 to increase the maximum penalties on conviction under that Act.

Section 72 amends section 13 of the Consumer Credit Act 1995 to increase the maximum penalties on conviction under that Act.

Section 73 amends the Package Holidays and Travel Trade Act 1995 in two respects. Firstly to increase the maximum penalties on conviction under that Act and secondly to increase the timeframe within which a prosecution may be taken from 12 months to 2 years.

Section 74 amends section 31 of the National Standards Authority of Ireland Act 1996 to increase the maximum penalties on conviction under that Act.

SCHEDULE

The Schedule amends the Undertakings for Collective Investment in Transferable Securities (UCITS) Regulations 2003 (S.I. No. 211 of 2003) as amended. It is proposed to allow sub-funds in an umbrella UCITS cross invest and to provide for segregated liability for the

sub-funds. Some new Regulations are included to provide for cross investment and segregated liability for UCITS and consequential amendments are made to relevant existing Regulations.

Financial Implications

It is not expected that this Act will give rise to any additional costs for the Exchequer.

Staffing Implications

The Act will not give rise to any additional staffing requirements.

*An Roinn Fiontar, Trádála agus Fostaíochta,
Márta, 2005.*