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PARTS 16 TO 25 AND SCHEDULES

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PART 16

DESIGNATED ACTIVITY COMPANIES

CHAPTER 1

Preliminary and definitions

Definitions (Part 16)

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965. In this Part—

“constitution” shall be read in accordance with *section 969(1)*;

“DAC limited by guarantee” means a DAC falling within *paragraph (b)* of the definition of “designated activity company” in this section;

“DAC limited by shares” means a DAC falling within *paragraph (a)* of the definition of “designated activity company” in this section; 10

“designated activity company” or “DAC” means a company that, as provided under *section 967(2)*, has either—

(a) the status of a private company limited by shares registered under this Part (as distinct from a private company limited by shares registered under *Part 2*); or 15

(b) the status of a private company limited by guarantee, and having a share capital.

Application of Parts 1 to 14 to DACs

966. (1) The provisions of *Parts 1* to *14* apply to a DAC except to the extent that they are disappplied or modified by—

(a) this section; or 20

(b) any other provision of this Part.

(2) For the purposes of that application, *section 10* shall have effect as if it read:

“Unless expressly provided otherwise, a reference in *Parts 2* to *14* to a company is a reference to a DAC.”.

(3) Subject to *subsection (4)*, the provisions of this Act specified in the Table to this section shall not apply to a DAC. 25

(4) In relation to a DAC limited by guarantee the non-application of *section 32(1)* is provided for by *section 979* and, accordingly, the entry of that provision in the Table to this section shall (so far as it relates to that type of DAC) be disregarded.

(5) The specification in the foregoing Table of a provision (a “specified provision”) of *Parts 1* to *14* also operates to disapply to a DAC any other provision of those Parts (notwithstanding that it is not specified in that Table) that makes consequential, incidental or supplemental provision on, or in relation to, the specified provision. 30

Table
Provisions disapplied to DACs

Subject matter	Provision disapplied	
Way of forming a private company limited by shares	<i>Section 17</i>	5
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Provisions as to names of companies	<i>Section 26(1) to (4)</i>	
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Variation of rights attached to special classes of shares	<i>Section 88</i>	15
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Holding of any other office or place of profit under the company by director	<i>Section 162</i>	
Liability as contributories of past and present members	<i>Section 655</i>	

CHAPTER 2

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Incorporation and consequential matters

Way of forming a DAC and the 2 types of DAC

967. (1) A DAC may be formed for any lawful purpose by any person or persons subscribing to a constitution and complying with the relevant provisions of—

(a) *Chapter 2 of Part 2*, as applied by this Part, and

(b) this Part,

in relation to registration of a DAC.

(2) If the memorandum of the DAC contains the statement referred to in—

(a) *section 969(2)(b)(i)*, the DAC shall have the status of a private company limited by shares registered under this Part (as distinct from a private company limited by shares registered under *Part 2*), or

(b) *section 969(2)(b)(ii)*, the DAC shall have the status of a private company limited by guarantee, and having a share capital.

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- (3) Without prejudice to the means by which a DAC may be formed under the relevant provisions referred to in *subsection (1)*, a company may be registered as a DAC by means of—
- (a) re-registration as a DAC (but only as one limited by shares) pursuant to *Chapter 6 of Part 2*, 5
 - (b) the re-registration, or registration, as a DAC of a body corporate pursuant to *Part 20* or *Part 22*,
 - (c) the merger of 2 or more companies pursuant to *Chapter 3 of Part 9*,
 - (d) the division of a company pursuant to *Chapter 4 of Part 9*, or
 - (e) the merger operation provided for by the European Communities (Cross-Border Mergers) Regulations 2008 (S.I. No. 157 of 2008). 10
- (4) The liability of a member of a DAC at any time shall be limited—
- (a) in the case of a DAC limited by shares, to the amount, if any, unpaid on the shares registered in the member's name at that time,
 - (b) in the case of a DAC limited by guarantee, to— 15
 - (i) the amount undertaken, as mentioned in *section 969(2)(e)*, to be contributed by him or her to the assets of the DAC in the event of its being wound up, and
 - (ii) the amount, if any, unpaid on the shares registered in the member's name at that time. 20
- (5) *Subsection (4)* is without prejudice to any other liability to which a member may be subject as provided by this Act.
- (6) The number of members of a DAC shall not exceed 149 but, in reckoning that limit, there shall be disregarded any of the following persons.
- (7) Those persons are— 25
- (a) a person in the employment of the DAC who is a member of it,
 - (b) a person who, having been formerly in the employment of the DAC, was, while in that employment, and has continued after the termination of the employment to be, a member of it.
- (8) Where 2 or more persons hold one or more shares in a DAC jointly, they shall, for the purposes of this section, be treated as a single member. 30
- (9) Any registration of a person as a member of a DAC in excess of the limit provided by *subsection (6)* shall be void.
- (10) The certificate of incorporation issued under *section 25(1)* shall state that the company is a designated activity company limited by shares or, as the case may be, a designated activity company limited by guarantee. 35

DAC to carry on activity in the State

968. A DAC shall not be formed and registered unless it appears to the Registrar that the

DAC, when registered, will carry on an activity in the State, being an activity that is mentioned in its memorandum.

The form of a DAC's constitution

969. (1) Subject to *subsection (3)*, the constitution of a DAC shall be in the form of a memorandum of association and articles of association which together are referred to in this Part as a “constitution”. 5

(2) The memorandum of association of a DAC shall state—

- (a) its name,
- (b) that it is a designated activity company having the status, as the case may be, of—
 - (i) a private company limited by shares, or
 - (ii) a private company limited by guarantee, and having a share capital, registered under this Part,
- (c) its objects,
- (d) in the case of a DAC limited by shares, the amount of share capital with which the DAC proposes to be registered and the division thereof into shares of a fixed amount, 15
- (e) in the case of a DAC limited by guarantee — in addition to the matter set out in the preceding paragraph — that each member undertakes that, if the company is wound up while he or she is a member, or within one year after the date on which he or she ceases to be a member, he or she will contribute to the assets of the company such amount as may be required for—
 - (i) payment of the debts and liabilities of the company contracted before he or she ceases to be a member,
 - (ii) payment of the costs, charges and expenses of winding up, and 25
 - (iii) adjustment of the rights of contributories among themselves, not exceeding an amount specified in the memorandum.

(3) The constitution of a DAC shall—

- (a) in addition to the matters specified in *subsection (2)*, state the number of shares (which shall not be less than one) taken by each subscriber to the constitution, 30
- (b) be in accordance with the form set out in—
 - (i) *Schedule 7* — in the case of a DAC limited by shares, or
 - (ii) *Schedule 8* — in the case of a DAC limited by guarantee, or, in either case, as near thereto as circumstances permit,
- (c) be printed in an entire format, that is to say the memorandum and articles shall be contained in the one document, being a document either in legible form or (as long as it is capable of being reproduced in legible form) in non-legible form, and 35

- (d) either—
 - (i) be signed by each subscriber in the presence of at least one witness who shall attest the signature, or
 - (ii) be authenticated in the manner referred to in *section 888*.

Supplemental provisions in relation to constitution

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970. (1) This section—

- (a) contains provisions as to the articles of a DAC, and
- (b) provides that, in certain circumstances, a default position shall obtain in relation to the articles of a DAC.

(2) In this section—

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“mandatory provision” means a provision of any of *Parts 1 to 14* (as applied by this Part) or of this Part that is not an optional provision;

“optional provision” means a provision of any of *Parts 1 to 14* (as applied by this Part) or of this Part that—

- (a) contains a statement to the effect, or is governed by provision elsewhere to the effect, that the provision applies save to the extent that the constitution provides otherwise or unless the constitution states otherwise; or
- (b) is otherwise of such import.

(3) The articles of a DAC may contain regulations in relation to the DAC.

(4) So far as the articles of a DAC do not exclude or modify an optional provision, that optional provision shall apply in relation to the DAC.

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(5) Articles, instead of containing any regulations in relation to the DAC, may consist solely of a statement to the effect that the provisions of the *Companies Act 2014* are adopted and, if the articles consist solely of such a statement, *subsection (4)* shall apply.

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Provisions as to names of DACs

971. (1) The name of a DAC shall end with one of the following:

- designated activity company;
- cuideachta ghníomhaíochta ainmnithe.

(2) The words “designated activity company” may be abbreviated to “d.a.c.” or “dac” (including either such abbreviation in capitalised form) in any usage after the company’s registration by any person including the DAC.

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(3) The words “cuideachta ghníomhaíochta ainmnithe” may be abbreviated to “c.g.a.” or “cga” (including either such abbreviation in capitalised form) in any usage after the company’s registration by any person including the DAC.

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(4) A DAC carrying on business under a name other than its corporate name shall register in the manner directed by law for the registration of business names but the use of the

abbreviations set out in *subsection (2)* or *(3)* shall not of itself render such registration necessary.

Trading under a misleading name

972. (1) Subject to *subsection (6)*, neither a body that is not a DAC nor an individual shall carry on any trade, profession or business under a name which includes, as its last part, the words “designated activity company”, or “cuideachta ghníomhaíochta ainmnithe” or abbreviations of those words.

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(2) If a body or individual contravenes *subsection (1)*, the body or individual and, in the case of a body, any officer of it who is in default, shall be guilty of a category 3 offence.

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(3) A DAC shall not, in the following circumstances, use a name which may reasonably be expected to give the impression that it is any type of a company other than a DAC or that it is any other form of body corporate.

(4) Those circumstances are circumstances in which the fact that it is a DAC is likely to be material to any person.

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(5) If a DAC contravenes *subsection (3)*, the DAC and any officer of it who is in default shall be guilty of a category 3 offence.

(6) *Subsection (1)* shall not apply to any company—

(a) to which *Part 21* applies, and

(b) which has provisions in its constitution that would entitle it to rank as a DAC if it had been registered in the State.

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Power to dispense with “designated activity company” or Irish equivalent in name of charitable and other companies

973. (1) A DAC shall, notwithstanding its registration as a company with limited liability, be exempt from the provisions of this Act relating to the use of the words “designated activity company” or “cuideachta ghníomhaíochta ainmnithe” as part of its name and the publishing of its name, but shall enjoy all the privileges and shall (subject to this section) be subject to all the obligations of a DAC, where—

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(a) its objects are the promotion of commerce, art, science, education, religion, charity or any other prescribed object, and

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(b) its constitution—

(i) requires its profits (if any) or other income to be applied to the promotion of its objects,

(ii) prohibits the making of distributions to its members, and

(iii) requires all the assets which would otherwise be available to its members to be transferred on its winding up to another company whose objects comply with *paragraph (a)* and which meets the requirements of this paragraph,

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and

- (c) a director or secretary of the company (or, in the case of an association about to be formed as a limited company, one of the persons who are to be the first directors or the person who is to be the first secretary of the company) has delivered to the Registrar a statement in the prescribed form that the company complies or, where applicable, will comply with the requirements of *paragraphs (a)* and *(b)*. 5
- (2) The Registrar shall refuse to register as a DAC any association about to be formed as a DAC by a name which does not include the words “designated activity company” or “cuideachta ghníomhaíochta ainmnithe” unless a statement, as provided for under *subsection (1)(c)*, has been delivered to the Registrar. 10
- (3) An application by a company registered as a DAC for a change of name, being a change that includes or consists of the omission of the words “designated activity company” or “cuideachta ghníomhaíochta ainmnithe”, shall be made in accordance with *section 30* and the Registrar shall refuse to accede to the application unless a statement, as provided for under *subsection (1)(c)*, has been delivered to the Registrar. 15
- (4) A DAC which is exempt under *subsection (1)* and which is permitted to omit the words “designated activity company” or “cuideachta ghníomhaíochta ainmnithe” from its name shall not alter its constitution so that it ceases to comply with the requirements of that subsection.
- (5) If it appears to the Registrar that a DAC which is registered under a name not including the words “designated activity company” or “cuideachta ghníomhaíochta ainmnithe”—20
- (a) has carried on any business other than the promotion of any of the objects mentioned in *subsection (1)(a)*,
 - (b) has applied any of its profits or other income otherwise than in promoting such objects, or25
 - (c) has made a distribution to any of its members,
- the Registrar may, in writing, direct the DAC to change its name within such period as may be specified in the direction so that its name ends with the words “designated activity company” or “cuideachta ghníomhaíochta ainmnithe”, and the change of name shall be made in accordance with *section 30*. 30
- (6) A DAC which has received a direction under *subsection (5)* shall not thereafter be registered by a name which does not include the words “designated activity company” or “cuideachta ghníomhaíochta ainmnithe” without the approval of the Registrar.
- (7) A person who—35
- (a) alters the constitution of a DAC in contravention of *subsection (4)*, or
 - (b) fails to comply with a direction from the Registrar under *subsection (5)*,
- shall be guilty of a category 3 offence.
- (8) *Subsections (9) to (12)* have effect notwithstanding—
- (a) the repeal by the Act of 2001 of section 24, as originally enacted, of the Act of 1963 (the “original section 24”), or40

- (b) the repeal by this Act of section 24, inserted by section 88(1) of the Act of 2001, of the Act of 1963 (the “substituted section 24”) or of the Act of 2001.
- (9) A licence that—
- (a) had been granted by the Minister pursuant to subsection (1) or (2) of the original section 24 to a private company limited by shares (being a company that has re-registered as a DAC pursuant to *Chapter 6 of Part 2*), and 5
 - (b) is in force immediately before the commencement of this section,
shall continue to have effect but with the modification that it shall operate to exempt the company from the use of the words “designated activity company” or “cuideachta ghníomhaíochta ainmnithe” as part of its name and the publishing of its name. 10
- (10) Subsections (4) to (7) of the original section 24 shall continue in force in relation to the foregoing licence as if that section 24 had never been repealed, except that references in those subsections to the Minister, wherever occurring, shall be read as references to the Registrar.
- (11) An exemption that immediately before the repeal of the Act of 2001 operated, by virtue of the substituted section 24, in favour of a private company limited by shares (being a company that has re-registered as a DAC pursuant to *Chapter 6 of Part 2*) shall continue to have effect but— 15
- (a) with the modification that it shall operate to exempt the company from the use of the words “designated activity company” or “cuideachta ghníomhaíochta ainmnithe” as part of its name and the publishing of its name, and 20
 - (b) subject to *subsection (12)*.
- (12) *Subsections (4) to (7)* shall, with the necessary modifications, apply to a foregoing exemption as they apply to an exemption under *subsection (1)*.
- (13) In relation to a DAC that avails itself of the exemption under *subsection (1)*, or continues to avail itself of a licence or exemption referred to in *subsection (9)* or *(11)*, *section 151* shall have effect as if, in addition to the particulars specified in *subsection (2)(a) to (c)* of that section to be included on all business letters and order forms of the DAC, there were specified in that subsection the fact of the DAC being a limited company. 25 30
- (14) In this section “Act of 2001” means the Company Law Enforcement Act 2001.

Prohibition on certain provisions in constitution, etc.

- 974.** Any provision in the memorandum or articles of a DAC, or in any resolution of a DAC, purporting to give any person a right to participate in the divisible profits of the company, otherwise than as a member, shall be void. 35

Capacity of a DAC

- 975.** (1) A DAC shall have the capacity to do any act or thing stated in the objects set out in its memorandum.
- (2) For the purposes of *subsection (1)*—

(a) the reference in it to an object includes a reference to anything stated in the memorandum to be a power to do any act or thing (whether the word “power” is used or not),

(b) if an object is stated in the DAC’s memorandum without the following also being stated in relation to it, the capacity of the DAC extends to doing any act or thing that appears to it to be requisite, advantageous or incidental to, or to facilitate, the attainment of that object and that is not inconsistent with any enactment,

and a subsequent reference in this Part to an object of a DAC shall be read accordingly.

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Capacity not limited by a DAC’s constitution

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976. (1) The validity of an act done by a DAC shall not be called into question on the ground of lack of capacity by reason of anything contained in the DAC’s objects.

(2) A member of a DAC may bring proceedings to restrain the doing of an act which, but for *subsection (1)*, would be beyond the DAC’s capacity but no such proceedings shall lie in respect of any act to be done in fulfilment of a legal obligation arising from a previous act of the DAC.

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(3) Notwithstanding the enactment of *subsection (1)*, it remains the duty of the directors to observe any limitations on their powers flowing from the DAC’s objects and action by the directors which, but for *subsection (1)*, would be beyond the DAC’s capacity may only be ratified by the DAC by special resolution.

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(4) A resolution ratifying such action shall not affect any liability incurred by the directors or any other person; if relief from any such liability is to be conferred by the DAC it must be agreed to separately by a special resolution of it.

(5) A party to a transaction with a DAC is not bound to enquire as to whether it is permitted by the DAC’s objects.

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Alteration of objects clause by special resolution

977. (1) Subject to *subsection (2)*, a DAC may, by special resolution, alter the provisions of its memorandum of association by abandoning, restricting or amending any existing object or by adopting a new object and any alteration so made shall be as valid as if originally contained therein, and be subject to alteration in like manner.

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(2) If an application is made to the court in accordance with this section for the alteration to be cancelled, it shall not have effect except in so far as it is confirmed by the court.

(3) Subject to *subsection (4)*, an application under this section may be made—

(a) by the holders of not less, in the aggregate, than 15 per cent in nominal value of the DAC’s issued share capital or any class thereof, or

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(b) by the holders of not less than 15 per cent of the DAC’s debentures, entitling the holders to object to alterations of its objects.

(4) An application shall not be made under this section by any person who has consented to or voted in favour of the alteration.

- (5) An application under this section shall be made within 21 days after the date on which the resolution altering the DAC's objects was passed and may be made on behalf of the persons entitled to make the application by such one or more of their number as they may appoint in writing for the purpose.
- (6) On an application under this section, the court may—
- (a) make an order cancelling the alteration or confirming the alteration, either wholly or in part, and on such terms and conditions as it thinks fit, and
 - (b) if it thinks fit, adjourn the proceedings in order that an arrangement may be made to the satisfaction of the court for the purchase of the interests of dissenting members and may give such directions and make such orders as it may think expedient for facilitating or carrying into effect any such arrangement.
- (7) An order under this section may, if the court thinks fit, provide for the purchase by the DAC of the shares of any members of the DAC and for the reduction accordingly of the DAC's company capital and may make such alterations in the constitution of the DAC as may be required in consequence of that provision; and such a purchase may be so ordered notwithstanding anything in *section 102*.

Supplemental provisions in relation to *section 977*

- 978.** (1) Where an order under *section 977* requires the DAC not to make any, or any specified, alteration in its constitution, then, notwithstanding anything in this Act, but subject to the provisions of the order, the DAC shall not have power, without the leave of the court, to make any such alteration in contravention of that requirement.
- (2) Any alteration in the constitution of a DAC made by virtue of an order under *section 977*, other than one made by resolution of the DAC, shall be of the same effect as if duly made by resolution of the DAC and the provisions of this Act shall apply to the constitution as so altered accordingly.
- (3) Notice of the meeting at which the special resolution altering a DAC's objects is intended to be proposed shall be given to any holders of the DAC's debentures that entitle the holders to object to alterations of its objects; that notice shall be the same as that given to members of the DAC, so however that not less than 10 days notice shall be given to the holders of any such debentures.
- (4) If the written resolution procedure is used in the matter, notice, which shall not be less than 10 days, of the proposed use of that procedure shall, together with a copy of the proposed text of the resolution, be given to the debenture holders referred to in *subsection (3)*.
- (5) In default of any provisions in the DAC's constitution regulating the giving to the foregoing debenture holders of notice referred to in *subsection (3)* or *(4)*, the provisions of *Part 4* or, as the case may be, of the DAC's constitution regulating the giving of notice to members shall apply.
- (6) Without prejudice to *subsections (3)* and *(4)*, in the case of a DAC which is, by virtue of *section 973*, permitted to omit the words "designated activity company" or "cuideachta ghníomhaíochta ainmnithe" from its name, notice of—
- (a) the meeting at which the special resolution altering a DAC's objects is intended

- to be proposed, or
- (b) if the written resolution procedure is used in the matter, notice of the proposed use of that procedure, together with a copy of the proposed text of the resolution, shall be given to the Registrar and *subsections (3) to (5)* shall apply as respects such notice as they apply as respects notice of the meeting or resolution to debenture holders.
- (7) Where a DAC passes a resolution altering its objects—
- (a) if no application is made under *section 977* with respect to the alteration, it shall, within 15 days after the end of the period for making such an application, deliver to the Registrar a copy of its memorandum of association as altered, and 10
- (b) if such an application is made, it shall—
- (i) forthwith give notice of that fact to the Registrar, and
- (ii) within 15 days after the date of any order cancelling or confirming the alteration, deliver to the Registrar a certified copy of the order and, in the case of an order confirming the alteration, a copy of the memorandum as altered. 15
- (8) The court may by order at any time extend the time for delivery of documents to the Registrar under *subsection (7)(b)* for such period as the court may think proper.
- (9) If a DAC makes default in giving notice or delivering any document to the Registrar as required by *subsection (7)*, the DAC and any officer of it who is in default shall be guilty of a category 4 offence. 20

Restriction of *section 32(1)* in relation to a DAC limited by guarantee

- 979.** (1) Other than in respect of making an amendment of the type specified in *subsection (2)*, *section 32(1)* shall not apply in relation to a DAC limited by guarantee.
- (2) The amendment referred to in *subsection (1)* is an amendment of the amount referred to in *section 969(2)(e)* that is specified in the memorandum of the DAC limited by guarantee. 25

Alteration of articles by special resolution

- 980.** (1) Subject to the provisions of this Act and to the conditions contained in its memorandum, a DAC may, by special resolution, alter or add to its articles. 30
- (2) Any alteration or addition so made in the articles shall, subject to the provisions of this Act, be as valid as if originally contained therein and be subject in like manner to alteration by special resolution.

Power to alter provisions in memorandum which could have been contained in articles

- 981.** (1) Subject to *subsection (2)*, *sections 32(4)* and *(5)* and *212*, any provision contained in a DAC's memorandum which could lawfully have been contained in articles instead of in the memorandum may, subject to the provisions of this section, be altered by the DAC by special resolution. 35

- (2) If an application is made to the court for the alteration to be cancelled, it shall not have effect except in so far as it is confirmed by the court.
- (3) This section shall not apply where the memorandum itself provides for or prohibits the alteration of all or any of the foregoing provisions, and shall not authorise any variation or abrogation of the special rights of any class of members.
- (4) *Section 977(3) to (7)* (other than *subsection (3)(b)*) and *section 978* (other than *subsections (3) to (6)*) shall apply in relation to any alteration and to any application made under this section as they apply in relation to alterations and to applications made under those sections.

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CHAPTER 3

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Share capital

Status of existing guarantee company, having a share capital

982. (1) This section—

- (a) makes provision as to the status of an existing guarantee company, having a share capital; and
- (b) continues in force the memorandum and articles of such a company.

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(2) In this section—

“existing guarantee company, having a share capital” means a private company limited by guarantee, having a share capital, which—

- (a) was incorporated under any former enactment relating to companies (within the meaning of *section 5*); and

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- (b) is in existence immediately before the commencement of this section;

“mandatory provision” means a provision of any of *Parts 1 to 14* (as applied by this Part) or of this Part that is not an optional provision;

“optional provision” means a provision of any of *Parts 1 to 14* (as applied by this Part) or of this Part that—

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- (a) contains a statement to the effect, or is governed by provision elsewhere to the effect, that the provision applies save to the extent that the constitution provides otherwise or unless the constitution states otherwise; or

- (b) is otherwise of such import.

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(3) An existing guarantee company, having a share capital shall, on and from the commencement of this section, continue in existence and be deemed to be a DAC limited by guarantee to which this Part applies.

(4) *Section 983* contains provisions—

- (a) for enabling such a company to continue to use, for a limited period, “limited” or “teoranta” in its name despite the foregoing status that it has assumed; and

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- (b) deeming the name of such a company, after a specified period and in default of its having changed its name in that fashion, to be altered by the replacement of—

- (i) “designated activity company” for “limited” at the end thereof; or
 - (ii) “cuideachta ghníomhaíochta ainmnithe” for “teoranta” at the end thereof,
as the case may be.
- (5) Reference, express or implied, in this Act to the date of registration of a company mentioned in a preceding subsection shall be read as a reference to the date on which the company was registered under the Joint Stock Companies Act 1862, the Companies (Consolidation) Act 1908 or the prior Companies Acts, as the case may be. 5
- (6) The memorandum and articles of an existing guarantee company, having a share capital shall—
- (a) save to the extent that they are inconsistent with a mandatory provision, and 10
 - (b) in the case of the memorandum, subject to *section 983(6)*,
continue in force but may be altered or added to under and in accordance with the conditions under which memorandums or articles, whenever registered, are permitted by this Act to be altered or added to.
- (7) References in the provisions of a memorandum or articles so continued in force to any provision of the prior Companies Acts shall be read as references to the corresponding provision of this Act. 15
- (8) To the extent that an existing guarantee company, having a share capital was, immediately before the commencement of this section, governed by—
- (a) the regulations of Table D in the First Schedule to the Act of 1963, or 20
 - (b) the regulations of any Table referred to in section 3(9)(b), (c) or (d) of the Act of 1963,
it shall, after that commencement, continue to be governed by those regulations but—
- (i) this is save to the extent that those regulations are inconsistent with a mandatory provision, 25
 - (ii) those regulations may be altered or added to under and in accordance with the conditions under which articles, whenever registered, are permitted by this Act to be altered or added to, and
 - (iii) references in the regulations to any provision of the prior Companies Acts shall
be read as references to the corresponding provision of this Act. 30

Transitional provision — use of “limited” or “teoranta” by existing guarantee company, having a share capital

983. (1) In this section—

“existing guarantee company, having a share capital” has the same meaning as it has in *section 982*; 35

“new provisions” means the provisions of this Part (and the relevant provisions of Part 2 as applied by this Part) relating to the use of either of the required sets of words (or their abbreviations) set out in *subsection (2)*;

“transition period” means the period of 18 months beginning after the commencement of this section.

(2) For the purposes of this section, each of the following is a required set of words—

- (a) “designated activity company”;
- (b) “cuideachta ghníomhaíochta ainmnithe”.

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(3) The reference—

- (a) in the preceding definition of “new provisions”, and
- (b) in *subsection (4)*,

to provisions relating to the use of any words includes a reference to provisions conferring an exemption from the use of those words.

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(4) During—

- (a) the transition period, or
- (b) if before the expiry of that period the company has changed its name to include either of the required sets of words, the period preceding the making of that change,

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the provisions of the prior Companies Acts relating to the use of limited or teoranta (or their abbreviations) shall apply as respects the name of an existing guarantee company, having a share capital in place of the new provisions.

(5) On and from—

- (a) the expiry of the transition period, or
- (b) the company changing its name to include either of the required sets of words, whichever happens first, the new provisions shall apply as respects the name of an existing guarantee company, having a share capital.

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(6) Without prejudice to the generality of *subsection (5)*, on the expiry of the transition period (and the company has not changed its name before then to include either of the required sets of words), the name of an existing guarantee company, having a share capital, as set out in its memorandum, shall be deemed to be altered by the replacement of—

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- (a) “designated activity company” for “limited” at the end thereof, or
- (b) “cuideachta ghníomhaíochta ainmnithe” for “teoranta” at the end thereof,

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as the case may be.

(7) Where the name, as set out in its memorandum, of an existing guarantee company, having a share capital is altered by virtue of *subsection (6)*, the Registrar shall issue to the company a fresh certificate of incorporation in respect of it, being a certificate of incorporation that is altered to meet the circumstances of the case.

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Limitation on offers by DACs of securities to the public

984. Section 68 shall apply to a DAC as if the following subsection were substituted for

subsection (2):

“(2) A company shall—

(a) neither apply to have securities (or interests in them) admitted to trading or to be listed on, nor

(b) have securities (or interests in them) admitted to trading or listed on,

any market, whether a regulated market or not, in the State or elsewhere; however nothing in this subsection prohibits the admission to trading or listing (or an application being made therefor) on any market of debentures (or interests in them) for the purposes of any of paragraphs (a) to (e) of subsection (3).”.

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Variation of rights attached to special classes of shares

985. (1) This section shall have effect with respect to the variation of the rights attached to any class of shares in a DAC whose share capital is divided into shares of different classes, whether or not the DAC is being wound up.

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(2) Where the rights are attached to a class of shares in the DAC otherwise than by the memorandum, and the articles of the DAC do not contain provision with respect to the variation of the rights, those rights may be varied if, but only if—

(a) the holders of 75 per cent, in nominal value, of the issued shares of that class, consent in writing to the variation, or

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(b) a special resolution, passed at a separate general meeting of the holders of that class, sanctions the variation,

and any requirement (however it is imposed) in relation to the variation of those rights is complied with, to the extent that it is not comprised in the requirements in paragraphs (a) and (b).

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(3) Where—

(a) the rights are attached to a class of shares in the DAC by the memorandum or otherwise,

(b) the memorandum or articles contain provision for the variation of those rights, and

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(c) the variation of those rights is connected with the giving, variation, revocation or renewal of an authority for the purposes of *section 69(1)* or with a reduction of the company's company capital by either of the means referred to in *section 84*,

those rights shall not be varied unless—

(i) the requirement in *subsection (2)(a)* or *(b)* is satisfied, and

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(ii) any requirement of the memorandum or articles in relation to the variation of rights of that class is complied with to the extent that it is not comprised in the requirement in *subsection (2)(a)* or *(b)*.

(4) Where the rights are attached to a class of shares in the DAC by the memorandum or

otherwise and—

(a) where they are so attached by the memorandum, the articles contain provision with respect to their variation which had been included in the articles at the time of the DAC's original incorporation, or

(b) where they are so attached otherwise, the articles contain such provision (whenever first so included),

and in either case the variation is not connected as mentioned in *subsection (3)(c)*, those rights may only be varied in accordance with that provision of the articles.

(5) Where the rights are attached to a class of shares in the DAC by the memorandum and the memorandum and articles do not contain provisions with respect to the variation of the rights, those rights may be varied if all the members of the DAC agree to the variation.

(6) The provisions of *sections 180* and *181* and the provisions of the DAC's articles relating to general meetings shall, so far as applicable, apply in relation to any meeting of shareholders required by this section or otherwise to take place in connection with the variation of the rights attached to a class of shares and shall so apply with the necessary modifications and subject to the following provisions, namely:

(a) the necessary quorum at any such meeting, other than an adjourned meeting, shall be 2 persons holding or representing by proxy at least one-third in nominal value of the issued shares of the class in question and at an adjourned meeting one person holding shares of the class in question or his or her proxy;

(b) any holder of shares of the class in question present in person or by proxy may demand a poll.

(7) Any amendment of a provision contained in the articles of a DAC for the variation of the rights attached to a class of shares or the insertion of any such provision into the DAC's articles shall itself be treated as a variation of those rights.

(8) *Section 89* shall apply in relation to a variation, pursuant to this section, of rights attached to any class of shares as it applies in relation to a variation, pursuant to *section 88*, of such rights.

(9) References to the variation of the rights attached to a class of shares in—

(a) this section, and

(b) except where the context otherwise requires, in any provision for the variation of the rights attached to a class of shares contained in the DAC's memorandum or articles,

shall include references to their abrogation.

(10) Nothing in *subsections (2) to (5)* shall be read as derogating from the powers of the court under *section 1284* or any of the following sections, that is to say, *sections 212, 455, 977 and 978*.

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Application of section 114 in relation to DACs

986. In its application to this Part, *section 114* shall apply as if each reference in it to the acquisition and holding of shares in a company included, in a case where the holding company is a DAC limited by guarantee, a reference to becoming, and being, a member of the company otherwise than by means of acquiring and holding shares. 5

Uncertificated transfer of securities

987. *Sections 1087 to 1089* shall apply to securities of a DAC as they apply to securities of a PLC.

CHAPTER 4

Corporate governance

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Directors

988. A DAC shall have at least 2 directors.

Limitation on number of directorships

989. For the purposes of this Part *section 142* shall apply as if the following subsection were substituted for *subsection (1)*: 15

- “(1) A person shall not, at a particular time, be a director of more than—
(a) 25 designated activity companies, or
(b) 25 companies, one, or more than one, of which is a designated activity company and one, or more than one, of which is any other type of company capable of being wound up under this Act.”. 20

Membership of DAC limited by guarantee confined to shareholders

990. For the avoidance of doubt, no person, other than a subscriber to its memorandum or a person who is subsequently allotted a share in it and entered on its register of members, may be a member of a DAC limited by guarantee.

DAC may not dispense with holding of a.g.m.

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991. *Section 175(3) and (4)* (which relate to dispensing with the holding of an annual general meeting) shall not apply to a DAC.

Application of section 193 in relation to a DAC

992. *Section 193* shall apply to a DAC as if, in *subsection (1)*, after “Notwithstanding any provision to the contrary in this Part or in Parts 1 to 3 or 5 to 14”, there were inserted “and unless the constitution provides otherwise”. 30

Application of section 194 in relation to a DAC

993. *Section 194* shall apply to a DAC as if after “Notwithstanding any provision to the

contrary in this Part or in *Parts 1 to 3 or 5 to 14*,”, in each place where it occurs in subsections (1) and (4) there were inserted “and unless the constitution provides otherwise.”.

CHAPTER 5

Financial statements, annual return and audit

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Non-application of *Part 6* to DACs that are credit institutions or insurance undertakings

994. *Part 6* shall not apply to a DAC that is a credit institution or an insurance undertaking—

- (a) to the extent provided by regulations made under section 3 of the European Communities Act 1972 to give effect to Community acts on accounts of credit institutions and insurance undertakings, respectively; or
- (b) to the extent provided by any other enactment.

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Requirement for corporate governance statement and modification of certain provisions of *Parts 5 and 6* as they apply to DACs

995. *Chapter 3* of *Part 23* has effect in relation to, amongst other companies, a DAC that has debentures admitted to trading on a regulated market in an EEA state.

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Application of *section 297* and *section 362* to a DAC

996. (1) *Section 297* shall apply to a DAC as if the following paragraph were substituted for paragraph (a) of subsection (8):

“(a) any debentures or other debt securities of the company or any shares, debentures or other debt securities of a subsidiary undertaking have been admitted to trading on a regulated market in an EEA state; or”.

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(2) *Section 362* shall apply to a DAC as if the words “(in so far as applicable to a private company limited by shares)”, in each place where they occur, were omitted and the cases specified in that section in which the audit exemption, as referred to *section 358(1)* or (2), as the case may be, is not available to a company, or a holding company and its subsidiary undertakings, included a case in which the company or holding company, as appropriate, is a credit institution or an insurance undertaking.

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Disclosures by DAC that is a credit institution

997. In addition to its having effect in relation to a public limited company, *section 1120* shall have effect in relation to a DAC.

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Exemption from filing with Registrar financial statements, etc.

998. (1) *Sections 347 and 348* shall not apply to a DAC if it satisfies the following conditions:

- (a) it has been formed for charitable purposes, and
- (b) it stands exempted from those sections by an order made by the relevant authority

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- (which order the relevant authority is, by virtue of this section, empowered to make),
- and the exemption provided by that order may, as the relevant authority considers appropriate, be either for an indefinite or a limited period.
- (2) The following provisions have effect in relation to a DAC referred to in *subsection (1)*: 5
- (a) unless the DAC is entitled to and has availed itself of the audit exemption conferred by *Chapter 15* or *16* of *Part 6*, the statutory auditors of the DAC shall prepare a separate report to the directors which— 10
 - (i) confirms that they audited the relevant statutory financial statements for the relevant financial year; and
 - (ii) includes within it the report made to the members of the DAC pursuant to *section 391*;
- and
- (b) a copy of the report prepared under *paragraph (a)* shall be annexed to the annual return delivered by the DAC to the Registrar. 15
- (3) The reference in *subsection (2)* to a copy of the report prepared under *paragraph (a)* of it is a reference to a copy that satisfies the following conditions: 20
- (a) it is a true copy of the original save for the difference that the signature or signatures on the original, and any date or dates thereon, shall appear in typeset form on the copy; and
 - (b) it is accompanied by a certificate of a director and the secretary of the company, that bears the signature of the director and the secretary in electronic or written form, stating that the copy is a true copy of the original (and the foregoing statement need not be qualified on account of the difference permitted by *paragraph (a)* as to the form of a signature or of a date). 25
- (4) In *subsection (5)*—
- “electronic means” means those provided for under the Electronic Commerce Act 2000 and effected in compliance with any requirements of the Registrar of the kind referred to in sections 12(2)(b) and 13(2)(a) of that Act; 30
- “required documents” means the copy of the report referred to in *paragraph (a)* of *subsection (3)*, accompanied by the certificate referred to in *paragraph (b)* of that subsection;
- “required period” means the period referred to in *section 343(2)* or *(3)*, as the case may be, or, where that period stands extended in accordance with *section 343(5)* and *(6)*, that period as it stands so extended. 35
- (5) Where a DAC makes its annual return by electronic means to the Registrar within the required period then, notwithstanding that the required documents have not been annexed to the annual return, the annual return shall be deemed to have been delivered to the Registrar within the required period with the foregoing documents annexed to it if those documents are delivered to the Registrar within 28 days after the 40

date on which the annual return has been delivered to the Registrar by electronic means.

(6) In this section “relevant authority” means—

(a) before the establishment day (within the meaning of the Charities Act 2009), the Commissioners of Charitable Donations and Bequests for Ireland, and

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(b) on or after the foregoing day, the Charities Regulatory Authority.

CHAPTER 6

Liability of contributories in winding up

Liability as contributories of past and present members and provision concerning winding up after certain re-registration

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999. (1) Subject to subsection (2), in the event of a DAC being wound up, every present and past member shall be liable to contribute to the assets of the DAC to an amount sufficient for payment of its debts and liabilities, and the costs, charges and expenses of the winding up, and for the adjustment of the rights of the contributories among themselves.

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(2) The following qualifications apply in relation to subsection (1):

(a) in the case of a DAC limited by shares, no contribution shall be required from any member exceeding the amount, if any, unpaid on the shares in respect of which he or she is liable as a present or past member;

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(b) in case of a DAC limited by guarantee, no contribution shall, subject to subsection (3), be required from any member exceeding the amount undertaken to be contributed by him or her to the assets of the DAC in the event of its being wound up;

(c) a past member shall not be liable to contribute if he or she has ceased to be a member for one year or more before the commencement of the winding up;

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(d) a past member shall not be liable to contribute in respect of any debt or liability of the DAC contracted after he or she ceased to be a member;

(e) a past member shall not be liable to contribute unless it appears to the court that the existing members are unable to satisfy the contributions required to be made by them in pursuance of this Act;

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(f) nothing in this Act shall invalidate any provision contained in any policy of insurance or other contract whereby the liability of individual members on the policy or contract is restricted, or whereby the funds of the DAC are alone made liable in respect of the policy or contract;

(g) a sum due to any member of the DAC, in his or her character of a member, by way of dividends, profits or otherwise, shall not be deemed to be a debt of the company, payable to that member in a case of competition between himself or herself and any other creditor not a member of the DAC, but any such sum may be taken into account for the purpose of the final adjustment of the rights of the contributories among themselves.

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- (3) In a winding up of a DAC limited by guarantee, every member of the DAC shall be liable, in addition to the amount undertaken to be contributed by him or her to the assets of the DAC in the event of its being wound up, to contribute to the extent of any sums unpaid on any shares held by him or her.
- (4) Without prejudice to the application of that section to a DAC, and its adaptation generally, by *section 966* of *section 665* (winding up of company that had been an unlimited company before re-registration), *paragraph (c)* of *section 665* shall apply as if the reference in it to *section 655(2)(a)* were—
- (a) in the case of a DAC limited by shares, a reference to *subsection (2)(a)* of this section,
 - (b) in the case of a DAC limited by guarantee, a reference to *subsections (2)(a)* and *(3)* of this section.

CHAPTER 7

Examinerships

Petitions for examinerships 15

1000. *Section 510* shall apply to a DAC as if the following subsections were substituted for *subsections (2)* and *(3)*:

- “(2) Where the company referred to in *section 509* is an insurer or the holding company of an insurer, a petition may be presented only by the Central Bank, and *subsection (1)* shall not apply to the company.”
- (3) Where the company referred to in *section 509* is—
 - (a) a credit institution or the holding company of a credit institution;
 - (b) a company which one or more trustee savings banks have been reorganised into pursuant to an order under section 57 of the Trustee Savings Banks Act 1989; or
 - (c) a company which a building society has converted itself into under Part XI of the Building Societies Act 1989,
 a petition may be presented only by the Central Bank, and *subsection (1)* shall not apply to the company.”.

CHAPTER 8

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Public offers of securities, prevention of market abuse, etc.

Application of Chapters 1, 2 and 4 of Part 23 to DACs

1001. *Chapters 1, 2 and 4 of Part 23*, so far as they are applicable to companies other than public limited companies, shall apply to a DAC.

PART 17

PUBLIC LIMITED COMPANIES

CHAPTER 1

Preliminary and definitions

Interpretation (Part 17)

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1002. (1) In this Part—

“authorised minimum” means—

(a) subject to *paragraph (b)*, €25,000; or

(b) such greater sum as may be specified by order made by the Minister under *subsection (2)*;

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“authorised share capital” shall be read in accordance with *section 1008(2)(d)*;

“constitution” shall be read in accordance with *section 1008(1)*;

“public limited company” or “PLC” means a company limited by shares and having a share capital, being a company—

(a) the constitution of which states that the company is to be a public limited company; and

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(b) in relation to which the provisions of this Act as to the registration (or re-registration or registration under *Part 20* or *Part 22* of a body corporate) as a public limited company have been complied with;

and *section 1003(2)* supplements this definition with regard to restricting the scope of that expression, as it occurs in this Part, to public limited companies that are not investment companies (as defined in *Part 24*);

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“regulated market” has the meaning given to it by point 14 of Article 4(1) of Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments;

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“securities” means transferable securities as defined in point 18 of Article 4(1) of Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments, with the exception of money market instruments as defined in point 19 of Article 4(1) of that Directive, having a maturity of less than 12 months.

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(2) The Minister may, by order, specify that the authorised minimum for the purposes of this Part shall be an amount greater than €25,000 and such an order may—

(a) require any PLC, having an allotted share capital of which the nominal value is less than the amount specified in the order as the authorised minimum, to increase that value to not less than that amount or make an application to be re-registered as another form of company,

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(b) make, in connection with any such requirement, provision for any of the matters for which provision is made by any provision of this Act relating to a PLC’s

- registration, re-registration or change of name, payment for any share comprised in a company's capital and offers of shares in, or debentures of, a company to the public, including provision as to the consequences (whether in criminal law or otherwise) of a failure to comply with any requirement of the order, and
- (c) contain such supplemental and transitional provision as the Minister thinks appropriate, make different provision for different cases and, in particular, provide for any provision of the order to come into operation on different days for different purposes.
- (3) Provision in an order under *subsection (2)(b)* as to the consequences in criminal law of a failure to comply with any requirement of the order shall consist only of any adaptation of an offence under this Act that may be necessary with respect to the amount mentioned therein (not being a penalty).
- Investment company to be a PLC but non-application of this Part to that company type**
- 1003.** (1) Public limited companies shall comprise 2 types—
- (a) those that are not investment companies (as defined in *Part 24*), and
 - (b) those that are such companies.
- (2) This Part applies only to public limited companies that are not investment companies (as so defined) and, accordingly, a reference in this Part to a public limited company does not include a reference to an investment company (as so defined).
- (3) The law in this Act in relation to investment companies is to be found in *Part 24* (which makes provision for such companies by, *inter alia*, applying or adapting provisions of this Part and *Parts 1 to 14*) and certain associated provisions of this Act.
- Application of *Parts 1 to 14* to PLCs**
- 1004.** (1) The provisions of *Parts 1 to 14* apply to a PLC except to the extent that they are disappledied or modified by—
- (a) this section, or
 - (b) any other provision of this Part.
- (2) For the purposes of that application, *section 10* shall have effect as if it read:
- “Unless expressly provided otherwise, a reference in *Parts 2 to 14* to a company is a reference to a PLC.”.
- (3) The provisions of this Act specified in the Table to this section shall not apply to a PLC.
- (4) The specification in the foregoing Table of a provision (a “specified provision”) of *Parts 1 to 14* also operates to disapply to a PLC any other provision of those Parts (notwithstanding that it is not specified in that Table) that makes consequential, incidental or supplemental provision on, or in relation to, the specified provision.

Table

Subject matter	Provision disapplied	
Way of forming a private company limited by shares	<i>Section 17</i>	5
Company to carry on activity in the State and prohibition of certain activities	<i>Section 18</i>	
Form of the constitution	<i>Section 19</i>	
Certificate of incorporation to state that the company is a private company limited by shares	<i>Section 25(3)</i>	
Provisions as to names of companies	<i>Section 26(1) to (4)</i>	10
Trading under a misleading name	<i>Section 27</i>	
Amendment of constitution by special resolution	<i>Section 32(1)</i>	
Capacity of private company limited by shares	<i>Section 38</i>	
Conversion of existing private company to private company limited by shares to which <i>Parts 1</i> to <i>14</i> apply	<i>Chapter 6 of Part 2</i>	15
Limitation on offers of securities to the public	<i>Section 68</i>	
Allotment of shares	<i>Section 69</i>	
Supplemental and additional provisions as regards allotments	<i>Section 70</i>	
Reduction in company capital — use of Summary Approval Procedure therefor	<i>Section 84(2)(a) and (3)</i>	20
Variation of rights attached to special classes of shares	<i>Section 88</i>	
Variation of company capital on reorganisation — use of Summary Approval Procedure therefor	<i>Section 91(4)(a)</i>	
Directors	<i>Section 128</i>	25
Directors' duty as regards certain matters in appointing secretary	<i>Section 129(4)</i>	
Removal of directors	<i>Section 146(2)</i>	
Remuneration of directors	<i>Section 155</i>	
Voting by director in respect of contract, etc. in which director is interested	<i>Section 161(7)</i>	30
Majority written resolutions	<i>Section 194</i>	
Supplemental provisions in relation to <i>section 194</i>	<i>Section 195</i>	
Summary Approval Procedure	<i>Chapter 7 of Part 4</i> (save as it applies to— <ul style="list-style-type: none"> (a) a members' voluntary winding up under <i>section 579</i>; (b) an activity specified in <i>section 118</i> (prohibition on pre- 	35 40

Subject matter	Provision disapplied	
	acquisition profits or losses being treated in holding company's financial statements as profits available for distribution); or (c) the making of a loan or quasi-loan or the doing of any other thing referred to in <i>section 239</i>).	5
Directors' compliance statement and related statement—exemption for companies below a particular size	The words "to which this section applies" in <i>section 225(2)</i> , and <i>section 225(7)</i>	10
Exemption from consolidation: size of group	<i>Section 297</i>	15
Statutory financial statements must be audited (unless audit exemption availed of)	<i>Section 333</i>	
Exclusions, exemptions and special arrangements with regard to public disclosure of financial information	<i>Chapter 14 of Part 6</i>	20
Audit exemption	<i>Chapter 15 of Part 6</i>	
Special audit exemption for dormant companies	<i>Chapter 16 of Part 6</i>	
Small and medium companies	<i>Section 377</i>	
Mergers and divisions of companies	<i>Chapter 3 and 4 of Part 9</i>	
Disclosure orders	<i>Chapter 2 of Part 14</i>	25

Societas Europaea to be regarded as PLC

1005. A Societas Europaea which is registered with the Registrar shall be regarded as a PLC for the purposes of this Part (but not as an investment company as defined in *Part 24*).

CHAPTER 2

Incorporation and consequential matters

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Way of forming a PLC

1006. (1) A PLC may be formed for any lawful purpose by any person or persons subscribing to a constitution and complying with the relevant provisions of—

- (a) *Chapter 2 of Part 2*, as applied by this Part, and
- (b) this Part,

in relation to registration of a PLC.

(2) Without prejudice to the means by which a PLC may be formed under the relevant provisions referred to in *subsection (1)*, a company may be registered as a PLC by

means of—

- (a) the re-registration, or registration, as a PLC of a body corporate pursuant to *Part 20* or *22*,
 - (b) the merger of 2 or more bodies corporate pursuant to *Chapter 16*,
 - (c) the division of a body corporate pursuant to *Chapter 17*, or 5
 - (d) the merger operation provided for by the European Communities (Cross-Border Mergers) Regulations 2008 (S.I. No. 157 of 2008).
- (3) The liability of a member of a PLC at any time shall be limited to the amount, if any, unpaid on the shares registered in the member's name at that time.
- (4) *Subsection (3)* is without prejudice to any other liability to which a member may be subject as provided by this Act. 10
- (5) The certificate of incorporation issued under *section 25(1)* shall state that the company is a public limited company.

PLC to carry on activity in the State

1007. A PLC shall not be formed and registered unless it appears to the Registrar that the company, when registered, will carry on an activity in the State, being an activity that is mentioned in its memorandum. 15

The form of a PLC's constitution

- 1008.** (1) Subject to *subsection (3)*, the constitution of a PLC shall be in the form of a memorandum of association and articles of association which together are referred to in this Part as a "constitution". 20
- (2) The memorandum of association of a PLC shall state—
- (a) its name,
 - (b) that it is a public limited company registered under this Part,
 - (c) its objects, and 25
 - (d) its authorised share capital, being the amount of share capital with which the PLC proposes to be registered which shall not be less than the authorised minimum, and the division thereof into shares of a fixed amount.
- (3) The constitution of a PLC shall—
- (a) in addition to the matters specified in *subsection (2)*, state the number of shares (which shall not be less than one) taken by each subscriber to the constitution, 30
 - (b) be in accordance with the form set out in *Schedule 9* or as near thereto as circumstances permit,
 - (c) be printed in an entire format, that is to say the memorandum and articles shall be contained in the one document, being a document either in legible form or (as long as it is capable of being reproduced in legible form) in non-legible form, and 35
 - (d) either—

- (i) be signed by each subscriber in the presence of at least one witness who shall attest the signature, or
- (ii) be authenticated in the manner referred to in section 888.

Supplemental provisions in relation to constitution and continuance in force of existing memorandum and articles

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1009. (1) This section—

- (a) contains provisions as to the articles of a PLC,
- (b) provides that, in certain circumstances, a default position shall obtain in relation to the articles of a PLC, and
- (c) continues in force the memorandum and articles of a PLC registered under the prior Companies Acts.

(2) In this section—

“mandatory provision” means a provision of any of *Parts 1 to 14* (as applied by this Part) or of this Part that is not an optional provision;

“optional provision” means a provision of any of *Parts 1 to 14* (as applied by this Part) or of this Part that—

- (a) contains a statement to the effect, or is governed by provision elsewhere to the effect, that the provision applies save to the extent that the constitution provides otherwise or unless the constitution states otherwise, or
- (b) is otherwise of such import.

(3) The articles of a PLC may contain regulations in relation to the PLC.

(4) So far as the articles of a PLC do not exclude or modify an optional provision, that optional provision shall apply in relation to the PLC.

(5) Articles, instead of containing any regulations in relation to the PLC, may consist solely of a statement to the effect that the provisions of the *Companies Act 2014* are adopted and, if the articles consist solely of such a statement, subsection (4) shall apply.

(6) The memorandum and articles of a PLC registered before the commencement of this section shall, save to the extent that they are inconsistent with a mandatory provision, continue in force but may be altered or added to under and in accordance with the conditions under which memorandums or articles, whenever registered, are permitted by this Act to be altered or added to.

(7) References in the provisions of a memorandum or articles so continued in force to any provision of the prior Companies Acts shall be read as references to the corresponding provision of this Act.

(8) To the extent that a PLC registered before the commencement of this section was, immediately before that commencement, governed by—

- (a) the regulations of Part I of Table A in the First Schedule to the Act of 1963, or
- (b) the regulations of any Table referred to in section 3(9)(b), (c) or (d) of the Act of

1963,

it shall, after that commencement, continue to be governed by those regulations but—

- (i) this is save to the extent that those regulations are inconsistent with a mandatory provision,
- (ii) those regulations may be altered or added to under and in accordance with the conditions under which articles, whenever registered, are permitted by this Act to be altered or added to, and
- (iii) references in the regulations to any provision of the prior Companies Acts shall be read as references to the corresponding provision of this Act.

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Provisions as to names of PLCs

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1010. (1) The name of a PLC shall end with one of the following:

- public limited company;
- cuideachta phoiblí theoranta.

(2) The words “public limited company” may be abbreviated to “p.l.c.” or “plc” (including either such abbreviation in capitalised form) in any usage after the company’s registration by any person including the PLC.

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(3) The words “cuideachta phoiblí theoranta” may be abbreviated to “c.p.t.” or “cpt” (including either such abbreviation in capitalised form) in any usage after the company’s registration by any person including the PLC.

(4) A PLC carrying on business under a name other than its corporate name shall register in the manner directed by law for the registration of business names but the use of the abbreviations set out in subsection (2) or (3) shall not of itself render such registration necessary.

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Trading under a misleading name

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1011. (1) Subject to subsection (6), neither a body that is not a PLC nor an individual shall carry on any trade, profession or business under a name which includes, as its last part, the words “public limited company”, or “cuideachta phoiblí theoranta” or abbreviations of those words.

(2) If a body or individual contravenes subsection (1), the body or individual and, in the case of a body, any officer of it who is in default, shall be guilty of a category 3 offence.

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(3) A PLC shall not, in the following circumstances, use a name which may reasonably be expected to give the impression that it is any type of a company other than a PLC or that it is any other form of body corporate.

(4) Those circumstances are circumstances in which the fact that it is a PLC is likely to be material to any person.

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(5) If a PLC contravenes subsection (3), the PLC and any officer of it who is in default shall be guilty of a category 3 offence.

- (6) *Subsection (1)* shall not apply to any company—
- to which *Part 21* applies, and
 - which has provisions in its constitution that would entitle it to rank as a PLC if it had been registered in the State.

Restriction on commencement of business by a PLC

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1012. (1) A company registered as a PLC on its original incorporation or pursuant to a merger or division shall not do business or exercise any borrowing powers unless the Registrar has issued to it a certificate under this section or the PLC is re-registered as another type of company.

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(2) The Registrar shall issue to a PLC a certificate under this section if, on an application made to him or her in the prescribed form by the PLC, the Registrar is satisfied that the nominal value of the PLC's allotted share capital is not less than the authorised minimum and there is delivered to the Registrar a declaration complying with *subsection (3)*.

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(3) The declaration mentioned in *subsection (2)* shall be in the prescribed form and signed by a director or secretary of the PLC and shall state—

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- that the nominal value of the PLC's allotted share capital is not less than the authorised minimum,
- the amount paid up, at the time of the application, on the PLC's allotted share capital,
- the amount, or estimated amount, of the preliminary expenses of the PLC and the persons by whom any of those expenses have been paid or are payable, and
- any amount or benefit paid or given or intended to be paid or given to any promoter of the PLC, and the consideration for the payment or benefit.

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(4) For the purposes of *subsection (2)*, a share allotted in pursuance of an employees' share scheme may not be taken into account in determining the nominal value of the PLC's allotted share capital unless it is paid up at least as to one-quarter of the nominal value of the share and the whole of any premium on the share.

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(5) The Registrar may accept a declaration delivered to him or her under *subsection (2)* as sufficient evidence of the matters stated therein.

(6) A certificate under this section in respect of any PLC shall be conclusive evidence that the PLC is entitled to do business and exercise any borrowing powers.

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(7) If a PLC does business or exercises borrowing powers in contravention of this section, the PLC and any officer of it who is in default shall be guilty of a category 3 offence.

(8) Subject to *subsection (9)*, the provisions of this section are without prejudice to the validity of any transaction entered into by a PLC.

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(9) If a PLC enters into a transaction in contravention of those provisions and fails to comply with its obligations in connection with them within 21 days after the date on which it is called upon to do so, the directors of the PLC shall be jointly and severally

liable to indemnify the other party to the transaction in respect of any loss or damage suffered by that party by reason of the failure of the PLC to comply with those obligations.

Capacity of a PLC

1013. (1) A PLC shall have the capacity to do any act or thing stated in the objects set out in its memorandum. 5

(2) For the purposes of *subsection (1)*—

(a) the reference in it to an object includes a reference to anything stated in the memorandum to be a power to do any act or thing (whether the word “power” is used or not), 10

(b) if an object is stated in the PLC’s memorandum without the following also being stated in relation to it, the capacity of the PLC extends to doing any act or thing that appears to it to be requisite, advantageous or incidental to, or to facilitate, the attainment of that object and that is not inconsistent with any enactment,

and a subsequent reference in this Part to an object of a PLC shall be read accordingly. 15

Capacity not limited by a PLC’s constitution

1014. (1) The validity of an act done by a PLC shall not be called into question on the ground of lack of capacity by reason of anything contained in the PLC’s objects.

(2) A member of a PLC may bring proceedings to restrain the doing of an act which, but for *subsection (1)*, would be beyond the PLC’s capacity but no such proceedings shall lie in respect of any act to be done in fulfilment of a legal obligation arising from a previous act of the PLC. 20

(3) Notwithstanding the enactment of *subsection (1)*, it remains the duty of the directors to observe any limitations on their powers flowing from the PLC’s objects and action by the directors which, but for *subsection (1)*, would be beyond the PLC’s capacity may only be ratified by the company by special resolution. 25

(4) A resolution ratifying such action shall not affect any liability incurred by the directors or any other person; if relief from any such liability is to be conferred by the company it must be agreed to separately by a special resolution of it. 30

(5) A party to a transaction with a PLC is not bound to enquire as to whether it is permitted by the PLC’s objects.

Alteration of objects clause by special resolution

1015. (1) Subject to *subsection (2)*, a PLC may, by special resolution, alter the provisions of its memorandum of association by abandoning, restricting or amending any existing object or by adopting a new object and any alteration so made shall be as valid as if originally contained therein, and be subject to alteration in like manner. 35

(2) If an application is made to the court in accordance with this section for the alteration to be cancelled, it shall not have effect except in so far as it is confirmed by the court.

- (3) Subject to *subsection (4)*, an application under this section may be made—
- (a) by the holders of not less, in the aggregate, than 15 per cent in nominal value of the PLC's issued share capital or any class thereof, or
 - (b) by the holders of not less than 15 per cent of the PLC's debentures, entitling the holders to object to alterations of its objects.
- (4) An application shall not be made under this section by any person who has consented to or voted in favour of the alteration.
- (5) An application under this section shall be made within 21 days after the date on which the resolution altering the PLC's objects was passed and may be made on behalf of the persons entitled to make the application by such one or more of their number as they may appoint in writing for the purpose.
- (6) On an application under this section, the court may—
- (a) make an order cancelling the alteration or confirming the alteration, either wholly or in part, and on such terms and conditions as it thinks fit, and
 - (b) if it thinks fit, adjourn the proceedings in order that an arrangement may be made to the satisfaction of the court for the purchase of the interests of dissenting members and may give such directions and make such orders as it may think expedient for facilitating or carrying into effect any such arrangement.
- (7) An order under this section may, if the court thinks fit, provide for the purchase by the PLC of the shares of any members of the PLC and for the reduction accordingly of the PLC's company capital and may make such alterations in the constitution of the PLC as may be required in consequence of that provision; and such a purchase may be so ordered notwithstanding anything in *section 102*.

Supplemental provisions in relation to section 1015

- 1016.** (1) Where an order under *section 1015* requires the PLC not to make any, or any specified, alteration in its constitution, then, notwithstanding anything in this Act, but subject to the provisions of the order, the PLC shall not have power, without the leave of the court, to make any such alteration in contravention of that requirement.
- (2) Any alteration in the constitution of a PLC made by virtue of an order under *section 1015*, other than one made by resolution of the PLC, shall be of the same effect as if duly made by resolution of the PLC and the provisions of this Act shall apply to the constitution as so altered accordingly.
- (3) Notice of the meeting at which the special resolution altering a PLC's objects is intended to be proposed shall be given to any holders of the PLC's debentures that entitle the holders to object to alterations of its objects; that notice shall be the same as that given to members of the PLC, so however that not less than 10 days' notice shall be given to the holders of any such debentures.
- (4) If the written resolution procedure is used in the matter, notice, which shall not be less than 10 days, of the proposed use of that procedure shall, together with a copy of the proposed text of the resolution, be given to the debenture holders referred to in *subsection (3)*.

- (5) In default of any provisions in the PLC's constitution regulating the giving to the foregoing debenture holders of notice referred to in subsection (3) or (4), the provisions of *Part 4* or, as the case may be, of the PLC's constitution regulating the giving of notice to members shall apply.
- (6) Where a PLC passes a resolution altering its objects—
- (a) if no application is made under *section 1015* with respect to the alteration, it shall, within 15 days after the end of the period for making such an application, deliver to the Registrar a copy of its memorandum of association as altered, and
 - (b) if such an application is made, it shall—
 - (i) forthwith give notice of that fact to the Registrar, and
 - (ii) within 15 days after the date of any order cancelling or confirming the alteration, deliver to the Registrar a certified copy of the order and, in the case of an order confirming the alteration, a copy of the memorandum as altered.
- (7) The court may, by order, at any time extend the time for delivery of documents to the Registrar under subsection (6)(b) for such period as the court may think proper.
- (8) If a PLC makes default in giving notice or delivering any document to the Registrar as required by subsection (6), the PLC and any officer of it who is in default shall be guilty of a category 4 offence.

- Alteration of articles by special resolution**
- 1017.** (1) Subject to the provisions of this Act and to the conditions contained in its memorandum, a PLC may, by special resolution, alter or add to its articles.
- (2) Any alteration or addition so made in the articles shall, subject to the provisions of this Act, be as valid as if originally contained therein and be subject in like manner to alteration by special resolution.

- Power to alter provisions in memorandum which could have been contained in articles**
- 1018.** (1) Subject to subsection (2), sections 32(4) and (5) and 212, any provision contained in a PLC's memorandum which could lawfully have been contained in articles instead of in the memorandum may, subject to the provisions of this section, be altered by the PLC by special resolution.
- (2) If an application is made to the court for the alteration to be cancelled, it shall not have effect except in so far as it is confirmed by the court.
- (3) This section shall not apply where the memorandum itself provides for or prohibits the alteration of all or any of the foregoing provisions, and shall not authorise any variation or abrogation of the special rights of any class of members.
- (4) *Section 1015(3) to (7)* (other than subsection (3)(b)) and *section 1016* (other than subsections (3) to (5)) shall apply in relation to any alteration and to any application made under this section as they apply in relation to alterations and to applications made under those sections.

Official seal for sealing securities

1019. (1) A PLC may have for use, for sealing—

- (a) securities issued by the company, and
- (b) documents creating or evidencing securities so issued,

an official seal which is a facsimile of the common seal of the company with the
addition on its face of the word “Securities” or the word “Urrúis”. 5

(2) Where a company was incorporated before 3 April 1978 and which has such an
official seal as is mentioned in subsection (1), the following provisions apply:

- (a) the company may use the seal for sealing such securities and documents as are
mentioned in that subsection notwithstanding anything in any instrument
constituting or regulating the company or in any instrument made before 3 April
1978 which relates to any securities issued by the company; and 10
- (b) any provision of an instrument referred to in paragraph (a) which requires any
such securities or documents to be signed shall not apply to the securities or
documents if they are sealed with that seal. 15

Status of existing PLC

1020. (1) A public limited company incorporated under the prior Companies Acts and in
existence immediately before the commencement of this section shall continue in
existence and be deemed to be a PLC to which this Part applies.

(2) In subsection (1) “public limited company incorporated under the prior Companies
Acts” includes an old public limited company (within the meaning of the Companies
(Amendment) Act 1983) that re-registered as a public limited company under that Act
as well as a public limited company that any company re-registered as under the prior
Companies Acts. 20

(3) Reference, express or implied, in this Act to the date of registration of a company
mentioned in a preceding subsection shall be read as a reference to the date on which
the company was registered under the Joint Stock Companies Act 1862, the
Companies (Consolidation) Act 1908 or the prior Companies Acts, as the case may be. 25

CHAPTER 3

Share capital

30

Provisions as to shares transferable by delivery (general prohibition and provision for certain letters of allotment)

1021. (1) The provisions of this section shall, in relation to a PLC, have effect in place of
subsections (8) to (10) of section 66.

(2) In this section—

“bearer instrument” means an instrument, in relation to shares of a PLC, which
entitles or purports to entitle the bearer thereof to transfer the shares that are specified
in the instrument by delivery of the instrument, and includes a share warrant as that
expression was defined by section 88 of the Act of 1963;

- “expiry date”, in relation to a permissible letter of allotment, means a date no later than 30 days after the date of the instrument;
- “permissible letter of allotment” means a letter of allotment by a PLC to a member of it of—
- (a) bonus shares of the PLC, credited as fully paid; 5
 - (b) shares of the PLC, in lieu of a dividend, credited as fully paid; or
 - (c) shares of the PLC allotted provisionally, on which no amount has been paid or which are shares partly paid up, where the shares are allotted in connection with a rights issue or open offer in favour of members and the shares are issued proportionately (or as nearly as may be) to the respective number of shares held by the members of the PLC, there being disregarded for this purpose any exceptions to such proportionality, or arrangements for a deviation from such proportionality, as the directors of the PLC may deem necessary or expedient to make for the purposes of dealing with—
- (i) fractional entitlements; or 15
 - (ii) problems of a legal or practical nature arising under the laws of any territory or requirements imposed by any recognised regulatory body in any territory,
- which letter is expressed to be transferable by delivery during a period expiring on its expiry date.
- (3) Save as provided by this section, a PLC shall not have power to issue any bearer instrument. 20
 - (4) If a PLC purports to issue a bearer instrument in contravention of subsection (3), the shares that are specified in the instrument shall be deemed not to have been allotted or issued, and the amount subscribed therefor (and in the case of a non-cash asset subscribed therefor, the cash value of that asset) shall be due as a debt of the PLC to the purported subscriber thereof. 25
 - (5) Subsection (3) shall not apply to an instrument falling within the definition of “permissible letter of allotment” in this section.
 - (6) Shares comprised in a permissible letter of allotment shall, until its expiry date, be transferable by renunciation and delivery of the letter, but subject to compliance with such conditions (if any) as may be specified in the letter. 30
 - (7) Where, on the commencement of this section, a PLC has in issue a bearer instrument in relation to shares of the PLC, other than a permissible letter of allotment—
 - (a) the PLC shall procure the entry in its register of members of the name of the holder or holders of those shares no later than the expiry of 18 months after that commencement; 35
 - (b) if and to the extent that paragraph (a) is not complied with, the PLC shall enter in its register of members the Minister for Finance as the person entitled to the share or shares concerned and thereupon the Minister for Finance shall become and be the full beneficial owner of that share or those shares.
 - (8) Subject to subsection (7), where on the commencement of this section a person has or

is entitled to possession of a bearer instrument (other than a permissible letter of allotment), whether as owner or as encumbrancer, nothing in this section shall affect any rights which such person has by virtue of such entitlement or possession, provided that any right to transfer the shares that are specified in it by delivery of the instrument shall cease 21 days before the expiry of the period referred to in subsection (7)(a). 5

Capacity to make public offers of securities

1022. Save to the extent prohibited by its constitution, a PLC shall have the capacity to offer, allot and issue securities (as defined in *Part 3*) to the public subject to compliance, where applicable, with *Part 23*. 10

Allotment of shares and other securities

1023. (1) No relevant securities may be allotted by a PLC unless the allotment is authorised, either specifically or pursuant to a general authority, by ordinary resolution or by the constitution of the PLC. 15

(2) Without prejudice to *subsection (1)*, no shares may be allotted by a PLC unless those shares are comprised in the authorised but unissued share capital of the PLC. 15

(3) Any such authority as is referred to in *subsection (1)* shall state the maximum amount of relevant securities that may be allotted under it and the date on which the authority will expire, which shall be not more than 5 years after whichever is relevant of the following dates: 20

(a) in the case of an authority contained at the time of the original incorporation of the PLC in the articles of the PLC, the date of that incorporation, and

(b) in any other case, the date on which the resolution is passed by virtue of which that authority is given,

but any such authority (including an authority contained in the articles of the PLC) may be previously revoked or varied by the PLC in general meeting. 25

(4) Any such authority (whether or not it has been previously renewed under this subsection) may be renewed by the PLC in general meeting for a further period not exceeding 5 years; but the resolution must state (or restate) the amount of relevant securities which may be allotted under the authority or, as the case may be, the amount remaining to be allotted thereunder, and must specify the date on which the renewed authority will expire. 30

(5) Notwithstanding that any authorisation conferred by a resolution or the constitution such as is mentioned in *subsection (1)* has expired, the directors of a PLC may allot relevant securities in pursuance of an offer or agreement previously made by the PLC, if that authorisation enabled the PLC to make an offer or agreement which would or might require relevant securities to be allotted after the authorisation's expiry. 35

(6) A resolution of a PLC to give, vary, revoke or renew such an authority may, notwithstanding that it alters the articles of association of the PLC, be an ordinary resolution. 40

(7) Where a PLC allots shares, the shares shall be taken, for the purposes of this Act, to

be allotted when a person acquires the unconditional right to be included in the PLC's register of members in respect of those shares.

(8) Any director of a PLC who knowingly contravenes, or knowingly permits or authorises a contravention of, a preceding provision of this section shall be guilty of a category 3 offence. 5

(9) Where a PLC allots shares, it shall, within 30 days after the date of allotment, deliver particulars of the allotment in the prescribed form to the Registrar.

(10) If a PLC fails to comply with *subsection (9)*, the PLC and any officer of it who is in default shall be guilty of a category 4 offence.

(11) Nothing in this section shall affect the validity of any allotment of relevant securities. 10

(12) In this section "relevant securities" means, in relation to a PLC—

(a) shares in the PLC other than shares shown in the memorandum to have been taken by the subscribers thereto or shares allotted in pursuance of an employees' share scheme, and

(b) any right to subscribe for, or to convert any security into, shares in the PLC other than shares so allotted, 15

and any reference in this section to the allotment of relevant securities includes a reference to the grant of such a right but does not include any reference to the allotment of shares pursuant to such a right.

Pre-emption rights 20

1024. (1) Subject to the provisions of this section and *section 1025*, a PLC proposing to allot any equity securities—

(a) shall not allot any of those securities, on any terms—

(i) to any non-member, unless it has made an offer to each person who holds relevant shares or relevant employee shares in the PLC to allot to him or her, on the same or more favourable terms, a proportion of those securities which is, as nearly as practicable, equal to the proportion in nominal value held by him or her of the aggregate of the relevant shares and relevant employee shares, or 25

(ii) to any person who holds relevant shares or relevant employee shares in the PLC, unless it has made an offer to each person who holds relevant shares or relevant employee shares in the PLC to allot to him or her, on the same or more favourable terms, a proportion of those securities which is, as nearly as practicable, equal to the proportion in nominal value held by him or her of the aggregate of the relevant shares and relevant employee shares, 30

and

(b) shall not allot any of those securities to any person unless the period during which any such offer may be accepted has expired or the PLC has received notice of the acceptance or refusal of every offer so made.

(2) In *subsection (1)(a)(i)* "non-member" means a person who is not a holder of shares (as 40

- that expression is to be read by virtue of subsection (11) in the PLC.
- (3) Subsection (4) applies to any provision of the memorandum or articles of a PLC which requires the PLC, when proposing to allot equity securities consisting of relevant shares of any particular class, not to allot those securities on any terms unless it has complied with the condition that it makes such an offer as is described in subsection (1) to each person who holds relevant shares or relevant employee shares of that class. 5
- (4) If, in accordance with a provision to which this subsection applies—
- (a) a PLC makes an offer to allot any securities to such a holder, and
 - (b) that holder or anyone in whose favour that holder has renounced his or her right to their allotment accepts the offer, 10
- subsection (1) shall not apply to the allotment of those securities and the PLC may allot them accordingly; but this subsection is without prejudice to the application of subsection (1) in any other case.
- (5) Subsection (1) shall not apply in relation to a particular allotment of equity securities if the securities are, or are to be, wholly or partly paid up otherwise than in cash. 15
- (6) Securities which a PLC has offered to allot to a holder of relevant shares or relevant employee shares may be allotted to that holder or anyone in whose favour that holder has renounced his or her right to their allotment without contravening subsection (1) (b). 20
- (7) Subsection (1) shall not apply in relation to the allotment of any securities which would, apart from a renunciation or assignment of the right to their allotment, be held under an employees' share scheme.
- (8) An offer which is required by subsection (1) or by any provision to which subsection (4) applies to be made to any person shall be made by serving it on him or her in the same manner in which notices are authorised to be given by sections 180, 181 and 218. 25
- (9) Any such offer as is mentioned in subsection (8) shall state a period of not less than 14 days during which the offer may be accepted; and the offer shall not be withdrawn before the end of that period. 30
- (10) Subsections (8) and (9) shall not invalidate a provision to which subsection (4) applies by reason that that provision requires or authorises an offer thereunder to be made in contravention of one or both of those subsections, but, to the extent that the provision requires or authorises such an offer to be so made, it shall be of no effect.
- (11) In relation to any offer to allot any securities required by subsection (1) or by any provision to which subsection (4) applies, references in this section (however expressed) to the holder of shares of any description shall be read as including references to any person who held shares of that description on any day within the period of 28 days ending with the day immediately preceding the date of the offer which is specified by the directors of the PLC concerned as being the record date for the purposes of the offer. 35
- (12) Where there is a contravention of subsection (1), (8) or (9) or a provision to which 40

subsection (4) applies, the PLC and every officer of the PLC who knowingly authorised or permitted the contravention, shall be jointly and severally liable to compensate any person to whom an offer should have been made under the subsection or provision contravened for any loss, damage, costs or expenses which that person has sustained or incurred by reason of the contravention.

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- (13) No proceedings to recover any such loss, damage, costs or expenses shall be commenced after the expiration of 2 years after the date of the delivery to the Registrar of the return of allotments in question or, where equity securities other than shares are granted, after the date of the grant.

Interpretation and supplemental provisions in relation to section 1024

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1025. (1) In *section 1024* and this section—

“equity security”, in relation to a PLC, means a relevant share in the PLC (other than a share shown in the memorandum to have been taken by a subscriber thereto or a bonus share) or a right to subscribe for, or to convert any securities into, relevant shares in the PLC, and references to the allotment of equity securities or of equity securities consisting of relevant shares of a particular class include references to the grant of a right to subscribe for, or to convert any securities into, relevant shares in the company or, as the case may be, relevant shares of a particular class, but does not include references to the allotment of any relevant shares pursuant to such a right;

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“relevant employee shares”, in relation to a PLC, means shares of the PLC which would be relevant shares in the PLC but for the fact that they are held by a person who acquired them in pursuance of an employees’ share scheme;

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“relevant shares”, in relation to a PLC, means shares in the PLC other than—

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- (a) shares which as respects dividends and capital carry a right to participate only up to a specified amount in a distribution, and
(b) shares which are held by a person who acquired them in pursuance of an employees’ share scheme, or, in the case of shares which have not been allotted, are to be allotted in pursuance of such a scheme.

- (2) Any reference in *section 1024* or this section to a class of shares shall be read as a reference to shares to which the same rights are attached as to voting and as to participation, both as respects dividends and as respects capital, in a distribution.

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- (3) Where the directors of a PLC are generally authorised for the purposes of *section 1023*, they may be given power by the articles or by a special resolution of the PLC to allot equity securities pursuant to that authority as if—

- (a) *subsection (1)* of *section 1024* did not apply to the allotment; or
(b) that subsection applied to the allotment with such modifications as the directors may determine;

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and where the directors make an allotment under this subsection, *section 1024* shall have effect accordingly.

- (4) Where the directors of a PLC are authorised for the purposes of *section 1023* (whether generally or otherwise), the PLC may by special resolution resolve either—

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- (a) that *subsection (1)* of *section 1024* shall not apply to a specified allotment of equity securities to be made pursuant to that authority; or
- (b) that that subsection shall apply to the allotment with such modifications as may be specified in the resolution;
- and where such a resolution is passed *section 1024* shall have effect accordingly. 5
- (5) A power conferred by virtue of *subsection (3)* or a special resolution under *subsection (4)* shall cease to have effect when the authority to which it relates is revoked or would, if not renewed, expire, but if that authority is renewed, the power or, as the case may be, the resolution may also be renewed, for a period not longer than that for which the authority is renewed, by a special resolution of the company. 10
- (6) Notwithstanding that any such power or resolution has expired, the directors may allot equity securities in pursuance of an offer or agreement previously made by the PLC, if the power or resolution enabled the PLC to make an offer or agreement which would or might require equity securities to be allotted after it expired.
- (7) A special resolution under *subsection (4)*, or a special resolution to renew such a resolution, shall not be proposed unless it is recommended by the directors and there has been circulated, with the notice of the meeting at which the resolution is proposed, to the members entitled to have that notice a written statement by the directors setting out— 15
- (a) their reasons for making the recommendation;
 - (b) the amount to be paid to the PLC in respect of the equity securities to be allotted; and
 - (c) the directors' justification of that amount.
- (8) A person who authorises or permits the inclusion in a statement circulated under *subsection (7)* of any matter which is false or misleading in a material particular knowing it to be so false or misleading or being reckless as to whether it is so false or misleading shall be guilty of a category 3 offence. 25

Status of authority to allot shares conferred prior to company's re-registration as a PLC

1026. Any authority of directors to allot shares under *section 69* conferred by ordinary resolution passed by a company prior to its re-registration as a PLC shall lapse at the conclusion of its annual general meeting next held after its re-registration as a PLC. 30

Subscription of share capital

- 1027.** (1) A PLC shall not accept at any time, in payment up of its shares or any premium on them, an undertaking given by any person that he or she or another should do work or perform services for the PLC or any other person. 35
- (2) Where a PLC accepts such an undertaking as payment up of its shares or any premium payable on them, the holder of the shares when they or the premium are treated as paid up, in whole or in part, by the undertaking—
- (a) shall be liable to pay the PLC in respect of those shares, an amount equal to their nominal value, together with the whole of any premium or, if the case so requires,

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- such proportion of that amount as is treated as paid up by the undertaking, and
- (b) shall be liable to pay interest at the appropriate rate on the amount payable under paragraph (a).
- (3) Where any person becomes a holder of any shares in respect of which—
- (a) there has been a contravention of this section, and
 - (b) by virtue of that contravention, another is liable to pay any amount under this section,
- the first-mentioned person in this subsection also shall be liable to pay that amount (jointly and severally with any other person so liable) unless either that first-mentioned person is a purchaser for value and, at the time of the purchase, he or she did not have actual notice of the contravention or he or she derived title to the shares (directly or indirectly) from a person who became a holder of them after the contravention and was not so liable.
- (4) References in this section to a holder, in relation to any shares in a PLC, include references to any person who has an unconditional right to be included in the PLC's register of members in respect of those shares or to have an instrument of transfer of the shares executed in his or her favour.
- (5) Where a PLC contravenes any of the provisions of this section, the PLC and any officer of it who is in default shall be guilty of a category 3 offence.
- Payment for allotted shares**
- 1028.** (1) Subject to subsection (4), a PLC shall not allot a share except as paid up at least as to one-quarter of the nominal value of the share and the whole of any premium on it.
- (2) Where a PLC allots a share in contravention of subsection (1), the share shall be treated as if one-quarter of its nominal value together with the whole of any premium had been received, but the allottee shall be liable to pay the PLC the minimum amount which should have been received in respect of the share under that subsection less the value of any consideration actually applied in payment up (to any extent) of the share and any premium on it, and interest at the appropriate rate on the amount payable under this subsection.
- (3) Subsection (2) shall not apply in relation to the allotment of a bonus share in contravention of subsection (1) unless the allottee knew or ought to have known the share was so allotted.
- (4) Subsections (1) to (3) shall not apply to shares allotted in pursuance of an employees' share scheme.
- (5) Subsection (3) of section 1027 shall apply for the purposes of this section as it applies for the purposes of section 1027.
- (6) Where a PLC contravenes any of the provisions of this section, the PLC and any officer of it who is in default shall be guilty of a category 3 offence.

Payment of non-cash consideration

- 1029.** (1) A PLC shall not allot shares as fully or partly paid up (as to their nominal value or any premium payable on them) otherwise than in cash if the consideration for the allotment is or includes an undertaking which is to be or may be performed more than 5 years after the date of the allotment. 5
- (2) Where a PLC allots shares in contravention of *subsection (1)*, the allottee of the shares shall be liable to pay the PLC an amount equal to their nominal value, together with the whole of any premium, or if the case so requires, such proportion of that amount as is treated as paid up by the undertaking and shall be liable to pay interest at the appropriate rate on the amount payable under this subsection. 10
- (3) Where a contract for the allotment of shares does not contravene *subsection (1)*, any variation of the contract which has the effect that the contract would have contravened that subsection if the terms of the contract as varied had been its original terms shall be void. 15
- (4) *Subsection (3)* shall apply to the variation by a PLC of the terms of a contract entered into before the company was registered or re-registered as a PLC. 15
- (5) Where a PLC allots shares for a consideration which consists of or includes (in accordance with *subsection (1)*) an undertaking which is to be performed within 5 years after the date of the allotment but that undertaking is not performed within the period allowed by the contract for the allotment of the shares, the following subsection applies. 20
- (6) The allottee of the shares in question shall be liable to pay the PLC at the end of the period secondly referred to in *subsection (5)* the following:
- (a) an amount equal to the nominal value of the shares, together with the whole of any premium, or if the case so requires, such proportion of that amount as is treated as paid up by the undertaking; and 25
- (b) interest at the appropriate rate on the amount payable under *paragraph (a)*. 25
- (7) *Subsection (3)* of *section 1027* shall apply in relation to a contravention of this section and to a failure to carry out a term of a contract as mentioned in *subsection (5)* as it applies in relation to a contravention of *section 1027*. 30
- (8) Any reference in this section to a contract for the allotment of shares includes a reference to an ancillary contract relating to payment in respect of those shares. 30
- (9) Where a PLC contravenes any of the provisions of this section, the PLC and any officer of it who is in default shall be guilty of a category 3 offence. 35
- Expert's report on non-cash consideration before allotment of shares** 35
- 1030.** (1) Subject to *subsection (2)* and *sections 1031 and 1033 to 1035*, a PLC shall not allot shares as fully or partly paid up (as to their nominal value or any premium payable on them) otherwise than in cash unless—
- (a) the consideration for the allotment has been valued in accordance with the following provisions of this section; 40
- (b) a report with respect to its value has been made to the PLC by a person appointed

- by the PLC in accordance with those provisions during the 6 months immediately preceding the date of the allotment of the shares; and
- (c) a copy of the report has been sent to the proposed allottee of the shares.
- (2) Subject to *subsection (3)*, *subsection (1)* shall not apply to the allotment of shares by a PLC in connection with an arrangement providing for the allotment of shares in that PLC on terms that the whole or part of the consideration for the shares allotted is to be provided by the transfer to that PLC or the cancellation of all or some of the shares, or of all or some of the shares of a particular class, in another company (with or without the issue to that PLC of shares, or of shares of any particular class, in that other company).
- (3) *Subsection (2)* does not exclude the application of *subsection (1)* to the allotment of shares by a PLC in connection with any such arrangement as is there mentioned unless the following condition is satisfied, namely, it is open to all the holders of the shares in the other company in question or, where the arrangement applies only to shares of a particular class, to all the holders of shares in that other company of that class, to take part in the arrangement.
- (4) In determining whether the foregoing condition is satisfied, shares held by, or by a nominee of, the PLC proposing to allot the shares in connection with the arrangement, or by, or by a nominee of, a company which is that PLC's holding company or subsidiary or a company which is a subsidiary of that PLC's holding company, shall be disregarded.
- (5) Subject to *subsections (6)* and *(7)*, the valuation and report required by *subsection (1)* shall be made by an independent person, that is to say, a person qualified at the time of the report to be appointed or to continue to be the statutory auditor of the PLC.
- (6) Where it appears to the independent person referred to in *subsection (5)* to be reasonable for the valuation of the consideration, or a valuation of part of the consideration, to be made, or to accept such a valuation made, by any person who—
- (a) appears to that independent person to have the requisite knowledge and experience to value the consideration or that part of the consideration; and
- (b) is not—
- (i) an officer or employee of the PLC or any other body corporate which is that PLC's subsidiary or holding company or a subsidiary of that PLC's holding company;
- (ii) a partner or employee of an officer or employee referred to in *subparagraph (i)*; or
- (iii) a person otherwise connected (within the meaning of *section 220* as adapted by *section 1031(7)*) with an officer or employee referred to in *subparagraph (i)*;
- that independent person may arrange for or accept such a valuation, together with a report which will enable the independent person to make his or her own report under *subsection (1)* and provide a note in accordance with *subsection (11)*.
- (7) Where the allotment of shares by a PLC is in connection with—

- (a) a proposed merger, where that company was formed as a successor company for the purpose of the proposed merger, the merger being a merger by formation of a new company within the meaning of *Chapter 16* or the European Communities (Cross-Border Mergers) Regulations 2008 (S.I. No. 157 of 2008); 5
- (b) a proposed merger of that company with another company; or
- (c) a proposed division of that company;
- the valuation and report required by *subsection (1)* may be made by the person appointed pursuant to *section 1133* or *1155* or an expert within the meaning of Regulation 7 of the foregoing Regulations, in which case the person so appointed shall be deemed to be an independent person for the purposes of *subsection (5)*. 10
- (8) For the purposes of *subsection (7)* there is a proposed merger of a PLC with a company when one of them proposes to acquire all the assets and liabilities of the other in exchange for the issue of shares or other securities in that one to shareholders of the other, with or without any cash payment to those shareholders.
- (9) The report of the independent person under *subsection (1)* shall state— 15
- (a) the nominal value of the shares to be wholly or partly paid for by the consideration in question;
 - (b) the amount of any premium payable on those shares;
 - (c) the description of the consideration and, as respects so much of the consideration as the independent person himself or herself has valued, a description of that part of the consideration, the method used to value it and the date of the valuation; and 20
 - (d) the extent to which the nominal value of the shares and any premium are to be treated as paid up—
 - (i) by the consideration; 25
 - (ii) in cash.
- (10) Where any consideration is valued under this section by a person other than the independent person, the latter's report under *subsection (1)* shall state that fact and shall also—
- (a) state the former's name and what knowledge and experience that other person has to carry out the valuation; and 30
 - (b) describe so much of the consideration as was valued by that other person, the method used to value it and state the date of valuation.
- (11) The report of the independent person made under *subsection (1)* shall contain a note by the independent person, or be accompanied by such a note— 35
- (a) in the case of a valuation made by another person, that it appeared to the independent person reasonable to arrange for it to be so made, or to accept a valuation so made;
 - (b) irrespective of whether the valuation has been by that person or the independent person, that the method of valuation was reasonable in all the circumstances; 40

- (c) that it appears to the independent person that there has been no material change in the value of the consideration in question since the valuation; and
- (d) that on the basis of the valuation the value of the consideration, together with any cash by which the nominal value of the shares or any premium payable on them is to be paid up, is not less than so much of the aggregate of the nominal value and the whole of any such premium as is treated as paid up by the consideration and any such cash.

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Supplemental provisions in relation to section 1030

1031. (1) *Subsection (2)* applies where a PLC allots any share in contravention of *section 1030(1)* and either—

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- (a) the allottee has not received a report under *section 1030*; or
- (b) there has been some other contravention of that section and the allottee knew or ought to have known that it amounted to a contravention.

(2) Where this subsection applies, the allottee shall be liable to pay the PLC an amount equal to the nominal value of the shares, together with the whole of any premium or if the case so requires, such proportion of that amount as is treated as paid up by the consideration, and shall be liable to pay interest at the appropriate rate on the amount payable under this subsection.

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(3) *Subsection (3)* of *section 1027* shall apply for the purposes of *section 1030* as it applies for the purposes of *section 1027*.

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(4) Where the consideration referred to in *section 1030* is accepted partly in payment up of the nominal value of the shares and any premium and partly for some other consideration given by the company, the provisions of that section and this section shall apply as if references to the consideration accepted by the PLC included references to the proportion of that consideration which is properly attributable to the payment up of that value and any premium; and—

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- (a) the independent person shall carry out or arrange for such other valuations as will enable him or her to determine that proportion, and
- (b) the independent person's report under *section 1030(1)* shall state what valuations have been made by virtue of this subsection and also the reason for and method and date of any such valuation and any other matters which may be relevant to that determination.

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(5) It is declared for the avoidance of doubt that *section 1030(1)* does not apply by reference to the application of an amount for the time being standing to the credit of any of the PLC's reserve accounts or to the credit of its profit and loss account in paying up (to any extent) any shares allotted to members of the PLC or any premiums on any shares so allotted; and in relation to any such allotment references in *section 1030* or this section to the consideration for the allotment do not include any such amount so applied.

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(6) In *section 1030* and this section—

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- (a) "arrangement" means any agreement, scheme or arrangement (including an arrangement sanctioned in accordance with *section 453, 541 or 601*),

(b) any reference to a company, except where it is or is to be read as a reference to a PLC, includes a reference to any body corporate and any body to which letters patent have been issued under the Chartered Companies Act 1837, and	
(c) any reference to an officer or employee shall not include a reference to a statutory auditor.	5
(7) For the purposes of the provision made by <i>section 1030(6)(b)(iii)</i> concerning a person's being connected with an officer or employee there referred to (which officer or employee is, in this subsection, subsequently referred to as the "relevant person"), <i>section 220</i> applies as if—	
(a) for each reference in <i>subsections (1), (2), (3) and (8)</i> to a director of a company there were substituted a reference to the relevant person;	10
(b) for the first reference and the third reference in <i>subsection (5)</i> to a director of a company there were substituted a reference to the relevant person;	
(c) the references in <i>subsection (5)</i> to another director or directors included references to one or more other relevant persons; and	15
(d) the reference in <i>subsection (6)(b)</i> to a director included a reference to a relevant person.	
(8) Where a PLC contravenes any of the provisions of <i>section 1030</i> or this section, the PLC and any officer of it who is in default shall be guilty of a category 3 offence.	
Expert's report: supplemental provisions in relation to <i>section 1030</i>	20
1032. (1) Any person carrying out a valuation or making a report under <i>section 1030</i> with respect to any consideration proposed to be accepted or given by a PLC shall be entitled to require from the officers of the PLC such information and explanation as the person thinks necessary to enable him or her to carry out the valuation or to make the report and provide a note required by that section.	25
(2) A PLC to which such a report is made as to the value of any consideration for which, or partly for which, it proposes to allot shares shall deliver a copy of the report to the Registrar at the same time that it delivers particulars of the allotments of those shares under <i>section 1023(9)</i> .	
(3) <i>Section 1023(10)</i> shall apply to a default in complying with <i>subsection (2)</i> as it applies to a default in complying with <i>section 1023(9)</i> .	30
(4) Any person who makes a statement—	
(a) that is a statement to which this subsection applies; and	
(b) which is false or misleading in a material particular; knowing it to be so false or misleading or being reckless as to whether it is so false or misleading, shall be guilty of a category 2 offence.	35
(5) <i>Subsection (4)</i> applies to any statement made (whether orally or in writing) to any person carrying out a valuation or making a report under <i>section 1030</i> , being a statement which conveys or purports to convey any information or explanation which that person requires, or is entitled to require, under <i>subsection (1)</i> .	40

Dispensation from *section 1030* — certain securities or money-market instruments constituting consideration for allotment

1033. (1) In this section—

“relevant assets” means securities or instruments (or, as the case may be, both referred to in the definition of “securities based consideration” in this subsection); 5

“securities based consideration” means consideration consisting of—

(a) transferable securities as defined in point 18 of Article 4(1) of Directive 2004/39/ EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments;

(b) money-market instruments as defined in point 19 of Article 4(1) of that Directive; 10 or

(c) both such transferable securities and such money-market instruments.

(2) Where this section applies then either—

(a) the requirements of *section 1030* do not apply; or

(b) those requirements only apply if the contingency specified in *subsection (4)(b)* 15 arises.

(3) This section applies where the consideration for the allotment of the shares consists wholly, or together with cash consideration, of securities based consideration and—

(a) the conditions specified in *subsection (4)* are satisfied with respect to the securities based consideration; and 20

(b) the value of the securities based consideration is not less than the value of the relevant assets as determined in accordance with *paragraph (a)* of that subsection.

(4) The following are the conditions with respect to the securities based consideration—

(a) the relevant assets are valued at the weighted average price at which they have been traded on one or more regulated markets during a period of 5 consecutive days (any break arising on account of closure of such market on one or more days being disregarded) immediately preceding the date on which those assets are treated as consideration given for the allotment of the shares in question; and 25

(b) the foregoing price has not been affected by exceptional circumstances that would significantly change the value of the asset at the foregoing date, including situations where the market for the securities or instruments concerned has become illiquid. 30

(5) If exceptional circumstances or a situation as mentioned in *subsection (4)(b)* arise, a valuation under *section 1030* of the relevant assets shall be caused to be carried out by the PLC and the relevant provisions of *sections 1030* to *1032* shall apply accordingly. 35

(6) Where this section applies and shares are proposed to be allotted by a PLC without a report of an independent expert as otherwise required by *sections 1030* to *1032*, the PLC shall, no later than the date of allotment, deliver, in the prescribed form, notice of the proposed allotment to the Registrar, which notice shall contain— 40

- (a) a description of the consideration other than in cash at issue;
 - (b) the value of that consideration, the source of its valuation and, where appropriate, the method of valuation;
 - (c) a statement whether the value arrived at corresponds at least to the number and nominal value of, and (where appropriate) to the premium on, the shares to be issued for that consideration.
- (7) Where shares have been allotted as mentioned in *subsection (6)*, the notice of the allotment delivered under *section 1023(9)* to the Registrar in respect of those shares shall—
- (a) contain—
 - (i) a description of the consideration other than in cash at issue;
 - (ii) the value of that consideration, the source of its valuation and, where appropriate, the method of valuation; and
 - (iii) a statement whether the value arrived at corresponds at least to the number and nominal value of, and (where appropriate) to the premium on, the shares issued for that consideration;

which may be by reference to the particulars delivered in accordance with *subsection (6)*; and
 - (b) contain a statement that no exceptional circumstances or a situation as mentioned in *subsection (4)(b)* with regard to the original valuation arose prior to the allotment.

Dispensation from *section 1030* — consideration for allotment other than securities and money-market instruments referred to in *section 1033*

1034. (1) In this section—

“non-securities based consideration” means consideration other than that falling within the definition of “securities based consideration” in *section 1033(1)*;

“relevant assets” means assets other than those falling within that definition of “securities based consideration”.

(2) Where this section applies then either—

- (a) the requirements of *section 1030* do not apply; or
- (b) those requirements only apply if—
 - (i) the contingency specified in *subsection (4)(e)* arises; or
 - (ii) a request of the kind referred to in *subsection (6)* is made by one or more members of the PLC, being a request that, as provided therein, must be acceded to by the PLC.

(3) This section applies where the consideration for the allotment of the shares consists wholly, or together with cash consideration, of non-securities based consideration and—

- (a) the conditions specified in *subsection (4)* are satisfied with respect to the non-securities based consideration; and
- (b) the value of the non-securities based consideration is not less than the value of the relevant assets as determined in accordance with *paragraph (a)* of that subsection.
- (4) The following are the conditions with respect to the non-securities based consideration:
- (a) the relevant assets are valued by reference to an opinion as to their fair value by an expert who, in the opinion of the PLC, possesses the requisite degree of independence from the interests concerned in the transaction and holds an appropriate qualification;
 - (b) that fair value was determined for a date not more than 6 months before the date on which the relevant assets are treated as consideration given for the allotment of the shares in question;
 - (c) that valuation as to fair value has been performed in accordance with generally accepted valuation standards and principles in the State (or such standards and principles in another Member State as are equivalent to them) and, in either case, which are applicable to the class of assets concerned;
 - (d) the giving of such consideration is approved—
 - (i) by ordinary resolution of the PLC; or
 - (ii) following 14 days' notice by the board of directors (of the PLC's intention to give that consideration) to the members, by a resolution of the board of directors of the PLC,
 and, in either case, that approval is granted not more than 30 days before the date on which the agreement to allot the shares in question is entered into or, where such agreement is subject to conditions that required fulfilment before the agreement can be carried into effect, on the date of those conditions' fulfilment;
 - (e) no exceptional circumstances arise that would significantly change the fair value of the asset at the date secondly referred to in *paragraph (b)*; and
 - (f) in a case where *paragraph (d)(ii)* applies, the resolution there referred to includes a statement by the board of directors that they are satisfied that there are no exceptional circumstances known to them that, in their opinion, have significantly changed the fair value of the assets at the date secondly referred to in *paragraph (b)*.
- (5) If either—
- (a) exceptional circumstances as mentioned in *paragraph (e)* of *subsection (4)* arise; or
 - (b) notwithstanding that the conditions specified in that subsection are satisfied, a request of the kind referred to in *subsection (6)* is made by one or more members of the PLC, being a request that, as provided therein, must be acceded to by the PLC;

- a valuation under *section 1030* of the relevant assets shall be caused to be carried out by the PLC and the relevant provisions of *sections 1030* to *1032* shall apply accordingly.
- (6) One or more members who hold, or together hold, not less than 5 per cent of the issued shares of the PLC on the date of the passing of the ordinary resolution or the notification by the directors, as the case may be, referred to in *subsection (4)(d)* may, by notice in writing served on the PLC before the date secondly referred to in *subsection (4)(b)*, request a valuation under *section 1030* of the relevant assets to be carried out; unless, on the date of service of that notice, the percentage of the issued shares of the PLC held by the requester or, as appropriate, the requesters has fallen below 5 per cent, the request shall be acceded to by the PLC. 5
- (7) Where this section applies and shares are proposed to be allotted by a PLC without a report of an independent expert as otherwise required by *sections 1030* to *1032*, the PLC shall, no later than the earliest of the dates specified in *subsection (8)*, deliver, in the prescribed form, notice of the proposed allotment to the Registrar, which notice shall contain— 10
- (a) a description of the consideration other than in cash at issue;
 - (b) the value of that consideration, the source of its valuation and, where appropriate, the method of valuation; and
 - (c) a statement whether the value arrived at corresponds at least to the number and nominal value of, and (where appropriate) to the premium on, the shares to be issued for that consideration. 20
- (8) The dates referred to in *subsection (7)* are—
- (a) the date of the allotment;
 - (b) where the allotment is to be authorised by ordinary resolution, as appropriate— 25
 - (i) the date of the notice of the general meeting at which the ordinary resolution is to be passed; or
 - (ii) where the ordinary resolution is to be passed by written resolution, the date on which the written resolution is deemed to be passed;
 - (c) where the allotment is to be authorised by the board of directors only, the date of the notification by the directors referred to in *subsection (4)(d)*. 30
- (9) Where shares have been allotted as mentioned in *subsection (7)*, the notice of the allotment delivered under *section 1023(9)* to the Registrar in respect of those shares shall—
- (a) contain— 35
 - (i) a description of the consideration other than in cash at issue;
 - (ii) the value of that consideration, the source of its valuation and, where appropriate, the method of valuation; and
 - (iii) a statement whether the value arrived at corresponds at least to the number and nominal value of, and (where appropriate) to the premium on, the shares issued for that consideration; 40

which may be by reference to the particulars delivered in accordance with subsection (7); and

- (b) contain a statement that no exceptional circumstances with regard to the original valuation arose prior to the allotment.

Dispensation from section 1030: cases in which consideration for allotment falls into both section 1033 and section 1034

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1035. (1) If the consideration for the allotment of the shares consists of both—

- (a) securities based consideration; and
(b) non-securities based consideration;

(whether in addition to cash or not), the provisions of sections 1033 and 1034 shall apply, respectively, to the securities based consideration and the non-securities based consideration, but with the modification that the notice of the proposed allotment, as provided for in sections 1033(6) and 1034(7), may be combined in the one document as long as that document is delivered to the Registrar no later than the earliest of the dates specified in section 1034(8).

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(2) In this section—

“non-securities based consideration” has the same meaning as it has in section 1034;
“securities based consideration” has the same meaning as it has in section 1033.

Expert’s report on non-cash assets acquired from subscribers, etc.

1036. (1) A PLC shall not, unless the conditions specified in subsection (3) have been satisfied, enter into an agreement with a relevant person for the transfer by him or her, during the initial period, of one or more non-cash assets to the PLC or another for a consideration to be given by the PLC equal in value at the time of the agreement to at least one-tenth of the nominal value of the PLC’s share capital issued at that time.

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(2) In this section—

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- (a) in relation to a company formed as a PLC—
(i) “relevant person” means any subscriber to the memorandum of the company; and
(ii) “initial period” means the period of 2 years beginning after the date on which the company is issued with a certificate under section 1012 that it is entitled to do business;

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- (b) in relation to a company re-registered or registered in accordance with Part 20 or 22 as a PLC—
(i) “relevant person” means any person who was a member of the company on the date of the re-registration or registration; and
(ii) “initial period” means the period of 2 years beginning after that date.

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(3) The conditions referred to in subsection (1) are that—

- (a) the consideration to be received by the PLC (that is to say, the asset to be transferred to the PLC or the advantage to the PLC of its transfer to another person) and any consideration other than cash to be given by the PLC have been valued under the following provisions of this section (without prejudice to any requirement to value any consideration under *sections 1030 to 1032*); 5
- (b) a report with respect to the consideration to be so received and given has been made to the PLC in accordance with those provisions during the 6 months immediately preceding the date of the agreement; 10
- (c) the terms of the agreement have been approved by an ordinary resolution of the PLC; and 10
- (d) not later than—
- (i) the date of the giving of the notice of the meeting at which the resolution is proposed; or
 - (ii) where the means under *section 193* (unanimous written resolutions) for passing the resolution is used, 21 days before the date of the signing of the resolution by the last member to sign; 15
- copies of the resolution and report have been circulated to the members of the PLC entitled to receive that notice or sign the resolution and, if the relevant person is not then such a member, to that person.
- (4) *Subsection (1)* shall not apply to the following agreements for the transfer of an asset for a consideration to be given by the PLC, that is to say— 20
- (a) where it is part of the ordinary business of the PLC to acquire or arrange for other persons to acquire assets of a particular description, an agreement entered into by the PLC in the ordinary course of its business for the transfer of an asset of that description to it or such a person, as the case may be; or 25
 - (b) an agreement entered into by the PLC under the supervision of the court, or an officer authorised by the court for the purpose, for the transfer of an asset to the PLC or to another.
- (5) *Subsections (5), (6) and (10) of section 1030* shall apply to a valuation and report of any consideration under this section as those subsections apply to a valuation of and report on any consideration under *subsection (1) of section 1030*. 30
- (6) The report of the independent person under this section shall—
- (a) state the consideration to be received by the PLC, describing the asset in question, specifying the amount to be received in cash and the consideration to be given by the PLC, specifying the amount to be given in cash; 35
 - (b) state the method and date of valuation;
 - (c) contain a note by the independent person, or be accompanied by such a note, as to the matters mentioned in *section 1030(11)(a) to (c)*; and
 - (d) contain a note by the independent person, or be accompanied by such a note, that, on the basis of the valuation, the value of the consideration to be received by the PLC is not less than the value of the consideration to be given by it. 40

- (7) If a PLC enters into an agreement with any relevant person in contravention of subsection (1) and either the relevant person has not received a report under this section or there has been some other contravention of this section or section 1030(5), (6) or (10) which he or she knew or ought to have known amounted to a contravention, then, subject to subsection (8)— 5
- (a) the PLC shall be entitled to recover from the relevant person, any consideration given by the PLC under the agreement or an amount equivalent to its value at the time of the agreement; and
 - (b) the agreement, so far as not carried out, shall be void.
- (8) Where a PLC enters into an agreement in contravention of subsection (1) and that agreement is or includes an agreement for the allotment of shares in that PLC, then whether or not the agreement also contravenes section 1030— 10
- (a) subsection (7) shall not apply to the agreement in so far as it is an agreement for the allotment of shares; and
 - (b) sections 1027(3) and 1031(2) shall apply in relation to the shares as if they had been allotted in contravention of section 1030. 15
- (9) Where a PLC contravenes any of the provisions of this section, the PLC and any officer of it who is in default shall be guilty of a category 3 offence.

Supplemental provisions in relation to section 1036

- 1037.** (1) Any person carrying out a valuation or making a report under section 1036 shall be entitled to require from the officers of the PLC such information and explanation as the person thinks necessary to enable him or her to carry out the valuation or make the report and provide the note required by that section. 20
- (2) Section 1032(4) shall apply in relation to any such valuation and report as it applies in relation to a valuation and report under section 1030 with the substitution of a reference to this subsection for the reference in section 1032(5) to section 1032(1). 25
- (3) A PLC which has passed a resolution under section 1036 with respect to the transfer of an asset shall, within 15 days after the date of the passing of the resolution, deliver to the Registrar a copy of the resolution together with the report required by that section and, if the PLC fails to do so, the PLC and any officer of it who is in default shall be guilty of a category 4 offence. 30
- (4) Any reference in section 1036 or this section to consideration given for the transfer of an asset includes a reference to consideration given partly for its transfer but—
- (a) the value of any consideration partly so given shall be taken to be the proportion of that consideration properly attributable to its transfer; 35
 - (b) the independent person shall carry out or arrange for such valuations of anything else as will enable him or her to determine that proportion; and
 - (c) his or her report under section 1036 shall state what valuation has been made by virtue of paragraph (b) and also the reason for and method and date of any such valuation and any other matters which may be relevant to that determination. 40

Relief

1038. (1) Where any person is liable to a PLC under *section 1027, 1029, 1030, 1031 or 1036* in relation to payment in respect of any shares in the PLC or is liable by virtue of any undertaking given to the PLC in, or in connection with, payment for any such shares, the person so liable may make an application to the court under this subsection to be exempted in whole or in part from that liability. 5

(2) Where the liability mentioned in *subsection (1)* arises under any of the foregoing sections in relation to payment in respect of any shares, the court may, on an application under that subsection, exempt the applicant from that liability only—

(a) if and to the extent that it appears to the court just and equitable to do so having regard to the following, namely: 10

(i) whether the applicant has paid, or is liable to pay, any amount in respect of any other liability arising in relation to those shares under any of the foregoing sections or of any liability arising by virtue of any undertaking given in or in connection with payment for those shares; 15

(ii) whether any person other than the applicant has paid or is likely to pay (whether in pursuance of an order of the court or otherwise) any such amount; and

(iii) whether the applicant or any other person has performed, in whole or in part, or is likely so to perform any such undertaking or has done or is likely to do any other thing in payment or part payment in respect of those shares; 20

(b) if and to the extent that it appears to the court just and equitable to do so in respect of any interest which he or she is liable to pay to the PLC under any of the foregoing sections.

(3) Where the liability mentioned in *subsection (1)* arises by virtue of an undertaking given to the PLC in or in connection with, payment for any shares in the PLC, the court may, on an application under that subsection, exempt the applicant from that liability only if and to the extent that it appears to the court just and equitable to do so having regard to the following, namely: 25

(a) whether the applicant has paid or is liable to pay any amount in respect of any liability arising in relation to those shares under *section 1027, 1029, 1030, 1031 or 1036*; and 30

(b) whether any person other than the applicant has paid or is likely to pay (whether in pursuance of an order of the court or otherwise) any such amount.

(4) In determining in pursuance of an application under *subsection (1)* whether it should exempt the applicant in whole or in part from any liability, the court shall have regard to the following overriding principles, namely: 35

(a) that a PLC which has allotted shares should receive money or money's worth at least equal in value to the aggregate of the nominal value of those shares and the whole of any premium or, if the case so requires, so much of that aggregate as is treated as paid up; and 40

(b) subject to *paragraph (a)*, that where such a PLC would, if the court did not grant that exemption, have more than one remedy against a particular person, it should

- be for the PLC to decide which remedy it should remain entitled to pursue.
- (5) Where a person brings any proceedings against another (the “contributor”) for a contribution in respect of any liability to a company arising under any of *sections 1027 to 1031* and *1036* and it appears to the court that the contributor is liable to make such a contribution, the court may, if and to the extent that it appears to the court, having regard to the respective culpability in respect of the liability to the PLC of the contributor and the person bringing the proceedings, that it is just and equitable to do so—
- (a) exempt the contributor in whole or in part from his or her liability to make such a contribution, or
 - (b) order the contributor to make a larger contribution than, but for this subsection, he or she would be liable to make.

- (6) Where a person is liable to a PLC by virtue of *subsection (7)(a)* of *section 1036* the court may, on an application under this subsection, exempt that person in whole or in part from that liability if and to the extent that it appears to the court just and equitable to do so having regard to any benefit accruing to the PLC by virtue of anything done by that person towards the carrying out of the agreement mentioned in that *subsection (7)(a)*.

Special provisions as to issue of shares to subscribers

- 1039.** (1) Any shares taken by a subscriber to the constitution of a PLC in pursuance of an undertaking of his or hers in the constitution and any premium on the shares shall be paid up in cash.
- (2) If a PLC permits any such share to be paid up otherwise than in cash, the PLC and any officer of it who is in default shall be guilty of a category 3 offence.

Enforceability of undertakings made in contravention of certain provisions of Chapter

1040. Subject to *section 1038*—

- (a) an undertaking given by any person in or in connection with payment for shares in a PLC to do work or perform services or to do any other thing shall, if it is enforceable by the PLC apart from this Part, be so enforceable notwithstanding that there has been a contravention in relation thereto of *section 1027, 1029, 1030* or *1031*; and
- (b) where such an undertaking is given in contravention of *section 1036* or *1037* in respect of the allotment of any shares it shall be so enforceable notwithstanding that contravention.

Adaptation of *section 102(1)* and (2) in relation to a PLC

1041. *Section 102(1)* and (2) shall apply in relation to a PLC as if references in them to *Chapter 3 or 4 of Part 9* were references to *Chapter 16* or, as the case may be, *Chapter 17* of this Part.

Treatment of own shares held by or on behalf of a PLC

1042. (1) Subject to *section 1043(5)*, this section applies to a PLC—

- (a) where shares in the PLC are forfeited, or are surrendered to the PLC in lieu of forfeiture, in pursuance of *Part 3* or its constitution for failure to pay any sum payable in respect of those shares, 5
 - (b) where shares in the PLC are acquired by the PLC otherwise than by any of the methods mentioned in *section 102(1)* and the company has a beneficial interest in those shares,
 - (c) where the nominee of the PLC acquires shares in the PLC from a third person without financial assistance being given directly or indirectly by the PLC and the PLC has a beneficial interest in those shares, or 10
 - (d) where any person acquires shares in the PLC with financial assistance given to him or her directly or indirectly by the PLC for the purpose of the acquisition and the PLC has a beneficial interest in those shares.
- (2) In determining for the purposes of *subsection (1)(b)* or *(c)* whether a PLC has a beneficial interest in any shares, there shall be disregarded, in any case where the PLC is a trustee (whether as personal representative or otherwise), any right of the PLC (as trustee) to recover its expenses or be remunerated out of the trust property. 15
- (3) Unless the shares or any interest of the PLC in them are previously disposed of, the PLC shall, not later than the end of the relevant period after the date of their forfeiture or surrender or, in a case to which *subsection (1)(b)*, *(c)* or *(d)* applies, their acquisition—
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- (a) cancel them and reduce the amount of the share capital by the nominal value of the shares, and
 - (b) where the effect of cancelling the shares will be that the nominal value of the PLC's allotted share capital is brought below the authorised minimum, apply for re-registration as another type of company, stating the effect of the cancellation, 25
- and the directors may take such steps as are requisite to enable the PLC to carry out its obligations under this subsection without complying with *sections 84* and *85*, including passing a resolution in accordance with *subsection (5)*. 30
- (4) The PLC and, in a case falling within *subsection (1)(c)* or *(d)*, the PLC's nominee or, as the case may be, the other shareholder, shall not exercise any voting rights in respect of the shares and any purported exercise of those rights shall be void.
- (5) The resolution authorised by *subsection (3)* may alter the PLC's constitution so that it no longer states that the company is to be a PLC and may make such other alterations in the constitution as are requisite in the circumstances. 35
- (6) Without prejudice to the generality of *subsection (5)*, where the resultant company type is a private company limited by shares, the alteration referred to in that subsection shall include the replacement of the memorandum and articles of the re-registering company by a constitution in conformity with *section 19* and *Schedule 1* (but nothing in this section authorises the alteration of the rights and obligations of members of the re-registering company, or of other persons, as set out in its memorandum and articles and, accordingly, where necessary, the foregoing 40

replacement constitution shall include such supplemental regulations as will secure those rights and obligations).

(7) The application for re-registration required by *subsection (3)(b)* shall be in the prescribed form and signed by a director or secretary of the PLC and shall be delivered to the Registrar together with a copy of the constitution of the PLC as altered by the resolution.

(8) If a PLC required to apply to be re-registered as another type of company under this section, fails to do so before the end of the relevant period, *section 68* shall apply to it as if it were a private company limited by shares, but, subject to that, the company shall continue to be treated for the purposes of this Act as a PLC until it is re-registered as another form of company.

(9) If a PLC, when required to do so by *subsection (3)*, fails to cancel any shares in accordance with *paragraph (a)* of that subsection or to make an application for re-registration in accordance with *paragraph (b)* of that subsection, the PLC and any officer of it who is in default shall be guilty of a category 3 offence.

(10) In addition to the resolutions which *subsection (4)* of that section provides that that section applies to, *section 198* shall apply to resolutions of the directors of a PLC passed by virtue of *subsection (3)*.

Supplemental provisions in relation to *section 1042* (including definition of “relevant period”)

1043. (1) If the Registrar is satisfied that a PLC is required to be re-registered in accordance with *section 1042*, the Registrar shall—

(a) retain the application and other documents delivered to him or her under *subsection (7)* of that section; and

(b) issue to the company an appropriate certificate of incorporation.

(2) Upon the issue of a certificate of incorporation under *subsection (1)*—

(a) the company shall, by virtue of the issue of that certificate, become the type of company stated in the certificate; and

(b) the alterations in the constitution set out in the resolution shall take effect accordingly.

(3) A certificate of incorporation issued to a company under *subsection (1)* shall be conclusive evidence—

(a) that the requirements of *section 1042* and this section in respect of re-registration and of matters precedent and incidental thereto have been complied with; and

(b) that the company is the type of company stated in the certificate.

(4) *Section 1282(9)* shall apply to a re-registration pursuant to *section 1042* as it applies to a re-registration pursuant to *Part 20*.

(5) Where, after shares in a company—

(a) are forfeited, or are surrendered to the company in lieu of forfeiture, in pursuance of *Part 3* or its constitution or are otherwise acquired by the company;

- (b) are acquired by a nominee of the company in the circumstances mentioned in section 1042(1)(c) (and the references in that provision to a PLC shall, for the purposes of this paragraph, be read as references to a company); or
 - (c) are acquired by any person in the circumstances mentioned in section 1042(1)(d) (and the references in that provision to a PLC shall, for the purposes of this paragraph, be read as references to a company);
- the company is re-registered as a PLC, section 1042 and the foregoing provisions of this section shall apply to the company as if it had been a PLC at the time of the forfeiture, surrender or acquisition and as if for any reference to the relevant period after the date of the forfeiture, surrender or acquisition there were substituted a reference to the relevant period after the date of the re-registration of the company as a PLC.
- (6) Section 104(1) shall not apply to shares acquired otherwise than by subscription by a nominee of a PLC in a case falling within section 1042(1)(d).
- (7) In section 1042 and this section “relevant period”, in relation to any shares, means—
- (a) in the case of shares forfeited or surrendered to the company in lieu of forfeiture or acquired as mentioned in section 1042(1)(b) or (c) — 3 years;
 - (b) in the case of shares acquired as mentioned in section 1042(1)(d) — one year.

Charges taken by PLC on own shares

- 1044.** (1) A mortgage, charge, lien or pledge of a PLC on its own shares (whether taken expressly or otherwise), except a mortgage or charge permitted by subsection (2), is void.
- (2) The following are permitted mortgages and charges, that is to say:
- (a) in the case of every description of PLC, a mortgage or charge on its own shares (not being fully paid) for any amount payable in respect of the shares;
 - (b) in the case of a PLC whose ordinary business includes the lending of money or consists of the provision of credit or the bailment or hiring of goods under a hire-purchase agreement, or both, a mortgage or charge of the PLC on its own shares (whether fully paid or not) which arises in connection with a transaction entered into by the company in the ordinary course of its business;
 - (c) in the case of a company which is re-registered under Part 20 as a PLC, a mortgage or charge on its own shares which was in existence immediately before its application for re-registration.

Application of certain provisions of section 82(6) in relation to PLCs

- 1045.** (1) Without prejudice to subsections (2) to (4), in its application to a PLC giving financial assistance, section 82(6) shall apply—
- (a) as if, in paragraph (k), “of it or its holding company” were substituted for “of its holding company”;
 - (b) as if, in paragraph (m), “by an offeree (within the meaning of the Irish Takeover

- Panel Act 1997) or a private limited subsidiary of an offeree” were substituted for “by a private limited subsidiary of an offeree (within the meaning of the Irish Takeover Panel Act 1997); and
- (c) as if the following paragraph were substituted for *paragraph (n)*:
- “(n) in connection with an allotment of shares by a company or its holding company, the payment by the company of commissions, not exceeding 10 per cent of the money received in respect of such allotment, to intermediaries, and the payment by the company of professional fees;”.
- (2) Subject to subsection (3), section 82(6)(a) shall not apply to a PLC. 10
- (3) In either of the following 2 cases, namely:
- (a) a case in which the giving of particular financial assistance by a company (not being a PLC) has been authorised by the company’s use of the Summary Approval Procedure; or
- (b) a case in which, before the commencement of this section, the giving of particular financial assistance by an existing company (not being a PLC) has been authorised by the company’s use of the procedure contained in subsection (2) of section 60 of the Act of 1963 (and that subsection and subsections (3) to (11) of that section shall remain in force for the purposes of the particular transaction and for the purposes of, and incidental to, the court’s jurisdiction to cancel the special resolution concerned); 15 20
- and—
- (i) following such authorisation, the company has applied to re-register, and has re-registered (whether under the prior Companies Acts or *Part 20*), as a PLC; and
- (ii) save where, by reason of the operation of *Chapter 7* of *Part 4* or, as the case may be, the foregoing subsections (3) to (11), the particular transaction may not be proceeded with; 25
- then the giving by the PLC of the financial assistance (pursuant to the foregoing authority) shall be lawful.
- (4) A PLC may, in accordance with *paragraph (e), (f) or (g)* of section 82(6), give financial assistance to any person only if the PLC’s net assets are not thereby reduced or, to the extent that those assets are thereby reduced, if the financial assistance is provided out of profits which are available for distribution. 30
- (5) In subsection (4) “net assets” means the aggregate of the PLC’s assets less the aggregate of its liabilities; and “liabilities” includes— 35
- (a) where the PLC prepares Companies Act entity financial statements, any provision for liabilities (within the meaning of *paragraph 82* of *Schedule 3*) that is made in those financial statements;
- (b) where the PLC prepares IFRS entity financial statements, any provision that is made in those financial statements; 40
- except to the extent that that provision is taken into account in calculating the value of

any asset to the PLC.

Variation of rights attached to special classes of shares

1046. *Section 985 shall apply to a PLC as if—*

- (a) each reference in it to a DAC were a reference to a PLC; and
- (b) in subsection (3)(c)—
 - (i) the reference to the giving, variation, revocation or renewal of an authority for the purposes of section 69(1) were a reference to the giving, variation, revocation or renewal of an authority for the purposes of section 1023(1); and
 - (ii) “by the means referred to in section 84(2)(b)” were substituted for “by either of the means referred to in section 84”.

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Restriction on transfer of shares

1047. *Section 95(2) shall not apply in respect of a transfer of shares in a PLC where those shares fall within a class of securities the evidencing and transfer of title to which is for the time being governed by, as appropriate—*

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- (a) regulations under section 1088, or
- (b) for so long as they remain in force (including for any period as they may stand amended by regulations under section 1088), the Companies Act 1990 (Uncertificated Securities) Regulations 1996 (S.I. No. 68 of 1996).

CHAPTER 4

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Interests in shares: disclosure of individual and group acquisitions

Purpose of Chapter

1048. The purpose of this Chapter is to require the disclosure to a PLC (and the keeping of a register by the PLC as to the matters disclosed) of the following facts, and certain associated particulars, namely:

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- (a) the fact of there being acquired an interest in shares of the PLC (being shares with full voting rights) of an amount that is equal to or above a specified percentage – see, principally, sections 1050 and 1051;
- (b) the fact of there no longer being held an interest in shares of the PLC (of the foregoing kind) of an amount that is equal to or above a specified percentage – see, principally, sections 1050 and 1051;
- (c) the fact of there being acquired, or there no longer being held, an interest in shares of the PLC (of the foregoing kind) where, in consequence of either such event, the percentage levels of the interest (in terms of whole number of percentages) in the shares before and immediately after that event are not the same — see, principally, sections 1050 and 1051; and
- (d) facts relevant to the application of the provisions of this Chapter as they require a

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disclosure of the kind described in a preceding paragraph, for example, the fact that full voting rights have, by virtue of a condition being satisfied, become attached to the shares in which the interests concerned exist – see, principally, *sections 1050* and *1052*;

and this Chapter—

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- (i) includes provisions for reckoning the interest of a spouse, civil partner or child of the person concerned, or a body corporate controlled by any of them, as an interest of that person and for reckoning, as an interest of the person concerned, the interest of another who is party with that person to a particular type of agreement;
- (ii) may limit the duty of disclosure to circumstances in which the person concerned has become aware of the relevant facts; and
- (iii) in addition to the various foregoing requirements, enables or, in certain cases requires, a PLC to conduct an investigation into whether interests are, or within a certain period have been, held in its shares that carry full voting rights.

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Interpretation and supplemental (*Chapter 4*)

1049. (1) In this Chapter—

“child” does not include a person who has attained the age of majority;

“duty of disclosure” shall be read in accordance with *section 1050* or *1052(1)*, as appropriate;

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“notifiable percentage” has the meaning given to it by *section 1054*;

“relevant share capital”, in relation to a PLC, means the PLC’s issued share capital of a class carrying rights to vote in all circumstances at general meetings of the PLC.

(2) It is declared for the avoidance of doubt that—

(a) where a PLC’s relevant share capital is divided into different classes of shares, references in this Chapter to a percentage of the nominal value of its relevant share capital are references to a percentage of the nominal value of the issued shares comprised in each of the classes taken separately, and

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(b) the temporary suspension of voting rights in respect of shares comprised in issued share capital of a PLC of any such class does not affect the application of this Chapter in relation to interests in those or any other shares comprised in that class.

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(3) The application of this Chapter is restricted, as was the position in the case of the corresponding provisions of the Act of 1990, by the regulations made under section 20 of the Investment Funds, Companies and Miscellaneous Provisions Act 2006 that are referred to in *paragraph 11* of *Schedule 6*.

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Duty of disclosure — first class of case in which duty arises

1050. Where a person either—

(a) to the person’s knowledge acquires an interest in shares comprised in a PLC’s

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- relevant share capital, or ceases to be interested in shares so comprised (whether or not retaining an interest in other shares so comprised), or
- (b) becomes aware that he or she has acquired an interest in shares so comprised or that he or she has ceased to be interested in shares so comprised in which he or she was previously interested,
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- then, if—
- (i) the interest in the shares is a notifiable interest as provided for in *section 1051(2)*, and
 - (ii) the case concerned falls within *section 1051(4)* or *(5)*,
- the person shall be under a duty (in this Chapter referred to as the “duty of disclosure”) to make notification to the PLC of the interests which the person has, or had, in its shares.
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- Notifiable interest**
- 1051.** (1) For the purposes of the duty of disclosure, the interests to be taken into account are those in relevant share capital of the PLC concerned; *section 1061* has effect (by means of its applying certain provisions of *Chapter 5 of Part 5*) for the purpose of determining whether a particular interest in shares is an interest in shares that is to be reckoned in applying the next following subsection.
- (2) For the purposes of this Chapter, a person has a notifiable interest at any time when the person is interested in shares comprised in that share capital of an aggregate nominal value equal to or more than the percentage of the nominal value of that share capital which is for the time being the notifiable percentage.
- (3) All facts relevant to determining whether a person has a notifiable interest at any time (or the percentage level of the person’s interest) are taken to be what he or she knows the facts to be at that time.
- (4) The duty of disclosure arises under *section 1050* where the person has a notifiable interest immediately after the relevant time, but did not have such an interest immediately before that time.
- (5) The duty of disclosure also arises under *section 1050* where—
- (a) the person had a notifiable interest immediately before the relevant time, but does not have such an interest immediately after it, or
 - (b) the person had a notifiable interest immediately before that time, and has such an interest immediately after it, but the percentage levels of his or her interest immediately before and immediately after that time are not the same.
- (6) For the purposes of this section, the “relevant time” means—
- (a) in a case falling within *section 1050(a)* — the time of the event there mentioned, and
 - (b) in a case falling within *section 1050(b)* — the time at which the person became aware of the facts in question.
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Duty of disclosure — second class of case in which duty arises

1052. (1) Where, otherwise than in circumstances falling within *section 1050*, a person—

- (a) is aware at the time when it occurs of any change of circumstances affecting facts relevant to the application of *section 1051(2)* to an existing interest of his or hers in shares comprised in a PLC's share capital of any description, or 5
- (b) otherwise becomes aware of any such facts (whether or not arising from any such change of circumstances),

then, if the case concerned falls within *subsection (2)*, the person shall be under a duty (in this Chapter also referred to as the “duty of disclosure”) to make notification to the PLC of those circumstances or facts. 10

(2) The duty of disclosure arises under this section where the person has a notifiable interest immediately after the relevant time, but did not have such an interest immediately before that time.

(3) For the purposes of this section, the “relevant time” means—

- (a) in a case falling within *subsection (1)(a)* — the time of the change of circumstances there mentioned, and 15
- (b) in a case falling within *subsection (1)(b)* — the time at which the person became aware of the facts in question.

“Percentage level” in relation to notifiable interests

1053. (1) Subject to *subsection (2)*, in this Chapter “percentage level” means the percentage figure found by expressing the aggregate nominal value of all the shares comprised in the share capital concerned in which the person is interested immediately before or (as the case may be) immediately after the relevant time as a percentage of the nominal value of that share capital and rounding that figure down, if it is not a whole number, to the next whole number. 20
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(2) Where the nominal value of the share capital is greater immediately after the relevant time than it was immediately before, the percentage level of the person's interest immediately before (as well as immediately after) that time is determined by reference to the larger amount.

The notifiable percentage

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1054. (1) In this Chapter “notifiable percentage” means—

- (a) subject to *paragraph (b)*, 3 per cent; or
 - (b) such other rate as may be specified by order made by the Minister under *subsection (2)*.
- (2) The Minister may, by order, specify the percentage to apply in determining whether a person's interest in a PLC's shares is notifiable under this Chapter; and different percentages may be so specified in relation to public limited companies of different classes or descriptions. 35
- (3) Where — in consequence of a reduction specified under this section in the percentage

made by such order — a person’s interest in a PLC’s shares becomes notifiable, the person shall then come under the duty of disclosure in respect of it; and the duty shall be performed within the period of 10 days after the day on which it arises.

Particulars to be contained in notification

1055. (1) Subject to *section 1054(3)*, a person’s duty to make a notification under *section 1050* or *1052* shall be performed within the period of 5 days after the day on which the duty arises; and the notification shall be in writing to the PLC. 5

(2) The notification shall specify the share capital to which it relates, and shall also—

(a) state the number of shares comprised in that share capital in which the person making the notification knows he or she was interested immediately after the time when the duty arose, or 10

(b) in a case where the person no longer has a notifiable interest in shares comprised in that share capital, state that he or she no longer has that interest.

(3) A notification with respect to a person’s interest in a PLC’s relevant share capital (other than one stating that he or she no longer has a notifiable interest in shares comprised in that share capital) shall include particulars of— 15

(a) the identity of each registered holder of shares to which the notification relates, and

(b) the number of those shares held by each such registered holder,

so far as known to the person making the notification at the date when the notification is made. 20

(4) A person who has an interest in shares comprised in a PLC’s relevant share capital, that interest being notifiable, is under a duty to notify the PLC in writing—

(a) of any particulars in relation to those shares which are specified in *subsection (3)*, and 25

(b) of any change in those particulars,

of which, in either case, the person becomes aware at any time after any interest notification date and before the first occasion following that date on which the person comes under any further duty of disclosure with respect to his or her interest in shares comprised in that share capital. 30

(5) A duty arising under *subsection (4)* shall be performed within the period of 5 days after the day on which it arises.

(6) The reference in *subsection (4)* to an interest notification date, in relation to a person’s interest in shares comprised in a PLC’s relevant share capital, is to either of the following: 35

(a) the date of any notification made by the person with respect to his or her interest under this Chapter; or

(b) where the person has failed to make a notification, the date on which the period allowed for making it came to an end.

- (7) A person who at any time has an interest in shares which is notifiable is to be regarded under subsection (4) as continuing to have a notifiable interest in them unless and until the person comes under a duty to make a notification stating that he or she no longer has such an interest in those shares.

Notification of family and corporate interests

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1056. (1) For the purposes of sections 1049 to 1055, a person is taken to be interested in any shares in which the person's spouse or civil partner or any child of the person is interested.

(2) For the purposes of sections 1049 to 1055 and subsection (1), a person is taken to be interested in shares if a body corporate is interested in them and—

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- (a) that body or its directors are accustomed to act in accordance with his or her directions or instructions, or
- (b) he or she is entitled to exercise or control the exercise of one-third or more of the voting power at general meetings of that body corporate.

(3) Where a person is entitled to exercise or control the exercise of one-third or more of the voting power at general meetings of a body corporate and that body corporate is entitled to exercise or control the exercise of any of the voting power at general meetings of another body corporate (the "effective voting power") then, for the purposes of subsection (2)(b), the effective voting power is taken as exercisable by that person.

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(4) For the purposes of subsections (2) and (3) a person is entitled to exercise or control the exercise of voting power if—

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- (a) the person has a right (whether subject to conditions or not) the exercise of which would make him or her so entitled, or
- (b) the person is under an obligation (whether or not so subject) the fulfilment of which would make him or her so entitled.

(5) A reference in this section to a child of a person shall be deemed to include a reference to a child of the person's civil partner who is ordinarily resident with the person and the civil partner.

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"Share acquisition agreement" — meaning

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1057. (1) Subject to the following provisions of this section, "share acquisition agreement", for the purposes of this Chapter, means an agreement between 2 or more persons which includes provision for the acquisition by any one or more of the parties to the agreement of interests in shares comprised in relevant share capital of a particular PLC (the "target company") but only if the following 2 conditions are satisfied.

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(2) Those conditions are—

- (a) the agreement also includes provisions imposing obligations or restrictions on any one or more of the parties to the agreement with respect to their use, retention or disposal of interests in that company's shares acquired in pursuance of the agreement (whether or not together with any other interests of theirs in that

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- company's shares to which the agreement relates); and
- (b) any interest in the company's shares is in fact acquired by any of the parties in pursuance of the agreement.
- (3) In relation to such an agreement references in this section and in *sections 1058 and 1059* to the target company are to the company which is the target company for that agreement in accordance with this section. 5
- (4) The reference in *subsection (2)(a)* to the use of interests in shares in the target company is to the exercise of any rights or of any control or influence arising from those interests (including the right to enter into any agreement for the exercise, or for control of the exercise, of any of those rights by another person). 10
- (5) Once any interest in shares in the target company has been acquired in pursuance of such an agreement as is mentioned in *subsection (1)*, the agreement continues to be a share acquisition agreement for the purposes of this Chapter irrespective of—
- (a) whether or not any further acquisitions of interests in the company's shares take place in pursuance of the agreement; and 15
 - (b) any change in the persons who are for the time being parties to it; and
 - (c) any variation of the agreement, so long as the agreement continues to include provisions of any description mentioned in *subsection (2)(a)*.
- (6) References in *subsection (5)* to the agreement include any agreement having effect (whether directly or indirectly) in substitution for the original agreement. 20
- (7) In this section, and also in references elsewhere in this Chapter to a share acquisition agreement as defined by this section, “agreement” includes any agreement or arrangement; and references in this section to provisions of an agreement—
- (a) accordingly include undertakings, expectations or understandings operative under any arrangement; and 25
 - (b) (without prejudice to the foregoing) also include any provisions, whether express or implied and whether absolute or not.
- (8) Neither of the following is a share acquisition agreement for the purposes of this Chapter:
- (a) an agreement which is not legally binding unless it involves mutuality in the undertakings, expectations or understandings of the parties to it; 30
 - (b) an agreement to underwrite or sub-underwrite any offer of shares in a company, provided the agreement is confined to that purpose and any matters incidental to it.

- Duties of disclosure arising in consequence of *section 1057*** 35
- 1058.** (1) In the case of a share acquisition agreement, each party to the agreement shall be taken (for purposes of the duty of disclosure) to be interested in all shares in the target company in which any other party to it is interested apart from the agreement (whether or not the interest of the other party in question was acquired, or includes any interest which was acquired, in pursuance of the agreement). 40

- (2) For those purposes, and also for those of *section 1059*, an interest of a party to such an agreement in shares in the target company is an interest apart from the agreement if the party is interested in those shares otherwise than by virtue of the application of *section 1057* and this section in relation to the agreement.
- (3) Accordingly, any such interest of the person (apart from the agreement) includes for those purposes any interest treated as his or hers under *section 1056* or by the application of *section 1057* and this section in relation to any other agreement with respect to shares in the target company to which he or she is a party.
- (4) A notification with respect to his or her interest in shares in the target company made to that company under this Chapter by a person who is for the time being a party to a share acquisition agreement shall—
- (a) state that the person making the notification is a party to such an agreement;
 - (b) include the names and (so far as known to the person) the addresses of the other parties to the agreement, identifying them as such; and
 - (c) state whether or not any of the shares to which the notification relates are shares in which the person is interested by virtue of *section 1057* and this section and, if so, the number of those shares.
- (5) Where a person makes a notification to a PLC under this Chapter in consequence of ceasing to be interested in any shares of that PLC by virtue of the fact that he or she or any other person has ceased to be a party to a share acquisition agreement, the notification shall include a statement that he or she or that other person has ceased to be a party to the agreement (as the case may require) and also (in the latter case) the name and (if known to him or her) the address of that other.

Duty of persons acting together to keep each other informed

- 1059.** (1) A person who is a party to a share acquisition agreement shall be subject to the requirements of this section at any time when—
- (a) the target company is a PLC, and the person knows it to be so; and
 - (b) the shares in that company to which the agreement relates consist of or include shares comprised in relevant share capital of the company, and the person knows that to be the case; and
 - (c) the person knows the facts which make the agreement a share acquisition agreement.
- (2) Such a person shall be under a duty to notify every other party to the agreement, in writing, of the relevant particulars of his or her interest (if any) apart from the agreement in shares comprised in relevant share capital of the target company—
- (a) on the person's first becoming subject to the requirements of this section; and
 - (b) on each occurrence after that time while the person is still subject to those requirements of any event or circumstances within *section 1050* or *1052* (as it applies to the person's case otherwise than by reference to interests treated as his or hers under *section 1058* as applying to that agreement).
- (3) The relevant particulars to be notified under subsection (2) are—

- (a) the number of shares (if any) comprised in the target company's relevant share capital in which the person giving the notice would be required to state his or her interest if he or she were under the duty of disclosure with respect to that interest (apart from the agreement) immediately after the time when the obligation to give notice under subsection (2) arose; and 5
- (b) the relevant particulars with respect to the registered ownership of those shares, so far as known to the person at the date of the notice.
- (4) A person who is for the time being subject to the requirements of this section shall be under a duty to notify every other party to the agreement, in writing— 10
- (a) of any relevant particulars with respect to the registered ownership of any shares comprised in relevant share capital of the target company in which he or she is interested apart from the agreement, and
- (b) of any change in those particulars,
- of which, in either case, the person becomes aware at any time after any interest notification date and before the first occasion following that date on which the person becomes subject to any further duty to give notice under subsection (2) with respect to his or her interest in shares comprised in that share capital. 15
- (5) The reference in subsection (4) to an interest notification date, in relation to a person's interest in shares comprised in the target company's relevant share capital, is to either of the following: 20
- (a) the date of any notice given by the person with respect to his or her interest under subsection (2); and
- (b) where the person has failed to give that notice, the date on which the period allowed by this section for giving the notice came to an end.
- (6) A person who is a party to a share acquisition agreement shall be under a duty to notify each other party to the agreement, in writing, of his or her current address— 25
- (a) on the person's first becoming subject to the requirements of this section, and
- (b) on any change in his or her address occurring after that time and while he or she is still subject to those requirements.
- (7) A reference in this section to the relevant particulars with respect to the registered ownership of shares is a reference to such particulars in relation to those shares as are mentioned in section 1055(3)(a) or (b). 30
- (8) A person's duty to give any notice required by this section to any other person shall be performed within the period of 5 days after the day on which that duty arose.
- Interest in shares by attribution** 35
- 1060.** (1) Where section 1050 refers to a person acquiring an interest in shares or ceasing to be interested in shares, that reference in certain cases includes the person's becoming or ceasing to be interested in those shares by virtue of another person's interest.
- (2) This section applies where the person (the "first-mentioned person") becomes or ceases to be interested by virtue of section 1056 or (as the case may be) section 1058 40

- whether—
- (a) by virtue of the fact that the person who is interested in the shares becomes or ceases to be a person whose interests (if any) fall by virtue of either section to be treated as the first-mentioned person's; or
 - (b) in consequence of the fact that such a person has become or ceased to be interested in the shares; or
 - (c) in consequence of the fact that the first-mentioned person himself or herself becomes or ceases to be a party to a share acquisition agreement to which the person interested in the shares is for the time being a party; or
 - (d) in consequence of the fact that an agreement to which both the first-mentioned person and that person are parties becomes or ceases to be a share acquisition agreement.
- (3) The person shall be treated under *section 1050* as knowing he or she has acquired an interest in the shares or (as the case may be) that he or she has ceased to be interested in them, if and when the person knows both—
- (a) the relevant facts with respect to the other person's interest in the shares; and
 - (b) the relevant facts by virtue of which the person himself or herself has become or ceased to be interested in them in accordance with *section 1056* or *1058*.
- (4) The person shall be deemed to know the relevant facts referred to in subsection (3)(a) if the person knows (whether contemporaneously or not) either of the subsistence of the other person's interest at any material time or of the fact that the other has become or ceased to be interested in the shares at any such time; and in this subsection “material time” means any time at which the other's interests (if any) fall or fell to be treated as his or hers under *section 1056* or *1058*.
- (5) A person shall be regarded as knowing of the subsistence of another's interest in shares or (as the case may be) that another has become or ceased to be interested in shares if the person has been notified under *section 1059* of facts with respect to the other's interest which indicate that he or she is or has become or ceased to be interested in the shares (whether on his or her own account or by virtue of a third party's interest in them).

Interest in shares that are notifiable interests for purposes of Chapter

- 1061.** (1) *Sections 257 to 260* shall, with the adaptations and modifications in this section, apply for the purposes of determining whether a particular interest in shares is an interest that is notifiable under this Chapter and, for the purpose of those adaptations, the expression “reckonable interest” means such an interest that is so notifiable.
- (2) The adaptations of *sections 257 to 260* are—
- (a) for each reference in them to disclosable interest there shall be substituted a reference to reckonable interest,
 - (b) references in them to debentures shall be disregarded.
- (3) *Section 260* shall have effect as if—

- (a) the existing section were re-numbered as *subsection (1)* thereof,
- (b) the following paragraphs were substituted for *paragraph (h)* of that subsection:
- “(h) an exempt security interest;
- (i) an interest of the President of the High Court subsisting by virtue of section 13 of the Succession Act 1965;
- (j) an interest of the Accountant of the High Court in shares held by him or her in accordance with rules of court;
- (k) such interests, or interests of such a class, as may be prescribed for purposes of this section.”;

and

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- (c) the following subsection were added:

“(2) An interest in shares is an exempt security interest for the purposes of *subsection (1)(h)* if—

- (a) it is held by—

(i) a credit institution, or an insurance undertaking within the meaning of *Part 6*;

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(ii) a trustee savings bank (within the meaning of the (Trustee Savings Banks Act 1989) or a Post Office Savings Bank within the meaning of the Post Office Savings Bank Acts 1861 to 1958; or

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(iii) a member of an authorised market operator carrying on business as a stockbroker;

and

- (b) it is held by way of security only for the purposes of a transaction entered into by the body or other person concerned in the ordinary course of business of such body or other person.”.

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Enforcement of notification obligation

1062. (1) Where a person authorises any other person (the “agent”) to acquire or dispose of, on his or her behalf, interests in shares comprised in relevant share capital of a PLC, the person shall secure that the agent notifies him or her immediately of acquisitions or disposals of interests in shares so comprised effected by the agent which will or may give rise to any duty on the person’s part to make a notification under this Chapter with respect to his or her interest in that share capital.

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(2) An obligation to make any notification imposed on any person by this Chapter shall be treated as not being fulfilled unless the notice by means of which it purports to be fulfilled identifies the person and gives his or her address, and in a case where the person is a director or secretary of the PLC, is expressed to be given in fulfilment of that obligation.

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(3) Subject to the subsequent provisions of this section, where a person fails to fulfil,

within the period specified by this Chapter in that behalf, a duty to which he or she is, by virtue of *section 1050, 1052 or 1059*, subject, no right or interest of any kind whatsoever in respect of any shares in the PLC concerned, held by the person, shall be enforceable by the person, whether directly or indirectly, by action or legal proceeding.

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(4) Where any right or interest is restricted under *subsection (3)*—

(a) any person in default as is mentioned in that subsection or any other person affected by such restriction may apply to the court for relief against a disability imposed by or arising out of that subsection;

(b) the court, on being satisfied that the default was accidental or due to inadvertence or some other sufficient cause or that on other grounds it is just and equitable to grant relief, may grant such relief either generally or as respects any particular right or interest, on such terms and conditions as it sees fit;

(c) where an applicant for relief under this subsection is a person referred to in *subsection (3)*, the court may not grant such relief if it appears that the default has arisen as a result of any deliberate act or omission on the part of the applicant.

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(5) *Subsection (3)* shall not apply to a duty relating to a person ceasing to be interested in shares in any PLC.

(6) A person who fails without reasonable excuse to comply with *subsection (1)* shall be guilty of a category 3 offence.

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(7) A person who fails to fulfil, within the period specified by this Chapter in that behalf, a duty to which he or she is, by virtue of *section 1050, 1052 or 1059*, subject, shall be guilty of a category 3 offence.

(8) In any proceedings in respect of an offence under *subsection (7)* consisting of a failure by a person to fulfil, within the period specified by this Chapter in that behalf, a duty to which the person is, by virtue of *section 1059*, subject, it shall be a defence to prove that it was not possible for the person to give the notice to the other person concerned required by that section within that period, and either—

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(a) that it has not since become possible for him or her to give the notice so required; or

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(b) that he or she gave that notice as soon after the end of that period as it became possible for him or her to do so.

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Individual and group acquisitions register

1063. (1) A PLC shall keep a register (the “individual and group acquisitions register”) for the purposes of *sections 1050 to 1055*.

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(2) Whenever the PLC receives information from a person in consequence of the fulfilment of a duty to which he or she is, by virtue of any of those sections, subject, the PLC shall enter in the individual and group acquisitions register, against that person’s name, that information and the date of the entry.

(3) Without prejudice to *subsection (2)*, where a PLC receives a notification under any of *sections 1050 to 1055* which includes a statement that the person making the

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notification, or any other person, has ceased to be a party to a share acquisition agreement, the PLC shall record that information against the name of that person in every place where the person's name appears in the individual and group acquisitions register as a party to that agreement (including any entry relating to that person made against another person's name). 5

- (4) An obligation imposed by *subsection (2)* or *(3)* on a PLC shall be fulfilled within the period of 3 days after the day on which it arises.
- (5) The nature and extent of an interest recorded in the individual and group acquisitions register of a person in any shares shall, if he or she so requires, be recorded in that register. 10
- (6) A PLC shall not, by virtue of anything done for the purposes of this section, be affected with notice of, or put upon enquiry as to, the rights of any person in relation to any shares.
- (7) The individual and group acquisitions register shall be so made up that the entries in it against the several names inscribed in it appear in chronological order. 15
- (8) Unless the forgoing register is in such form as to constitute in itself an index, the PLC shall keep an index of the names entered in it which shall, in respect of each name, contain a sufficient indication to enable the information inscribed against it to be readily found; and the PLC shall, within 10 days after the date on which a name is entered in the register, make any necessary alteration in the index. 20
- (9) If the PLC ceases to be a PLC it shall continue to keep the individual and group acquisitions register and any associated index until the end of the period of 6 years beginning after the date on which it ceases to be a PLC.
- (10) If default is made by a PLC (or, in the case of *subsection (9)* by the company that it has re-registered as) in complying with any of the provisions of this section, the PLC (or the other company, as the case may be) and any officer of it who is in default shall be guilty of a category 3 offence. 25

Company investigations concerning interests in shares

1064. (1) A PLC may, by notice in writing, require a person whom the PLC knows or has reasonable cause to believe to be, or at any time during the 3 years immediately preceding the date on which the notice is issued, to have been, interested in shares comprised in the PLC's relevant share capital— 30

- (a) to confirm that fact or (as the case may be) to indicate whether or not it is the case; and
- (b) where he or she holds or has during that time held an interest in shares so comprised, to give such further information as may be required in accordance with *subsection (2)*. 35
- (2) A notice under this section may require the person to whom it is addressed—
- (a) to give particulars of the person's own past or present interest in shares comprised in relevant share capital of the PLC (held by him or her at any time during the 3 year period mentioned in *subsection (1)*); 40

- (b) where—
- (i) the interest is a present interest and any other interest in the shares subsists;
or
 - (ii) in any case, where another interest in the shares subsisted during that 3 year period at any time when the person's own interest subsisted; 5
to give (so far as lies within his or her knowledge) such particulars with respect to that other interest as may be required by the notice;
 - (c) where the person's interest is a past interest, to give (so far as lies within his or her knowledge) particulars of the identity of the person who held that interest immediately upon his or her ceasing to hold it. 10
- (3) The particulars referred to in subsection (2)(a) and (b) include particulars of the identity of persons interested in the shares in question and of whether persons interested in the same shares are or were parties to a share acquisition agreement or to any agreement or arrangement relating to the exercise of any rights conferred by the holding of the shares. 15
- (4) A notice under this section shall require any information given in response to the notice to be given in writing within such reasonable time as may be specified in the notice.
- (5) Sections 257 to 259 (as adapted by section 1061) apply for the purpose of construing references in this section to persons interested in shares and to interests in shares respectively, as they apply for the purposes mentioned in section 1061 (but with the omission of any reference to section 260). 20
- (6) This section applies in relation to a person who has or previously had, or is or was entitled to acquire, a right to subscribe for shares in a PLC which would on issue be comprised in relevant share capital of that PLC as it applies in relation to a person who is or was interested in shares so comprised; and references in this section to an interest in shares so comprised and to shares so comprised are to be read accordingly in any such case as including, respectively, any such right and shares which would on issue be so comprised. 25

- Registration of interest disclosed under section 1064** 30
- 1065.** (1) Whenever, in pursuance of a requirement imposed on a person under section 1064, a PLC receives information to which this section applies relating to shares comprised in its relevant share capital, the PLC shall enter against the name of the registered holder of those shares, in a separate part of the register kept by it under section 1063—
- (a) the fact that the requirement was imposed and the date on which it was imposed, and 35
 - (b) any information to which this section applies received in pursuance of the requirement.
- (2) This section applies to any information received in pursuance of a requirement imposed by section 1064 which relates to the present interests held by any persons in shares comprised in relevant share capital of the PLC in question. 40

- (3) Subsections (4) to (10) of section 1063 apply in relation to any part of the register maintained in accordance with subsection (1) of this section, reading references to subsection (2) of that section to include subsection (1) of this section.

Company investigations on requisition by members

1066. (1) A PLC may be required to exercise its powers under *section 1064* on the requisition of members of the PLC holding at the date of the deposit of the requisition not less than one-tenth of such of the paid-up capital of the company as carries at that date the right of voting at general meetings of the company. 5

(2) The requisition shall—

- (a) state that the requisitionists are requiring the PLC to exercise its powers under *section 1064*;
- (b) specify the manner in which they require those powers to be exercised; and
- (c) give reasonable grounds for requiring the PLC to exercise those powers in the manner specified;

and shall be signed by the requisitionists and deposited at the PLC's registered office. 15

(3) The requisition may consist of several documents in like form each signed by one or more requisitionists.

(4) On the deposit of a requisition complying with this section, the PLC shall exercise its powers under *section 1064* in the manner specified in the requisition.

(5) If default is made in complying with subsection (4), the court may, on the application of the requisitionists, or any of them, and on being satisfied that it is reasonable to do so, require the PLC to exercise its powers under *section 1064* in a manner specified in the order of the court. 20

Company reports on investigation

1067. (1) On the conclusion of an investigation carried out by a PLC in pursuance of a requisition under *section 1066*, the PLC shall cause a report of the information received in pursuance of that investigation to be prepared. 25

(2) Where—

- (a) a PLC undertakes an investigation in pursuance of a requisition under *section 1066*, and
- (b) the investigation is not concluded before the end of the period of 3 months falling after the date of the deposit of the requisition,

the PLC shall cause to be prepared, in respect of that period and each successive period of 3 months ending before the conclusion of the investigation, an interim report of the information received during that period in pursuance of the investigation. 35

(3) The PLC shall, within 3 days after the date of making any report prepared under this section available for inspection in accordance with *Chapter 10* of *Part 4* (as adapted by *section 1071*), notify the requisitionists that the report is so available.

- (4) An investigation carried out by a company in pursuance of a requisition under *section 1066* shall be regarded for the purposes of this section as concluded when—
- (a) the PLC has made all such inquiries as are necessary or expedient for the purposes of the requisition; and
 - (b) in the case of each such inquiry—
- (i) a response has been received by the PLC; or
 - (ii) the time allowed for a response has elapsed.
- (5) If default is made by a PLC in complying with *subsection (1), (2) or (3)*, the PLC and any officer of it who is in default shall be guilty of a category 3 offence.

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Penalty for failure to provide information

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- 1068.** (1) Where notice is served by a PLC under *section 1064* on a person who is or was interested in shares of the PLC and that person fails to give the PLC any information required by the notice within the time specified in it, the PLC may apply to the court for an order directing that the shares in question be subject to restrictions under *section 768*.
- (2) Such an order may be made by the court notwithstanding any power contained in the applicant PLC's constitution enabling the company itself to impose similar restrictions on the shares in question.
- (3) Subject to the following subsections, a person who fails to comply with a notice under *section 1064* shall be guilty of a category 3 offence.
- (4) A person shall not be guilty of an offence by virtue of failing to comply with a notice under *section 1064* if he or she proves that the requirement to give the information was frivolous or vexatious.
- (5) Where an order is made under this section directing that shares shall be subject to restrictions under *section 768*, the PLC or any person aggrieved by the order may apply to the court for an order directing that the shares shall cease to be subject thereto.
- (6) *Sections 769 to 776* shall apply in relation to any shares subject to the restrictions imposed by *section 768* by virtue of an order under this section but with the omission in *sections 769 to 775* of any reference to the Director.

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Removal of entries from register

- 1069.** (1) A PLC may remove an entry against a person's name from the register required to be kept by it under *section 1063* (the "register") if more than 6 years have elapsed after the date of the entry being made, and either—
- (a) that entry recorded the fact that the person in question had ceased to have an interest notifiable under *sections 1050 to 1055* in relevant share capital of the PLC, or
 - (b) it has been superseded by a later entry made under *section 1063* against the same person's name,

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- and, in a case falling within *paragraph (a)*, the PLC may also remove that person's name from the register.
- (2) If a person, in pursuance of an obligation imposed on him or her by any of *sections 1050 to 1055*, gives to a PLC the name and address of another person as being interested in shares in the PLC, the PLC shall, within 15 days after the date on which it was given that information, notify the other person that he or she has been so named and shall include in that notification—
- (a) particulars of any entry relating to the person made, in consequence of its being given that information, by the PLC in the register; and
- (b) a statement informing the person of his or her right to apply to have the entry removed in accordance with the following provisions of this section.
- (3) A person who has been notified by a PLC in pursuance of *subsection (2)* that an entry relating to him or her has been made in the register, may apply in writing to the PLC for the removal of that entry from the register, and the PLC shall remove the entry if satisfied that the information in pursuance of which the entry was made was incorrect.
- (4) If a person who is identified in the register as being a party to a share acquisition agreement (whether by an entry against the person's own name or by an entry relating to him or her made against another person's name as mentioned in *subsection (2)(a)*) ceases to be a party to that agreement, the person may apply in writing to the PLC for the inclusion of that information in the register.
- (5) If the PLC is satisfied that the first-mentioned person in *subsection (4)* has ceased to be a party to the agreement concerned, it shall record that information (if not already recorded) in every place where that person's name appears as a party to that agreement in the register.
- (6) If an application under—
- (a) *subsection (3)* is refused, or
- (b) *subsection (4)* is refused otherwise than on the ground that the information has already been recorded,
- the applicant may apply to the court for an order directing the PLC to remove the entry in question from the register or (as the case may be) to include the information in question in the register; and the court may, if it thinks fit, make such an order.
- (7) Where a name is removed from the register pursuant to *subsection (1)* or *(3)* or an order under *subsection (6)*, the PLC shall, within 14 days after the date of that removal, make any necessary alterations in any associated index.
- (8) If default is made by a PLC in complying with *subsection (2)* or *(7)*, the PLC and any officer of it who is in default shall be guilty of a category 3 offence.

Entries, when not to be removed

- 1070.** (1) Entries in the register kept by a PLC under *section 1063* shall not be deleted except in accordance with *section 1069*.
- (2) If an entry is deleted from that register in contravention of *subsection (1)*, the PLC shall restore that entry to the register as soon as is reasonable and practicable.

- (3) If default is made by a PLC in complying with subsection (1) or (2), the PLC and any officer of it who is in default shall be guilty of a category 3 offence.

Where register to be kept, inspection of register, inspection of reports, etc.

1071. (1) *Chapter 10 of Part 4*, as adapted by this section, shall apply in relation to—

- (a) the register under *section 1063*; and
(b) any report referred to in *section 1067*.

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(2) For the purposes of this section, *Chapter 10 of Part 4* is adapted as follows:

- (a) in *section 215(a)*, there shall be added the following definitions:

“ ‘individual and group acquisitions register’ means the register kept by the company pursuant to *section 1063(1)*;

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‘share interest investigation report’ means any report referred to in *section 1067* caused to be prepared by the company;”;

- (b) *section 216(1)* shall have effect as if, in addition to the registers and documents specified in that provision as being registers and documents to which *section 216* applies, that provision specified the individual and group acquisitions register and the share interest investigation report as being, respectively, a register and a document to which that section applies; and

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- (c) each of *subsections (9), (11) and (12)* of *section 216* shall have effect as if, in addition to the registers or documents specified in the particular subsection, there were specified in the particular subsection the individual and group acquisitions register and the share interest investigation report.

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(3) The register under *section 1063* shall also be and remain open and accessible to any person attending the PLC’s annual general meeting at least one quarter hour before the appointed time for the commencement of the meeting and during the continuance of the meeting.

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(4) A report referred to in *section 1067(1)* shall be made available for inspection in accordance with *Chapter 10 of Part 4* (as so adapted) within a reasonable period (not more than 15 days) after the date of conclusion of the investigation concerned.

(5) Each report referred to in *section 1067(2)* shall be made available for inspection in accordance with *Chapter 10 of Part 4* (as so adapted) within a reasonable period (not more than 15 days) after the end of the period to which it relates.

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(6) Such a report (that is a report whether referred to in *section 1067(1)* or (2)) shall continue to be so made available for inspection for a period that expires 6 years beginning on the day after the first day that it is made available for inspection in accordance with the foregoing provisions.

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(7) *Section 127(1)* (access to documents during business hours) shall apply for the purposes of *Chapter 10 of Part 4*, as that Chapter is adapted for the purposes of this section, as it applies in relation to the relevant provisions of *Part 4*.

Duty of PLC to notify authorised market operator

1072. (1) In this section “relevant PLC” means a PLC dealing facilities in respect of the shares or debentures of which are provided by an authorised market operator.

(2) If—

(a) a relevant PLC is notified of any matter by a director or secretary in consequence of the fulfilment of a duty imposed on him or her by *Chapter 5 of Part 5*, and

(b) the matter relates to shares or debentures for which the dealing facilities referred to in subsection (1) are provided,

the PLC shall be under an obligation to notify the market operator referred to in that subsection of the matter.

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(3) That market operator may publish, in such manner as it may determine, any information received by it under subsection (2).

(4) An obligation imposed by subsection (2) shall be fulfilled before the end of the day after that on which it arises.

(5) If default is made in complying with this section, the PLC and any officer of it who is in default shall be guilty of a category 3 offence.

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CHAPTER 5

Acquisition of own shares and certain acquisitions by subsidiaries

Additional (general) provisions relating to acquisition by PLCs of own shares

1073. (1) In addition to the requirements set out in sections 105 and 106—

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(a) an acquisition by a PLC of its own shares, in so far as the consideration therefor is profits available for distribution, shall be in compliance with the restriction on the distribution of assets specified in section 1084; and

(b) a PLC shall not purchase any of its shares if as a result of such purchase the nominal value of its issued share capital which is not redeemable would be less than one-tenth of the nominal value of the total issued share capital of the PLC.

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(2) With regard to the purchase by a PLC of its own shares, the requirements of sections 105 and 106 and the preceding subsection shall have effect without prejudice to—

(a) the principle of equal treatment of all shareholders who are in the same position; and

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(b) *Chapter 2 of Part 23* and regulations thereunder.

“Market purchase”, “overseas market purchase” and “off-market purchase”

1074. (1) For the purposes of sections 1075 to 1083, a purchase by a PLC of its own shares is—

(a) an “off-market purchase” if the shares are purchased either—

(i) otherwise than on a securities market; or

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(ii) on a securities market but are not subject to a marketing arrangement on that

- market;
- (b) a “market purchase” if the shares are purchased on a securities market within the State and are subject to a marketing arrangement.
- (2) For the purposes of *sections 1075 to 1083*, a purchase by a PLC that issues shares, or by a subsidiary of that PLC, of the first-mentioned company’s shares, is an “overseas market purchase” if the shares—
- (a) are purchased on—
- (i) a regulated market; or
- (ii) another market recognised for the purposes of this section;
being, in either case, a market outside the State; and
- (b) are subject to a marketing arrangement.
- (3) For the purposes of *subsections (1)* and *(2)*, a PLC’s shares are subject to a marketing arrangement on a securities market or, in the case of *subsection (2)(a)*, a regulated market or another market recognised for the purposes of this section, if either—
- (a) they are listed or admitted to trading on that market; or
- (b) the PLC has been afforded facilities for dealings in those shares to take place on that market without prior permission for individual transactions from the—
- (i) authorised market operator concerned; or
- (ii) in the case of *subsection (2)(a)*, the authority in the state concerned that governs the market;
and without limit as to the time during which those facilities are to be available.
- (4) *Sections 1075 to 1083* shall apply to American depository receipts as those sections apply to shares.
- (5) In this section—
- “American depository receipt” means an instrument—
- (a) which acknowledges—
- (i) that a depositary or a nominee acting on his or her behalf, holds stocks or marketable securities which are dealt in and quoted on a market recognised for the purposes of this section; and
- (ii) that the holder of the instrument has rights in or in relation to such stocks or marketable securities, including the right to receive such stocks or marketable securities from the depositary or his or her nominee;
and
- (b) which—
- (i) is dealt in and quoted on a market recognised for the purposes of this section, being a market which is situated in the United States of America; or
- (ii) represents stocks or marketable securities which are so dealt in and quoted;

“recognised for the purposes of this section”, in relation to a market, means recognised by order made by the Minister (and such an order may provide for different markets to be recognised for the purposes of different provisions of this section);

“securities market” means—

- (a) a regulated market;
- (b) a multilateral trading facility (within the meaning of Article 4(1), point (15) of Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004); or
- (c) such other securities market as may be prescribed.

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Authority for PLC's purchase of own shares

1075. Neither *paragraph (a) or (b) of section 105(4)* shall be regarded as conferring authority for a purchase by a PLC of its own shares and accordingly such purchase shall be required to have the authority of—

- (a) in a case falling within *section 1076* — an ordinary resolution of the PLC;
- (b) in a case falling within *section 1077* — a special resolution of the PLC.

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Market purchase of own shares

1076. (1) A PLC shall not make a market purchase or overseas market purchase of its own shares unless the purchase has first been authorised by the PLC by ordinary resolution and any such authority may be varied, revoked or from time to time renewed by the PLC by ordinary resolution.

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(2) *Subsection (1)* shall not be read as requiring any particular contract for the market purchase or overseas market purchase of shares to be authorised by the PLC in general meeting and, for the purposes of this Part, where a market purchase or overseas market purchase of shares has been authorised in accordance with this section any contract entered into pursuant to that authority in respect of such a purchase shall be deemed also to be so authorised.

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(3) *Section 198* shall apply to a resolution under *subsection (1)*.

(4) The authority granted under *subsection (1)* shall—

- (a) specify the maximum number of shares authorised to be acquired;
- (b) determine both the maximum and minimum prices which may be paid for the shares, either by—
 - (i) specifying a particular sum; or
 - (ii) providing a basis or formula for calculating the amount of the price in question without reference to any person's discretion or opinion;
- (c) specify the date on which the authority is to expire which shall not be later than 5 years after the date on which the ordinary resolution granting the authority is passed.

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- (5) A PLC may make a purchase referred to in *subsection (1)* after the expiry of any time limit imposed by virtue of *subsection (4)(c)* in any case where the contract of purchase was concluded before the authority conferred on it expired and the terms of that authority permit the PLC to make a contract of purchase which would or might be executed wholly or partly after the authority expired.

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Off-market purchase of own shares

- 1077.** (1) A PLC shall not make an off-market purchase of its own shares otherwise than in pursuance of a contract authorised in advance by a special resolution of the PLC.

- (2) Any such authority may be varied, revoked or from time to time renewed by the PLC by special resolution.

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- (3) *Section 105(5), (7), (8) and (10) to (12)* apply to a special resolution referred to in *subsection (1)* or *(2)* as they apply to a special resolution of a private company limited by shares authorising the acquisition by it of its own shares but *subsections (4)* and *(5)* of this section supplement those provisions.

- (4) Any authority granted under *subsection (1)* or *(2)* shall specify the date on which the authority is to expire which shall not be later than 18 months after the date on which the special resolution granting the authority is passed.

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- (5) A PLC may make a purchase referred to in *subsection (1)* after the expiry of any time limit imposed by virtue of *subsection (4)* in any case where the contract of purchase was concluded before the authority conferred on it expired and the terms of that authority permit the PLC to make a contract of purchase which would or might be executed wholly or partly after the authority expired.

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Assignment or release of company's right to purchase own shares

- 1078.** (1) Any purported assignment of the rights of a PLC under any contract authorised under *section 1076* or *1077* shall be void.

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- (2) Nothing in *subsection (1)* shall prevent a PLC from releasing its right under any contract authorised under *section 1076* or *1077* provided that the release has been authorised by—

(a) in the case of *section 1076* — an ordinary resolution of the PLC;

(b) in the case of *section 1077* — a special resolution of the PLC,

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before the release is entered into, and any such purported release by a PLC which has not been authorised in that manner shall be void.

- (3) *Subsections (5), (7) and (8) of section 105* shall apply to a resolution under *subsection (2)* and, for the purposes of this subsection, *subsection (8) of section 105* shall have effect as if the references in it to the contract of purchase were references to the release concerned.

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Relationship of certain acquisition provisions to those in Part 3

- 1079.** (1) For the avoidance of doubt, the provisions of *Part 3* that make consequential or supplementary provision in respect of an acquisition by a company under *section 105*

of its own shares (and, in particular, the provisions referred to in *subsection (2)*) apply to an acquisition by a PLC of its own shares referred to in *sections 1073* to *1078*, and the authorisation of any contract thereunder, unless a contrary intention is indicated in one of those latter sections.

- (2) The particular provisions mentioned in *subsection (1)* are those that contain reference, however expressed, to a contract authorised under *section 105*. 5

Off-market re-allotment of treasury shares by PLC

1080. (1) The maximum and minimum prices at which treasury shares may be re-allotted off-market (the “re-allotment price range”) by a PLC shall be determined in advance by the PLC in general meeting in accordance with *subsections (2)* to *(4)* and such determination may fix different maximum and minimum prices for different shares. 10

- (2) Where the treasury shares to be re-allotted are derived in whole or in part from shares purchased by the PLC in accordance with the provisions of *Part 3* (as applied by this Part) the re-allotment price range of the whole or such part (as the case may be) of those shares shall be determined by special resolution of the PLC passed at the meeting at which the resolution authorising that purchase has been passed and such determination shall, for the purposes of this section, remain effective with respect to those shares for the requisite period. 15

- (3) Where the treasury shares to be re-allotted are derived in whole or in part from shares redeemed by the PLC in accordance with the provisions of *Part 3* (as applied by this Part) the re-allotment price range of the whole or such part (as the case may be) of those shares shall be determined by special resolution of the PLC passed before any contract for the re-allotment of those shares is entered into and such determination shall, for the purposes of this section, remain effective with respect to those shares for the requisite period. 20

- (4) The PLC may from time to time by special resolution vary or renew a determination of re-allotment price range under *subsection (2)* or *(3)* with respect to particular treasury shares before any contract for re-allotment of those shares is entered into and any such variation or renewal shall, for the purposes of this section, remain effective as a determination of the re-allotment price range of those shares for the requisite period. 30

- (5) A re-allotment by a PLC of treasury shares in contravention of *subsection (2)*, *(3)* or *(4)* shall be unlawful.

- (6) For the purposes of determining in this section whether treasury shares are re-allotted off-market, the provisions of *section 1074* shall have effect with the substitution of the words “re-allotment”, “off-market re-allotment” and “re-allotted” respectively for the words “purchase”, “off-market purchase” and “purchased” in *subsection (1)(a)* of that section. 35

- (7) In this section, the “requisite period” means the period of 18 months after the date of the passing of the resolution determining the re-allotment price range or varying or renewing (as the case may be) such determination or such lesser period of time as the resolution may specify. 40

Return to be made to Registrar under section 116(1)

1081. (1) In its application to shares, the subject of an overseas market purchase by a PLC, *section 116(1)* shall apply as if “3 days” were substituted for “30 days”.

(2) In addition to the requirements of *section 116*, the return required to be made by a PLC under that section shall state—

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- (a) the aggregate amount paid by the PLC for the shares; and
- (b) the maximum and minimum prices paid in respect of each class purchased.

(3) Where *subsection (2)* applies, then the following subsection shall be substituted for *subsection (2)* of *section 116*:

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“(2) Particulars of shares delivered to the company on different dates and under different contracts may be included in a single return to the Registrar, and in such a case the amount required to be stated under *section 1081(2)(a)* shall be the aggregate amount paid by the company for all the shares to which the return relates.”.

Duty of PLC to publish particulars of overseas market purchase

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1082. (1) Whenever shares for which dealing facilities are provided on a regulated market or other market referred to in *section 1074(2)(a)* are the subject of an overseas market purchase either by the PLC which issued the shares or by a company which is that PLC’s subsidiary, the PLC which issued the shares has the following duty.

(2) That duty of the PLC is to publish—

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- (a) on its website; or
- (b) in any other prescribed manner;

for a continuous period of not less than 28 days beginning on the day that next follows the overseas market purchase concerned and is a day on which the market concerned is open for business the following information for total purchases on the market concerned on each such day—

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- (i) the date, in the place outside the State where the market concerned is located, of the overseas market purchase;
- (ii) the purchase price at which the shares were purchased, or the highest such price and lowest such price paid by the PLC or the subsidiary;
- (iii) the number of shares which were purchased; and
- (iv) the market on which the shares were purchased.

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(3) If a PLC fails to fulfil its duty under *subsection (1)*, the PLC and any officer of it who is in default shall be guilty of a category 3 offence.

Duty of PLC to notify authorised market operator

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1083. (1) Whenever shares for which dealing facilities are provided on a regulated market have been purchased, either by the PLC which issued the shares or by a company which is that PLC’s subsidiary, then, save where the purchase was an overseas market

purchase, the PLC whose shares have been purchased has the following duty.

- (2) That duty of the PLC is to notify the authorised market operator concerned of the fact of that purchase; that operator may publish, in such manner as it may determine, any information received by it under this subsection.
- (3) That duty shall be fulfilled before the end of the day after that on which the purchase concerned has taken place. 5
- (4) If a PLC fails to fulfil its duty under *subsection (1)*, the PLC and any officer of it who is in default shall be guilty of a category 3 offence.

CHAPTER 6

Distribution by a PLC

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Restriction on distribution of assets

1084. (1) A PLC may only make a distribution at any time—

- (a) if at that time the amount of its net assets is not less than the aggregate of the PLC's called-up share capital and its undistributable reserves; and
 - (b) if, and to the extent that, the distribution does not reduce the amount of those assets to less than that aggregate. 15
- (2) For the purposes of this section the undistributable reserves of a PLC are—
- (a) the PLC's undenominated capital;
 - (b) the amount by which the PLC's accumulated, unrealised profits, so far as not previously utilised by any capitalisation, exceed its accumulated, unrealised losses, so far as not previously written off in a reduction or reorganisation of capital duly made; and 20
 - (c) any other reserve which the PLC is prohibited from distributing by any enactment, other than one contained in this Part, or by its constitution.
- (3) *Subsections (4) to (8) of section 117* shall apply for the purposes of this section as they apply for the purposes of that section. 25
- (4) A PLC shall not include any uncalled share capital as an asset in any financial statement relevant for the purposes of this section.

Relevant financial statements in the case of distribution by PLC

- 1085.** (1) In addition to its application for the purpose of determining whether a distribution may be made by a PLC without contravening *section 117*, and the amount of any distribution which may be so made, *section 121* shall apply for the purpose of determining whether a distribution may be made by a PLC without contravening *section 1084*, and the amount of any distribution which may be so made. 30
- (2) Accordingly *section 1084* shall be treated as contravened in the case of a distribution unless the requirements of *section 121* in relation to the financial statements mentioned therein are complied with in the case of that distribution. 35

- (3) For the purposes of the application of *section 121*, by virtue of *subsection (1)*, to a distribution (and without prejudice to that section's application otherwise to a distribution by a PLC)—
- (a) there shall, in *section 121(3)(b)*, be substituted “if that distribution would be found to contravene *section 1084*” for “if that distribution would be found to contravene *section 117*”; and 5
 - (b) there shall, in *section 121(3)(a)* and *(c)*, be substituted “whether that distribution would be in contravention of *section 1084*” for “whether that distribution would be in contravention of *section 117*”.
- (4) In addition to the foregoing provisions as regards *section 121*'s application, *subsections (5) to (7)* contain provisions supplementing *section 121*'s application in the case of a distribution by a PLC and that section shall have effect accordingly. 10
- (5) The following requirements apply to interim financial statements, as referred to in *section 121*, that are prepared for a proposed distribution by a PLC, that is to say:
- (a) the financial statements shall have been properly prepared or have been so prepared subject only to matters which are not material for the purpose of determining, by reference to the relevant items as stated in those statements, whether that distribution would be in contravention of *section 117* or *1084*, as the case may be; 15
 - (b) a copy of those financial statements shall have been delivered to the Registrar; 20
 - (c) if the financial statements are in a language other than the English or Irish language, a translation into English or Irish of the statements which has been certified in the prescribed manner to be a correct translation, shall also have been delivered to the Registrar.
- (6) The following requirements apply to initial financial statements, as referred to in *section 121*, that are prepared for a proposed distribution by a PLC, that is to say: 25
- (a) the financial statements shall have been properly prepared or have been so prepared subject only to matters which are not material for the purpose of determining, by reference to the relevant items as stated in those statements, whether that distribution would be in contravention of *section 117* or *1084*, as the case may be; 30
 - (b) the statutory auditors of the PLC shall have made a report stating whether, in their opinion, the financial statements have been properly prepared;
 - (c) if, by virtue of anything referred to in that report, the report is not an unqualified report, the statutory auditors shall also have stated in writing whether, in their opinion, that thing is material for the purpose of determining, by reference to the relevant items as stated in those financial statements, whether that distribution would be in contravention of *section 117* or *1084*, as the case may be; 35
 - (d) a copy of those financial statements, of the report made under *paragraph (b)* and of any such statement shall have been delivered to the Registrar; and 40
 - (e) if the financial statements are, or that report or statement is, in a language other than the English or Irish language, a translation into English or Irish of the

- financial statements, the report or statement, as the case may be, which has been certified in the prescribed manner to be a correct translation, shall also have been delivered to the Registrar.
- (7) For the purposes of this section, *section 121(6)* shall apply as if “Where *subsection (3)(a)* or *section 1085(5)(a)* or *1085(6)(a)* applies to the relevant financial statements” were substituted for “Where *subsection (3)(a)* applies to the relevant financial statements”. 5

Limitation on reduction by a PLC of its company capital

1086. A PLC may not reduce its company capital below the authorised minimum and *section 84* shall be read accordingly. 10

CHAPTER 7

Uncertificated securities

Transfer in writing

1087. The following:

- (a) section 6 of the Statute of Frauds 1695; 15
- (b) section 28(6) of the Supreme Court of Judicature (Ireland) Act 1877;
- (c) *section 94(4)*; and
- (d) any other enactment or rule of law requiring the execution, under hand or seal, of a document in writing for the transfer of property,

shall not apply (if they would otherwise do so) to any transfer of title to securities 20 pursuant to—

- (i) section 12 of the Electronic Commerce Act 2000; or
- (ii) procedures authorised or required pursuant to regulations made by the Minister under *section 1088*.

Power to make regulations for the transfer of securities

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1088. (1) The Minister may make provision by regulations for enabling or requiring title to securities or any class of securities to be evidenced and transferred without a written instrument.

(2) Subject to any exceptions that may be specified in the regulations, the regulations may, in respect of— 30

- (a) securities of public limited companies admitted to trading on a regulated market,
- (b) securities of public limited companies admitted to trading on a market other than a regulated market, or
- (c) securities of public limited companies of a specified class,

provide that the means provided by the regulations for evidencing and transferring 35

title to such securities shall constitute the sole and exclusive means for doing so (and accordingly, that any purported transfer of such securities otherwise than by those means shall be void).

(3) In this section—

(a) “securities” means transferable securities as defined by Directive 2004/39/EC of the European Parliament and the Council of 21 April 2004; 5

(b) references to title to securities include any legal or equitable interest in securities; and

(c) references to a transfer of title include a transfer by way of security.

(4) The regulations may make provision— 10

(a) for procedures for recording and transferring title to securities; and

(b) for the regulation of those procedures and the persons responsible for or involved in their operation; and

(c) for dispensing with the obligations of a company under *section 99* to issue certificates and providing for alternative procedures. 15

(5) The regulations shall contain such safeguards as appear to the Minister appropriate for the protection of investors and for ensuring that competition is not restricted, distorted or prevented.

(6) The regulations may, for the purpose of enabling or facilitating the operation of the new procedures, make provision with respect to the rights and obligations of persons in relation to securities dealt with under the procedures. 20

(7) The regulations shall be framed so as to secure that the rights and obligations in relation to securities dealt with under the new procedures correspond, so far as practicable, with those which would arise apart from any regulations under this section. 25

(8) The regulations may—

(a) require the provision of statements by a company to holders of securities (at specified intervals or on specified occasions) of the securities held in their name;

(b) make provision removing any requirement for the holders of securities to surrender existing share certificates to issuers; and 30

(c) make provision that the requirements of the regulations supersede any existing requirements in the articles of association of a company which would be incompatible with the requirements of the regulations.

Supplemental provisions in relation to *section 1088*

1089. (1) Without prejudice to the generality of *subsections (5) to (8)* of *section 1088*, regulations under that section shall not contain provisions that would result in a person who, but for the regulations, would be entitled— 35

(a) to have his or her name entered in the register of members of a company, or

(b) to give instructions in respect of any securities,

- ceasing to be so entitled.
- (2) Regulations under *section 1088* may include such supplementary, incidental and transitional provisions as appear to the Minister to be necessary or expedient.
- (3) In particular, provision may be made for the purpose of giving effect to—
- (a) the transmission of title of securities by operation of law; 5
 - (b) any restriction on the transfer of title to securities arising by virtue of the provisions of any enactment or instrument, court order or agreement;
 - (c) any power conferred by any such provision on a person to deal with securities on behalf of the person entitled.
- (4) Regulations under *section 1088* may, for the purposes mentioned in that section and this section, make provision with respect to the persons who are to be responsible for the operation of the new procedures and for those purposes may empower the Minister to delegate to any person willing and able to discharge them, any functions of the Minister under the regulations. 10
- (5) Regulations under *section 1088* may make different provision for different cases. 15

CHAPTER 8

Corporate governance

Number of directors of a PLC

1090. A PLC shall have at least 2 directors.

PLC may not dispense with holding of a.g.m.

1091. *Section 175(3) and (4)* (which relate to dispensing with the holding of an annual general meeting) shall not apply to a PLC. 20

Rotation of directors

1092. (1) Each provision of this section applies save to the extent that the PLC's constitution provides otherwise. 25

(2) At the first annual general meeting of the PLC all the directors shall retire from office.

(3) At the annual general meeting in every subsequent year, one-third of the directors for the time being, or, if their number is not 3 or a multiple of 3, then the number nearest one-third shall retire from office.

(4) The directors to retire in every year shall be those who have been longest in office since their last election but as between persons who became directors on the same day, those to retire shall (unless they otherwise agree among themselves) be determined by lot. 30

(5) A retiring director shall be eligible for re-election.

(6) The PLC, at the meeting at which a director retires in any of the foregoing instances, may fill the vacated office by electing a person to it. 35

- (7) In default of the PLC doing so, the retiring director shall, if offering himself or herself for re-election, be deemed to have been re-elected, unless—
- at such meeting it is expressly resolved not to fill such vacated office, or
 - a resolution for the re-election of such director has been put to the meeting and lost.

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Modification of section 149(8)'s operation where public or local offer co-incides with change among directors

1093. Where—

- a change among a PLC's directors occurs, and
- prior to the end of the period referred to in *section 149(8)* (as that provision operates apart from this section) for the sending to the Registrar of the notification required by that provision of the change, the PLC issues a prospectus or, in the case of a local offer (within the meaning of *Chapter 1* of *Part 23*), a document for the purposes of making such an offer,

then, notwithstanding that the foregoing period has not expired, the PLC shall send that notification to the Registrar no later than the time of issue of such prospectus or document, and *section 149(8)* shall be read and operate accordingly.

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Remuneration of directors

1094. (1) Each provision of this section applies save to the extent that the PLC's constitution provides otherwise.

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(2) The remuneration of the directors of a PLC shall be such as is determined, from time to time, by the PLC in general meeting and such remuneration shall be deemed to accrue from day to day.

(3) The directors of a PLC may also be paid all travelling, hotel and other expenses properly incurred by them—

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(a) in attending and returning from—

(i) meetings of the directors or any committee referred to in *section 160(9)*, or

(ii) general meetings of the PLC,

or

(b) otherwise in connection with the business of the PLC.

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Application of section 193 in relation to PLC

1095. *Section 193* shall apply to a PLC as if, in *subsection (1)*, after “Notwithstanding any provision to the contrary in this Part or in *Parts 1 to 3* or *5 to 14*”, there were inserted “and unless the Constitution provides otherwise”.

Provisions consequent on participation by PLC in system for uncertificated transfer of securities

1096. (1) *Sections 1097 and 1098* have effect where a PLC is a participating issuer.

(2) *Sections 1097 and 1098* are without prejudice to *sections 1101 to 1112*.

(3) In this section and *sections 1097 and 1098* “participating issuer” has the meaning 5 given to it by—

(a) the Companies Act 1990 (Uncertificated Securities) Regulations 1996 (S.I. No. 68 of 1996) which regulations are continued in force by *Schedule 6*; or

(b) if regulations under *section 1088* are made and those regulations—

(i) replace the regulations referred to in *paragraph (a)* — those replacement 10 regulations; or

(ii) amend the regulations referred to in *paragraph (a)* — the latter regulations as they stand so amended.

Attendance and voting at meetings

1097. (1) For the purposes of determining which persons are entitled to attend or vote at a meeting, and how many votes such persons may cast, a PLC that is a participating issuer may specify in the notice of the meeting a time, not more than 48 hours before the time fixed for the meeting, by which a person must be entered on the relevant register of securities in order to have the right to attend or vote at the meeting. 15

(2) Changes to entries on the relevant register of securities after the time specified by virtue of *subsection (1)* shall be disregarded in determining the rights of any person to attend or vote at the meeting, notwithstanding any provisions in any enactment, articles of association or other instrument to the contrary. 20

(3) In this section, “register of securities” has the meaning given to it by—

(a) the Companies Act 1990 (Uncertificated Securities) Regulations 1996 (S.I. No. 68 of 1996) which regulations are continued in force by *Schedule 6*; or 25

(b) if regulations under *section 1088* are made and those regulations—

(i) replace the regulations referred to in *paragraph (a)* — those replacement regulations; or

(ii) amend the regulations referred to in *paragraph (a)* — the latter regulations 30 as they stand so amended.

Notice of meetings

1098. (1) For the purposes of serving notices of meetings, whether under *section 218*, any other enactment, a provision in the articles or any other instrument, a participating issuer may determine that persons entitled to receive such notices are those persons entered on the relevant register of securities at the close of business on a day determined by the participating issuer. 35

(2) The day determined by a participating issuer under *subsection (1)* may not be more than 7 days before the day that the notices of the meeting are sent.

- (3) In this section “register of securities” has the same meaning as *subsection (3) of section 1097* provides it is to have in that section.

Application of section 167 to PLC that is not a public-interest entity under S.I. No. 220 of 2010

1099. *Section 167* shall apply to a PLC that does not fall within Regulation 91 (which relates to an obligation of a public-interest entity to establish an audit committee) of the European Communities (Statutory Audits) (Directive 2006/43/EC) Regulations 2010 and, for the avoidance of doubt, that section shall apply irrespective of the balance sheet amount or the amount of turnover of the PLC for any financial year.

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Length of notice of general meetings to be given

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1100. Subject to *section 1104*, in its application to a PLC, *section 181(1)* shall apply as if the following paragraph were substituted for *paragraph (b)*:

“(b) in the case of any other extraordinary general meeting, by not less than 14 days’ notice.”.

Additional rights of shareholders in certain PLCs (provisions implementing Shareholders’ Rights Directive 2007/36/EC) 15

1101. (1) *Sections 1102 to 1112* have effect in relation to—

- (a) a notice of a general meeting given by a PLC, and
- (b) otherwise in relation to a general meeting of a PLC,

being a PLC whose shares are admitted to trading on a regulated market in any Member State (in *sections 1102 to 1112* referred to as a “traded PLC”). 20

(2) *Sections 1102 to 1112* have effect notwithstanding anything in the PLC’s constitution.

Equality of treatment of shareholders

1102. In addition to any provisions of *Part 4* imposing requirements on the company in that behalf, a traded PLC shall ensure equal treatment for all members who are in the same position with regard to the exercise of voting rights and participation in a general meeting of the company.

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Requisitioning of general meeting by members — modification of section 178(3)

1103. In its application to a traded PLC, *section 178* shall apply as if the following subsection were substituted for *subsection (3)*:

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“(3) The directors of a company shall, on the requisition of one or more members holding, or together holding, at the date of the deposit of the requisition, not less than 5 per cent of the paid up share capital of the company, as at the date of the deposit carries the right of voting at general meetings of the company, forthwith proceed duly to convene an extraordinary general meeting of the company.”.

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Length of notice of general meetings to be given by traded PLC

1104. (1) In its application to a PLC which is a traded PLC, *section 181* shall apply as if—

(a) the following subsection were substituted for *subsection (1)*:

“(1) Subject to *section 1104(2)*, a general meeting of a company (whether an annual general meeting or an extraordinary general meeting), other than an adjourned meeting, shall be called by not less than 21 days’ notice.”;

and

(b) *subsection (2)* were omitted.

(2) Notwithstanding *section 181(1)* as it applies by virtue of *subsection (1)* of this section, a general meeting of a PLC which is a traded PLC (other than an annual general meeting or an extraordinary general meeting for the passing of a special resolution) may be called by not less than 14 days’ notice if—

(a) the PLC offers the facility for members to vote by electronic means accessible to all members who hold shares that carry rights to vote at general meetings; and

(b) a special resolution reducing the period of notice to 14 days has been passed at the immediately preceding annual general meeting, or at a general meeting held since that meeting.

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Additional provisions concerning notice under *section 181* by a traded PLC

1105. (1) In addition to the requirements of *section 181*, a notice, under that section, by a traded PLC of a general meeting, whether—

(a) an annual general meeting; or

(b) an extraordinary general meeting;

shall be issued, free of charge, in a manner ensuring fast access to the notice on a non-discriminatory basis, using such media as may reasonably be relied upon for the effective dissemination of information to the public throughout the Member States.

(2) Notice of a general meeting shall set out—

(a) when and where the meeting is to take place and the proposed agenda for the meeting;

(b) a clear and precise statement of any procedures a member shall comply with in order to participate and vote in the meeting, including—

(i) the right of a member to put items on the agenda of a general meeting and to table draft resolutions pursuant to *section 1106* and to ask questions relating to items on the agenda pursuant to *section 1109*, and the time limits applicable to the exercise of any of those rights;

(ii) the right of a member entitled to attend, speak, ask questions and vote, to appoint, pursuant to *section 183* as it applies by virtue of *section 1110*, by electronic means or otherwise—

(I) a proxy; or

- (II) in any of the cases set out in those sections, more than one proxy; to attend, speak, ask questions and vote instead of the member and that any such proxy need not be a member;
- (iii) the procedure for voting by proxy pursuant to *section 183* as so applied, including the forms to be used and the means by which the company is prepared to accept electronic notification of the appointment of a proxy; and
- (iv) the procedure (where applicable) to be followed pursuant to *sections 1108* and *1111* for voting electronically or by correspondence respectively;
- (c) the record date for eligibility for voting as defined in *section 1107* and state that only members registered on the record date shall have the right to participate and vote in the general meeting;
- (d) where and how the full, unabridged text of the documents and draft resolutions referred to in *subsection (3)(c)* and *(d)* may be obtained; and
- (e) the website at which the information contained in *subsection (3)* shall be made available.
- (3) A traded PLC shall make available to its members on its website, for a continuous period beginning not later than 21 days before a general meeting (inclusive of the day of the meeting), the following:
- (a) the notice under *section 181*;
- (b) the total number of shares and voting rights at the date of the giving of the notice (including separate totals for each class of shares where the company's capital is divided into 2 or more classes of shares);
- (c) the documents to be submitted to the meeting;
- (d) a copy of any draft resolution or, where no such resolution is proposed to be adopted, a comment from the board of directors on each item of the proposed agenda of the meeting;
- (e) a copy of forms to be used to vote by proxy and to vote by correspondence unless these forms are sent directly to each member.
- (4) The traded PLC shall make available, on its website as soon as possible following their receipt, draft resolutions tabled by members.
- (5) Where the forms referred to in *subsection (3)(e)* cannot be made available on the traded PLC's website for technical reasons, the PLC shall indicate on its website how the forms may be obtained in hard copy form and the PLC shall send the forms by post, free of charge, to every member who requests them.
- (6) Where notice of a general meeting is issued later than on the twenty first day before the meeting pursuant to *section 1104(2)* or Article 9(4) or 11(4) of Directive 2004/25/EC, the period specified in *subsection (3)* shall be reduced accordingly.

Right to put items on the agenda of the general meeting and to table draft resolutions

1106. (1) One or more members of a traded PLC shall have the right, by electronic or postal means, at an address specified by the PLC, to—

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- (a) put an item on the agenda of an annual general meeting, provided that each such item is accompanied by—
- (i) stated grounds justifying its inclusion; or
 - (ii) a draft resolution to be adopted at the general meeting;
- and
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- (b) table a draft resolution for an item on the agenda of a general meeting (whether an annual general meeting or not);
- subject to the member or members concerned holding 3 per cent of the issued share capital of the PLC, representing at least 3 per cent of the total voting rights of all the members who have a right to vote at the meeting to which the request for inclusion of the item relates.
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- (2) A request by a member to put an item on the agenda or to table a draft resolution under subsection (1)(a) shall be received by the traded PLC in written or electronic form at least 42 days before the date of the meeting to which it relates.
- (3) Where the exercise of the right conferred by subsection (1)(a) involves a modification of the agenda for the annual general meeting, in situations where the agenda has already been communicated to the members, and only in such situations, the traded PLC shall make available a revised agenda in the same manner as the previous agenda—
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- (a) in advance of the applicable record date (as defined in section 1107) of share-ownership for purposes of entitlement to vote, or
 - (b) if no such record date applies, sufficiently in advance of the date of the annual general meeting so as to enable other members to appoint a proxy or, where applicable, to vote by correspondence.
- (4) In order to facilitate a member to avail of subsection (1)(a), the traded PLC shall ensure that the date of the next annual general meeting is placed on its website by—
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- (a) the end of the previous financial year, or
 - (b) not later than 70 days prior to the date of the annual general meeting,
- whichever is the earlier.
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Requirements for participation and voting in general meeting

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1107. (1) In this section—

- “record date” means a date not more than 48 hours before the general meeting to which it relates;
- “register of securities” has the same meaning as subsection (3) of section 1097 provides it is to have in that section.
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- (2) A person shall be entered on the relevant register of securities by the record date in order to exercise the right of a member to participate and vote at a general meeting and any change to an entry on the relevant register of securities after the record date shall be disregarded in determining the right of any person to attend and vote at the

meeting.

- (3) The right of a member to participate in a general meeting and to vote in respect of his or her shares shall not be subject to any requirement that the shares be deposited with, or transferred to, or registered in the name of another person before the general meeting.

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- (4) Unless that right is otherwise subject to such a restriction, a member shall have the right to sell or otherwise transfer shares in the traded PLC at any time between the record date and the general meeting to which it applies.

- (5) In relation to the subjecting by a traded PLC of a person to proof of the person's qualification as a member, that person may be made subject only to such requirements—

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- (a) as are necessary to ensure the identification of the person as a member, and
(b) then only to the extent that such requirements are proportionate to the achievement of that objective.

Participation in general meeting by electronic means

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- 1108.** (1) A traded PLC may provide for participation in a general meeting by electronic means including—

- (a) a mechanism for casting votes, whether before or during the meeting, and the mechanism adopted shall not require the member to be physically present at the meeting or require the member to appoint a proxy who is physically present at the meeting;
(b) real time transmission of the meeting;
(c) real time two way communication enabling members to address the meeting from a remote location.

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- (2) The use of electronic means pursuant to *subsection (1)* may be made subject only to such requirements and restrictions as are necessary to ensure the identification of those taking part and the security of the electronic communication, to the extent that such requirements and restrictions are proportionate to the achievement of those objectives.

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- (3) Members shall be informed of any requirements or restrictions which a traded PLC puts in place pursuant to *subsection (2)*.

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- (4) A traded PLC that provides electronic means for participation at a general meeting by a member shall ensure, as far as practicable, that—

- (a) such means—

- (i) guarantee the security of any electronic communication by the member;
(ii) minimise the risk of data corruption and unauthorised access;
(iii) provide certainty as to the source of the electronic communication; and

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- (b) in the case of any failure or disruption of such means, that failure or disruption is remedied as soon as practicable.

Right to ask questions

1109. (1) A member of a traded PLC has the right to ask questions related to items on the agenda of a general meeting and to have such questions answered by the PLC subject to any reasonable measures the PLC may take to ensure the identification of the member. 5

- (2) An answer to a question asked pursuant to *subsection (1)* is not required where—
- (a) to give an answer would interfere unduly with the preparation for the meeting or the confidentiality and business interests of the PLC;
 - (b) the answer has already been given on the PLC's website by means of what is commonly known as "a question and answer forum"; or 10
 - (c) it appears to the chairperson of the meeting that it is undesirable in the interests of good order of the meeting that the question be answered.

Provisions concerning appointment of proxies

1110. (1) In the case of a traded PLC, *section 183* shall have effect subject to the following subsections. 15

- (2) *Section 183* shall apply as if the following subsection were substituted for *subsection (3)*:

“(3) Unless the company's constitution otherwise provides, a member of a company shall not be entitled to appoint more than one proxy to attend on the same occasion, but this is subject to *section 1110(3)*.”. 20

- (3) Notwithstanding anything in *section 183(3)*, as applied by *subsection (2)*, or in the traded PLC's constitution—

(a) no limitation may be placed on the right of a member to appoint more than one proxy to attend on the same occasion in respect of shares held in different securities accounts, and 25

(b) a member (being an individual or a body corporate) acting as an intermediary on behalf of one or more clients shall not be prohibited from granting a proxy to each of his or her clients or to any third party designated by such a client,

and an intermediary referred to in *paragraph (b)* shall be permitted to cast votes attaching to some of the shares differently from others. 30

- (4) Without prejudice to the other means of communication that may be used for that purpose, the instrument of proxy referred to in *section 183* may be notified to the traded PLC by electronic means.

- (5) A member shall be entitled to—

(a) appoint a proxy by electronic means, to an address specified by the traded PLC; 35

(b) have the electronic notification of such appointment accepted by the traded PLC; and

(c) have at least one effective method of notification of a proxy by electronic means offered to it by the traded PLC.

- (6) The appointment and notification of appointment of a proxy to a traded PLC and the issuing of voting instructions to a proxy may be subject only to such formal requirements as are necessary to ensure identification of a member or the proxy, or the possibility of verifying the content of voting instructions, if any, and only to the extent that those requirements are proportionate to achieving those objectives. 5
- (7) *Subsections (4) to (6)* apply with the necessary modifications to the revocation of the appointment of a proxy.
- (8) Any provision contained in the constitution of a traded PLC (other than a requirement that a person appointed as a proxy shall possess legal capacity) shall be void in so far as it would have the effect of restricting the eligibility of a person to be appointed as a proxy. 10

Traded PLC may permit vote to be cast in advance by correspondence

- 1111.** (1) A traded PLC may permit, by appropriate arrangements, a vote to be exercised for the purpose of a poll (that is to be taken at a general meeting) by means of the vote being cast in advance by correspondence. 15
- (2) Any such arrangements may be made subject only to such requirements and restrictions as are—
- (a) necessary to ensure the identification of the person voting, and
 - (b) proportionate to the achievement of that objective.
- (3) A traded PLC shall not be required to count votes cast in advance by correspondence pursuant to *subsection (1)* unless such votes are received before the date and time specified by the PLC; however, for that purpose, the PLC may not specify a date and time that is more than 24 hours before the time at which the vote is to be concluded. 20

Voting results

- 1112.** (1) Where a member requests a full account of a vote before or on the declaration of the result of a vote at a general meeting, then with respect to each resolution proposed at a general meeting the traded PLC shall establish—
- (a) the number of shares for which votes have been validly cast;
 - (b) the proportion of the company's issued share capital at close of business on the day before the meeting represented by those votes; 30
 - (c) the total number of votes validly cast; and
 - (d) the number of votes cast in favour of and against each resolution and, if counted, the number of abstentions.
- (2) Where no member requests a full account of the voting before or on the declaration of the result of a vote at a general meeting, it shall be sufficient for the traded PLC to establish the voting results only to the extent necessary to ensure that the required majority is reached for each resolution. 35
- (3) A traded PLC shall ensure that a voting result established in accordance with this section is published on its website not later than the expiry of 15 days after the date of

the meeting at which the voting result was obtained.

CHAPTER 9

Duties of directors and other officers

Obligation to convene extraordinary general meeting in event of serious loss of capital

1113. (1) Where the net assets of a PLC are half or less of the amount of the PLC's called-up share capital, the directors of the PLC shall, not later than 28 days after the earliest day on which that fact is known to a director of the PLC (the "relevant day"), duly convene an extraordinary general meeting of the PLC. 5

(2) That extraordinary general meeting shall be convened—

- (a) for the purpose of considering whether any, and if so what, measures should be taken to deal with the situation; and
- (b) for a date not later than 56 days after the relevant day.

(3) If there is a failure to convene an extraordinary general meeting of a PLC as required by subsections (1) and (2), each of the directors of the PLC who—

- (a) knowingly and intentionally authorises or permits that failure, or
- (b) after the expiry of the period during which that meeting should have been convened, knowingly and intentionally authorises or permits that failure to continue,

shall be guilty of a category 3 offence.

(4) Nothing in this section shall be taken as authorising the consideration, at an extraordinary general meeting convened in pursuance of this section, of any matter which could not have been considered at that meeting apart from this section. 20

Qualifications of secretary of a PLC

1114. (1) The directors of a PLC shall have a duty to ensure that the person appointed as secretary has the skills necessary to discharge his or her statutory and other legal duties and such other duties as may be delegated to the secretary by the directors and that the person complies with one, or more than one, of the following 3 conditions. 25

(2) Those conditions are—

(a) the person, for at least 3 years of the 5 years immediately preceding his or her appointment as secretary, held the office of secretary of a company;

(b) the person is a member of a body for the time being recognised for the purposes of this section by the Minister;

(c) the person is a person who, by virtue of his or her—

(i) holding or having held any other position; or

(ii) his or her being a member of any other body;

appears to the directors of the PLC to be capable of discharging the duties 35

referred to in subsection (1).

- (3) *Section 226* shall apply, in relation to a PLC, as if, in subsection (2), “Without prejudice to the generality of section 1114(1) and (2)” were substituted for “Without prejudice to the generality of section 129(4)”.

CHAPTER 10

5

Financial statements, annual return and audit

Non-application of Part 6 to PLCs that are credit institutions or insurance undertakings

1115. *Part 6* shall not apply to a PLC that is a credit institution or an insurance undertaking—

- (a) to the extent provided by regulations made under section 3 of the European Communities Act 1972 to give effect to Community acts on accounts of credit institutions and insurance undertakings, respectively; or 10
- (b) to the extent provided by any other enactment.

Requirement for corporate governance statement and modification of certain provisions of Parts 5 and 6 as they apply to PLCs

1116. *Chapter 3* of *Part 23* has effect in relation to, amongst other companies, a PLC that has 15 shares or debentures admitted to trading on a regulated market in an EEA state.

Obligation for a PLC’s statutory financial statements to be audited

1117. The directors of a PLC shall arrange for the statutory financial statements of the PLC for a financial year to be audited by statutory auditors.

Statutory auditors’ report on revised financial statements and revised report

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1118. *Section 370* shall apply to a PLC as if, in subsection (1), “Subject to subsection (3)” were substituted for “Subject to *section 371* and subsection (3)”.

Summary financial statements and circulation of them to members in lieu of full financial statements

1119. (1) The directors of a PLC may prepare in respect of each financial year a summary financial statement for that financial year derived from the statutory financial statements and the directors’ report for that period, giving a fair and accurate summary account of the PLC’s financial development during that financial year and financial position at the end of that year. 25

- (2) The summary financial statement shall be approved by the board of directors and shall be signed by them or, if there are more than 2 directors, shall be signed on their behalf by 2 of them. 30

- (3) Where the PLC has subsidiary undertakings or undertakings of substantial interest (within the meaning of *section 314*), the statement shall (so far as they are dealt with in the group financial statements) give an account of the financial development and position of the PLC and its subsidiary undertakings and other such undertakings. 35

- (4) Every summary financial statement shall include a statement of the statutory auditors' opinion as to its consistency with the statutory financial statements of the PLC and the directors' report and its conformity with the requirements of this section.
- (5) Not later than the day specified in *subsection (6)*, a copy of—
- (a) the summary financial statement, and 5
 - (b) where it includes a qualification, the statutory auditors' report under *section 391*, may, in lieu of the documents specified in *section 338(2)*, be sent by the PLC to every member who is entitled to notice of the meeting referred to in *subsection (6)* and to the Registrar.
- (6) The day referred to in *subsection (5)* is the 21st day before the date of the annual general meeting at which the statutory financial statements and directors' report of the PLC are to be considered. 10
- (7) Every summary financial statement shall also include statements to the effect that—
- (a) it is only a summary of information in the statutory financial statements and directors' report; 15
 - (b) the statutory financial statements have been audited; and
 - (c) copies of the statutory financial statements, statutory auditors' report and directors' report will be available to members upon request;
- and copies of those documents will, accordingly, be made available by the PLC to any member upon request. 20
- (8) For the avoidance of doubt, the reference, in relation to non-statutory financial statements, in *section 340(4)* to publication does not include the sending of a summary financial statement to a member in accordance with *subsection (5)*.
- (9) *Section 347(2)* applies for the purpose of the construction of the reference to a copy of a document in *subsection (5)* of this section (in so far as the reference is to a copy to be sent to the Registrar) as it applies for the purpose of the construction of the reference to a copy of a document in *section 347(1)*. 25

Application of sections 310 to 313

- 1120.** (1) For the purposes of this Part, *sections 310 to 313* shall apply as if, in those sections, there were substituted for the references to a holding company of a credit institution preparing financial statements references to a PLC that is a credit institution preparing financial statements; but this adaptation does not displace those sections' application in cases where—
- (a) the holding company of the company concerned is a PLC that is a credit institution, or 30
 - (b) both the holding company and the company concerned are credit institutions.
- (2) In particular, that adaptation does not limit the provisions of *sections 310 to 313* that operate by reference to something that has been done to or in relation to a person connected with a director of a holding company of another company. 35

- (3) Accordingly any exemption conferred, or requirement imposed, by any of those sections applies in respect of a transaction, arrangement or agreement (being a transaction, arrangement or agreement to which the PLC hereafter mentioned is a party) that is entered into or made with or for—
- (a) a person connected with a director of a holding company of a PLC which PLC is a credit institution, or
 - (b) an officer of such a PLC,
- as it applies in respect of a transaction, arrangement or agreement (being a transaction, arrangement or agreement to which such a PLC is a party) entered into or made with or for—
- (i) a person connected with a director of such a PLC, or
 - (ii) an officer of such a PLC.
- (4) *Section 312(3) to (6)* shall not apply to a credit institution which is the wholly owned subsidiary of a company incorporated in the State.

CHAPTER 11

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Debentures

Provisions as to register of debenture holders

- 1121.** (1) A PLC shall keep a register of holders of debentures (the “debenture holders’ register”) of the PLC and enter therein the names and addresses of the debenture holders and the amount of debentures currently held by each.
- (2) For the purposes of *subsection (1)*, debentures do not include any debenture which does not form part of a series ranking *pari passu* nor any debenture which is transferable by delivery.
- (3) *Chapter 10 of Part 4*, as adapted by *subsection (4)*, shall apply in relation to the debenture holders’ register.
- (4) For the purposes of this section, *Chapter 10 of Part 4* is adapted as follows:
- (a) in *section 215(a)*, there shall be added the following definition:
- “ ‘debenture holders’ register’ means the register kept by the company pursuant to *section 1121(1)*;”;
- (b) *section 216(1)* shall have effect as if, in addition to the registers specified in that provision as being registers to which *section 216* applies, that provision specified the debenture holders’ register as being a register to which that section applies;
 - (c) *subsection (7) of section 216* shall have effect as if after “it is closed under *section 174*” there were inserted “and, in the case of the debenture holders’ register, when it is deemed to be closed under *section 1121(6)*”; and
 - (d) each of *subsections (9), (11) and (12) of section 216* shall have effect as if, in addition to the registers specified in the particular subsection, there were specified in the particular subsection the debenture holders’ register.

- (5) *Section 127(1)* (access to documents during business hours) shall apply for the purposes of *Chapter 10* of *Part 4*, as that Chapter is adapted for the purposes of this section, as it applies in relation to the relevant provisions of *Part 4*.
- (6) For the purposes of *section 216(7)*, as adapted by *subsection (4)*, the debenture holders' register shall be deemed to be closed if closed in accordance with provisions contained in—5
- (a) the articles of the PLC; or
 - (b) the debentures, or in the case of debenture stock, in the stock certificates; or
 - (c) the trust deed or other document securing the debentures or debenture stock;
- during such period or periods, not exceeding in the whole 30 days in any year, as may be specified in the document referred to in *paragraph (a), (b) or (c)*.10
- (7) A copy of any trust deed for securing any issue of debentures shall be forwarded to every holder of any such debentures, at his or her request, by the PLC on payment to it of a fee of €10.00 or such less sum as may be determined by the PLC.15
- (8) If a copy of a trust deed referred to in *subsection (7)* is not forwarded by the PLC in accordance with that subsection, the PLC and any officer of it who is in default shall be guilty of a category 3 offence.15
- (9) In the case of a failure to comply with *subsection (7)*, the court may, on application being made to it, make an order directing that the copy requested be forwarded to the person requesting it.20

CHAPTER 12

Examinerships

Petitions for examinerships

1122. *Section 510* shall apply to a PLC as if the following subsections were substituted for *subsections (2) and (3)*:25

“(2) Where the company referred to in *section 509* is an insurer or the holding company of an insurer, a petition may be presented only by the Central Bank, and *subsection (1)* shall not apply to the company.

(3) Where the company referred to in *section 509* is—

(a) a credit institution or the holding company of a credit institution;30

(b) a company which one or more trustee savings banks have been reorganised into pursuant to an order under section 57 of the Trustee Savings Banks Act 1989; or

(c) a company which a building society has converted itself into under Part XI of the Building Societies Act 1989,35

a petition may be presented only by the Central Bank, and *subsection (1)* shall not apply to the company.”.

CHAPTER 13

Reorganisations

Acquisitions of uncertificated securities from dissenting shareholders

1123. (1) In this section—

“dissenting security holder” has the meaning given to it by Part 5 of the European Communities (Takeover Bids (Directive 2004/25/EC)) Regulations 2006 (S.I. No. 255 of 2006); 5

“dissenting shareholder” has the meaning given to it by *Chapter 2 of Part 9*;

“relevant offeree” means an offeree company within the meaning of—

(a) *Chapter 2 of Part 9*; or 10

(b) Part 5 of the European Communities (Takeover Bids (Directive 2004/25/EC)) Regulations 2006;

which is a participating issuer;

“relevant offeror” means an offeror within the meaning of—

(a) *Chapter 2 of Part 9*; or 15

(b) Part 5 of the European Communities (Takeover Bids (Directive 2004/25/EC)) Regulations 2006;

“relevant regulations” means—

(a) the Companies Act 1990 (Uncertificated Securities) Regulations 1996 (S.I. No. 68 of 1996) which regulations are continued in force by *Schedule 6*; or 20

(b) if regulations under *section 1088* are made and those regulations—

(i) replace the regulations referred to in *paragraph (a)* — those replacement regulations; or

(ii) amend the regulations referred to in *paragraph (a)* — the latter regulations as they stand so amended. 25

(2) In this section each of the following:

(i) “issuer-instruction”;

(ii) “operator”;

(iii) “operator-instruction”;

(iv) “participating issuer”; 30

(v) “register of securities”;

(vi) “system-member”;

(vii) “uncertificated securities”;

(viii) “unit of a security”;

has the meaning given to it by the relevant regulations. 35

- (3) Where a relevant offeror has become bound to acquire under, as the case may be—
- Chapter 2 of Part 9;* or
 - Part 5 of the European Communities (Takeover Bids (Directive 2004/25/EC)) Regulations 2006;

the shares or securities of a dissenting shareholder or dissenting security holder then, subsection (4) applies, in lieu of the relevant procedures specified in section 459 or Regulation 25 of the foregoing Regulations, with respect to effecting the transfer and a reference in subsection (4) to securities includes shares.

- (4) The relevant offeree shall enter the relevant offeror in its register of securities as the holder of the uncertificated units of the securities concerned in place of the system-member who was, immediately prior to such entry, registered as the holder of such units as if it had received an operator-instruction requiring it to amend its register of securities in such manner.
- (5) A company which amends its register of securities in accordance with subsection (4) shall forthwith notify the operator by issuer-instruction of the amendment.

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CHAPTER 14

Strike off and restoration

Power of Registrar to strike PLC off register

1124. (1) In addition to the cases mentioned in section 725, a PLC may be struck off the register in the circumstances and under the conditions specified in the following provisions.

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(2) Where a PLC, registered as such on its original incorporation, has not been issued with a certificate under section 1012 within one year after the date on which it was registered, the Registrar may employ the following procedure.

(3) That procedure consists of there being sent by the Registrar, by registered post, the notice referred to in subsection (5) to the PLC at its registered office.

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(4) The Registrar shall also send a copy of the foregoing notice by prepaid ordinary post to such persons, if any, as are recorded in the office of the Registrar as being current directors of the PLC but non-compliance with this subsection does not affect the validity of a notice that otherwise complies with subsection (3); the address to which a notice under this subsection is sent shall be the usual residential address, as recorded in the office of the Registrar, of the addressee concerned.

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(5) The Registrar's notice referred to in subsections (3) and (4) shall—

(a) state that the issue of the notice is the first step in a process that may lead to the PLC being struck off the register;

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(b) state the ground for striking off being invoked by the Registrar, namely, that the PLC has not been issued with a certificate under section 1012 within one year after the date on which it was registered;

(c) state that the PLC will be dissolved if it is struck off the register;

(d) specify the remedial step, namely the procuring by the PLC of the issue to it of a

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- certificate under *section 1012*;
- (e) specify the date on or before which that certificate must be issued to the PLC; and
 - (f) state that failure to have that certificate issued to it on or before the date so specified may result in the Registrar giving public notice of an intention to strike the PLC off the register.
- (6) The date to be specified for the purposes of *subsection (5)(e)* shall be a date falling not less than 28 days after the date of the notice.
- (7) If the Registrar has given a notice under *subsection (3)* and the remedial step referred to in *subsection (5)(d)* has not been taken on or before the date specified in that notice for the purposes of *subsection (5)(e)*, the Registrar may, by publishing a notice in the CRO Gazette that complies with *subsection (8)*, give public notice of the Registrar's intention to strike the PLC off the register.
- (8) The notice referred to in *subsection (7)* shall—
- (a) specify the ground for striking the PLC off the register, namely, that the PLC has not been issued with a certificate under *section 1012* within one year after the date on which it was registered;
 - (b) specify the remedial step, namely the procuring by the PLC of the issue to it of a certificate under *section 1012*;
 - (c) specify the date on or before which that remedial step must be taken; and
 - (d) state that unless that remedial step is taken on or before the date so specified the Registrar may strike the PLC off the register and, if the Registrar does so, the PLC will be dissolved.
- (9) The date to be specified for the purposes of *subsection (8)(c)* shall be a date falling not less than 28 days after the date of publication of the notice.
- (10) If the Registrar has given a notice referred to in *subsection (8)* and the remedial step referred to in *paragraph (b)* of that subsection has not been taken on or before the date specified in that notice for the purposes of *paragraph (c)* of that subsection, the Registrar may strike the PLC off the register.
- (11) *Section 733(3) and (4), section 734 and sections 738 to 743* shall apply to a PLC which has been struck off the register in accordance with *subsection (10)* as those provisions apply to a company struck off the register in accordance with *section 733(1)*.

Reinstatement as PLC confined to company which had such status before dissolution

- 1125.** Where a company has been dissolved under this Act or under any of the prior Companies Acts, it may not be restored to the register as a PLC unless it was a PLC immediately before such dissolution.

CHAPTER 15

Investigations

Inspectors — minimum number of members that may apply for their appointment in the case of a PLC

1126. *Section 747(2)* shall apply to a PLC as if the following paragraph were substituted for paragraph (b): 5

“(b) not less than 100 members of the company;”.

CHAPTER 16

Mergers

Interpretation (Chapter 16)

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1127. (1) In this Chapter—

“company” includes a body corporate to which *section 1308(1)* (application of certain provisions of Act to unregistered companies) relates;

“director”, in relation to a company which is being wound up, means liquidator;

“merger” means— 15

(a) a merger by acquisition;

(b) a merger by absorption; or

(c) a merger by formation of a new company;

within, in each case, the meaning of *section 1129*;

“merging company” means— 20

(a) in relation to a merger by acquisition or a merger by absorption, a company that is, in relation to that merger, a transferor company or the successor company; and

(b) in relation to a merger by formation of a new company, a company that is, in relation to that merger, a transferor company;

“share exchange ratio” means the number of shares or other securities in the successor company that the common draft terms of merger provide to be allotted to members of any transferor company for a given number of their shares or other securities in the transferor company; 25

“successor company” shall be read in accordance with *section 1129*;

“transferor company”, in relation to a merger, means a company, the assets and liabilities of which are to be, or have been, transferred to the successor company by way of that merger. 30

(2) References in this Chapter to the acquisition of a company are references to the acquisition of the assets and liabilities of the company by way of a merger under this Chapter. 35

Requirement for Chapter to apply

1128. This Chapter applies only if each of the merging companies, or, one at least, of them, is a PLC.

Mergers to which Chapter applies — definitions and supplementary provision

- 1129.** (1) In this Chapter “merger by acquisition” means an operation in which a company (the “successor company”) acquires all the assets and liabilities of one or more other companies that is or are dissolved without going into liquidation in exchange for the issue to the members of that company or those companies of shares in the first-mentioned company, with or without any cash payment. 5
- (2) In this Chapter “merger by absorption” means an operation whereby, on being dissolved and without going into liquidation, a company transfers all of its assets and liabilities to a company that is the holder of all the shares representing the capital of the first-mentioned company. 10
- (3) The reference in *subsection (2)* to a company (the “second-mentioned company”) that is the holder of all the shares representing the capital of the first-mentioned company in that subsection includes a reference to either of the following cases: 15
- (a) a case where all of those shares are held by other persons in their own names but on behalf of the second-mentioned company;
- (b) a case where the shares representing the capital of the first-mentioned company held by the second-mentioned company and by other persons in their own names but on behalf of the second-mentioned company amount, in aggregate, to all of the shares representing the foregoing capital. 20
- (4) In this Chapter “merger by formation of a new company” means an operation in which 2 or more companies, on being dissolved without going into liquidation, transfer all their assets and liabilities to a company that they form — the “other company”— in exchange for the issue to their members of shares representing the capital of the other company, with or without any cash payment. 25
- (5) Where a company is being wound up it may—
- (a) become a party to a merger by acquisition, a merger by absorption or a merger by formation of a new company, provided that the distribution of its assets to its shareholders has not begun at the date, under *section 1131(6)*, of the common draft terms of merger; or 30
- (b) opt to avail itself of the provisions of *Chapters 1* and *2* of *Part 9* or *section 601*.
- (6) Subject to *subsection (5)*, the provisions of *Chapters 1* and *2* of *Part 9* and *section 601* shall not apply to a merger by acquisition, a merger by absorption or a merger by formation of a new company. 35

Merger may not be put into effect save in accordance with this Chapter

1130. (1) A merger may not be put into effect save under and in accordance with the provisions of this Chapter.

(2) A merger shall not take effect under this Chapter in the absence of the approval, 40

authorisation or other consent, if any, that is required by any other enactment or a Community act for the merger to take effect.

Common draft terms of merger

1131. (1) Where a merger is proposed to be entered into, the directors of the merging companies shall draw up common draft terms of the merger in writing and approve those terms in writing. 5

(2) The common draft terms of merger shall state, at least—

- (a) the name and registered office of each of the merging companies;
- (b) as to each of the merging companies, whether it is a PLC, another type of company as defined in *section 2(1)* or a body corporate to which *section 1308(1)* relates; 10
- (c) save in the case of a merger by absorption, the proposed share exchange ratio and the amount of any cash payment;

(d) save in the case of a merger by absorption, the proposed terms relating to allotment of shares in the successor company; 15

(e) save in the case of a merger by absorption, the date from which holders of such shares will become entitled to participate in the profits of the successor company;

(f) the date from which the transactions of the company or companies being acquired are to be treated for accounting purposes as being those of the successor company; 20

(g) any special conditions, including special rights or restrictions, whether in regard to voting, participation in profits, share capital or otherwise, which will apply to shares issued by the successor company in exchange for shares in the company or companies being acquired;

(h) any payment or benefit in cash or otherwise, paid or given or intended to be paid or given to any expert referred to in *section 1133* and to any director of any of the merging companies in so far as it differs from the payment or benefit paid or given to other persons in respect of the merger and the consideration, if any, for any such payment or benefit. 25

(3) The common draft terms of merger shall not provide for any shares in the successor company to be exchanged for shares in a company being acquired that are held either— 30

- (a) by the successor company itself or its nominee on its behalf; or
- (b) by the company being acquired itself or its nominee on its behalf.

(4) Where the merger is a merger by formation of a new company the common draft terms of merger shall include or be accompanied by the constitution or draft constitution of the new company. 35

(5) The common draft terms of merger, as approved under *subsection (1)*, shall be signed, on the same date, on behalf of each of the merging companies by 2 directors of each such company (or, in the case of each of one or more of them having a sole director, 40

by the sole director); the common draft terms shall bear the date of such signing.

- (6) That date shall, for the purposes of this Chapter, be the date of the common draft terms of merger.

Directors' explanatory report

1132. (1) Except in the case of a merger by absorption and subject to *subsections (4)* and *(5)*, a separate written report (the "explanatory report") shall be prepared in respect of each of the merging companies by the directors of each such company. 5

- (2) The explanatory report shall at least give particulars of, and explain—

(a) the common draft terms of merger;

(b) the legal and economic grounds for and implications of the common draft terms of merger with particular reference to the proposed share exchange ratio, organisation and management structures, recent and future commercial activities and the financial interests of the holders of the shares and other securities in the company; 10

(c) the methods used to arrive at the proposed share exchange ratio and the reasons for the use of these methods; and 15

(d) any special valuation difficulties which have arisen.

- (3) The explanatory report shall be signed, on the same date, on behalf of each of the merging companies by 2 directors of each such company (or, in the case of each of one or more of them having a sole director, by the sole director); the report shall bear the date of such signing. 20

- (4) This section is subject to *section 1137(11)* (which provides for an exemption from its requirements in relation to a particular type of merger operation).

- (5) This section shall not apply if the following condition is, or (as appropriate) the following 2 conditions are, satisfied: 25

(a) other than in a case falling within *paragraph (b)*, all of the holders of shares conferring the right to vote at general meetings of each of the merging companies have agreed that this section shall not apply; or

(b) where a requirement for the taking effect of a vote (whether a vote generally or of the type to which this subsection applies) by holders of shares of any of the merging companies is that a holder of securities of the company has consented thereto— 30

(i) the agreement mentioned in *paragraph (a)* exists; and

(ii) all of the holders of securities of the company or companies in respect of which requirement mentioned in this paragraph operates have agreed that this section shall not apply. 35

Expert's report

1133. (1) Subject to *subsections (2)*, *(13)* and *(14)*, there shall, in accordance with this section, be appointed one or more persons to—

- (a) examine the common draft terms of merger; and
 - (b) make a report on those terms to the shareholders of the merging companies.
- (2) *Subsection (1)* shall not apply where the merger is a merger by absorption.
- (3) The functions referred to in *subsection (1)(a)* and *(b)* shall be performed either—
- (a) in relation to each merging company, by one or more persons appointed for that purpose in relation to the particular company by its directors and—
 - (i) no person may be appointed under this paragraph unless the person's appointment has first been approved by the court on the application to it of the company concerned;
 - (ii) the directors of each company may appoint the same person or persons for that purpose;
- or
- (b) in relation to all the merging companies, by one or more persons appointed for that purpose by the court, on the application to it of all of the merging companies.
- (4) The person so appointed, or each person so appointed, is referred to in this Chapter as an “expert” and a reference in this Chapter to a report of an expert or other action (including an opinion) of an expert shall, in a case where there are 2 or more experts, be read as reference to a joint report or joint other action (including an opinion) of or by them.
- (5) A person shall not be appointed an expert unless the person is a qualified person.
- (6) A person is a qualified person for the purposes of this section if the person—
- (a) is a statutory auditor; and
 - (b) is not—
 - (i) a person who is or, within the period of 12 months before the date of the common draft terms of merger has been, an officer or employee of any of the merging companies;
 - (ii) except with the leave of the court, a parent, spouse, civil partner, brother, sister or child of an officer of any of the merging companies (and a reference in this subparagraph to a child of an officer shall be deemed to include a child of the officer's civil partner who is ordinarily resident with the officer and the civil partner); or
 - (iii) a person who is a partner, or in the employment, of an officer or employee of any of the merging companies.
- (7) The report of the expert shall be in writing and shall—
- (a) state the method or methods used to arrive at the proposed share exchange ratio;
 - (b) give the opinion of the expert as to whether the proposed share exchange ratio is fair and reasonable;
 - (c) give the opinion of the expert as to the adequacy of the method or methods used in the case in question;

- (d) indicate the values arrived at using each such method;
 - (e) give the opinion of the expert as to the relative importance attributed to such methods in arriving at the values decided on; and
 - (f) specify any special valuation difficulties which have arisen.
- (8) The expert may—
- (a) require each of the merging companies and their officers to give to the expert such information and explanations (whether oral or in writing); and
 - (b) make such enquiries;
- as the expert thinks necessary for the purposes of making the report.
- (9) If a merging company fails to give to the expert any information or explanation in the power, possession or procurement of that company, on a requirement being made of it under subsection (8)(a) by the expert, that company and any officer of it who is in default shall be guilty of a category 2 offence.
- (10) If a merging company makes a statement (whether orally or in writing), or provides a document, to the expert that conveys or purports to convey any information or explanation the subject of a requirement made of it under subsection (8)(a) by the expert and—
- (a) that information is false or misleading in a material particular, and
 - (b) the company knows it to be so false or misleading or is reckless as to whether it is so false or misleading,
- the company and any officer of it who is in default shall be guilty of a category 2 offence.
- (11) If a person appointed an expert under subsection (3)(a) or (b) ceases to be a qualified person, that person—
- (a) shall immediately cease to hold office, and
 - (b) shall give notice in writing of the fact of the person's ceasing to be a qualified person to each merging company and (in the case of an appointment under subsection (3)(b)) to the court within 14 days after the date of that cessation,
- but without prejudice to the validity of any acts done by the person under this Chapter before that cessation.
- (12) A person who purports to perform the functions of an expert (in respect of the merger concerned) under this Chapter after ceasing to be a qualified person (in respect of that merger) shall be guilty of a category 2 offence.
- (13) This section is subject to section 1137(11) (which provides for an exemption from its requirements in relation to a particular type of merger operation).
- (14) This section shall not apply if the following condition is, or (as appropriate) the following 2 conditions are, satisfied:
- (a) other than in a case falling within paragraph (b), all of the holders of shares conferring the right to vote at general meetings of each of the merging companies

have agreed that this section shall not apply; or	
(b) where a requirement for the taking effect of a vote (whether a vote generally or of the type to which this subsection applies) by holders of shares of any of the merging companies is that a holder of securities of the company has consented thereto—	5
(i) the agreement mentioned in <i>paragraph (a)</i> exists; and	
(ii) all of the holders of securities of the company or companies in respect of which the requirement mentioned in this paragraph operates have agreed that this section shall not apply.	
Merger financial statement	10
1134. (1) Subject to <i>subsections (6)</i> and <i>(8)</i> , where the latest statutory financial statements of any of the merging companies relate to a financial year ended more than 6 months before the date of the common draft terms of merger, that company shall prepare a merger financial statement in accordance with the provisions of this section.	
(2) The merger financial statement shall be drawn up—	15
(a) in the format of the last annual balance sheet, if any, of the company and in accordance with the provisions of <i>Part 6</i> , and	
(b) as at a date not earlier than the first day of the third month preceding the date of the common draft terms of merger.	
(3) Valuations shown in the last annual balance sheet, if any, shall, subject to the exceptions provided for under <i>subsection (4)</i> , only be altered to reflect entries in the accounting records of the company.	20
(4) Notwithstanding <i>subsection (3)</i> , the following shall be taken into account in preparing the merger financial statement:	
(a) interim depreciation and provisions; and	25
(b) material changes in actual value not shown in the accounting records.	
(5) The provisions of <i>Part 6</i> relating to the statutory auditor's report on the last statutory financial statements of the company concerned shall apply, with any necessary modifications, to the merger financial statement required of the company by <i>subsection (1)</i> .	30
(6) This section shall not apply in relation to a merging company which makes public a half-yearly financial report covering the first 6 months of its financial year pursuant to the provision referred to in <i>subsection (7)</i> if that company makes that report available for inspection pursuant to <i>section 1136</i> .	
(7) The provision referred to in <i>subsection (6)</i> is, as appropriate—	35
(a) Regulation 6 of the Transparency (Directive 2004/109/EC) Regulations 2007 (S.I. No. 277 of 2007) which regulations are continued in force by <i>Schedule 6</i> ; or	
(b) if regulations under <i>section 1375</i> are made and those regulations—	
(i) replace the regulations referred to in <i>paragraph (a)</i> — the provision of those	

- replacement regulations corresponding to the foregoing Regulation 6; or
- (ii) amend the foregoing Regulation 6 — that Regulation as it stands so amended.
- (8) This section shall not apply to a merging company if the following condition is, or (as appropriate) the following 2 conditions are, satisfied:
- (a) other than in a case falling within *paragraph (b)*, all of the holders of shares conferring the right to vote at general meetings of the company have agreed that this section shall not apply; or
- (b) where a requirement for the taking effect of a vote (whether a vote generally or of the type to which this subsection applies) by holders of shares of the company is that a holder of securities of the company has consented thereto—
- (i) the agreement mentioned in *paragraph (a)* exists; and
- (ii) all of the holders of securities in respect of which the requirement mentioned in this paragraph operates have agreed that this section shall not apply.
- Registration and publication of documents**
- 1135.** (1) Subject to *subsection (3)*, each of the merging companies shall—
- (a) deliver to the Registrar a copy of the common draft terms of merger, signed and dated as required by *section 1131(5)*;
- (b) cause to be published in the CRO Gazette notice of delivery to the Registrar of the common draft terms of merger.
- (2) The requirements of *subsection (1)* shall be fulfilled by each of the merging companies at least 30 days before the date of the general meeting of each such company which, by virtue of *section 1137*, is held to consider the common draft terms of merger.
- (3) This section shall not apply in relation to a merging company if the company—
- (a) publishes, free of charge on its website for a continuous period of at least 2 months, commencing at least 30 days before the date of the general meeting which, by virtue of *section 1137*, is to consider the common draft terms of merger and ending at least 30 days after that date, a copy of the common draft terms of merger, signed and dated pursuant to *section 1131(5)*, and
- (b) causes to be published in the CRO Gazette and once at least in 2 daily newspapers circulating in the district in which the registered office or principal place of business of the company is situate notice of publication on its website of the common draft terms of merger.
- (4) Where, in the period referred to in *subsection (3)(a)*, access to the company's website is disrupted for a continuous period of at least 24 hours or for separate periods totalling not less than 72 hours, the period referred to in *subsection (3)(a)* shall be extended for a period corresponding to the period or periods of disruption.

Inspection of documents

1136. (1) Subject to *subsections (5)* and *(9)*, each of the merging companies shall, in accordance with *subsection (3)*, make available for inspection free of charge by any member of the company at its registered office during business hours—

- (a) the common draft terms of merger; 5
 - (b) subject to *subsection (2)*, the statutory financial statements for the preceding 3 financial years of each company (audited, where required by that Part, in accordance with *Part 6*);
 - (c) if such a report is required to be prepared by that section, each explanatory report in relation to the merging companies referred to in *section 1132*; 10
 - (d) if such a report is required to be prepared by that section, the expert's report relating to each of the merging companies referred to in *section 1133*; and
 - (e) each merger financial statement, if any, in relation to one or, as the case may be, more than one of the merging companies, required to be prepared by *section 1134* or, as appropriate, its half-yearly financial report referred to in *subsection (6)* of that section. 15
- (2) For the purposes of *paragraph (b)* of *subsection (1)*—
- (a) if any of the merging companies has traded for less than 3 financial years before the date of the common draft terms of merger, then, as respects that company, that paragraph is satisfied by the statutory financial statements for those financial years for which the company has traded (audited, where required by that Part, in accordance with *Part 6*) being made available as mentioned in that subsection by each of the merging companies; or 20
 - (b) if, by reason of its recent incorporation, the obligation of any of the foregoing companies to prepare its first financial statements under *Part 6* had not arisen as of the date of the common draft terms of merger, then the reference in that paragraph to the financial statements of that company shall be disregarded. 25
- (3) The provisions of *subsection (1)* shall apply in the case of each of the merging companies for a period of 30 days before the date of the meeting of each such company which, by virtue of *section 1137*, is held to consider the common draft terms of merger. 30
- (4) *Section 127(1)* (access to documents during business hours) shall apply in relation to *subsection (1)* as it applies in relation to the relevant provisions of *Part 4*.
- (5) Subject to *subsection (6)*, *subsection (1)* shall not apply in relation to a merging company if it publishes free of charge on its website the documents specified in that subsection for a continuous period of at least 2 months, commencing at least 30 days before the date of the general meeting which, by virtue of *section 1137*, is to consider the common draft terms of merger and ending at least 30 days after that date. 35
- (6) *Subsection (5)* shall not apply where the entitlement referred to in *section 1137(4)* does not apply in consequence of the application of *section 1138(2)*. 40
- (7) Where, in the period referred to in *subsection (5)*, access to the company's website is disrupted for a continuous period of at least 24 hours or for separate periods totalling

not less than 72 hours, the period referred to in *subsection (5)* shall be extended for a period corresponding to the period or periods of disruption.

- (8) A reference in this section to statutory financial statements shall be deemed to include a reference to a directors' report and a reference to auditing shall, in the case of such a report, be read as a reference to the operation referred to in *section 336(5)*.
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- (9) This section is subject to *section 1137(11)* (which provides for an exemption from its requirements in relation to a particular type of merger operation).

General meetings of merging companies

1137. (1) In this section a reference to a general meeting, without qualification, is a reference to a general meeting referred to in *subsection (2)*.
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- (2) Subject to *subsection (7)* and without prejudice to *section 1139*, the subsequent steps under this Chapter in relation to the merger shall not be taken unless the common draft terms of merger have been approved by a special resolution passed at a general meeting of each of the merging companies.

- (3) In addition, where the merger is a merger by formation of a new company, those subsequent steps shall not be taken unless the constitution or draft constitution of the new company has been approved by a special resolution of each of the companies being acquired.
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- (4) Subject to *section 1138(2)*, the notice convening the general meeting referred to in *subsection (2)* shall contain a statement of every shareholder's entitlement to obtain on request, free of charge, full or, if so desired, partial copies of the documents referred to in *section 1136(1)* (and, accordingly, every shareholder has, subject to the foregoing provision, that entitlement).
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- (5) The directors of each of the companies involved in a merger shall inform—

(a) the general meeting of that company; and
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(b) the directors of each of the other companies involved in the merger;

of any material change in the assets and liabilities of that company that occurs between the date of the common draft terms of merger and the date of such general meeting.

- (6) On being so informed of them, the directors of each such other company involved in the merger shall inform the general meeting of that company of the matters referred to in *subsection (5)*.
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- (7) Where the merger is—

(a) a merger by acquisition (not falling within *paragraph (b)*); or
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(b) a merger by acquisition carried out by a company which holds 90 per cent or more, but not all, of the shares conferring the right to vote at general meetings (excluding any shares held as treasury shares) of the company or companies being acquired; or

(c) a merger by absorption;
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approval, by means of a special resolution, of the common draft terms of merger is not

- required in the case of the successor company if the conditions specified in *subsection (8)* are satisfied.
- (8) The conditions referred to in *subsection (7)* are the following:
- (a) the provisions of *sections 1135* and *1136* are complied with at least 30 days before the date of the general meeting of each of the companies being acquired; and
 - (b) the right, conferred by *subsection (9)*, to requisition a general meeting has not been exercised during that period of 30 days.
- (9) One or more members of the successor company who hold or together hold not less than 5 per cent of the paid-up capital of the company which carries the right to vote at general meetings of the company (excluding any shares held as treasury shares) may require the convening of a general meeting of the company to consider the common draft terms of merger, and *section 178(3)* to (7) apply, with any necessary modifications, in relation to the requisition.
- (10) The reference in *subsection (7)(b)* to a percentage of shares (the “specified percentage”) being held by the company carrying out the acquisition includes a reference to either of the following cases:
- (a) a case where the specified percentage of shares are held by other persons in their own names but on behalf of that company;
 - (b) a case where the percentages of—
 - (i) shares held by that company; and
 - (ii) shares held by other persons in the manner referred to in *paragraph (a)*; amount, in aggregate, to the specified percentage.
- (11) *Sections 1132, 1133 and 1136* shall not apply to an operation referred to in *subsection (7)(b)* if—
- (a) any shareholder in any of the merging companies indicates to the successor company that the shareholder will not vote in favour of the special resolution concerning the common draft terms of merger and requests, in writing, that company to purchase his or her shares in the company concerned for cash (which request such a shareholder is empowered by this subsection to make), and
 - (b) within 15 days after the date of that request, the successor company purchases those shares of that shareholder at the market sale price.

Electronic means of making certain information available for purposes of section 1137

- 1138.** (1) For the purposes of *section 1137*, but subject to *subsection (2)*, where a shareholder has consented to the use by the company of electronic means for conveying information, the copies of the documents referred to in *section 1136(1)* may be provided, by electronic mail, to that shareholder by the company and the notice convening the general meeting referred to in *section 1137(2)* shall contain a statement to that effect.
- (2) The entitlement referred to in *section 1137(4)* shall not apply where, for the period

specified in *subsection (3)*, copies of the documents referred to in *section 1136(1)* are available to download and print, free of charge, from the company's website by shareholders of the company.

- (3) The period referred to in *subsection (2)* is a continuous period of at least 2 months, commencing at least 30 days before the date of the general meeting which, by virtue of *section 1137*, is to consider the common draft terms of merger and ending at least 30 days after that date. 5
- (4) Where, in the period referred to in *subsection (3)*, access to the company's website is disrupted for a continuous period of at least 24 hours or for separate periods totalling not less than 72 hours, the period referred to in *subsection (3)* shall be extended for a period corresponding to the period or periods of disruption. 10

Meetings of classes of shareholders

1139. (1) Where the share capital of any of the merging companies is divided into shares of different classes the provisions referred to in *subsection (2)*, with the exclusions specified in *subsection (3)*, shall apply with respect to the variation of the rights attached to any such class that is entailed by the merger. 15

- (2) Those provisions are—
- (a) if the merging company is not a private company limited by shares, as appropriate—
- (i) *section 985*; 20
- (ii) *section 1046*;
- (iii) *section 1249*;
- or
- (b) if the merging company is a private company limited by shares, the provisions of *Chapter 4 of Part 3* on the variation of the rights attached to any class of shares in a company. 25
- (3) There is excluded the following from the foregoing provisions:
- (a) *section 88(9)*;
- (b) *section 985(10)* (including as it applies to a company other than a DAC);
- (c) *section 89* (including as it applies to a company other than a private company limited by shares). 30

Purchase of minority shares

1140. (1) Any person being—

- (a) a shareholder in any of the merging companies who voted against the special resolution of the company concerned relating to the common draft terms of merger, or 35
- (b) in a case to which *section 1137(7)(b)* relates, any shareholder other than the successor company,

- may, not later than 15 days after the relevant date, request the successor company in writing to acquire his or her shares for cash.
- (2) Where a request is made by a shareholder in accordance with *subsection (1)*, the successor company shall purchase the shares of the shareholder at a price determined in accordance with the share exchange ratio set out in the common draft terms of merger and the shares so purchased by the successor company shall be treated as treasury shares within the meaning of *section 106*. 5
- (3) In this section the “relevant date” means, in relation to the particular merging company to which *subsection (1)(a)* or *(b)* relates, the date on which the latest general meeting of that company to consider the draft terms of merger, or of any class of the holders of shares or other securities of such company, as required by this Chapter, is held. 10
- (4) Nothing in this section shall prejudice the power of the court to make any order necessary for the protection of the interests of a dissenting minority in a merging company. 15

Application for confirmation of merger by court

- 1141.** (1) An application under this section to the court for an order confirming a merger shall be made jointly by all the merging companies.
- (2) That application shall be accompanied by a statement of the size of the shareholding of any shareholder who has requested the purchase of his or her shares under *section 1140* and of the measures which the successor company proposes to take to comply with the shareholder’s request. 20

Protection of creditors

- 1142.** (1) A creditor of any of the merging companies who—
- (a) at the date of publication of the notice under *section 1135(1)(b)* is entitled to any debt or claim against the company, and 25
- (b) can credibly demonstrate that the proposed merger would be likely to put the satisfaction of that debt or claim at risk, and that no adequate safe-guards have been obtained from the company or the acquiring company,
- shall be entitled to object to the confirmation by the court of the merger. 30
- (2) If the court deems it necessary in order to secure the adequate protection of creditors of any of the merging companies it may—
- (a) determine a list of creditors entitled to object and the nature and amount of their debts or claims, and may publish notices fixing a day or days within which creditors not entered on the list are to claim to be so entered or are to be excluded from the right of objecting to the confirmation; 35
- (b) where a creditor entered on the list whose debt or claim is not discharged or has not terminated does not consent to the confirmation, the court may, if it thinks fit, dispense with the consent of that creditor, on either—
- (i) the company securing payment of his or her debt or claim by appropriating, 40

as the court may direct, the following amount—

(I) if the company admits the full amount of the debt or claim, or, though not admitting it, is willing to provide for it, then the full amount of the debt or claim;

(II) if the company does not admit and is not willing to provide for the full amount of the debt or claim, or, if the amount is contingent or not ascertained, then an amount fixed by the court after the like inquiry and adjudication as if the company were being wound up by the court;

(ii) the successor company, on behalf of the company liable for the debt or claim, securing payment of the debt or claim.

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(3) If, having regard to any special circumstances of the case it thinks proper so to do, the court may direct that *subsection (2)* shall not apply as regards any class of creditors.

(4) References in this section to a debt or claim having terminated are references to the debt or claim ceasing to be enforceable or to its otherwise determining.

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Preservation of rights of holders of securities

1143. (1) Subject to *subsection (2)*, holders of securities, other than shares, in any of the companies being acquired to which special rights are attached shall be given rights in the successor company at least equivalent to those they possessed in the company being acquired.

(2) *Subsection (1)* shall not apply—

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(a) where the alteration of the rights in the successor company has been approved—

(i) by a majority of the holders of such securities at a meeting held for that purpose, or

(ii) by the holders of those securities individually,

or

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(b) where the holders of those securities are entitled under the terms of those securities to have their securities purchased by the successor company.

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Confirmation order

1144. (1) Where an application is made under *section 1141* to the court for an order confirming a merger this section applies.

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(2) The court, on being satisfied that—

(a) the requirements of this Chapter have been complied with;

(b) proper provision has been made for—

(i) any shareholder in any of the merging companies who has made a request under *section 1140*; and

(ii) any creditor of any of the merging companies who objects to the merger in accordance with *section 1142*;

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- (c) the rights of holders of securities other than shares in any of the companies being acquired are safeguarded in accordance with *section 1143*; and
- (d) where applicable, the relevant provisions referred to in *section 1139(2)* on the variation of the rights attached to any class of shares in any of the merging companies have been complied with; 5
- may make an order confirming the merger with effect from such date as the court appoints (the “effective date”).
- (3) The order of the court confirming the merger shall, from the effective date, have the following effects:
- (a) all the assets and liabilities of the company or companies being acquired are transferred to the successor company; 10
 - (b) in the case of a merger by acquisition or a merger by formation of a new company, where no request has been made by shareholders under *section 1140*, all remaining members of the transferor company or companies except the successor company (if it is a member of a transferor company) become members 15 of the successor company;
 - (c) the transferor company or companies is or are dissolved;
 - (d) all legal proceedings pending by or against any transferor company shall be continued with the substitution, for the transferor company, of the successor company as a party; 20
 - (e) the successor company is obliged to make to the members of the transferor company or companies any cash payment required by the common draft terms of merger;
 - (f) every contract, agreement or instrument to which a transferor company is a party shall, notwithstanding anything to the contrary contained in that contract, agreement or instrument, be read and have effect as if— 25
 - (i) the successor company had been a party thereto instead of the transferor company;
 - (ii) for any reference (however worded and whether express or implied) to the transferor company there were substituted a reference to the successor company; and 30
 - (iii) any reference (however worded and whether express or implied) to the directors, officers, representatives or employees of the transferor company, or any of them—
 - (I) were, respectively, a reference to the directors, officers, representatives or employees of the successor company or to such director, officer, representative or employee of the successor company as the successor company nominates for that purpose; or
 - (II) in default of such nomination, were, respectively, a reference to the director, officer, representative or employee of the successor company who corresponds as nearly as may be to the first-mentioned director, officer, representative or employee; 40

- (g) every contract, agreement or instrument to which a transferor company is a party becomes a contract, agreement or instrument between the successor company and the counterparty with the same rights, and subject to the same obligations, liabilities and incidents (including rights of set-off), as would have been applicable thereto if that contract, agreement or instrument had continued in force between the transferor company and the counterparty;
- 5
- (h) any money due and owing (or payable) by or to a transferor company under or by virtue of any such contract, agreement or instrument as is mentioned in paragraph (g) shall become due and owing (or payable) by or to the successor company instead of the transferor company; and
- 10
- (i) an offer or invitation to treat made to or by a transferor company before the effective date shall be read and have effect, respectively, as an offer or invitation to treat made to or by the successor company.
- (4) The successor company shall comply with registration requirements and any other special formalities required by law and as directed by the court for the transfer of the assets and liabilities of the transferor company or companies to be effective in relation to other persons.
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- (5) The court may, either by the order confirming the merger or by a separate order, make provision for such matters as the court considers necessary to secure that the merger shall be fully and effectively carried out.
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- (6) If the taking effect of the merger would fall at a time (being the time ascertained by reference to the general law and without regard to this subsection) on the particular date appointed under subsection (2) that is a time that would not, in the opinion of the court, be suitable having regard to the need of the parties to co-ordinate various transactions, the court may, in appointing a date under subsection (2) with respect to when the merger takes effect, specify a time, different from the foregoing, on that date when the merger takes effect and, where such a time is so specified—
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- (a) the merger takes effect on that time of the date concerned; and
- (b) references in this section to the effective date shall be read accordingly.

Certain provisions not to apply where court so orders

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- 1145.** Where the court makes an order confirming a merger under this Chapter, the court may, if it sees fit for the purpose of enabling the merger properly to have effect, include in the order provision permitting—
- (a) the giving of financial assistance which may otherwise be prohibited under section 82;
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- (b) a reduction in company capital which may otherwise be restricted under section 84.

Registration and publication of confirmation of merger

- 1146.** (1) If the court makes an order confirming a merger, a certified copy of the order shall forthwith be sent to the Registrar by such officer of the court as the court may direct.

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- (2) Where the Registrar receives a certified copy of the order of the court in accordance with *subsection (1)*, the Registrar shall—
- on, or as soon as practicable after, the effective date — register in the register that certified copy and the dissolution of the transferor company or companies; and
 - within 14 days after the date of that delivery — cause to be published in the CRO Gazette notice that a copy of an order of the court confirming the merger has been delivered to him or her.

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Civil liability of directors and experts

1147. (1) Subject to *subsection (5)*, any shareholder of any of the merging companies who has suffered loss or damage by reason of misconduct in the preparation or implementation of the merger by a director of any such company or by the expert, if any, who has made a report under *section 1133* shall be entitled to have such loss or damage made good to him or her by—

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- in the case of misconduct by a person who was a director of that company at the date of the common draft terms of merger — that person;
- in the case of misconduct by any expert who made a report under *section 1133* in respect of any of the merging companies — that person.

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(2) Without prejudice to the generality of *subsection (1)*, any shareholder of any of the merging companies who has suffered loss or damage arising from the inclusion of any untrue statement in any of the following, namely:

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- the common draft terms of merger;
- the explanatory report, if any, referred to in *section 1132*;
- the expert's report, if any, under *section 1133*;
- the merger financial statement, if any, prepared under *section 1134*;

shall, subject to *subsections (3) to (5)*, be entitled to have such loss or damage made good to him or her—

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- in the case of the document or report referred to in *paragraph (a), (b) or (d)* — by every person who was a director of that company at the date of the common draft terms of merger; or
- in the case of the report referred to in *paragraph (c)* — by the person who made that report in relation to that company.

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(3) A director of a company shall not be liable under *subsection (2)* if he or she proves—

- that the document or report referred to in *subsection (2)(a), (b) or (d)*, as the case may be, was issued without his or her knowledge or consent and that, on becoming aware of its issue, he or she forthwith informed the shareholders of that company that it was issued without his or her knowledge or consent; or
- that as regards every untrue statement he or she had reasonable grounds, having exercised all reasonable care and skill, for believing and did, up to the time the merger took effect, believe that the statement was true.

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- (4) A person who makes a report under *section 1133* in relation to a company shall not be liable in the case of any untrue statement in the report if he or she proves—
- (a) that, on becoming aware of the statement, he or she forthwith informed that company and its shareholders of the untruth; or
 - (b) that he or she was competent to make the statement and that he or she had reasonable grounds for believing and did up to the time the merger took effect believe that the statement was true.
- (5) This section shall not apply to a merger by absorption. 5

Criminal liability for untrue statements in merger documents

- 1148.** (1) Where any untrue statement has been included in— 10
- (a) the common draft terms of merger;
 - (b) the explanatory report, if any, referred to in *section 1132*; or
 - (c) the merger financial statement, if any, prepared under *section 1134*;
- the following:
- (i) each of the persons who was a director of any of the merging companies at the date of the common draft terms of merger or, in the case of the foregoing explanatory report or merger financial statement, at the time of the report's or statement's preparation; and 15
 - (ii) any person who authorised the issue of the document;
- shall be guilty of a category 2 offence. 20
- (2) Where any untrue statement has been included in the expert's report prepared under *section 1133*, the expert and any person who authorised the issue of the report shall be guilty of a category 2 offence.
- (3) In any proceedings against a person in respect of an offence under subsection (1) or (2), it shall be a defence to prove that, having exercised all reasonable care and skill, the defendant had reasonable grounds for believing and did, up to the time of the issue of the document concerned, believe that the statement concerned was true. 25

CHAPTER 17

Divisions

- Interpretation (Chapter 17)** 30
- 1149.** (1) In this Chapter—
- “company” includes a body corporate to which *section 1308(1)* (application of certain provisions of Act to unregistered companies) relates;
- “director”, in relation to a company which is being wound up, means liquidator;
- “division” means— 35
- (a) a division by acquisition; or

- (b) a division by formation of new companies;
 within, in each case, the meaning of *section 1151*;
- “share exchange ratio” means the number of shares or other securities in any of the successor companies that the draft terms of division provide to be allotted to members of the transferor company for a given number of their shares or other securities in the transferor company; 5
- “successor company” shall be read in accordance with *section 1151(1)*;
- “transferor company” shall be read in accordance with *section 1151(1)*.
- (2) A reference in this Chapter to a company involved in a division shall— 10
- in the case of a division by acquisition, be read as a reference to a company that is, in relation to that division, the transferor company or a successor company (other than a new company formed for the purpose of the acquisition concerned);
 - in the case of a division by formation of new companies, be read as a reference to a company that is, in relation to that division, the transferor company.
- (3) References in this Chapter to the acquisition of a company are references to the acquisition of the assets and liabilities of the company by way of a division under this Chapter. 15

Requirements for Chapter to apply

1150. This Chapter applies only if each of the companies involved in the division, or, one at least, of them, is a PLC. 20

Divisions to which this Chapter applies — definitions and supplementary provisions

1151. (1) In this Chapter “division by acquisition” means an operation consisting of the following:

- 2 or more companies (each of which is referred to in this Chapter as a “successor company”), of which one or more but not all may be a new company, acquire between them all the assets and liabilities of another company that is dissolved without going into liquidation (referred to in this Chapter as the “transferor company”); and 25
 - such acquisition is—
 - in exchange for the issue to the shareholders of the transferor company of shares in one or more of the successor companies, with or without any cash payment; and
 - with a view to the dissolution of the transferor company.
- (2) In this Chapter “division by formation of new companies” means an operation consisting of the same elements as a division by acquisition (as defined in *subsection (1)*) consists of save that the successor companies have been formed for the purposes of the acquisition of the assets and liabilities referred to in that subsection. 35
- (3) Where a company is being wound up it may—

- (a) become a party to a division by acquisition or a division by formation of new companies, provided that the distribution of its assets to its shareholders has not begun at the date, under *section 1153(8)*, of the common draft terms of division; or
 - (b) opt to avail itself of the provisions of *Chapters 1* and *2* of *Part 9* or *section 601*. 5
- (4) Subject to *subsection (3)*, the provisions of *Chapters 1* and *2* of *Part 9* and *section 601* shall not apply to a division by acquisition or a division by formation of new companies.

Division may not be put into effect save under and in accordance with this Chapter

- 1152.** (1) A division may not be put into effect save under and in accordance with the provisions 10 of this Chapter.
- (2) A division shall not take effect under this Chapter in the absence of the approval, authorisation or other consent, if any, that is required by any other enactment or a Community act for the division to take effect.

Common draft terms of division

- 1153.** (1) Where a division is proposed to be entered into, the directors of the companies involved in the division shall draw up common draft terms of division and approve those terms in writing. 15
- (2) The common draft terms of division shall state, at least—
- (a) in relation to the transferor company— 20
 - (i) its name;
 - (ii) its registered office; and
 - (iii) its registered number;
 - (b) in relation to each of the successor companies—
 - (i) where any of those is an existing company, the particulars specified in *subparagraphs (i)* to *(iii)* of *paragraph (a)*; or 25
 - (ii) where any of those is a new company yet to be formed, what is proposed as the particulars specified in *subparagraphs (i)* and *(ii)* of that paragraph;
 - (c) as to each of the companies involved in the division, whether it is a PLC, another type of company as defined in *section 2(1)* or a body corporate to which *section 1308(1)* relates; 30
 - (d) the proposed share exchange ratio and amount of any cash payment;
 - (e) the proposed terms relating to allotment of shares or other securities in the successor companies;
 - (f) the date from which the holding of shares or other securities in the successor companies will entitle the holders to participate in profits and any special conditions affecting that entitlement; 35

- (g) the date from which the transactions of the transferor company are to be treated for accounting purposes as being those of any of the successor companies;
- (h) the rights, if any, to be conferred by the successor companies on members of the transferor company enjoying special rights or on holders of securities other than shares representing the transferor company's capital, and the measures proposed concerning them; 5
- (i) any special advantages granted to—
- (i) any director of a company involved in the division; or
- (ii) any person appointed under *section 1155*;
- (j) the precise description and allocation of the assets and liabilities of the company being acquired that are to be transferred to each of the successor companies; 10
- (k) the allocation of shares in the successor companies to the shareholders of the transferor company and the criteria on which such allocation is based;
- (l) the dates of the financial statements, if any, of every company involved in the division which were used for the purpose of preparing the common draft terms of division. 15
- (3) Where the division involves the formation of one or more new companies the common draft terms of division shall include or be accompanied by the constitution or draft constitution of each of the new companies.
- (4) The common draft terms of division shall not provide for any shares in any of the successor companies to be exchanged for shares in the transferor company held either— 20
- (a) by the successor companies themselves or their nominees on their behalf; or
- (b) by the transferor company or its nominee on its behalf.
- (5) Without prejudice to *subsection (6)*, where— 25
- (a) an asset of the transferor company is not allocated by the common draft terms of division, and
- (b) it is not possible, by reference to an interpretation of those terms, to determine the manner in which it is to be allocated,
- the asset or the consideration therefor shall be allocated to the successor companies in proportion to the share of the net assets allocated to each of those companies under the common draft terms of division. 30
- (6) If provision is not made by the common draft terms of division for the allocation of an asset acquired by, or otherwise becoming vested in, the transferor company on or after the date of those draft terms then, subject to any provision the court may make in an order under *section 1166*, the asset or the consideration therefor shall be allocated in the manner specified in *subsection (5)*. 35
- (7) The common draft terms of division, as approved under *subsection (1)*, shall be signed, on the same date, on behalf of each of the companies involved in the division by 2 directors of each such company (or, in the case of each of one or more of them 40

- having a sole director, by the sole director); the common draft terms shall bear the date of such signing.
- (8) That date shall, for the purposes of this Chapter, be the date of the common draft terms of division.

Directors' explanatory report

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1154. (1) Subject to subsections (5) and (6), a separate written report (the "explanatory report") shall be prepared in respect of each of the companies involved in the division by the directors of each such company.

(2) The explanatory report shall at least give particulars of, and explain—

(a) the common draft terms of division;

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(b) the legal and economic grounds for and implications of the common draft terms of division with particular reference to the proposed share exchange ratio, organisation and management structures, recent and future commercial activities and the financial interests of holders of the shares and other securities in the company;

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(c) the methods used to arrive at the proposed share exchange ratio and the reasons for the use of these methods; and

(d) any special valuation difficulties which have arisen.

(3) Where it is proposed that any of the successor companies (being a company that is a PLC) will allot shares for a consideration other than in cash, the explanatory report shall also state—

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(a) whether a report has been made to that successor company under section 1030 in relation to that consideration; and

(b) if so, whether that report has been delivered to the Registrar.

(4) The explanatory report shall be signed on behalf of each of the companies involved in the division by 2 directors of each such company (or, in the case of each of one or more of them having a sole director, by the sole director) and shall bear the date of such signing.

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(5) This section shall not apply if the following condition is, or (as appropriate) the following 2 conditions are, satisfied:

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(a) other than in a case falling within paragraph (b), all of the holders of shares conferring the right to vote at general meetings of each of the companies involved in the division have agreed that this section shall not apply; or

(b) where a requirement for the taking effect of a vote (whether a vote generally or of the type to which this subsection applies) by holders of shares of any of the companies involved in the division is that a holder of securities of the company has consented thereto—

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(i) the agreement mentioned in paragraph (a) exists; and

(ii) all of the holders of securities of the company or companies in respect of which the requirement mentioned in this paragraph operates have agreed that

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this section shall not apply.

- (6) This section shall not apply in relation to a company involved in a division by formation of new companies where the shares in each of the acquiring companies are allocated to the shareholders of the transferor company in proportion to their rights in the capital of that company.

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Expert's report

- 1155.** (1) Subject to subsections (12) and (13), there shall, in accordance with this section, be appointed one or more persons to—

- (a) examine the common draft terms of division; and
(b) make a report on those terms to the shareholders of the companies involved in the division.

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- (2) The functions referred to in subsection (1)(a) and (b) shall be performed either—

- (a) in relation to each company involved in the division, by one or more persons appointed for that purpose in relation to the particular company by its directors and—

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- (i) no person may be appointed under this paragraph unless the person's appointment has first been approved by the court on the application to it of the company concerned;

- (ii) the directors of each company may appoint the same person or persons for that purpose;

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or

- (b) in relation to all the companies involved in the division, by one or more persons appointed for that purpose by the court, on the application to it of all of the companies so involved.

- (3) The person so appointed, or each person so appointed, is referred to in this Chapter as an "expert" and a reference in this Chapter to a report of an expert or other action (including an opinion) of an expert shall, in a case where there are 2 or more experts, be read as reference to a joint report or joint other action (including an opinion) of or by them.

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- (4) A person shall not be appointed an expert unless the person is a qualified person.

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- (5) A person is a qualified person for the purposes of this section if the person—

- (a) is a statutory auditor; and

- (b) is not—

- (i) a person who is or, within the period of 12 months before the date of the common draft terms of division has been, an officer or employee of any of the companies involved in the division;

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- (ii) except with the leave of the court, a parent, spouse, civil partner, brother, sister or child of an officer of any of the companies involved in the division (and a reference in this subparagraph to a child of an officer shall be deemed

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- to include a child of the officer's civil partner who is ordinarily resident with the officer and the civil partner); or
- (iii) a person who is a partner, or in the employment, of an officer or employee of any of the companies involved in the division.
- (6) The report of the expert shall be made available not less than 30 days before the date of the passing of the resolution referred to in *section 1159* by each of the companies involved in the division, shall be in writing and shall—
- (a) state the method or methods used to arrive at the proposed share exchange ratio;
 - (b) give the opinion of the expert as to whether the proposed share exchange ratio is fair and reasonable;
 - (c) give the opinion of the expert as to the adequacy of the method or methods used in the case in question;
 - (d) indicate the values arrived at using each such method;
 - (e) give the opinion of the expert as to the relative importance attributed to such methods in arriving at the values decided on; and
 - (f) specify any special valuation difficulties which have arisen.
- (7) The expert may—
- (a) require each of the companies involved in the division and their officers to give to the expert such information and explanations (whether oral or in writing), and
 - (b) make such enquiries,
- as the expert thinks necessary for the purposes of making the report.
- (8) If a company involved in the division fails to give to the expert any information or explanation in the power, possession or procurement of that company, on a requirement being made of it under *subsection (7)(a)* by the expert, that company and any officer of it who is in default shall be guilty of a category 2 offence.
- (9) If a company involved in the division makes a statement (whether orally or in writing), or provides a document, to the expert that conveys or purports to convey any information or explanation the subject of a requirement made of it under *subsection (7)(a)* by the expert and—
- (a) that information is false or misleading in a material particular, and
 - (b) the company knows it to be so false or misleading or is reckless as to whether it is so false or misleading,
- the company and any officer of it who is in default shall be guilty of a category 2 offence.
- (10) If a person appointed an expert under *subsection (2)(a)* or *(b)* ceases to be a qualified person, that person—
- (a) shall immediately cease to hold office; and
 - (b) shall give notice in writing of the fact of the person's ceasing to be a qualified person to each company involved in the division and (in the case of an

- appointment under *subsection (2)(b)*) to the court within 14 days after the date of that cessation,
but without prejudice to the validity of any acts done by the person under this Chapter before that cessation.
- (11) A person who purports to perform the functions of an expert (in respect of the division concerned) under this Chapter after ceasing to be a qualified person (in respect of that division) shall be guilty of a category 2 offence. 5
- (12) This section shall not apply if the following condition is, or (as appropriate) the following 2 conditions are, satisfied:
(a) other than in a case falling within *paragraph (b)*, all of the holders of shares conferring the right to vote at general meetings of each of the companies involved in the division have agreed that this section shall not apply; or 10
(b) where a requirement for the taking effect of a vote (whether a vote generally or of the type to which this subsection applies) by holders of shares of any of the companies involved in the division is that a holder of securities of the company has consented thereto—
(i) the agreement mentioned in *paragraph (a)* exists; and
(ii) all of the holders of securities of the company or companies in respect of which the requirement mentioned in this paragraph operates have agreed that this section shall not apply. 15
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- (13) This section shall not apply in relation to a company involved in a division by formation of new companies where the shares in each of the successor companies are allocated to the shareholders of the transferor company in proportion to their rights in the capital of that company. 25
- Division financial statement**
- 1156.** (1) Subject to *subsections (6) and (8)*, where the latest statutory financial statements of any of the companies involved in the division relate to a financial year ended more than 6 months before the date of the common draft terms of division then that company shall prepare a division financial statement in accordance with the provisions of this section. 30
(2) The division financial statement shall be drawn up—
(a) in the format of the last annual balance sheet, if any, of the company and in accordance with the provisions of *Part 6*; and
(b) as at a date not earlier than the first day of the third month preceding the date of the common draft terms of division. 35
(3) Valuations shown in the last annual balance sheet, if any, shall, subject to the exceptions provided for under *subsection (4)*, only be altered to reflect entries in the accounting records of the company.
(4) Notwithstanding *subsection (3)*, the following shall be taken into account in preparing the division financial statement— 40

- (a) interim depreciation and provisions; and
 - (b) material changes in actual value not shown in the accounting records.
- (5) The provisions of *Part 6* relating to the statutory auditor's report on the last statutory financial statements of the company concerned shall apply, with any necessary modifications, to the division financial statement required of the company by *subsection (1)*. 5
- (6) This section shall not apply in relation to a company involved in a division which makes public a half-yearly financial report covering the first 6 months of its financial year pursuant to the provision referred to in *subsection (7)* if that company makes that report available for inspection pursuant to *section 1158*. 10
- (7) The provision referred to in *subsection (6)* is, as appropriate—
- (a) Regulation 6 of the Transparency (Directive 2004/109/EC) Regulations 2007 (S.I. No. 277 of 2007) which regulations are continued in force by *Schedule 6*; or
 - (b) if regulations under *section 1375* are made and those regulations—
 - (i) replace the regulations referred to in *paragraph (a)* — the provision of those replacement regulations corresponding to the foregoing Regulation 6; or
 - (ii) amend the foregoing Regulation 6 — that Regulation as it stands so amended.
- (8) This section shall not apply to a company involved in a division if the following condition is, or (as appropriate) the following 2 conditions are, satisfied: 20
- (a) other than in a case falling within *paragraph (b)*, all of the holders of shares conferring the right to vote at general meetings of the company have agreed that this section shall not apply; or
 - (b) where a requirement for the taking effect of a vote (whether a vote generally or of the type to which this subsection applies) by holders of shares of the company is that a holder of securities of the company has consented thereto—
 - (i) the agreement mentioned in *paragraph (a)* exists; and
 - (ii) all of the holders of securities in respect of which the requirement mentioned in this paragraph operates have agreed that this section shall not apply.

- Registration and publication of documents** 30
- 1157.** (1) Subject to *subsection (3)*, each of the companies involved in the division shall—
- (a) deliver to the Registrar a copy of the common draft terms of division, signed and dated as required by *section 1153(7)*;
 - (b) cause to be published in the CRO Gazette notice of delivery to the Registrar of the common draft terms of division. 35
- (2) The requirements of *subsection (1)* shall be fulfilled by each of the companies involved in the division at least 30 days before the date of the general meeting of each such company which, by virtue of *section 1159*, is held to consider the common draft terms of division.

- (3) This section shall not apply in relation to a company involved in the division if the company—
- (a) publishes, free of charge on its website for a continuous period of at least 2 months, commencing at least 30 days before the date of the general meeting which, by virtue of *section 1159*, is to consider the common draft terms of division and ending at least 30 days after that date, a copy of the common draft terms of division, signed and dated pursuant to *section 1153(7)*; and
 - (b) causes to be published in the CRO Gazette and once at least in 2 daily newspapers circulating in the district in which the registered office or principal place of business of the company is situate notice of publication on its website of the common draft terms of division.
- (4) Where, in the period referred to in subsection (3)(a), access to the company's website is disrupted for a continuous period of at least 24 hours or for separate periods totalling not less than 72 hours, the period referred to in subsection (3)(a) shall be extended for a period corresponding to the period or periods of disruption.

Inspection of documents

- 1158.** (1) Subject to subsections (5) and (6), each of the companies involved in the division shall, in accordance with subsection (3), make available for inspection free of charge by any member of the company at its registered office during business hours—
- (a) the common draft terms of division;
 - (b) subject to subsection (2), the statutory financial statements for the preceding 3 financial years of each company (audited, where required by that Part, in accordance with *Part 6*);
 - (c) if such a report is required to be prepared by that section, each explanatory report in relation to the companies involved in the division referred to in *section 1154*;
 - (d) if such a report is required to be prepared by that section, the expert's report relating to each of the companies involved in the division referred to in *section 1155*;
 - (e) each division financial statement, if any, in relation to one or, as the case may be, more than one of the companies involved in the division, required to be prepared by *section 1156* or, as appropriate, its half-yearly financial report referred to in subsection (6) of that section.
- (2) For the purposes of paragraph (b) of subsection (1)—
- (a) if any of the companies involved in the division has traded for less than 3 financial years before the date of the common draft terms of division, then, as respects that company, that paragraph is satisfied by the statutory financial statements for those financial years for which the company has traded (audited, where required by that Part, in accordance with *Part 6*) being made available as mentioned in that subsection by each of the companies involved in the division, or
 - (b) if, by reason of its recent incorporation, the obligation of any of the foregoing companies to prepare its first financial statements under *Part 6* had not arisen as

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- of the date of the common draft terms of division, then the reference in that paragraph to the financial statements of that company shall be disregarded.
- (3) The provisions of *subsection (1)* shall apply in the case of each of the companies involved in the division for a period of 30 days before the date of the meeting of each such company which, by virtue of *section 1159*, is held to consider the common draft terms of division.
 - (4) *Section 127(1)* (access to documents during business hours) shall apply in relation to *subsection (1)* as it applies in relation to the relevant provisions of *Part 4*.
 - (5) *Subsection (1)(e)* shall not apply in relation to a company involved in a division by formation of new companies where the shares in each of the successor companies are allocated to the shareholders of the transferor company in proportion to their rights in the capital of that company.
 - (6) Subject to *subsection (7)*, *subsection (1)* shall not apply in relation to a company involved in a division if it publishes free of charge on its website the documents specified in that subsection for a continuous period of at least 2 months, commencing at least 30 days before the date of the general meeting which, by virtue of *section 1159*, is to consider the common draft terms of division and ending at least 30 days after that date.
 - (7) *Subsection (6)* shall not apply where the entitlement referred to in *section 1159(4)* does not apply in consequence of the application of *section 1160(2)*.
 - (8) Where, in the period referred to in *subsection (6)*, access to the company's website is disrupted for a continuous period of at least 24 hours or for separate periods totalling not less than 72 hours, the period referred to in *subsection (6)* shall be extended for a period corresponding to the period or periods of disruption.
 - (9) A reference in this section to statutory financial statements shall be deemed to include a reference to a directors' report and a reference to auditing shall, in the case of such a report, be read as a reference to the operation referred to in *section 336(5)*.
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General meetings of companies involved in a division

- 1159.** (1) In this section a reference to a general meeting, without qualification, is a reference to a general meeting referred to in *subsection (2)*.
- (2) Subject to *subsections (7)* and *(10)* and without prejudice to *section 1161*, the subsequent steps under this Chapter in relation to the division shall not be taken unless the common draft terms of division have been approved by a special resolution passed at a general meeting of each of the companies involved in the division.
 - (3) In addition, where the division is a division by formation of new companies, those subsequent steps shall not be taken unless the constitution or draft constitution of each of the new companies has been approved by a special resolution of the transferor company.
 - (4) Subject to *section 1160(2)*, the notice convening the general meeting referred to in *subsection (2)* shall contain a statement of every shareholder's entitlement to obtain on request, free of charge, full or, if so desired, partial copies of the documents referred to in *section 1158(1)* (and, accordingly, every shareholder has, subject to the

- foregoing provision, that entitlement).
- (5) The directors of the transferor company shall inform—
- (a) the general meeting of that company, and
 - (b) the directors of the successor companies,
- of any material change in the assets and liabilities of the transferor company that occurs between the date of the common draft terms of division and the date of that general meeting.
- (6) On being so informed of them, the directors of each such other company involved in the division shall inform the general meeting of that company of the matters referred to in subsection (5); this and the preceding subsection operate subject to subsections (10)(c) and (11). 5
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- (7) Approval, by means of a special resolution, of the common draft terms of division is not required in the case of a successor company (in subsections (8) and (9) referred to as the “particular successor company”) if the conditions specified in subsection (8) have been satisfied. 15
- (8) The conditions referred to in subsection (7) are the following:
- (a) the provisions of sections 1157 and 1158 are complied with at least 30 days before the date of the general meeting of the transferor company; and
 - (b) the right, conferred by subsection (9), to requisition a general meeting of the particular successor company has not been exercised during that period of 30 days. 20
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- (9) One or more members of the particular successor company who hold or together hold not less than 5 per cent of the paid-up capital of the company which carries the right to vote at general meetings of the company (excluding any shares held as treasury shares) may require the convening of a general meeting of the company to consider the common draft terms of division, and section 178(3) to (7) apply, with any necessary modifications, in relation to the requisition.
- (10) Approval, by means of a special resolution, of the common draft terms of division is not required in the case of the transferor company if the following conditions have been satisfied: 30
- (a) the successor companies together hold all of the shares carrying the right to vote at general meetings of the transferor company;
 - (b) the companies involved in the division comply with the provisions of sections 1157 and 1158 at least 30 days before the earlier of the dates specified in paragraphs (f) and (g) of section 1153(2); and 35
 - (c) the condition specified in subsection (11).
- (11) The condition referred to in subsection (10)(c) is that the directors of the transferor company shall inform—
- (a) the members of that company, and
 - (b) the directors of the successor companies, 40

of any material change in the assets and liabilities of the transferor company that has occurred since the date of the common draft terms of division and *subsection (6)* shall be read, as regards the information to which it applies, as referring to the foregoing information.

Electronic means of making certain information available for purposes of section 1159

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1160. (1) For the purposes of *section 1159*, but subject to *subsection (2)*, where a shareholder has consented to the use by the company of electronic means for conveying information, the copies of the documents referred to in *section 1158(1)* may be provided, by electronic mail, to that shareholder by the company and the notice convening the general meeting referred to in *section 1159(2)* shall contain a statement to that effect.

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(2) The entitlement referred to in *section 1159(4)* shall not apply where, for the period specified in *subsection (3)*, copies of the documents referred to in *section 1158(1)* are available to download and print, free of charge, from the company's website by shareholders of the company.

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(3) The period referred to in *subsection (2)* is a continuous period of at least 2 months, commencing at least 30 days before the date of the general meeting which, by virtue of *section 1159*, is to consider the common draft terms of merger and ending at least 30 days after that date.

(4) Where, in the period referred to in *subsection (3)*, access to the company's website is disrupted for a continuous period of at least 24 hours or for separate periods totalling not less than 72 hours, the period referred to in *subsection (3)* shall be extended for a period corresponding to the period or periods of disruption.

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Meetings of classes of shareholders

1161. (1) Where the share capital of any of the companies involved in the division is divided into shares of different classes the provisions referred to in *subsection (2)*, with the exclusions specified in *subsection (3)*, shall apply with respect to the variation of the rights attached to any such class that is entailed by the division.

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(2) Those provisions are:

(a) if the particular company involved in the division is not a private company limited by shares, as appropriate—

(i) *section 985*;

(ii) *section 1046*;

(iii) *section 1249*;

or

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(b) if the particular company involved in the division is a private company limited by shares, the provisions of *Chapter 4* of *Part 3* on the variation of the rights attached to any class of shares in a company.

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(3) There is excluded the following from the foregoing provisions:

- (a) *section 88(9);*
- (b) *section 985(10)* (including as it applies to a company other than a DAC);
- (c) *section 89* (including as it applies to a company other than a private company limited by shares).

Purchase of minority shares

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1162. (1) Subject to *subsection (5)*, any person being—

- (a) a shareholder in any of the companies involved in the division who voted against the special resolution of the company concerned relating to the common draft terms of division, or
- (b) in a case to which *subsection (2)* relates, any shareholder in the transferor company other than the successor company there referred to,

may, not later than 15 days after the relevant date, request the successor companies in writing to acquire his or her shares for cash.

(2) This subsection relates to a case where a successor company (not being a company formed for the purpose of the division) holds 90 per cent or more (but not all) of the shares carrying the right to vote at general meetings of the transferor company.

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(3) Where a request is made by a shareholder in accordance with *subsection (1)*, the successor companies (or such one, or more than one of them, as they may agree among themselves) shall purchase the shares of the shareholder at a price determined in accordance with the share exchange ratio set out in the common draft terms of division and the shares so purchased by any successor company shall be treated as treasury shares within the meaning of *section 106*.

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(4) Nothing in the preceding subsections limits the power of the court to make any order necessary for the protection of the interests of a dissenting minority in a company involved in a division.

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(5) This section shall not apply where the shares in each of the successor companies are allocated to the shareholders of the transferor company in proportion to their rights in the capital of that company.

(6) In this section “relevant date” means—

- (a) in relation to a shareholder referred to in *subsection (1)(a)* — the date on which the resolution of the transferor company was passed;
- (b) in relation to a shareholder referred to in *subsection (1)(b)* — the date of publication of the notice of delivery of the common draft terms of division under *section 1157(1)(b)*.

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Application for confirmation of division by court

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1163. (1) An application under this section to the court for an order confirming a division shall be made jointly by all the companies involved in the division.

(2) The application shall be accompanied by a statement of the size of the shareholding of any shareholder who has requested the purchase of his or her shares under *section*

1162 and of the measures which the successor companies propose to take to comply with the shareholder's request.

Protection of creditors and allocation of liabilities

1164. (1) A creditor of any of the companies involved in a division who—

(a) at the date of publication of the notice under section 1157(1)(b) is entitled to any debt or claim against the company, and 5

(b) can credibly demonstrate that the proposed division would be likely to put the satisfaction of that debt or claim at risk and that no adequate safe-guards have been obtained from the company or a successor company,

shall be entitled to object to the confirmation by the court of the division. 10

(2) If the court deems it necessary in order to secure the adequate protection of creditors of any of the companies involved in the division it may—

(a) determine a list of creditors entitled to object and the nature and amount of their debts or claims, and may publish notices fixing a day or days within which creditors not entered on the list are to claim to be so entered or are to be excluded from the right of objecting to the confirmation, 15

(b) where a creditor entered on the list whose debt or claim is not discharged or has not terminated does not consent to the confirmation, the court may, if it thinks fit, dispense with the consent of that creditor, on either—

(i) the company securing payment of his or her debt or claim by appropriating, 20
as the court may direct, the following amount:

(I) if the company admits the full amount of the debt or claim, or, though not admitting it, is willing to provide for it, then the full amount of the debt or claim;

(II) if the company does not admit and is not willing to provide for the full amount of the debt or claim, or, if the amount is contingent or not ascertained, then an amount fixed by the court after the like inquiry and adjudication as if the company were being wound up by the court; 25

(ii) a successor company, on behalf of the company liable for the debt or claim, securing payment of the debt or claim. 30

(3) If, having regard to any special circumstances of the case it thinks proper so to do, the court may direct that subsection (2) shall not apply as regards any class of creditors.

(4) Without prejudice to subsection (5), where—

(a) a liability of the transferor company is not allocated by the common draft terms of division, and 35

(b) it is not possible, by reference to an interpretation of those terms, to determine the manner in which it is to be allocated,

the liability shall become, jointly and severally, the liability of the successor companies.

- (5) If provision is not made by the common draft terms of division for the allocation of a liability incurred by, or which otherwise becomes attached to, the transferor company on or after the date of those draft terms then, subject to any provision the court may make in an order under *section 1166*, the liability shall become, jointly and severally, the liability of the successor companies.
- (6) References in this section to a debt or claim having terminated are references to the debt or claim ceasing to be enforceable or to its otherwise determining.

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Preservation of rights of holders of securities

1165. (1) Subject to *subsection (2)*, holders of securities, other than shares, in the transferor company to which special rights are attached shall be given rights in one or more of the successor companies at least equivalent to those they possessed in the transferor company.

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(2) *Subsection (1)* shall not apply—

(a) where the alteration of the rights in a successor company has been approved—

(i) by a majority of the holders of such securities at a meeting held for that purpose, or

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(ii) by the holders of those securities individually,

or

(b) where the holders of those securities are entitled under the terms of those securities to have their securities purchased by a successor company.

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Confirmation order

1166. (1) Where an application is made under *section 1163* to the court for an order confirming a division this section applies.

(2) The court, on being satisfied that—

(a) the requirements of this Chapter have been complied with,

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(b) proper provision has been made for—

(i) any shareholder in any of the companies involved in the division who has made a request under *section 1162*, and

(ii) any creditor of any of the companies who objects to the division in accordance with *section 1164*,

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(c) the rights of holders of securities other than shares in the transferor company are safeguarded in accordance with *section 1165*, and

(d) where applicable, the relevant provisions referred to in *section 1161(2)* on the variation of the rights attached to any class of shares in any of the companies involved in the division have been complied with,

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may make an order confirming the division with effect from such date as the court appoints (the “effective date”).

- (3) In the case of an asset or liability (including any contractual right or obligation or the obligation to make any cash payment), references in subsequent provisions of this section to the relevant successor company or companies are references to such one or (as the case may be) more than one of the successor companies—
- (a) as provided for in respect of the matter concerned by the common draft terms of division, or
 - (b) in the cases or circumstances specified in whichever of the following is applicable, namely, *section 1153(5)* or *(6)* or *section 1164(4)* or *(5)*—
 - (i) subject to where it permits such provision by an order of the court, as provided for in that applicable provision (including, where relevant, as regards the nature of the joint liability), or
 - (ii) as provided for in an order of the court under this section.
- (4) The order of the court confirming the division shall, from the effective date, have the following effects:
- (a) each asset and liability of the transferor company is transferred to the relevant successor company or companies;
 - (b) where no request has been made by shareholders under *section 1162*, all remaining members of the transferor company except any successor company (if it is a member of the transferor company) become members of the successor companies or any of them as provided by the common draft terms of division;
 - (c) the transferor company is dissolved;
 - (d) all legal proceedings pending by or against the transferor company shall be continued with the substitution, for the transferor company, of the successor companies or such of them as the court before which the proceedings have been brought may order;
 - (e) the relevant successor company or companies is or are obliged to make to the members of the transferor company any cash payment required by the common draft terms of division;
 - (f) every contract, agreement or instrument to which the transferor company is a party shall, notwithstanding anything to the contrary contained in that contract, agreement or instrument, be read and have effect as if—
 - (i) the relevant successor company or companies had been a party or parties thereto instead of the transferor company,
 - (ii) for any reference (however worded and whether express or implied) to the transferor company there were substituted a reference to the relevant successor company or companies, and
 - (iii) any reference (however worded and whether express or implied) to the directors, officers, representatives or employees of the transferor company, or any of them—
 - (I) were, respectively, a reference to the directors, officers, representatives or employees of the relevant successor company or companies or to such

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- director, officer, representative or employee of that company or those companies as that company nominates or, as the case may be, those companies nominate for that purpose, or
- (II) in default of such nomination, were, respectively, a reference to the director, officer, representative or employee of the relevant successor company or companies who corresponds as nearly as may be to the first-mentioned director, officer, representative or employee;
- (g) every contract, agreement or instrument to which the transferor company is a party becomes a contract, agreement or instrument between the relevant successor company or companies and the counterparty with the same rights, and subject to the same obligations, liabilities and incidents (including rights of set-off), as would have been applicable thereto if that contract, agreement or instrument had continued in force between the transferor company and the counterparty;
- (h) any money due and owing (or payable) by or to the transferor company under or by virtue of any such contract, agreement or instrument as is mentioned in paragraph (g) shall become due and owing (or payable) by or to the relevant successor company or companies instead of the transferor company; and
- (i) an offer or invitation to treat made to or by the transferor company before the effective date shall be read and have effect, respectively, as an offer or invitation to treat made to or by the relevant successor company or companies.
- (5) Such of the successor companies as is or are appropriate shall comply with registration requirements and any other special formalities required by law and as directed by the court for the transfer of the assets and liabilities of the transferor company to be effective in relation to other persons.
- (6) The court may, either by the order confirming the division or by a separate order, make provision for such matters as the court considers necessary to secure that the division shall be fully and effectively carried out.
- (7) If the taking effect of the division would fall at a time (being the time ascertained by reference to the general law and without regard to this subsection) on the particular date appointed under subsection (2) that is a time that would not, in the opinion of the court, be suitable having regard to the need of the parties to co-ordinate various transactions, the court may, in appointing a date under subsection (2) with respect to when the division takes effect, specify a time, different from the foregoing, on that date when the division takes effect and, where such a time is so specified—
- (a) the division takes effect on that time of the date concerned, and
- (b) references in this section to the effective date shall be read accordingly.
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Certain provisions not to apply where court so orders

- 1167.** Where the court makes an order confirming a division under this Chapter, the court may, if it sees fit for the purpose of enabling the division properly to have effect, include in the order provision permitting—
- (a) the giving of financial assistance which may otherwise be prohibited under
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section 82,

- (b) a reduction in company capital which may otherwise be restricted under *section 84.*

Registration and publication of confirmation of division

1168. (1) If the court makes an order confirming a division, a certified copy of the order shall forthwith be sent to the Registrar by such officer of the court as the court may direct. 5

(2) Where the Registrar receives a certified copy of the order of the court in accordance with *subsection (1)*, the Registrar shall—

(a) on, or as soon as practicable after, the effective date — register that certified copy and the dissolution of the transferor company, and 10

(b) within 14 days after the date of that delivery — cause to be published in the CRO Gazette notice that a copy of an order of the court confirming the division has been delivered to him or her.

Civil liability of directors and experts

1169. (1) Any shareholder of any of the companies involved in the division who has suffered loss or damage by reason of misconduct in the preparation or implementation of the division by a director of any such company or by the expert, if any, who has made a report under *section 1155* shall be entitled to have such loss or damage made good to him or her by— 15

(a) in the case of misconduct by a person who was a director of that company at the date of the common draft terms of division — that person;

(b) in the case of misconduct by any expert who made a report under *section 1155* in respect of any of the companies involved in the division — that person.

(2) Without prejudice to the generality of *subsection (1)*, any shareholder of any of the companies involved in the division who has suffered loss or damage arising from the inclusion of any untrue statement in any of the following, namely 25

(a) the common draft terms of division;

(b) the explanatory report, if any, referred to in *section 1154*;

(c) the expert's report, if any, under *section 1155*;

(d) the division financial statement, if any, prepared under *section 1156*;

shall, subject to *subsections (3)* and *(4)*, be entitled to have such loss or damage made good to him or her—

(i) in the case of the document or report referred to in *paragraph (a), (b) or (d)* — by every person who was a director of that company at the date of the common draft terms of division, or 35

(ii) in the case of the report referred to in *paragraph (c)* — by the person who made that report in relation to that company.

(3) A director of a company shall not be liable under *subsection (2)* if he or she proves—

- (a) that the document or report referred to in subsection (2)(a), (b) or (d), as the case may be, was issued without his or her knowledge or consent and that, on becoming aware of its issue, he or she forthwith informed the shareholders of that company that it was issued without his or her knowledge or consent, or
 - (b) that as regards every untrue statement he or she had reasonable grounds, having exercised all reasonable care and skill, for believing and did, up to the time the division took effect, believe that the statement was true.
- (4) A person who makes a report under section 1155 in relation to a company shall not be liable in the case of any untrue statement in the report if he or she proves—
- (a) that, on becoming aware of the statement, he or she forthwith informed that company and its shareholders of the untruth, or
 - (b) that he or she was competent to make the statement and that he or she had reasonable grounds for believing and did up to the time the division took effect believe that the statement was true.

Criminal liability for untrue statements in division documents 15

- 1170.** (1) Where any untrue statement has been included in—
- (a) the common draft terms of division,
 - (b) the explanatory report, if any, referred to in section 1154, or
 - (c) the division financial statement, if any, prepared under section 1156,
- the following: 20
- (i) each of the persons who was a director of any of the companies involved in the division at the date of the common draft terms of division or, in the case of the foregoing explanatory report or division financial statement, at the time of the report's or statement's preparation; and
 - (ii) any person who authorised the issue of the document;
- shall be guilty of a category 2 offence. 25
- (2) Where any untrue statement has been included in the expert's report prepared under section 1155, the expert and any person who authorised the issue of the report shall be guilty of a category 2 offence.
- (3) In any proceedings against a person in respect of an offence under subsection (1) or (2), it shall be a defence to prove that, having exercised all reasonable care and skill, the defendant had reasonable grounds for believing and did, up to the time of the issue of the document concerned, believe that the statement concerned was true. 30

CHAPTER 18

Public offers of securities, prevention of market abuse, etc. 35

Application of Chapters 1, 2 and 4 of Part 23 to PLCs

- 1171.** Chapters 1, 2 and 4 of Part 23 shall apply to a PLC.

PART 18

GUARANTEE COMPANIES

CHAPTER 1

Preliminary and definitions

Definitions (Part 18)

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1172. In this Part—

“company limited by guarantee” or “CLG” means a company which does not have a share capital and which, as provided under *section 1176(2)(d)*, has the liability of its members limited by the constitution to such amount as the members may respectively thereby undertake to contribute to the assets of the company in the event of its being wound up;

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“constitution” shall be read in accordance with *section 1176(1)*.

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Application of Parts 1 to 14 to CLGs

1173. (1) The provisions of *Parts 1 to 14* apply to a CLG except to the extent that they are disappplied or modified by—

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- (a) this section, or
- (b) any other provision of this Part.

(2) For the purposes of that application, *section 10* shall have effect as if it read—

“Unless expressly provided otherwise, a reference in *Parts 2 to 14* to a company is a reference to a CLG.”

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(3) Any of *Parts 1 to 14* that makes provision by reference to—

- (a) membership arising by virtue of a shareholding, or
- (b) right or incidents of membership, including the right to vote or receive a distribution, arising by virtue of a shareholding,

shall be read, in the case of a CLG, as making such provision in the analogous context in which membership, or rights or incidents of membership, may arise in the case of a CLG.

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(4) *Subsection (3)* is without prejudice to the generality of the application and adaptation of *Parts 1 to 14* provided by *subsections (1)* and *(2)* or any specific adaptation provided by a subsequent section of this Part.

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(5) The provisions of this Act specified in the Table to this section shall not apply to a CLG.

(6) The specification in the foregoing Table of a provision (a “specified provision”) of *Parts 1 to 14* also operates to disapply to a CLG any other provision of those Parts (notwithstanding that it is not specified in that Table) that makes consequential, incidental or supplemental provision on, or in relation to, the specified provision.

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Table

Subject matter	Provision disapp lied	
Way of forming a private company limited by shares	<i>Section 17</i>	5
Company to carry on activity in the State and prohibition of certain activities	<i>Section 18</i>	
Form of the constitution	<i>Section 19</i>	
Certificate of incorporation to state that company is a private company limited by shares	<i>Section 25(3)</i>	
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Liability as contributories of past and present members	<i>Section 655</i>	40

CHAPTER 2

Incorporation and consequential matters

Way of forming a CLG

1174. (1) A CLG may be formed for any lawful purpose by any person or persons subscribing to a constitution and complying with the relevant provisions of—

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- (a) *Chapter 2 of Part 2*, as applied by this Part, and
- (b) this Part,

in relation to registration of a CLG.

(2) Without prejudice to the means by which a CLG may be formed under the relevant provisions referred to in *subsection (1)*, a company may be registered as a CLG by means of—

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- (a) the re-registration or registration as a CLG of a body corporate pursuant to *Part 20* or *22*,
- (b) the merger of 2 or more companies pursuant to *Chapter 3 of Part 9*,
- (c) the division of a company pursuant to *Chapter 4 of Part 9*.

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(3) The certificate of incorporation issued under *section 25(1)* shall state that the company is a company limited by guarantee.

CLG to carry on activity in the State

1175. A CLG shall not be formed and registered unless it appears to the Registrar that the CLG, when registered, will carry on an activity in the State, being an activity that is mentioned in its memorandum.

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The form of a CLG's constitution

1176. (1) Subject to *subsection (3)*, the constitution of a CLG shall be in the form of a memorandum of association and articles of association which together are referred to in this Part as a “constitution”.

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(2) The memorandum of association of a CLG shall state—

- (a) its name,
- (b) that it is a company limited by guarantee registered under this Part,
- (c) its objects,

(d) that each member undertakes that, if the company is wound up while he or she is a member, or within one year after the date on which he or she ceases to be a member, he or she will contribute to the assets of the company such amount as may be required for—

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- (i) payment of the debts and liabilities of the company contracted before he or she ceases to be a member,

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- (ii) payment of the costs, charges and expenses of winding up, and
 - (iii) adjustment of the rights of contributors among themselves, not exceeding an amount specified in the memorandum.
- (3) The constitution of a CLG shall—
- (a) be in accordance with the form set out in *Schedule 10* or as near thereto as circumstances permit, 5
 - (b) be printed in an entire format, that is to say the memorandum and articles shall be contained in the one document, being a document either in legible form or (as long as it is capable of being reproduced in legible form) in non-legible form, and
 - (c) either— 10
 - (i) be signed by each subscriber in the presence of at least one witness who shall attest the signature, or
 - (ii) be authenticated in the manner referred to in *section 888*.

Supplemental provisions in relation to constitution and continuance in force of existing memorandum and articles 15

1177. (1) This section—

- (a) contains provisions as to the articles of a CLG,
- (b) provides that, in certain circumstances, a default position shall obtain in relation to the articles of a CLG, and
- (c) continues in force the memorandum and articles of a company limited by guarantee registered under the prior Companies Acts. 20

(2) In this section—

“mandatory provision” means a provision of any of *Parts 1* to *14* (as applied by this Part) or of this Part that is not an optional provision;

“optional provision” means a provision of any of *Parts 1* to *14* (as applied by this Part) or of this Part that— 25

- (a) contains a statement to the effect, or is governed by provision elsewhere to the effect, that the provision applies save to the extent that the constitution provides otherwise or unless the constitution states otherwise, or
- (b) is otherwise of such import. 30

(3) The articles of a CLG may contain regulations in relation to the CLG.

(4) So far as the articles of a CLG do not exclude or modify an optional provision, that optional provision shall apply in relation to the CLG.

(5) Subject to their compliance with *section 1199(3)* (articles must state the number of members with which the company proposes to be registered), articles may otherwise consist solely of a statement to the effect that the provisions of the *Companies Act 2014* are adopted and, if the articles contain such a statement, *subsection (4)* shall apply. 35

- (6) The memorandum and articles of a company limited by guarantee registered before the commencement of this section shall—
- save to the extent that they are inconsistent with a mandatory provision, and
 - in the case of the memorandum, subject to *section 1190(6)*,
- continue in force but may be altered or added to under and in accordance with the conditions under which memorandums or articles, whenever registered, are permitted by this Act to be altered or added to.
- (7) References in the provisions of a memorandum or articles so continued in force to any provision of the prior Companies Acts shall be read as references to the corresponding provision of this Act.
- (8) To the extent that a company limited by guarantee registered before the commencement of this section was, immediately before that commencement, governed by—
- the regulations of Table C in the First Schedule to the Act of 1963, or
 - the regulations of any Table referred to in section 3(9)(b), (c) or (d) of the Act of 1963,
- it shall, after that commencement, continue to be governed by those regulations but—
- this is save to the extent that those regulations are inconsistent with a mandatory provision,
 - those regulations may be altered or added to under and in accordance with the conditions under which articles, whenever registered, are permitted by this Act to be altered or added to, and
 - references in the regulations to any provision of the prior Companies Acts shall be read as references to the corresponding provision of this Act.

Provisions as to names of CLGs

- 1178.** (1) The name of a CLG shall end with one of the following:
- company limited by guarantee;
 - cuideachta faoi theorainn ráthaíochta.
- (2) The words “company limited by guarantee” may be abbreviated to “c.l.g.” or “clg” (including either such abbreviation in capitalised form) in any usage after the company’s registration by any person including the CLG.
- (3) The words “cuideachta faoi theorainn ráthaíochta” may be abbreviated to “c.t.r.” or “ctr” (including either such abbreviation in capitalised form) in any usage after the company’s registration by any person including the CLG.
- (4) A CLG carrying on business under a name other than its corporate name shall register in the manner directed by law for the registration of business names but the use of the abbreviations set out in subsection (2) or (3) shall not of itself render such registration necessary.
- (5) This section is subject to *section 1189* (which makes transitional provision for an

existing guarantee company as regards its name).

Trading under a misleading name

1179. (1) Subject to *subsection (5)*, neither a body that is not a CLG nor an individual shall carry on any trade, profession or business under a name which includes, as its last part, the words “company limited by guarantee”, or “cuideachta faoi theorainn ráthaíochta” or abbreviations of those words.

(2) If a body or individual contravenes *subsection (1)*, the body or individual and, in the case of a body, any officer of it who is in default, shall be guilty of a category 3 offence.

(3) A CLG shall not, in the following circumstances, use a name which may reasonably be expected to give the impression that it is any type of a company other than a CLG or that it is any other form of body corporate.

(4) Those circumstances are circumstances in which the fact that it is a CLG is likely to be material to any person.

(5) If a CLG contravenes *subsection (3)*, the CLG and any officer of it who is in default shall be guilty of a category 3 offence.

(6) *Subsection (1)* shall not apply to any company—

(a) to which *Part 21* applies, and

(b) which has provisions in its constitution that would entitle it to rank as a CLG if it had been registered in the State.

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Power to dispense with “company limited by guarantee” or Irish equivalent in name of charitable and other companies

1180. (1) A CLG shall, notwithstanding its registration as a company with limited liability, be exempt from the provisions of this Act relating to the use of the words “company limited by guarantee” or “cuideachta faoi theorainn ráthaíochta” as part of its name and the publishing of its name, but shall enjoy all the privileges and shall (subject to this section) be subject to all the obligations of a CLG, where—

(a) its objects are the promotion of commerce, art, science, education, religion, charity or any other prescribed object, and

(b) its constitution—

(i) requires its profits (if any) or other income to be applied to the promotion of its objects,

(ii) prohibits the making of distributions to its members, and

(iii) requires all the assets which would otherwise be available to its members to be transferred on its winding up to another company whose objects comply with *paragraph (a)* and which meets the requirements of this paragraph,

and

(c) a director or secretary of the company (or, in the case of an association about to

be formed as a limited company, one of the persons who are to be the first directors or the person who is to be the first secretary of the company) has delivered to the Registrar a statement in the prescribed form that the company complies or, where applicable, will comply with the requirements of *paragraphs (a)* and *(b)*.
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(2) The Registrar shall refuse to register as a CLG any association about to be formed as a CLG by a name which does not include the words “company limited by guarantee” or “cuideachta faoi theorainn ráthaíochta” unless a statement, as provided for under subsection (1)(c), has been delivered to the Registrar.
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(3) An application by a company registered as a CLG for a change of name, being a change that includes or consists of the omission of the words “company limited by guarantee” or “cuideachta faoi theorainn ráthaíochta”, shall be made in accordance with section 30 and the Registrar shall refuse to accede to the application unless a statement, as provided for under subsection (1)(c), has been delivered to the Registrar.
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(4) A CLG which is exempt under subsection (1) and which is permitted to omit the words “company limited by guarantee” or “cuideachta faoi theorainn ráthaíochta” from its name shall not alter its constitution so that it ceases to comply with the requirements of that subsection.
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(5) If it appears to the Registrar that a CLG which is registered under a name not including the words “company limited by guarantee” or “cuideachta faoi theorainn ráthaíochta”—
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- (a) has carried on any business other than the promotion of any of the objects mentioned in subsection (1)(a),
- (b) has applied any of its profits or other income otherwise than in promoting such objects, or
- (c) has made a distribution to any of its members,

the Registrar may, in writing, direct the CLG to change its name within such period as may be specified in the direction so that its name ends with the words “company limited by guarantee” or “cuideachta faoi theorainn ráthaíochta”, and the change of name shall be made in accordance with section 30.
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(6) A CLG which has received a direction under subsection (5) shall not thereafter be registered by a name which does not include the words “company limited by guarantee” or “cuideachta faoi theorainn ráthaíochta” without the approval of the Registrar.
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(7) A person who—

- (a) alters the constitution of a CLG in contravention of subsection (4), or
- (b) fails to comply with a direction from the Registrar under subsection (5),

shall be guilty of a category 3 offence.

(8) Subsections (9) to (12) have effect notwithstanding—

- (a) the repeal by the Act of 2001 of section 24, as originally enacted, of the Act of 1963 (the “original section 24”), or
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- (b) the repeal by this Act of section 24, inserted by section 88(1) of the Act of 2001, of the Act of 1963 (the “substituted section 24”) or of the Act of 2001.
- (9) A licence that—
- (a) had been granted by the Minister pursuant to subsection (1) or (2) of the original section 24 to a company limited by guarantee, and
 - (b) is in force immediately before the commencement of this section,
- shall, on and from whichever thing referred to in *section 1190(5)(a)* or *(b)* happens first, continue to have effect but with the modification that it shall operate to exempt the company from the use of the words “company limited by guarantee” or “cuideachta faoi theorainn ráthaíochta” as part of its name and the publishing of its name.
- (10) Subsections (4) to (7) of the original section 24 shall continue in force in relation to the foregoing licence as if that section 24 had never been repealed, except that references in those subsections to the Minister, wherever occurring, shall be read as references to the Registrar.
- (11) An exemption that immediately before the repeal of the Act of 2001 operated, by virtue of the substituted section 24, in favour of a company limited by guarantee shall, on and from whichever thing referred to in *section 1190(5)(a)* or *(b)* happens first, continue to have effect but—
- (a) with the modification that it shall operate to exempt the company from the use of the words “company limited by guarantee” or “cuideachta faoi theorainn ráthaíochta” as part of its name and the publishing of its name; and
 - (b) subject to *subsection (12)*.
- (12) *Subsections (4) to (7)* shall, with the necessary modifications, apply to a foregoing exemption as they apply to an exemption under *subsection (1)*.
- (13) *Subsections (9) to (12)* are without prejudice to *section 1190(4)* (which saves for a limited period the effect of provisions of the prior Companies Acts (including section 88(2) of the Act of 2001) that impose a requirement, or confer an exemption from a requirement, with regard to the use of “limited” or “teoranta” or their abbreviations).
- (14) In relation to—
- (a) a CLG that avails itself of the exemption under *subsection (1)* or continues to avail itself of a licence or exemption referred to in *subsection (9)* or *(11)*, and
 - (b) an existing guarantee company (within the meaning of *section 1189*) that avails itself, during the period specified in *section 1190(4)*, of an exemption conferred by a provision of the prior Companies Acts with regard to the use of “limited” or “teoranta” or their abbreviations,
- section 151* shall have effect as if, in addition to the particulars specified in *subsection (2)(a) to (c)* of that section to be included on all business letters and order forms of the CLG, there were specified in that subsection the fact of the CLG being a limited company.
- (15) In this section “Act of 2001” means the Company Law Enforcement Act 2001.

Prohibition on certain provisions in constitution, etc. and issuing of shares

- 1181.** (1) Any provision in the memorandum or articles of a CLG, or in any resolution of a CLG, purporting to give any person a right to participate in the divisible profits of the company, otherwise than as a member, shall be void. 5
- (2) Nothing in *subsection (1)* invalidates any distribution by a company limited by guarantee registered before 1 January 1901, on foot of a provision or resolution referred to in that subsection, if the distribution was made before the commencement of this section. 10
- (3) For the purposes of the provisions of this Part stipulating that a characteristic of a CLG is that it does not have a share capital and of this section, the following has effect— 15
- (a) every provision in the constitution, or in any resolution, of a CLG purporting to divide the undertaking of the CLG into shares or interests, shall be treated as a provision for a share capital, notwithstanding that the nominal amount or number of the shares or interests is not specified thereby, and
- (b) every such provision or resolution shall be void.
- (4) A CLG shall not purport to issue shares.
- (5) If a CLG contravenes *subsection (4)*, the CLG and any officer of it who is in default shall be guilty of a category 3 offence.

Capacity of a CLG

- 1182.** (1) A CLG shall have the capacity to do any act or thing stated in the objects set out in its memorandum. 20
- (2) For the purposes of *subsection (1)*—
- (a) the reference in it to an object includes a reference to anything stated in the memorandum as being a power to do any act or thing (whether the word “power” is used or not), 25
- (b) if an object is stated in the CLG’s memorandum without the following also being stated in relation to it, the capacity of the CLG extends to doing any act or thing that appears to it to be requisite, advantageous or incidental to, or to facilitate, the attainment of that object and that is not inconsistent with any enactment, 30
- and a subsequent reference in this Part to an object of a CLG shall be read accordingly.

Capacity not limited by a CLG’s constitution

- 1183.** (1) The validity of an act done by a CLG shall not be called into question on the ground of lack of capacity by reason of anything contained in the CLG’s objects. 35
- (2) A member of a CLG may bring proceedings to restrain the doing of an act which, but for *subsection (1)*, would be beyond the CLG’s capacity but no such proceedings shall lie in respect of any act to be done in fulfilment of a legal obligation arising from a previous act of the CLG.

- (3) Notwithstanding the enactment of *subsection (1)*, it remains the duty of the directors to observe any limitations on their powers flowing from the CLG's objects and action by the directors which, but for *subsection (1)*, would be beyond the CLG's capacity may only be ratified by the CLG by special resolution.
- (4) A resolution ratifying such action shall not affect any liability incurred by the directors or any other person; if relief from any such liability is to be conferred by the CLG it must be agreed to separately by a special resolution of it. 5
- (5) A party to a transaction with a CLG is not bound to enquire as to whether it is permitted by the CLG's objects.

Alteration of objects clause by special resolution

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- 1184.** (1) Subject to *subsection (2)*, a CLG may, by special resolution, alter the provisions of its memorandum of association by abandoning, restricting or amending any existing object or by adopting a new object and any alteration so made shall be as valid as if originally contained therein, and be subject to alteration in like manner.
- (2) If an application is made to the court in accordance with this section for the alteration to be cancelled, it shall not have effect except in so far as it is confirmed by the court. 15
- (3) Subject to *subsection (4)*, an application under this section may be made—
- (a) by not less than 15 per cent of the CLG's members, or
 - (b) by the holders of not less than 15 per cent of the CLG's debentures, entitling the holders to object to alterations of its objects. 20
- (4) An application shall not be made under this section by any person who has consented to or voted in favour of the alteration.
- (5) An application under this section shall be made within 21 days after the date on which the resolution altering the CLG's objects was passed and may be made on behalf of the persons entitled to make the application by such one or more of their number as they may appoint in writing for the purpose. 25
- (6) On an application under this section, the court may—
- (a) make an order cancelling the alteration or confirming the alteration, either wholly or in part, and on such terms and conditions as it thinks fit, and
 - (b) if it thinks fit, adjourn the proceedings in order that an arrangement may be made to the satisfaction of the court for the purchase of the interests of dissenting members and may give such directions and make such orders as it may think expedient for facilitating or carrying into effect any such arrangement. 30

Supplemental provisions in relation to section 1184

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- 1185.** (1) Where an order under *section 1184* requires the CLG not to make any, or any specified, alteration in its constitution, then, notwithstanding anything in this Act, but subject to the provisions of the order, the CLG shall not have power, without the leave of the court, to make any such alteration in contravention of that requirement.
- (2) Any alteration in the constitution of a CLG made by virtue of an order under *section*

1184, other than one made by resolution of the CLG, shall be of the same effect as if duly made by resolution of the CLG and the provisions of this Act shall apply to the constitution as so altered accordingly.

- (3) Notice of the meeting at which the special resolution altering a CLG's objects is intended to be proposed shall be given to any holders of the CLG's debentures that entitle the holders to object to alterations of its objects; that notice shall be the same as that given to members of the CLG, so however that not less than 10 days' notice shall be given to the holders of any such debentures. 5
- (4) If the written resolution procedure is used in the matter, notice, which shall not be less than 10 days, of the proposed use of that procedure shall, together with a copy of the proposed text of the resolution, be given to the debenture holders referred to in subsection (3). 10
- (5) In default of any provisions in the CLG's constitution regulating the giving to the foregoing debenture holders of notice referred to in subsection (3) or (4), the provisions of *Part 4* or, as the case may be, of the CLG's constitution regulating the giving of notice to members shall apply. 15
- (6) Without prejudice to subsections (3) and (4), in the case of a CLG which is, by virtue of section 1180, permitted to omit the words "company limited by guarantee" or "cuideachta faoi theorainn ráthaíochta" from its name, notice of— 20
- (a) the meeting at which the special resolution altering a CLG's objects is intended to be proposed; or
- (b) if the written resolution procedure is used in the matter, notice of the proposed use of that procedure, together with a copy of the proposed text of the resolution, shall be given to the Registrar and subsections (3) to (5) shall apply as respects such notice as they apply as respects notice of the meeting or resolution to debenture holders. 25
- (7) Where a CLG passes a resolution altering its objects— 30
- (a) if no application is made under section 1184 with respect to the alteration, it shall, within 15 days after the end of the period for making such an application, deliver to the Registrar a copy of its memorandum of association as altered, and
- (b) if such an application is made, it shall—
- (i) forthwith give notice of that fact to the Registrar, and
- (ii) within 15 days after the date of any order cancelling or confirming the alteration, deliver to the Registrar a certified copy of the order and, in the case of an order confirming the alteration, a copy of the memorandum as altered. 35
- (8) The court may by order at any time extend the time for delivery of documents to the Registrar under subsection (7)(b) for such period as the court may think proper.
- (9) If a CLG makes default in giving notice or delivering any document to the Registrar as required by subsection (7), the CLG and any officer of it who is in default shall be guilty of a category 4 offence. 40

Restriction of section 32(1) in relation to CLGs

- 1186.** (1) Other than in respect of making an amendment of the type specified in subsection (2), section 32(1) shall not apply in relation to a CLG.
- (2) The amendment referred to in subsection (1) is an amendment of the amount referred to in section 1176(2)(d) that is specified in the CLG's memorandum. 5

Alteration of articles by special resolution

- 1187.** (1) Subject to the provisions of this Act and to the conditions contained in its memorandum, a CLG may, by special resolution, alter or add to its articles.
- (2) Any alteration or addition so made in the articles shall, subject to the provisions of this Act, be as valid as if originally contained therein and be subject in like manner to alteration by special resolution. 10

Power to alter provisions in memorandum which could have been contained in articles

- 1188.** (1) Subject to subsection (2), sections 32(4) and (5) and 212, any provision contained in a CLG's memorandum which could lawfully have been contained in articles instead of in the memorandum may, subject to the provisions of this section, be altered by the CLG by special resolution. 15
- (2) If an application is made to the court for the alteration to be cancelled, it shall not have effect except in so far as it is confirmed by the court.
- (3) This section shall not apply where the memorandum itself provides for or prohibits the alteration of all or any of the foregoing provisions, and shall not authorise any variation or abrogation of the special rights of any class of members. 20
- (4) Section 1184(3) to (6) (other than subsection (3)(b)) and section 1185 (other than subsections (3) to (6)) shall apply in relation to any alteration and to any application made under this section as they apply in relation to alterations and to applications made under those sections. 25

Status of existing guarantee company

- 1189.** (1) In this section "existing guarantee company" means a company limited by guarantee, and not having a share capital, which—
- (a) was incorporated under any former enactment relating to companies (within the meaning of section 5), and 30
- (b) is in existence immediately before the commencement of this section.
- (2) An existing guarantee company shall, on and from the commencement of this section, continue in existence and be deemed to be a CLG to which this Part applies.
- (3) Section 1190 contains provisions—
- (a) for enabling such a company to continue to use, for a limited period, "limited" or "teoranta" in its name despite the foregoing status that it has assumed, and 35
- (b) subject to certain exceptions, deeming the name of such a company, after a specified period and in default of its having changed its name in that fashion, to

- be altered by the replacement of—
- (i) “company limited by guarantee” for “limited” at the end thereof, or
 - (ii) “cuideachta faoi theorainn ráthaíochta” for “teoranta” at the end thereof,
- as the case may be.
- (4) Reference, express or implied, in this Act to the date of registration of a company mentioned in a preceding subsection shall be read as a reference to the date on which the company was registered under the Joint Stock Companies Act 1862, the Companies (Consolidation) Act 1908 or the prior Companies Acts, as the case may be. 5
- Transitional provision — use of “limited” or “teoranta” by existing guarantee company**
- 1190.** (1) In this section— 10
- “existing guarantee company” has the same meaning as it has in *section 1189*;
- “new provisions” means the provisions of this Part (and the relevant provisions of *Part 2* as applied by this Part) relating to the use of either of the required sets of words (or their abbreviations) set out in *subsection (2)*;
- “transition period” means the period of 18 months beginning after the commencement 15 of this section.
- (2) For the purposes of this section, each of the following is a required set of words—
- (a) company limited by guarantee,
 - (b) cuideachta faoi theorainn ráthaíochta.
- (3) The reference— 20
- (a) in the preceding definition of “new provisions”, and
 - (b) in *subsection (4)*,
- to provisions relating to the use of any words includes a reference to provisions conferring an exemption from the use of those words.
- (4) During— 25
- (a) the transition period, or
 - (b) if before the expiry of that period the company has changed its name to include either of the required sets of words, the period preceding the making of that change,
- the provisions of the prior Companies Acts relating to the use of limited or teoranta 30 (or their abbreviations) shall apply as respects the name of an existing guarantee company in place of the new provisions.
- (5) On and from—
- (a) the expiry of the transition period, or
 - (b) the company changing its name to include either of the required sets of words, 35 whichever happens first, the new provisions shall apply as respects the name of an

existing guarantee company.

(6) Without prejudice to the generality of *subsection (5)* and subject, where appropriate, to *section 1180(9) to (12)*, on the expiry of the transition period (and the company has not changed its name before then to include either of the required sets of words), the name of an existing guarantee company, as set out in its memorandum, shall be deemed to be altered by the replacement of—

- (a) “company limited by guarantee” for “limited” at the end thereof, or
 - (b) “cuideachta faoi theorainn ráthaíochta” for “teoranta” at the end thereof,
- as the case may be.

(7) Where an existing guarantee company’s name, as set out in its memorandum, is altered by virtue of *subsection (6)*, the Registrar shall issue to the company a fresh certificate of incorporation in respect of it, being a certificate of incorporation that is altered to meet the circumstances of the case.

CHAPTER 3

Share capital

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Limitation on offers by CLGs of securities to the public

1191. *Section 68* shall apply to a CLG as if the following subsection were substituted for *subsection (2)*:

“(2) A company shall—

(a) neither apply to have securities (or interests in them) admitted to trading or to be listed on, nor

(b) have securities (or interests in them) admitted to trading or listed on,

any market, whether a regulated market or not, in the State or elsewhere; however nothing in this subsection prohibits the admission to trading or listing (or an application being made therefor) on any market of debentures (or interests in them) for the purposes of any of paragraphs (a) to (e) of *subsection (3)*.”.

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Application of *section 114* in relation to CLGs

1192. In its application to this Part, *section 114* shall apply as if each reference in it to the acquisition and holding of shares in a company included, in a case where the holding company is a CLG, a reference to becoming, and being, a member of the company otherwise than by means of acquiring and holding shares.

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Uncertificated transfer of securities

1193. *Sections 1087 to 1089* shall apply to securities of a CLG as they apply to securities of a PLC.

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CHAPTER 4

Corporate governance

Directors

1194. A CLG shall have at least 2 directors.

Limitation on number of directorships

1195. For the purposes of this Part, *section 142* shall apply as if the following subsection were substituted for *subsection (1)*:

“(1) A person shall not, at a particular time, be a director of more than—

(a) 25 companies limited by guarantee, or

(b) 25 companies, one, or more than one, of which is a company limited by guarantee and one, or more than one, of which is any other type of company capable of being wound up under this Act.”.

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Rotation of directors

1196. (1) Each provision of this section applies save to the extent that the CLG’s constitution provides otherwise.

(2) At the first annual general meeting of the CLG all the directors shall retire from office.

(3) At the annual general meeting in every subsequent year, one-third of the directors for the time being, or, if their number is not 3 or a multiple of 3, then the number nearest one-third shall retire from office.

(4) The directors to retire in every year shall be those who have been longest in office since their last election but as between persons who became directors on the same day, those to retire shall (unless they otherwise agree among themselves) be determined by lot.

(5) A retiring director shall be eligible for re-election.

(6) The CLG, at the meeting at which a director retires in any of the foregoing instances, may fill the vacated office by electing a person to it.

(7) In default of the CLG doing so, the retiring director shall, if offering himself or herself for re-election, be deemed to have been re-elected, unless—

(a) at such meeting it is expressly resolved not to fill such vacated office, or

(b) a resolution for the re-election of such director has been put to the meeting and lost.

Remuneration of directors

1197. (1) Each provision of this section applies save to the extent that the CLG’s constitution provides otherwise.

(2) The remuneration of the directors of a CLG shall be such as is determined, from time to time, by the CLG in general meeting and such remuneration shall be deemed to accrue from day to day.

(3) The directors of a CLG may also be paid all travelling, hotel and other expenses properly incurred by them—

(a) in attending and returning from—

(i) meetings of the directors or any committee referred to in *section 160(9)*, or

(ii) general meetings of the CLG,

or

(b) otherwise in connection with the business of the CLG.

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Removal of directors

1198. *Section 146* shall apply to a CLG with the omission of *subsection (2)* (exclusion of section's application to a director holding office for life).

Membership

1199. (1) The subscribers to the memorandum of association of a CLG shall be deemed to have agreed to become members of the CLG, and, on its registration, shall be entered as members in its register of members.

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(2) Such other persons—

(a) being persons—

(i) whom the directors admit to membership; or

(ii) who are admitted to membership, pursuant to provisions that the constitution may contain in that behalf, whether provisions that—

(I) provide a separate power to; or

(II) supplement or limit, or exclude,

any power of the directors in that regard;

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and

(b) whose names are entered in its register of members,

shall be members of the CLG.

(3) The articles of a CLG shall state the number of members with which the company proposes to be registered.

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(4) Where a CLG has increased the number of its members beyond the registered number, it shall, within 15 days after date on which the increase was resolved on or took place, deliver particulars of the increase to the Registrar.

(5) If default is made by a CLG in complying with *subsection (4)*, the CLG and any officer of it who is in default shall be guilty of a category 4 offence.

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- (6) The articles of a CLG may state the maximum number of persons who may be members of the CLG, subject to the power of the directors to register an increase in the number of members.
- (7) A member may resign his or her membership by serving notice to that effect upon the directors at the registered office of the CLG, such notice to expire no earlier than the date of service of the notice of resignation. 5
- (8) Save where the constitution of a CLG provides otherwise, the directors may require a member to resign his or her membership by serving notice upon the member terminating his or her membership to expire no earlier than the date of service of the notice of termination. 10
- (9) Save where the constitution of a CLG provides otherwise, every member shall have one vote.
- (10) The death or bankruptcy of a member shall terminate his or her membership.

Personation of member: offence

- 1200.** If any person falsely and deceitfully personates any member of a CLG and thereby— 15
- (a) receives or endeavours to receive any money due to any such member, or
 - (b) votes at any meeting as if the person were the true and lawful member,
- he or she shall be guilty of a category 2 offence.

Register of members

- 1201.** *Section 169* shall apply to a CLG with the following modifications: 20
- (a) the following paragraph shall be substituted, in *subsection (1)*, for *paragraph (a)*:
“(a) the names and addresses of the members;”;
 - and
 - (b) *subsection (5)* shall be omitted.

CLG may not dispense with holding of a.g.m.

- 1202.** *Section 175(3) and (4)* (which relate to dispensing with the holding of an annual general meeting) shall not apply to a CLG. 25

Convening of extraordinary general meeting on requisition

- 1203.** *Section 178* shall apply to a CLG with the following modifications: 30
- (a) *subsections (1)(a) and (2)* shall be omitted; and
 - (b) the following subsection shall be substituted for *subsection (3)*:
“(3) The directors of a company shall, on the requisition of one or more members holding, or together holding, at the date of the deposit of the requisition, not less than 10 per cent of the total voting rights of all the members having, at the date of the deposit, the right to vote at general 35

meetings of the company, forthwith proceed duly to convene an extraordinary general meeting of the company.”.

Persons entitled to notice of general meetings

1204. *Section 180 shall apply to a CLG with the omission of subsection (1)(b) and (c) and subsections (2) to (4).*

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Proxies

1205. *Section 183 shall apply to a CLG with the following modifications:*

- (a) in subsection (1) there shall be inserted “and save to the extent that the constitution provides otherwise” after “Subject to subsection (3)”;
- (b) in subsection (8), the words “or the transfer of the share in respect of which the proxy is given” shall be omitted; and
- (c) in subsection (9), there shall be substituted “such death, insanity or revocation” for “such death, insanity, revocation or transfer”.

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Votes of members

1206. *Section 188 shall apply to a CLG with the following modifications:*

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- (a) the following subsection shall be substituted for subsection (2):
 - “(2) Where a matter is being decided (whether on a show of hands or on a poll), every member present in person and every proxy shall have one vote, but so that no individual member shall have more than one vote.”;
- (b) subsection (3) shall be omitted; and
- (c) the following subsection shall be substituted for subsection (6):
 - “(6) No member shall be entitled to vote at any general meeting of a company unless all moneys immediately payable by him or her to the company have been paid.”.

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Right to demand a poll

1207. *Section 189 shall apply to a CLG with the omission of subsection (2)(d).*

Application of section 193 in relation to a CLG

1208. *Section 193 shall apply to a CLG as if, in subsection (1), after “Notwithstanding any provision to the contrary in this Part or in Parts 1 to 3 or 5 to 14”, there were inserted “and unless the constitution provides otherwise”.*

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Application of section 198 in relation to a CLG

1209. *Section 198 shall apply to a CLG with the following modifications:*

- (a) the following paragraph shall be substituted for paragraph (c) of subsection (4):

“(c) resolutions or agreements which have been agreed to by all the members of some class of membership but which if not so agreed to, would not have been effective for their purpose unless they had been passed by some particular majority or otherwise in some particular manner, and all resolutions or agreements which effectively bind all the members of any class of membership though not agreed to by all those members;”;

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and

(b) *paragraphs (d) and (e) and (g) to (k) of subsection (4)* shall be omitted.

Application of Chapter 5 of Part 5 to a CLG

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1210. (1) Subject to subsection (2), *Chapter 5 of Part 5* shall apply to a CLG.

(2) For the purposes of that application, *Chapter 5 of Part 5* shall operate, so far as it relates to shares in a company, or shares in a body corporate of the same group as that company belongs to, as if it excluded references to—

- (a) that company where that company is a CLG, and
- (b) such a body corporate where that body corporate is a CLG.

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CHAPTER 5

Financial statements, annual return and audit

Non-application of Part 6 to CLGs that are credit institutions or insurance undertakings

1211. *Part 6* shall not apply to a CLG that is a credit institution or an insurance undertaking—

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- (a) to the extent provided by regulations made under section 3 of the European Communities Act 1972 to give effect to Community acts on accounts of credit institutions and insurance undertakings, respectively, or
- (b) to the extent provided by any other enactment.

Requirement for corporate governance statement and modification of certain provisions of Parts 5 and 6 as they apply to CLGs

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1212. *Chapter 3 of Part 23* has effect in relation to, amongst other companies, a CLG that has debentures admitted to trading on a regulated market in an EEA state.

Application of section 297 to a CLG

1213. *Section 297* shall apply to a CLG as if the following paragraph were substituted for paragraph (a) of subsection (8):

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“(a) any debentures or other debt securities of the company or any shares, debentures or other debt securities of a subsidiary undertaking have been admitted to trading on a regulated market in an EEA state; or”.

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Disclosures by CLG that is credit institution

1214. In addition to its having effect in relation to a public limited company, *section 1120* shall have effect in relation to a CLG.

Disclosure of membership changes in CLG's financial statements

1215. *Section 318* (details of authorised share capital, allotted share capital and movements) shall not apply in relation to the financial statements of a CLG but where there are changes in the interests of members of a CLG in the financial year to which the financial statements of the CLG relate then particulars of those changes shall be given in the notes to those financial statements.

Disapplication of sections 325(1)(c) and 329 to a CLG

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1216. *Sections 325(1)(c)* and 329 shall not apply to a CLG.

Application of sections 334 and 362 to a CLG

1217. (1) *Section 334* shall apply to a CLG with the following modifications:

(a) the following subsection shall be substituted for *subsection (1)*:

“(1) Any member of a company may serve a notice in writing on the company stating that that member does not wish the audit exemption to be available to the company in a financial year specified in the notice.”;

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(b) *subsection (3)* shall be omitted; and

(c) the following subsection shall be substituted for *subsection (4)*:

“(4) For the avoidance of doubt, the reference in *subsection (1)* to the member’s not wishing the audit exemption to be available to the company in a specified financial year is, if the company is a subsidiary undertaking, a reference to the member’s not wishing the audit exemption to be available to the subsidiary undertaking irrespective of whether its holding company and any other undertakings in the group avail themselves of the audit exemption in that year.”.

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(2) *Section 362* shall apply to a CLG as if the words “(in so far as applicable to a private company limited by shares)”, in each place where they occur, were omitted and the cases specified in that section in which the audit exemption, as referred to *section 358(1)* or (2), as the case may be, is not available to a company, or a holding company and its subsidiary undertakings, included a case in which the company or holding company, as appropriate, is a credit institution or an insurance undertaking.

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Qualification of section 338 in the case of a CLG

1218. *Section 338* (circulation of statutory financial statements) shall apply to a CLG with the following modifications:

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(a) in *subsection (1)(a)*, there shall be substituted “(but only if that person is entitled to receive notices of general meetings of the company)” for “(whether that person

is or is not entitled to receive notices of general meetings of the company)”; and

- (b) in *subsection (1)(b)*, there shall be substituted “(but only if that person is so entitled)” for “(whether that person is or is not so entitled)”.

Exemption from filing with Registrar financial statements, etc.

1219. (1) Without prejudice to *subsections (4) to (6)* (which contain transitional provisions), *sections 347 and 348* shall not apply to a CLG if it satisfies the following conditions:

- (a) it has been formed for charitable purposes; and
(b) it stands exempted from those sections by an order made by the relevant authority (which order the relevant authority is, by virtue of this section, empowered to make),

and the exemption provided by that order may, as the relevant authority considers appropriate, be either for an indefinite or a limited period.

(2) The following provisions have effect in relation to a CLG referred to in *subsection (1)*—

- (a) unless the CLG is entitled to and has availed itself of the audit exemption conferred by *Chapter 15 or 16 of Part 6*, the statutory auditors of the CLG shall prepare a separate report to the directors which—

- (i) confirms that they audited the relevant statutory financial statements for the relevant financial year, and
(ii) includes within it the report made to the members of the CLG pursuant to *section 391*,

and

- (b) a copy of the report prepared under *paragraph (a)* shall be annexed to the annual return delivered by the CLG to the Registrar.

(3) The reference in *subsection (2)* to a copy of the report prepared under *paragraph (a)* of it is a reference to a copy that satisfies the following conditions:

- (a) it is a true copy of the original save for the difference that the signature or signatures on the original, and any date or dates thereon, shall appear in typeset form on the copy; and

- (b) it is accompanied by a certificate of a director and the secretary of the company, that bears the signature of the director and the secretary in electronic or written form, stating that the copy is a true copy of the original (and the foregoing statement need not be qualified on account of the difference permitted by *paragraph (a)* as to the form of a signature or of a date).

(4) *Sections 347 and 348* shall not apply to an existing guarantee company that, immediately before the commencement of this section, stood exempted from the requirements of section 128 of the Act of 1963 by virtue of subsection (4)(c) or (5) of that section, but this is subject to *subsections (5) and (6)*.

(5) If, by reason of a change of circumstances set out in section 128(4) of the Act of 1963 relating to the company concerned (were that section 128(4) to remain in force after

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the commencement of *section 4* (repeals and revocations)), an existing guarantee company would no longer comply with that section 128(4), then, thereupon, *sections 347 and 348* shall apply to that company.

(6) If—

- (a) circumstances arise affecting an existing guarantee company that stood exempted, immediately before the commencement of this section, from the requirements of section 128 of the Act of 1963 by virtue of subsection (5) of the latter, and
- (b) those circumstances are such as would, but for the repeal of that section 128, warrant the relevant authority exercising the power of revocation that but, for that repeal, would have been available to them in relation to the particular order that had subsisted, under that subsection (5), in relation to that company,

then the relevant authority shall, by virtue of those circumstances, be empowered to declare in writing that *sections 347 and 348* shall, on and from a date specified in the declaration, apply to that company and, where the relevant authority so declares, *sections 347 and 348* shall apply to that company on and from the date so specified.

(7) In *subsection (8)*—

“electronic means” means those provided for under the Electronic Commerce Act 2000 and effected in compliance with any requirements of the Registrar of the kind referred to in sections 12(2)(b) and 13(2)(a) of that Act;

“required documents” means the copy of the report referred to in *paragraph (a)* of *subsection (3)*, accompanied by the certificate referred to in *paragraph (b)* of that subsection;

“required period” means the period referred to in *section 343(2)* or *(3)*, as the case may be, or, where that period stands extended in accordance with *section 343(5)* and *(6)*, that period as it stands so extended.

(8) Where a CLG makes its annual return by electronic means to the Registrar within the required period then, notwithstanding that the required documents have not been annexed to the annual return, the annual return shall be deemed to have been delivered to the Registrar within the required period with the foregoing documents annexed to it if those documents are delivered to the Registrar within 28 days after the date on which the annual return has been delivered to the Registrar by electronic means.

(9) In this section—

“existing guarantee company” has the same meaning as it has in *section 1189*;

“relevant authority” means—

- (a) before the establishment day (within the meaning of the Charities Act 2009), the Commissioners of Charitable Donations and Bequests for Ireland; and
- (b) on or after the foregoing day, the Charities Regulatory Authority.

Application of *section 392* to a CLG

1220. *Section 392* (report to Registrar and Director: accounting records) shall apply to a CLG

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as if, in *subsection (6)*, there were substituted “its members” for “its shareholders”.

Application of section 393 to a CLG

1221. *Section 393* (report to Registrar and Director: category 1 and 2 offences) shall apply to a CLG as if, in *subsection (4)*, there were substituted “its members” for “its shareholders”.

CHAPTER 6

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Liability of contributories in winding up

Liability as contributories of past and present members and provision concerning winding up after certain re-registration

1222. (1) Subject to *subsection (2)*, in the event of a CLG being wound up, every present and past member shall be liable to contribute to the assets of the CLG to an amount sufficient for payment of its debts and liabilities, and the costs, charges and expenses of the winding up, and for the adjustment of the rights of the contributories among themselves.

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(2) The following qualifications apply in relation to *subsection (1)*:

(a) no contribution shall be required from any member exceeding the amount undertaken to be contributed by him or her to the assets of the CLG in the event of its being wound up;

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(b) a past member shall not be liable to contribute if he or she has ceased to be a member for one year or more before the commencement of the winding up;

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(c) a past member shall not be liable to contribute in respect of any debt or liability of the CLG contracted after he or she ceased to be a member;

(d) a past member shall not be liable to contribute unless it appears to the court that the existing members are unable to satisfy the contributions required to be made by them in pursuance of this Act;

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(e) nothing in this Act shall invalidate any provision contained in any policy of insurance or other contract whereby the liability of individual members on the policy or contract is restricted, or whereby the funds of the CLG are alone made liable in respect of the policy or contract;

(f) a sum due to any member of the CLG, in his or her character of a member, by way of distributions, profits or otherwise, shall not be deemed to be a debt of the company, payable to that member in a case of competition between himself or herself and any other creditor not a member of the CLG, but any such sum may be taken into account for the purpose of the final adjustment of the rights of the contributories among themselves.

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(3) Without prejudice to the application of that section to a CLG, and its adaptation generally, by *section 1173* of *section 665* (winding up of company that had been an unlimited company before re-registration), *paragraph (c)* of *section 665* shall apply as if the reference in it to *section 655(2)(a)* were, in the case of a CLG, a reference to *subsection (2)(a)* of this section.

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CHAPTER 7

Examinerships

Petitions for examinerships

1223. *Section 510* shall apply to a CLG as if the following subsections were substituted for subsections (2) and (3):

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“(2) Where the company referred to in *section 509* is an insurer or the holding company of an insurer, a petition may be presented only by the Central Bank, and subsection (1) shall not apply to the company.

(3) Where the company referred to in *section 509* is—

(a) a credit institution or the holding company of a credit institution, 10

(b) a company which one or more trustee savings banks have been reorganised into pursuant to an order under section 57 of the Trustee Savings Banks Act 1989, or

(c) a company which a building society has converted itself into under Part XI of the Building Societies Act 1989,

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a petition may be presented only by the Central Bank, and subsection (1) shall not apply to the company.”.

CHAPTER 8

Investigations

Application of *section 747(2*) to CLGs

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1224. *Section 747(2)* shall apply to a CLG as if paragraph (c) were deleted therefrom.

CHAPTER 9

Public offers of securities, prevention of market abuse, etc.

Application of *Chapters 1, 2 and 4 of Part 23* to CLGs

1225. *Chapters 1, 2 and 4 of Part 23*, so far as they are applicable to companies other than public limited companies, shall apply to a CLG.

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PART 19

UNLIMITED COMPANIES

CHAPTER 1

Preliminary and definitions

Interpretation (Part 19)

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1226. In this Part—

“constitution” shall be read in accordance with *section 1232 or 1233*, as the case may be;

“PUC” shall be read in accordance with *section 1227(1)(b)*;

“PULC” shall be read in accordance with *section 1227(1)(c)*;

“ULC” shall be read in accordance with *section 1227(1)(a)*. 10

Three types of unlimited company and uniform words to be affixed to name

1227. (1) This Part makes provision for, and there is permitted to be formed and registered under this Part, the following 3 types of unlimited company:

(a) a private unlimited company — referred to in this Part as a “ULC”;

(b) a public unlimited company — referred to in this Part as a “PUC”; and 15

(c) a public unlimited company that has no share capital — referred to in this Part as a “PULC”.

(2) Irrespective of the type of unlimited company that the particular company constitutes, the name of any such company shall, as provided under *section 1236* and subject to *section 1246*, end with the words “unlimited company” or “cuideachta neamhtheoranta”. 20

References to unlimited company to mean ULC, PUC or PULC

1228. A reference in this Part to an unlimited company shall, unless expressly provided otherwise, be read as a reference to any of the 3 types of unlimited company referred to in *section 1227*. 25

Application of Parts 1 to 14 to unlimited companies

1229. (1) The provisions of *Parts 1 to 14* apply to an unlimited company except to the extent that they are disappplied or modified by—

(a) this section, or

(b) any other provision of this Part. 30

(2) For the purposes of that application, *section 10* shall have effect as if it read:

“Unless expressly provided otherwise, a reference in *Parts 2 to 14* to a company is a reference to an unlimited company.”.

- (3) Any of *Parts 1* to *14* that makes provision by reference to—
- membership arising by virtue of a shareholding, or
 - rights or incidents of membership, including the right to vote or receive a distribution, arising by virtue of a shareholding,
- shall be read, in the case of a PULC, as making such provision in the analogous context in which membership, or rights or incidents of membership, may arise in the case of a PULC. 5
- (4) *Subsection (3)* is without prejudice to the generality of the application and adaptation of *Parts 1* to *14* provided by *subsections (1)* and *(2)* or any specific adaptation provided by a subsequent section of this Part. 10
- (5) The provisions of this Act specified in *Part 1* of the Table to this section shall not apply to an ULC.
- (6) The provisions of this Act specified in *Part 2* of the Table to this section shall not apply to a PUC.
- (7) The provisions of this Act specified in *Part 3* of the Table to this section shall not apply to a PULC. 15
- (8) The specification in the foregoing Table of a provision (a “specified provision”) of *Parts 1* to *14* also operates to disapply to the particular type of unlimited company concerned any other provision of those Parts (notwithstanding that it is not specified in that Table) that makes consequential, incidental or supplemental provision on, or in relation to, the specified provision. 20

Table
Part 1
Provisions disappled to ULCs

Subject matter	Provision disappled
Way of forming a private company limited by shares	<i>Section 17</i>
Company to carry on activity in the State and prohibition of certain activities	<i>Section 18</i>
Form of the constitution	<i>Section 19</i>
Effect of registration	<i>Section 25</i>
Provisions as to names of companies	<i>Section 26(1) to (4)</i>
Trading under a misleading name	<i>Section 27</i>
Amendment of constitution by special resolution	<i>Section 32(1)</i>
Capacity of private company limited by shares	<i>Section 38</i>
Security for costs	<i>Section 52</i>
Conversion of existing private company to private company limited by shares to which <i>Parts 1</i> to <i>15</i> apply	<i>Chapter 6 of Part 2</i>

Subject matter	Provision disapplyed	
Returns of allotments	<i>Section 70(7) and (8)</i>	
Variation in capital	<i>Chapter 4 of Part 3 (other than sections 83, 89, 90, 92 and 93)</i>	
Directors	<i>Section 128</i>	5
Certain particulars to be shown on all business letters	<i>Section 151(2) to (4)</i>	
Majority written resolutions	<i>Section 194</i>	
Supplemental provisions in relation to section 194	<i>Section 195</i>	
Directors' compliance statement and related statement	<i>Section 225</i>	10
Liability as contributories of past and present members	<i>Section 655</i>	
Payment of debts due by contributory to the company and extent to which set-off allowed	<i>Section 659</i>	15

Part 2

Provisions disapplyed to PUCs

Subject matter	Provision disapplyed	
Way of forming a private company limited by shares	<i>Section 17</i>	
Company to carry on activity in the State and prohibition of certain activities	<i>Section 18</i>	20
Form of the constitution	<i>Section 19</i>	
Effect of registration	<i>Section 25</i>	
Provisions as to names of companies	<i>Section 26(1) to (4)</i>	
Trading under a misleading name	<i>Section 27</i>	25
Amendment of constitution by special resolution	<i>Section 32(1)</i>	
Capacity of private company limited by shares	<i>Section 38</i>	
Security for costs	<i>Section 52</i>	
Allotment of shares	<i>Section 69</i>	
Supplemental and additional provisions as regards allotments	<i>Section 70</i>	30
Variation in capital	<i>Chapter 4 of Part 3 (other than sections 83, 89, 90, 92 and 93)</i>	
Directors	<i>Section 128</i>	
Certain particulars to be shown on all business letters	<i>Section 151(2) to (4)</i>	35
Majority written resolutions	<i>Section 194</i>	
Supplemental provisions in relation to section 194	<i>Section 195</i>	
Directors' compliance statement and related statement	<i>Section 225</i>	40

Subject matter	Provision disapplied	
Exemption from consolidation: size of group	<i>Section 297</i>	
Statutory financial statements must be audited (unless audit exemption availed of)	<i>Section 333</i>	
Exclusions, exemptions and special arrangements with regard to public disclosure of financial information	<i>Chapter 14 of Part 6</i>	5
Audit exemption	<i>Chapter 15 of Part 6</i>	
Special audit exemption for dormant companies	<i>Chapter 16 of Part 6</i>	
Small and medium companies	<i>Section 377</i>	10
Liability as contributories of past and present members	<i>Section 655</i>	
Payment of debts due by contributory to the company and extent to which set-off allowed	<i>Section 659</i>	

Part 3

15

Provisions disapplied to PULCs

Subject matter	Provision disapplied	
Way of forming a private company limited by shares	<i>Section 17</i>	
Company to carry on activity in the State and prohibition of certain activities	<i>Section 18</i>	20
Form of the constitution	<i>Section 19</i>	
Effect of registration	<i>Section 25</i>	
Provisions as to names of companies	<i>Section 26(1) to (4)</i>	
Trading under a misleading name	<i>Section 27</i>	
Amendment of constitution by special resolution	<i>Section 32(1)</i>	25
Capacity of private company limited by shares	<i>Section 38</i>	
Security for costs	<i>Section 52</i>	
Conversion of existing private company to private company limited by shares to which <i>Parts 1 to 15</i> apply	<i>Chapter 6 of Part 2</i>	30
Powers to convert shares into stock, etc.	<i>Section 65</i>	
Shares	<i>Section 66</i>	
Numbering of shares	<i>Section 67</i>	
Allotment of shares and variation in capital	<i>Chapters 3 and 4 of Part 3</i>	
Transfer of shares	<i>Chapter 5 of Part 3</i> (save section 94 in so far as it relates to debentures)	35
Acquisition of own shares	<i>Chapter 6 of Part 3</i> (save sections 113 to 116)	
Procedures for declarations, payments, etc., of dividends and other things	<i>Section 124</i>	40

Subject matter	Provision disapplied	
Supplemental provisions in relation to <i>section 124</i>	<i>Section 125</i>	5
Bonus issues	<i>Section 126</i>	
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CHAPTER 2

Incorporation and consequential matters

Way of forming an unlimited company

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1230. (1) An unlimited company may be formed for any lawful purpose by any person or persons subscribing to a constitution and complying with the relevant provisions of—

- (a) *Chapter 2 of Part 2*, as applied by this Part, and
- (b) this Part,

in relation to registration of an unlimited company.

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(2) Without prejudice to the means by which an unlimited company may be formed under the relevant provisions referred to in *subsection (1)*, a company may be registered as an unlimited company by means of—

- (a) the re-registration, or registration, as an unlimited company of a body corporate pursuant to *Part 20* or *22*,
- (b) the merger of 2 or more companies pursuant to *Chapter 3* of *Part 9*, or
- (c) the division of a company pursuant to *Chapter 4* of *Part 9*.

Unlimited company to carry on activity in the State

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- 1231.** An unlimited company shall not be formed and registered unless it appears to the Registrar that the company, when registered, will carry on an activity in the State, being an activity that is mentioned in its memorandum.

The form of the constitution of an ULC or PUC

- 1232.** (1) Subject to *subsection (3)*, the constitution of an ULC or PUC shall be in the form of a memorandum of association and articles of association which together are referred to in this Part as a “constitution”. 10
- (2) The memorandum of association of an ULC or PUC shall state—
- (a) its name,
 - (b) that it is, as the case may be, a private unlimited company or public unlimited company registered under this Part, 15
 - (c) its objects,
 - (d) the amount of share capital with which the company proposes to be registered and the division thereof into shares of a fixed amount, and
 - (e) the fact that its members have unlimited liability. 20
- (3) The constitution of an ULC or PUC shall—
- (a) in addition to the matters specified in *subsection (2)*, state the number of shares (which shall not be less than one) taken by each subscriber to the constitution,
 - (b) be in accordance with the form set out in—
 - (i) *Schedule 11* — in the case of an ULC, or 25
 - (ii) *Schedule 12* — in the case of a PUC,
 or, in either case, as near thereto as circumstances permit,
 - (c) be printed in an entire format, that is to say the memorandum and articles shall be contained in the one document, being a document either in legible form or (as long as it is capable of being reproduced in legible form) in non-legible form, and 30
 - (d) either—
 - (i) be signed by each subscriber in the presence of at least one witness who shall attest the signature, or
 - (ii) be authenticated in the manner referred to in *section 888*.

The form of the constitution of a PULC

1233. (1) Subject to *subsection (3)*, the constitution of a PULC shall be in the form of a memorandum of association and articles of association which together are referred to in this Part as a “constitution”.

(2) The memorandum of association of a PULC shall state—

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- (a) its name,
- (b) that it is a public unlimited company, that has no share capital, registered under this Part,
- (c) its objects, and
- (d) the fact that its members have unlimited liability.

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(3) The constitution of a PULC shall—

(a) be in accordance with the form set out in *Schedule 13* or as near thereto as circumstances permit,

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(b) be printed in an entire format, that is to say the memorandum and articles shall be contained in the one document, being a document either in legible form or (as long as it is capable of being reproduced in legible form) in non-legible form, and

(c) either—

(i) be signed by each subscriber in the presence of at least one witness who shall attest the signature, or

(ii) be authenticated in the manner referred to in *section 888*.

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Supplemental provisions in relation to constitution referred to in section 1232 or 1233 and continuance in force of existing memorandum and articles

1234. (1) This section—

(a) contains provisions as to the articles of an unlimited company,

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(b) provides that, in certain circumstances, a default position shall obtain in relation to the articles of an unlimited company, and

(c) continues in force the memorandum and articles of an unlimited company registered under the prior Companies Acts.

(2) In this section—

“mandatory provision” means a provision of any of *Parts 1 to 14* (as applied by this Part) or of this Part that is not an optional provision;

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“optional provision” means a provision of any of *Parts 1 to 14* (as applied by this Part) or of this Part that—

(a) contains a statement to the effect, or is governed by provision elsewhere to the effect, that the provision applies save to the extent that the constitution provides otherwise or unless the constitution states otherwise, or

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(b) is otherwise of such import.

- (3) The articles of an unlimited company may contain regulations in relation to the company.
- (4) So far as the articles of an unlimited company do not exclude or modify an optional provision, that optional provision shall apply in relation to the company.
- (5) In the case of an ULC or PUC, articles, instead of containing any regulations in relation to the unlimited company, may consist solely of a statement to the effect that the provisions of the *Companies Act 2014* are adopted and, if the articles consist solely of such a statement, *subsection (4)* shall apply.
- (6) In the case of a PULC, subject to the articles' compliance with *section 1257(3)* (articles must state the number of members with which the company proposes to be registered), articles of such an unlimited company may otherwise consist solely of a statement to the effect that the provisions of the *Companies Act 2014* are adopted and, if the articles contain such a statement, *subsection (4)* shall apply. 10
- (7) The memorandum and articles of an unlimited company registered before the commencement of this section shall, save to the extent that they are inconsistent with a mandatory provision, continue in force but may be altered or added to under and in accordance with the conditions under which memorandums or articles, whenever registered, are permitted by this Act to be altered or added to. 15
- (8) References in the provisions of a memorandum or articles so continued in force to any provision of the prior Companies Acts shall be read as references to the corresponding provision of this Act. 20
- (9) To the extent that an unlimited company registered before the commencement of this section was, immediately before that commencement, governed by—
- (a) the regulations of Part II or III of Table E in the First Schedule to the Act of 1963, or 25
 - (b) the regulations of any Table referred to in section 3(9)(b), (c) or (d) of the Act of 1963,
- it shall, after that commencement, continue to be governed by those regulations but—
- (i) this is save to the extent that those regulations are inconsistent with a mandatory provision, 30
 - (ii) those regulations may be altered or added to under and in accordance with the conditions under which articles, whenever registered, are permitted by this Act to be altered or added to, and
 - (iii) references in the regulations to any provision of the prior Companies Acts shall be read as references to the corresponding provision of this Act. 35

Effect of registration

- 1235.** (1) On the registration of the constitution of an unlimited company, the Registrar shall certify in writing that the company is incorporated and shall issue to the company a certificate of incorporation in respect of it.
- (2) From the date of incorporation mentioned in the certificate of incorporation, the subscriber or subscribers to the constitution, together with such other persons as may 40

from time to time become members of the unlimited company, shall be a body corporate with the name contained in the constitution, having perpetual succession and a common seal, but with such liability on the part of the members to contribute to the assets of the company in the event of its being wound up as is mentioned in this Part.

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- (3) The certificate of incorporation issued under *subsection (1)* shall state that the company is—

- (a) a private unlimited company,
- (b) a public unlimited company, or
- (c) a public unlimited company that has no share capital,

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as the case may be.

- (4) A certificate of incorporation issued under *subsection (1)* shall be conclusive evidence that the requirements of *section 21* and of this Chapter have been complied with, and that the unlimited company is duly registered under this Act.

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- (5) The persons who are specified in the statement required to be delivered to the Registrar by *section 21(1)(a)* as the directors, secretary or joint secretaries or assistant or deputy secretary or secretaries of the unlimited company to which the statement refers shall, on the incorporation of the company, be deemed to have been appointed as the first directors, secretary or joint secretaries or assistant or deputy secretary or secretaries, as the case may be, of the company.

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- (6) Any indication in the constitution, as delivered under *section 21* for registration, specifying a person as a director or secretary (including any assistant or deputy secretary) of a company shall be void unless such person is specified as a director or as secretary (or, as the case may be, assistant or deputy secretary) in the foregoing statement.

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- (7) *Subsection (5)* does not operate to deem a person appointed as a director or secretary (including any assistant or deputy secretary) of an unlimited company where—

- (a) he or she is disqualified under this Act from being appointed a director, secretary, assistant or deputy secretary, as the case may be, of a company, or

- (b) in the case of a director or secretary, a provision of this Act provides that the person's appointment as such in the circumstances is void.

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Provisions as to names of unlimited companies

- 1236.** (1) The name of an unlimited company shall end with one of the following:

- unlimited company;
- cuideachta neamhtheoranta.

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- (2) The words “unlimited company” may be abbreviated to “u.c.” or “uc” (including either such abbreviation in capitalised form) in any usage after the company’s registration by any person including the unlimited company.

- (3) The words “cuideachta neamhtheoranta” may be abbreviated to “c.n.” or “cn” (including either such abbreviation in capitalised form) in any usage after the

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company's registration by any person including the unlimited company.

- (4) An unlimited company carrying on business under a name other than its corporate name shall register in the manner directed by law for the registration of business names but the use of the abbreviations set out in subsection (2) or (3) shall not of itself render such registration necessary. 5
- (5) This section is subject to section 1246 (which makes transitional provision for an existing unlimited company as regards its name).

Trading under a misleading name

1237. (1) Subject to subsection (6), neither a body that is not an unlimited company nor an individual shall carry on any trade, profession or business under a name which includes, as its last part, the words "unlimited company", or "cuideachta neamhtheoranta" or abbreviations of those words. 10

- (2) If a body or individual contravenes subsection (1), the body or individual and, in the case of a body, any officer of it who is in default, shall be guilty of a category 3 offence. 15

- (3) An unlimited company shall not, in the following circumstances, use a name which may reasonably be expected to give the impression that it is any type of a company other than an unlimited company or that it is any other form of body corporate.

- (4) Those circumstances are circumstances in which the fact that it is an unlimited company is likely to be material to any person. 20

- (5) If an unlimited company contravenes subsection (3), the unlimited company and any officer of it who is in default shall be guilty of a category 3 offence.

- (6) Subsection (1) shall not apply to any company—

(a) to which Part 21 applies, and

(b) which has provisions in its constitution that would entitle it to rank as an unlimited company if it had been registered in the State. 25

Capacity of an unlimited company

1238. (1) An unlimited company shall have the capacity to do any act or thing stated in the objects set out in its memorandum.

- (2) For the purposes of subsection (1)—

(a) the reference in it to an object includes a reference to anything stated in the memorandum to be a power to do any act or thing (whether the word "power" is used or not),

(b) if an object is stated in the unlimited company's memorandum without the following also being stated in relation to it, the capacity of the unlimited company extends to doing any act or thing that appears to it to be requisite, advantageous or incidental to, or to facilitate, the attainment of that object and that is not inconsistent with any enactment, 35

and a subsequent reference in this Part to an object of an unlimited company shall be

read accordingly.

Capacity not limited by the constitution of an unlimited company

1239. (1) The validity of an act done by an unlimited company shall not be called into question on the ground of lack of capacity by reason of anything contained in the company's objects. 5

(2) A member of an unlimited company may bring proceedings to restrain the doing of an act which, but for *subsection (1)*, would be beyond the company's capacity but no such proceedings shall lie in respect of any act to be done in fulfilment of a legal obligation arising from a previous act of the company.

(3) Notwithstanding the enactment of *subsection (1)*, it remains the duty of the directors to observe any limitations on their powers flowing from the unlimited company's objects and action by the directors which, but for *subsection (1)*, would be beyond the unlimited company's capacity may only be ratified by the company by special resolution. 10

(4) A resolution ratifying such action shall not affect any liability incurred by the directors or any other person; if relief from any such liability is to be conferred by the unlimited company it must be agreed to separately by a special resolution of it. 15

(5) A party to a transaction with an unlimited company is not bound to enquire as to whether it is permitted by the company's objects.

Alteration of objects clause by special resolution

1240. (1) Subject to *subsection (2)*, an unlimited company may, by special resolution, alter the provisions of its memorandum of association by abandoning, restricting or amending any existing object or by adopting a new object and any alteration so made shall be as valid as if originally contained therein, and be subject to alteration in like manner.

(2) If an application is made to the court in accordance with this section for the alteration to be cancelled, it shall not have effect except in so far as it is confirmed by the court. 25

(3) Subject to *subsection (4)*, an application under this section may be made—

(a) in the case of—

(i) an ULC or a PUC by the holders of not less, in the aggregate, than 15 per cent in nominal value of the ULC's or PUC's issued share capital or any class thereof, or 30

(ii) in the case of any type of unlimited company, by not less than 15 per cent of the company's members,

or

(b) in any case, by the holders of not less than 15 per cent of the unlimited company's debentures, entitling the holders to object to alterations of its objects. 35

(4) An application shall not be made under this section by any person who has consented to or voted in favour of the alteration.

(5) An application under this section shall be made within 21 days after the date on which

the resolution altering the unlimited company's objects was passed and may be made on behalf of the persons entitled to make the application by such one or more of their number as they may appoint in writing for the purpose.

- (6) On an application under this section, the court may—
- (a) make an order cancelling the alteration or confirming the alteration, either wholly or in part, and on such terms and conditions as it thinks fit, and 5
 - (b) if it thinks fit, adjourn the proceedings in order that an arrangement may be made to the satisfaction of the court for the purchase of the interests of dissenting members and may give such directions and make such orders as it may think expedient for facilitating or carrying into effect any such arrangement. 10
- (7) An order under this section may, if the court thinks fit, provide for the purchase by the unlimited company of the shares of any members of the company and for the reduction accordingly of its company capital and may make such alterations in the constitution of the company as may be required in consequence of that provision; and such a purchase may be so ordered notwithstanding anything in *section 102*. 15

Supplemental provisions in relation to *section 1240*

- 1241.** (1) Where an order under *section 1240* requires the unlimited company not to make any, or any specified, alteration in its constitution, then, notwithstanding anything in this Act, but subject to the provisions of the order, the unlimited company shall not have power, without the leave of the court, to make any such alteration in contravention of that requirement. 20
- (2) Any alteration in the constitution of an unlimited company made by virtue of an order under *section 1240*, other than one made by resolution of the company, shall be of the same effect as if duly made by resolution of the company and the provisions of this Act shall apply to the constitution as so altered accordingly. 25
- (3) Notice of the meeting at which the special resolution altering an unlimited company's objects is intended to be proposed shall be given to any holders of the company's debentures that entitle the holders to object to alterations of its objects; that notice shall be the same as that given to members of the company, so however that not less than 10 days' notice shall be given to the holders of any such debentures. 30
- (4) If the written resolution procedure is used in the matter, notice, which shall not be less than 10 days, of the proposed use of that procedure shall, together with a copy of the proposed text of the resolution, be given to the debenture holders referred to in *subsection (3)*. 35
- (5) In default of any provisions in the unlimited company's constitution regulating the giving to the foregoing debenture holders of notice referred to in *subsection (3)* or (4), the provisions of *Part 4* or, as the case may be, of the unlimited company's constitution regulating the giving of notice to members shall apply.
- (6) Where an unlimited company passes a resolution altering its objects—
- (a) if no application is made under *section 1240* with respect to the alteration, it shall, within 15 days after the end of the period for making such an application, deliver to the Registrar a copy of its memorandum of association as altered, and 40

- (b) if such an application is made, it shall—

 - (i) forthwith give notice of that fact to the Registrar, and
 - (ii) within 15 days after the date of any order cancelling or confirming the alteration, deliver to the Registrar a certified copy of the order and, in the case of an order confirming the alteration, a copy of the memorandum as altered.

(7) The court may, by order, at any time extend the time for delivery of documents to the Registrar under subsection (6)(b) for such period as the court may think proper.

(8) If an unlimited company makes default in giving notice or delivering any document to the Registrar as required by subsection (6), the unlimited company and any officer of it who is in default shall be guilty of a category 4 offence.

Application of section 1020 to PUCs and PULCs

1242. Section 1020 (official seal for sealing securities) shall apply to a PUC and a PULC as it applies to a PLC.

Alteration of articles by special resolution

- 1243.** (1) Subject to the provisions of this Act and to the conditions contained in its memorandum, an unlimited company may, by special resolution, alter or add to its articles.

(2) Any alteration or addition so made in the articles shall, subject to the provisions of this Act, be as valid as if originally contained therein and be subject in like manner to alteration by special resolution.

Power to alter provisions in memorandum which could have been contained in articles

1244. (1) Subject to subsection (2), sections 32(4) and (5) and 212, any provision contained in an unlimited company's memorandum which could lawfully have been contained in articles instead of in the memorandum may, subject to the provisions of this section, be altered by the unlimited company by special resolution.

(2) If an application is made to the court for the alteration to be cancelled, it shall not have effect except in so far as it is confirmed by the court.

(3) This section shall not apply where the memorandum itself provides for or prohibits the alteration of all or any of the foregoing provisions, and shall not authorise any variation or abrogation of the special rights of any class of members.

(4) Section 1240(3) to (7) (other than subsection (3)(b)) and section 1241 (other than subsections (3) to (5)) shall apply in relation to any alteration and to any application made under this section as they apply in relation to alterations and to applications made under those sections.

Status of existing unlimited company

- 1245.** (1) In this section “existing unlimited company” means an unlimited company, whether it is a private or public such company having a share capital, or a public such one not

- having a share capital, which—
- (a) was incorporated under any former enactment relating to companies (within the meaning of *section 5*), and
 - (b) is in existence immediately before the commencement of this section.
- (2) An existing unlimited company shall, on and from the commencement of this section, continue in existence and be deemed to be—
- (a) if it was a private unlimited company having a share capital before such commencement — an ULC to which this Part applies,
 - (b) if it was a public unlimited company having a share capital before such commencement — a PUC to which this Part applies, and
 - (c) if it was a public unlimited company not having a share capital before such commencement — a PULC to which this Part applies.
- (3) *Section 1246* contains provisions—
- (a) for enabling such a company to omit, for a limited period, “unlimited company” or “cuideachta neamhtheoranta” from its name despite the foregoing status that it has assumed, and
 - (b) deeming the name of such a company, after a specified period and in default of its having changed its name in that fashion, to be altered by the addition of—
 - (i) “unlimited company” at the end thereof, or
 - (ii) “cuideachta neamhtheoranta” at the end thereof,

as the case may be.
- (4) Reference, express or implied, in this Act to the date of registration of a company mentioned in a preceding subsection shall be read as a reference to the date on which the company was registered under the Joint Stock Companies Act 1862, the Companies (Consolidation) Act 1908 or the prior Companies Acts, as the case may be.

Transitional provision — omission of “unlimited company” or “cuideachta neamhtheoranta” by existing unlimited company

1246. (1) In this section—

- “existing unlimited company” has the same meaning as it has in *section 1245*;
- “new provisions” means the provisions of this Part (and the relevant provisions of *Part 2* as applied by this Part) relating to the use of either of the required sets of words (or their abbreviations) set out in *subsection (2)*;
- “transition period” means the period of 18 months beginning after the commencement of this section.
- (2) For the purposes of this section, each of the following is a required set of words—
- (a) unlimited company,
 - (b) cuideachta neamhtheoranta.

- (3) During—
- (a) the transition period, or
 - (b) if before the expiry of that period the company has changed its name to include either of the required sets of words, the period preceding the making of that change,
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an existing unlimited company may omit the words “unlimited company” or “cuideachta neamhtheoranta” from its name.
- (4) On and from—
- (a) the expiry of the transition period, or
 - (b) the company changing its name to include either of the required sets of words,
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whichever happens first, the new provisions shall apply as respects the name of an existing unlimited company.
- (5) Without prejudice to the generality of *subsection (4)*, on the expiry of the transition period (and the company has not changed its name before then to include either of the required sets of words), the name of an existing unlimited company, as set out in its memorandum, shall be deemed to be altered by the addition of—
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- (a) “unlimited company” at the end thereof, or
 - (b) “cuideachta neamhtheoranta” at the end thereof,
- as the case may be.
- (6) Where an existing unlimited company’s name, as set out in its memorandum, is altered by virtue of *subsection (5)*, the Registrar shall issue to the company a fresh certificate of incorporation in respect of it, being a certificate of incorporation that is altered to meet the circumstances of the case.
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CHAPTER 3

Share capital

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Application of section 68 to PUCs and PULCs

1247. *Section 68 shall apply to a PUC and a PULC as if the following subsection were substituted for subsection (2):*

- “(2) A company shall—
- (a) neither apply to have securities (or interests in them) admitted to trading or to be listed on; nor
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 - (b) have securities (or interests in them) admitted to trading or listed on,
any market, whether a regulated market or not, in the State or elsewhere; however nothing in this subsection prohibits the admission to trading or listing (or an application being made therefor) on any market of debentures (or interests in them) for the purposes of any of paragraphs (a) to (e) of subsection (3).”
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Authority to allot and pre-emption rights in the case of a PUC

1248. Sections 1023 to 1025 shall apply to a PUC.

Variation of rights attached to special classes of shares

1249. Section 985 shall apply to a PUC and an ULC as if—

- (a) each reference in it to a DAC were a reference to a PUC or an ULC, as the case may be, and
- (b) in the case of a PUC, the reference in *subsection (3)(c)* to the giving, variation, revocation or renewal of an authority for the purposes of *section 69(1)* were a reference to the giving, variation, revocation or renewal of an authority for the purposes of *section 1023(1)*.

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Variation of company capital

1250. Section 83 shall apply to a ULC and a PUC with the following modifications—

- (a) “special resolution” shall be substituted for “ordinary resolution” in *subsection (1)*; and
- (b) in *subsection (1)(b)*, the following shall be omitted:

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“, so however, that in the subdivision the proportion between the amount paid and the amount, if any, unpaid on each reduced share shall be the same as it was in the case of the share from which the reduced share is derived”.

Reduction of company capital

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1251. (1) Save to the extent that its constitution otherwise provides, an ULC or PUC may, by special resolution, reduce its company capital in any way it thinks expedient and, without prejudice to the generality of the foregoing, may thereby—

- (a) extinguish or reduce the liability on any of its shares in respect of share capital not paid up,
- (b) either with or without extinguishing or reducing liability on any of its shares, cancel any paid up company capital which is lost or unrepresented by available assets, or
- (c) either with or without extinguishing or reducing liability on any of its shares, pay off any paid up company capital which is in excess of the wants of the company.

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(2) A resolution shall not be valid for the purposes of *subsection (1)* if it would have the effect that the ULC or PUC no longer has any members.

(3) Without prejudice to any contrary provision of—

- (a) the resolution for, or any other resolution relevant to, the reduction of company capital, or
- (b) the ULC’s or PUC’s constitution,

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a reserve arising from the reduction of a ULC’s or PUC’s company capital is to be

treated for all purposes as a realised profit.

Application of section 114 in relation to PULCs

1252. In its application to this Part, *section 114* shall apply as if each reference in it to the acquisition and holding of shares in a company included, in a case where the holding company is a PULC, a reference to becoming, and being, a member of the company otherwise than by means of acquiring and holding shares. 5

Making of distributions unrestricted in the case of unlimited companies

1253. Neither the provisions of *Chapter 7* of *Part 3* nor any rule of law on the making of distributions out of a company's assets shall apply in relation to an unlimited company.

Uncertificated transfer of securities

1254. *Sections 1087 to 1089* shall apply to securities of a PUC or a PULC as they apply to securities of a PLC. 10

CHAPTER 4

Corporate governance

Directors

1255. An unlimited company shall have at least 2 directors. 15

Limitation on number of directorships

1256. For the purposes of this Part *section 142* shall apply as if the following subsection were substituted for *subsection (1)*:

“(1) A person shall not, at a particular time, be a director of more than— 20
(a) 25 unlimited companies (of whatever type), or
(b) 25 companies, one, or more than one, of which is an unlimited company (of whatever type) and one, or more than one, of which is any other type of company capable of being wound up under this Act.”. 25

Membership of a PULC

1257. (1) The subscribers to the memorandum of association of a PULC shall be deemed to have agreed to become members of the PULC, and, on its registration, shall be entered as members in its register of members.

(2) Such other persons—
(a) being persons—
(i) whom the directors admit to membership; or
(ii) who are admitted to membership, pursuant to provisions that the constitution 30

may contain in that behalf, whether provisions that—

- (I) provide a separate power to; or
 - (II) supplement or limit, or exclude,
- any power of the directors in that regard;

and

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- (b) whose names are entered in its register of members,
shall be members of the PULC.

(3) The articles of a PULC shall state the number of members with which the company proposes to be registered.

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(4) Where a PULC has increased the number of its members beyond the registered number, it shall, within 15 days after the date on which the increase was resolved on or took place, deliver particulars of the increase to the Registrar.

(5) If default is made in complying with *subsection (4)*, the PULC and any officer of it who is in default shall be guilty of a category 4 offence.

(6) The articles of a PULC may state the maximum number of persons who may be members of the PULC, subject to the power of the directors to register an increase in the number of members.

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(7) A member may resign his or her membership by serving notice to that effect upon the directors at the registered office of the PULC, such notice to expire no earlier than the date of service of the notice of resignation.

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(8) Save where the constitution of a PULC provides otherwise, the directors may require a member to resign his or her membership by serving notice upon the member terminating his or her membership to expire no earlier than the date of service of the notice of termination.

(9) Save where the constitution of a PULC provides otherwise, every member shall have one vote.

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(10) The death of a member shall terminate his or her membership.

Personation of member: offence

1258. If any person falsely and deceitfully personates any member of a PULC and thereby—

(a) receives or endeavours to receive any money due to any such member, or

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(b) votes at any meeting as if the person were the true and lawful member,

he or she shall be guilty of a category 2 offence.

Register of members

1259. *Section 169* shall apply to a PULC with the following modifications:

(a) the following paragraph shall be substituted, in *subsection (1)*, for *paragraph (a)*:

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“(a) the names and addresses of the members;”;

and

- (b) subsection (5) shall be omitted.

Unlimited company may not dispense with holding of a.g.m.

1260. Section 175(3) and (4) (which relate to dispensing with the holding of an annual general meeting) shall not apply to an unlimited company. 5

Application of section 193 in relation to an unlimited company

1261. Section 193 shall apply to an unlimited company as if, in subsection (1), after “Notwithstanding any provision to the contrary in this Part or in Parts 1 to 3 or 5 to 14”, there were inserted “and unless the constitution provides otherwise”.

CHAPTER 5

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Financial statements, annual return and audit

Definitions (Chapter 5)

1262. In this Chapter—

“designated ULC” has the meaning assigned to it by section 1271;

“non-designated ULC” means a ULC that is not a designated ULC. 15

Non-application of Part 6 to unlimited companies that are credit institutions or insurance undertakings

1263. Part 6 shall not apply to an unlimited company that is a credit institution or an insurance undertaking—

- (a) to the extent provided by regulations made under section 3 of the European Communities Act 1972 to give effect to Community acts on accounts of credit institutions and insurance undertakings, respectively, or
(b) to the extent provided by any other enactment.

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Requirement for corporate governance statement and modification of certain provisions of Parts 5 and 6 as they apply to PUCs and PULCs

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1264. Chapter 3 of Part 23 has effect in relation to, amongst other companies, a PUC and a PULC that have debentures admitted to trading on a regulated market in an EEA state.

Application of section 297 to a PULC

1265. Section 297 shall apply to a PULC as if the following paragraph were substituted for paragraph (a) of subsection (8): 30

“(a) any debentures or other debt securities of the company or any shares, debentures or other debt securities of a subsidiary undertaking have been admitted to trading on a regulated market in an EEA state; or”.

Disclosures by unlimited company that is a credit institution

1266. In addition to its having effect in relation to a public limited company, *section 1120* shall have effect in relation to an unlimited company.

Disclosure of membership changes in PULC's financial statements

1267. *Section 318* (details of authorised share capital, allotted share capital and movements) shall not apply in relation to the financial statements of a PULC but where there are changes in the interests of members of a PULC in the financial year to which the financial statements of the PULC relate then particulars of those changes shall be given in the notes to those financial statements.

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Disapplication of sections 325(1)(c) and 329 to a PULC

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1268. *Sections 325(1)(c)* and 329 shall not apply to a PULC.

Application of section 362 to an ULC and obligation on other unlimited companies to have their financial statements audited

1269. (1) *Section 362* shall apply to an ULC as if the words “(in so far as applicable to a private company limited by shares)”, in each place where they occur, were omitted and the cases specified in that section in which the audit exemption, as referred to in *section 358(1)* or (2), as the case may be, is not available to a company, or a holding company and its subsidiary undertakings, included a case in which the company or holding company, as appropriate, is a credit institution or an insurance undertaking.

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(2) The directors of a PUC shall arrange for the statutory financial statements of the PUC for a financial year to be audited by statutory auditors.

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(3) The directors of a PULC shall arrange for the statutory financial statements of the PULC for a financial year to be audited by statutory auditors.

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Qualification of section 338 in the case of a PULC

1270. *Section 338* (circulation of statutory financial statements) shall apply to a PULC with the following modifications:

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- (a) in *subsection (1)(a)*, there shall be substituted “(but only if that person is entitled to receive notices of general meetings of the company)” for “(whether that person is or is not entitled to receive notices of general meetings of the company)”; and
- (b) in *subsection (1)(b)*, there shall be substituted “(but only if that person is so entitled)” for “(whether that person is or is not so entitled)”.
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No requirement to deliver financial statements, etc., with annual return in the case of certain ULCs

1271. (1) Other than in the case of a designated ULC, *sections 347* and *348* (which require documents to be annexed to annual return) shall not apply to an ULC.

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(2) In this section “designated ULC” means—

- (a) an ULC all of the members of which are—

- (i) companies registered under this Act limited by shares or guarantee or existing such companies,
 - (ii) bodies not governed by the law of the State but equivalent to those referred to in *subparagraph (i)*, or
 - (iii) any combination of the types of bodies referred to in *subparagraphs (i)* and *(ii)*,
- or
- (b) an ULC all of the members of which are—
 - (i) unlimited companies—
 - (I) the membership of each of which is comprised only of bodies falling within *paragraph (a)(i), (ii) or (iii)*, and
 - (II) that are governed by the laws of one or more Member States,
 - (ii) partnerships, all the partners of which are bodies that—
 - (I) fall within *paragraph (a)(i), (ii) or (iii)*, and
 - (II) are governed by the laws of one or more Member States,
 - (iii) bodies governed by the laws of one or more Member States that are of a form comparable to those referred to in *subparagraph (i)* or *(ii)*, or
 - (iv) any combination of the types of bodies referred to in the preceding subparagraphs of this paragraph and *subparagraphs (i)* and *(ii)* of *paragraph (a)*.

Application of section 392 to a PULC

1272. *Section 392* (report to Registrar and Director: accounting records) shall apply to a PULC with the substitution, in *subsection (6)*, of “its members” for “its shareholders”.

Application of section 393 to a PULC

1273. *Section 393* (report to Registrar and Director: category 1 and 2 offences) shall apply to a PULC with the substitution, in *subsection (4)*, of “its members” for “its shareholders”.

Documents to be annexed to annual return of non-designated ULC

- 1274.** (1) The statutory auditors of a non-designated ULC shall prepare, and furnish to the directors of the company, a separate report which—
 - (a) confirms that the statutory auditors audited the financial statements of the company for the relevant financial year, and
 - (b) includes within it the report made by them to the members of the company pursuant to *section 391* on those financial statements.
- (2) Where a report is prepared in accordance with *subsection (1)* there shall be attached to the annual return of the non-designated ULC a copy of the report that satisfies the following conditions—

- (a) it is a true copy of the original save for the difference that the signature or signatures on the original, and any date or dates thereon, shall appear in typeset form on the copy, and
- (b) it is accompanied by a certificate of a director and the secretary of the non-designated ULC, that bears the signature of the director and the secretary in electronic or written form, stating that the copy is a true copy of the original (and the foregoing statement need not be qualified on account of the difference permitted by *paragraph (a)* as to the form of a signature or of a date).
- (3) In *subsection (4)*—
- “electronic means” means those provided for under the Electronic Commerce Act 2000 and effected in compliance with any requirements of the Registrar of the kind referred to in sections 12(2)(b) and 13(2)(a) of that Act; 10
- “required documents” means the copy of the report referred to in *paragraph (a)* of *subsection (2)*, accompanied by the certificate referred to in *paragraph (b)* of that subsection; 15
- “required period” means the period referred to in *section 343(2)* or *(3)*, as the case may be, or, where that period stands extended in accordance with *section 343(5)* and *(6)*, that period as it stands so extended.
- (4) Where a non-designated ULC makes its annual return by electronic means to the Registrar within the required period then, notwithstanding that the required documents have not been attached to the annual return, the annual return shall be deemed to have been delivered to the Registrar within the required period with the foregoing documents attached to it if those documents are delivered to the Registrar within 28 days after the date on which the annual return has been delivered to the Registrar by electronic means. 20 25
- (5) This section shall not apply if the non-designated ULC is entitled to, and has availed itself of, the audit exemption conferred by *Chapter 15* or *16* of *Part 6* in the financial year concerned.

CHAPTER 6

Winding up

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Liability as contributories of past and present members

- 1275.** (1) Subject to *subsection (2)*, in the event of an unlimited company being wound up, every present and past member shall be liable to contribute to the assets of the unlimited company to an amount sufficient for payment of its debts and liabilities, and the costs, charges and expenses of the winding up, and for the adjustment of the rights of the contributories among themselves. 35
- (2) The following qualifications apply in relation to *subsection (1)*:
- (a) a past member shall not be liable to contribute if he or she has ceased to be a member for one year or more before the commencement of the winding up;
- (b) a past member shall not be liable to contribute in respect of any debt or liability of the unlimited company contracted after he or she ceased to be a member; 40

- (c) a past member shall not be liable to contribute unless it appears to the court that the existing members are unable to satisfy the contributions required to be made by them in pursuance of this Act;
- (d) nothing in this Act shall invalidate any provision contained in any policy of insurance or other contract whereby the liability of individual members on the policy or contract is restricted, or whereby the funds of the unlimited company are alone made liable in respect of the policy or contract; 5
- (e) a sum due to any member of the unlimited company, in his or her character of a member, by way of distributions, profits or otherwise, shall not be deemed to be a debt of the company, payable to that member in a case of competition between himself or herself and any other creditor not a member of the unlimited company, but any such sum may be taken into account for the purpose of the final adjustment of the rights of the contributories among themselves. 10

Payment of debts due by contributory to the unlimited company and extent to which set-off allowed

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1276. (1) The court may make an order requiring any contributory for the time being on the list of contributories to pay, in a manner directed by the order, any money due from him or her or from the estate of the person whom he or she represents to the unlimited company, exclusive of any money payable by him or her or the estate by virtue of any call in pursuance of this Act. 20

(2) The court in making any such order may allow to the contributory by way of set-off any sum due to the contributory or to the estate which the contributory represents from the unlimited company on any independent dealing or contract with the company, but not any money due to him or her as a member of the company in respect of any dividend or profit. 25

(3) When all the creditors are paid in full, any money due on any account whatever to a contributory from the unlimited company may be allowed to him or her by way of set-off against any subsequent call.

CHAPTER 7

Examinerships

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Petitions for examinerships

1277. *Section 510* shall apply to an unlimited company as if the following subsections were substituted for subsections (2) and (3):

- “(2) Where the company referred to in *section 509* is an insurer or the holding company of an insurer, a petition may be presented only by the Central Bank, and subsection (1) shall not apply to the company. 35
- (3) Where the company referred to in *section 509* is—
 - (a) a credit institution or the holding company of a credit institution,
 - (b) a company which one or more trustee savings banks have been reorganised into pursuant to an order under section 57 of the 40

Trustee Savings Banks Act 1989, or

(c) a company which a building society has converted itself into under Part XI of the Building Societies Act 1989,

a petition may be presented only by the Central Bank, and *subsection (1)* shall not apply to the company.”.

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CHAPTER 8

Investigations

Application of section 747(2) to PUCs and PULCs

1278. (1) *Section 747(2)* shall apply to a PUC as if the following paragraph were substituted for paragraph (b):

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“(b) not less than 100 members of the company;”.

(2) *Section 747(2)* shall apply to a PULC as if—

(a) the following paragraph were substituted for paragraph (b):

“(b) not less than 100 members of the company;”;

and

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(b) paragraph (c) were omitted therefrom.

CHAPTER 9

Public offers of securities, market abuse, etc.

Application of Chapters 1, 2 and 4 of Part 23 to PUCs and PULCs

1279. *Chapters 1, 2 and 4 of Part 23*, so far as they are applicable to companies other than public limited companies, shall apply to a PUC and a PULC.

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PART 20

RE-REGISTRATION

CHAPTER 1

Interpretation

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Interpretation (Part 20)

1280. (1) In this Part—

“resultant company” means the company that a company re-registering becomes on the issue to the latter of a certificate of incorporation under *section 1282(6)*;

“resultant company type” means the type of company specified in the special resolution of a company under *section 1282(1)* as being the type of company which it

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wishes to be re-registered as;

“statement of compliance” shall be read in accordance with *section 1282(4)(c)*;

“type of company” means a company of a type that may be formed and registered under this Act.

- (2) A word or expression used in this Part that is defined in a preceding Part of this Act shall, unless expressly provided otherwise, have the meaning given to it by that preceding Part. 5

CHAPTER 2

General provisions as to re-registration

Company may re-register as another company type

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- 1281.** (1) This Part permits a company, subject to compliance with certain requirements, to re-register as another type of company.

- (2) This Part is in addition to—

(a) the provisions of *Chapter 6 of Part 2* requiring or enabling an existing private company (within the meaning of *Part 2*) to re-register as a designated activity company limited by shares during the period specified in that Chapter, 15

(b) the provisions of *sections 1042 and 1043* concerning the re-registration of a PLC as another type of company where the effect of the PLC cancelling its own shares will be that the nominal value of the PLC’s allotted share capital is brought below the authorised minimum. 20

Procedure generally for re-registration

- 1282.** (1) Subject to *section 1283* and *Chapter 3*, a company may be re-registered as another type of company only if—

(a) a special resolution of the company, complying with *subsection (2)*, that it should be so re-registered is passed, and 25

(b) an application for the purpose, in the prescribed form and signed by a director or secretary of the company, is delivered to the Registrar together with the documents specified in *subsection (4)*.

- (2) The special resolution shall—

(a) alter the company’s constitution so that it states that the company is to be a company of the type that the company wishes to be re-registered as, 30

(b) make such other alterations in the company’s constitution as are necessary to bring it in substance and in form into conformity with the requirements of this Act with respect to the constitution of the resultant company type, and

(c) make such other alterations in the company’s constitution as are requisite in the circumstances. 35

- (3) Without prejudice to the generality of *subsection (2)*, where the resultant company

type is a private company limited by shares, the alteration required by that subsection shall include the replacement of the memorandum and articles of the re-registering company by a constitution in conformity with *section 19* and *Schedule 1* (but nothing in this section authorises the alteration of the rights and obligations of members of the re-registering company, or of other persons, as set out in its memorandum and articles and, accordingly, where necessary, the foregoing replacement constitution shall include such supplemental regulations as will secure those rights and obligations).

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(4) The documents referred to in *subsection (1)* are—

(a) a copy of the special resolution that the company should re-register as another type of company,

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(b) a copy of the constitution of the company as altered by the resolution,

(c) a statement in the prescribed form (in this Part referred to as a “statement of compliance”) by a director or secretary of the company that the requirements of this Part as to re-registration as another type of company have been complied with by the company, including the passing of the special resolution for re-registration.

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(5) The Registrar may accept the statement of compliance as sufficient evidence that the special resolution has been duly passed and the other conditions of this Part for re-registration have been satisfied and that the company is entitled to be re-registered as the type of company concerned.

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(6) If, on an application for re-registration of a company as another type of company under *subsection (1)*, the Registrar is satisfied that a company is entitled to be so re-registered, the Registrar shall—

(a) retain the application and the other documents delivered to him or her under this Part, and

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(b) issue to the company a certificate of incorporation in respect of it, being a certificate of incorporation that—

(i) is altered to meet the circumstances of the case, and

(ii) states that it is issued on re-registration of the company and the date on which it is issued.

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(7) Upon the issue to a company of a certificate of incorporation on re-registration under *subsection (6)*—

(a) the company shall, by virtue of the issue of that certificate, become a company of the type described in the certificate, and

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(b) any alterations in the constitution set out in the special resolution shall take effect accordingly.

(8) A certificate of incorporation issued on re-registration to a company under *subsection (6)* shall be conclusive evidence—

(a) that the requirements of this Part as to re-registration and of matters precedent and incidental thereto have been complied with, and

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(b) that the company is the type of company which is set out in the certificate,

and, accordingly, the law applicable to the resultant company type shall, on and from the issue of the certificate, apply to the company.

- (9) The re-registration of a company as another type of company pursuant to this Part shall not affect any rights or obligations of the company or render defective any legal proceedings by or against the company, and any legal proceedings which might have been continued or commenced against it in its former status may be continued or commenced against it in its new status. 5
- (10) For the avoidance of doubt, references in *Part 6*, and in particular *section 349* (which exempts a company from having to annex financial statements to its first annual return), to the incorporation of a company are references to its original incorporation. 10

Additional statements required of company that is to have a share capital on its re-registration

1283. (1) In addition to the requirements of *section 1282*, in the case of a company, being a company which does not have a share capital, that proposes to re-register as a company which does have share capital, there shall, as part of the application under that section, be delivered to the Registrar— 15

- (a) a statement under *subsection (2)* — in this section referred to as a “statement of initial shareholdings”, and
- (b) a statement under *subsection (3)* — in this section referred to as a “statement of share capital”. 20

(2) The statement of initial shareholdings shall state with respect to each member of the company—

- (a) the number and nominal value of the shares to be taken by him or her on re-registration, and
- (b) the amount (if any) payable in respect of each share on re-registration, whether on account of the nominal value or by way of a premium. 25

(3) The statement of share capital—

(a) shall, if the resultant company will be other than a private company limited by shares, state with respect to the company’s share capital to be allotted on re-registration— 30

- (i) the total number of shares of the company,
- (ii) the aggregate nominal value of those shares,
- (iii) for each class of shares—

(I) the total number of shares of that class,

(II) the aggregate nominal value of shares of that class, and

(III) the amount paid up and the amount (if any) unpaid on each share (whether on account of the nominal value of the share or by way of premium); 35

or

- (b) if the resultant company will be a private company limited by shares, state either (depending on whether it is to have an authorised share capital or not)—
- (i) the particulars specified in *paragraph (a)(i)* to *(iii)*, or
 - (ii) that the share capital of the company shall, at the time of its re-registration, stand divided into shares of the fixed amount specified in the copy of the constitution delivered under *section 1282* and such of the other particulars specified in *paragraph (a)* as, having regard to that intended position, the circumstances permit to be stated.

PLC's resolution to re-register as a private company limited by shares or DAC may be cancelled by court

1284. (1) Subject to *subsection (2)*, where a special resolution by a PLC to be re-registered as a private company limited by shares or a designated activity company has been passed, an application to the court for the cancellation of the resolution may be made by—

- (a) the holders of not less in the aggregate than 5 per cent in nominal value of the PLC's issued share capital or any class of the PLC's issued share capital (disregarding any shares held by the PLC as treasury shares), or
 - (b) not less than 50 of the PLC's members.
- (2) An application shall not be made under this section by any person who has consented to or voted in favour of the resolution.
- (3) An application under this section shall be made within 28 days after date on which the resolution was passed and may be made on behalf of the persons entitled to make the application by such one or more of their number as they may appoint in writing for the purpose.
- (4) If an application is made under this section—
- (a) the PLC shall forthwith give notice of that fact to the Registrar, and
 - (b) within 15 days after the date of the court making its order on the application, or such longer period as the court may at any time direct, the PLC or the resultant company shall deliver to the Registrar a certified copy of the order.
- (5) On the hearing of an application under this section, the court shall make an order either cancelling or confirming the resolution.
- (6) The powers of the court on an application under this section extend to—
- (a) providing that the re-registration, notwithstanding the confirmation, shall not take effect unless such terms and conditions as the court thinks fit and specifies are satisfied,
 - (b) if it thinks fit, adjourning the proceedings in order that an arrangement may be made to the satisfaction of the court for the purchase of the interests of dissentient members, and
 - (c) giving such directions and making such order as it thinks expedient for facilitating or carrying into effect any such arrangement.
- (7) Without prejudice to the generality of *subsection (6)*, the order of the court may, if the

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- court thinks fit—
- (a) provide for the purchase by the PLC or the resultant company of the shares of any of its members and for the reduction accordingly of the PLC's or the resultant company's company capital, and
 - (b) make such alteration in the PLC's or the resultant company's constitution as may be required in consequence of that provision, and such a purchase may be so ordered notwithstanding anything in *section 102*. 5
- (8) Where an order under this section requires the PLC or the resultant company not to make any, or any specified, alterations in its constitution, then, notwithstanding anything in this Act, but subject to the provisions of the order, the PLC or the resultant company shall not have power, without the leave of the court, to make any such alteration in contravention of that requirement. 10
- (9) Any alteration in the constitution of a company (whether the PLC or the resultant company) made by virtue of an order under this section, other than one made by resolution of the company, shall be of the same effect as if duly made by resolution of the company, and the provisions of this Act shall apply to the constitution as so altered accordingly. 15
- (10) If a company (whether the PLC or the resultant company) fails to comply with *subsection (4)*, the company and any officer of it who is in default shall be guilty of a category 3 offence. 20

Re-registration upon reduction of company capital of a PLC

- 1285.** (1) If—
- (a) the court makes an order confirming a reduction of the company capital of a PLC, and
 - (b) that reduction has the effect of bringing the nominal value of the company's allotted share capital below the authorised minimum, 25
the court may authorise the PLC to be re-registered as another type of company without its having passed a special resolution for that purpose.
- (2) Where the court makes an order authorising a PLC to so re-register, the court shall specify in the order the alterations in the PLC's constitution to be made in connection with that re-registration. 30
- (3) In its application to a PLC that applies to be re-registered as another type of company in pursuance of an authority given under *subsection (1)*, this Part shall have effect with the following modifications—
- (a) references in *section 1282* to the special resolution of the company shall be read as references to the order of the court under *subsection (1)*, 35
 - (b) *section 1282(1)(a)* and *(2)* shall not apply and, in the event of an application to re-register the PLC as a private company limited by shares, *section 1287(a)* shall not apply, and, in the event of an application to re-register the PLC as a designated activity company, *section 1295(1)(a)* or *1296(1)(a)*, as the case may be, shall not apply, and 40

(c) *section 1282(6)* shall be read as if the following were substituted for all the words preceding paragraphs (a) and (b) of it:

“(6) On receipt of an application for re-registration under this section made in pursuance of an order of the court under *section 1285(1)*, the Registrar shall—”.

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CHAPTER 3

Special requirements for re-registration

What this Chapter does and references to relevant *Chapter 2* requirements

1286. (1) This Chapter—

(a) makes provision in the following cases, namely—

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- (i) a case in which an application is not made under *section 1284*; and
- (ii) a case in which an application is made under that section;

and, in the latter case, the provision made by this Chapter is by reference to the particular course that the application takes; and

(b) specifies requirements, additional to those in *Chapter 2*, that must be complied with in certain cases before a re-registration may be effected.

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(2) In this Chapter a reference to the relevant *Chapter 2* requirements is a reference to—

(a) subject to paragraph (b), the requirements of *section 1282*,

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(b) in the case of a company that does not have a share capital and that proposes to re-register as a company that does have share capital, the requirements of *sections 1282 and 1283*.

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Particular requirements for re-registration as a private company limited by shares

1287. A company may be re-registered as a private company limited by shares if, in addition to compliance by the company with the relevant *Chapter 2* requirements, the following requirements are complied with—

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(a) where the company is a PLC—

(i) the period during which an application under *section 1284* for the cancellation of the special resolution has expired without any such application having been made, or

(ii) where such an application has been made, the application has been withdrawn, or

(iii) either—

(I) an order, not falling within clause (II), has been made under *section 1284* confirming the resolution, or

(II) if an order has been made under that section confirming the resolution but providing that re-registration shall not take effect unless specified

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terms and conditions are satisfied, those terms and conditions are satisfied,

and, in either case, a certified copy of that order has been delivered to the Registrar,

and

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(b) where the company is an unlimited company, the special resolution required by *section 1282(1)(a)* includes a statement that the liability of the members of the resultant company is to be limited by shares and—

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- (i) if the resultant company is to have an authorised share capital, specifying what is to be that authorised share capital and the fixed amount of the shares into which that share capital is to be divided, or
- (ii) if the resultant company is not to have an authorised share capital, specifying the fixed amount of the shares into which the company's share capital is to be divided.

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Particular requirements for re-registration of company as a PLC

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1288. (1) A company may be re-registered as a PLC if, in addition to compliance by the company with the relevant *Chapter 2* requirements and *section 1289*, the following requirements are complied with—

(a) the company delivers the following documents to the Registrar:

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(i) a copy of a balance sheet of the company prepared as at a date not more than 7 months before the date on which the application for re-registration is received by the Registrar;

(ii) an unqualified report by the company's statutory auditors on that balance sheet;

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(iii) a copy of a written statement by the statutory auditors of the company that, in their opinion, that, at the balance sheet date, the amount of the company's net assets was not less than the aggregate of its called-up share capital and undistributable reserves; and

(iv) a copy of any report prepared under *section 1289*,

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(b) the statement of compliance includes a statement by a director or secretary of the company confirming that, between the balance sheet date and the date of the making by the company of the application for re-registration, there has been no change in the financial position of the company that has resulted in the amount of the company's net assets becoming less than the aggregate of its called-up share capital and undistributable reserves, and

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(c) where the company is an unlimited company, the special resolution required by *section 1282(1)(a)* includes a statement that the liability of the members of the resultant company is to be limited by shares and specifying what is to be the authorised share capital of the resultant company and the fixed amount of the shares into which that share capital is to be divided.

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(2) The Registrar shall not, on foot of the application to re-register a company as a PLC,

- issue a certificate of incorporation under *section 1282(6)* if it appears to the Registrar that—
- (a) by, either of the means specified in *section 84(2)*, a reduction of the company's company capital has taken place after the date of the passing of the special resolution that the company should be re-registered as a PLC, and 5
 - (b) the reduction has the effect of bringing the nominal value of the company's allotted share capital below the authorised minimum.
- (3) A qualification shall be treated for the purposes of the definition of an "unqualified report" in *subsection (6)* as being not material in relation to any balance sheet if, but only if, the person making the report states in writing that the thing giving rise to the qualification is not material for the purposes of determining, by reference to that balance sheet, whether, at the balance sheet date, the amount of the company's net assets was not less than the aggregate of its called-up share capital and undistributable reserves. 10
- (4) For the purposes of the making, in relation to the foregoing balance sheet, of a report falling within the definition of an "unqualified report" in *subsection (6)*, *section 290* and the other relevant provisions of *Part 6* (so far as applicable to balance sheets as distinct from the other elements of financial statements) shall be deemed to have effect in relation to that balance sheet with the following modifications. 15
- (5) Those modifications are such modifications as are necessary by reason of the fact (if such is the case) that that balance sheet is prepared otherwise than in respect of a financial year. 20
- (6) In this section—
- "undistributable reserves" has the same meaning as in *section 1084*;
 - "unqualified report" means, in relation to the balance sheet of a company, a report stating without material qualification— 25
- (a) that, in the opinion of the person making the report, the balance sheet complies with *section 290* and the other relevant provisions of *Part 6* (so far as applicable to balance sheets as distinct from the other elements of financial statements); and 30
 - (b) without prejudice to paragraph (a), that in the opinion of that person, the balance sheet gives a true and fair view of the company's assets, liabilities and equity as at the balance sheet date.
- Requirements as to share capital of a company applying to re-register as a PLC**
- 1289.** (1) Subject to *subsection (2)*, a company shall not be re-registered under this Part as a PLC unless, at the time the special resolution that the company should be re-registered as a PLC is passed— 35
- (a) the nominal value of the company's allotted share capital is not less than the authorised minimum,
 - (b) each of its allotted shares is paid up at least as to one-quarter of the nominal value of that share and the whole of any premium on it, 40
 - (c) where any share in the company or any premium payable on it has been fully or

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- partly paid up by an undertaking given by any person that that person or another should do work or perform services for the company or another, the undertaking has been performed or otherwise discharged, and
- (d) where shares have been allotted as fully or partly paid up to their nominal value or any premium payable on them otherwise than in cash and the consideration for the allotment consists of or includes an undertaking (other than one to which paragraph (c) applies) to the company either—
- (i) that undertaking has been performed or otherwise discharged, or
- (ii) there is a contract between the company and any person pursuant to which that undertaking must be performed within 5 years after that time.
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- (2) Subject to subsection (3), any share allotted by the company—
- (a) which was allotted prior to 13 October 1986, or
- (b) which was allotted in pursuance of an employees' share scheme and by reason of which the company would, but for this subsection, be precluded under subsection (1)(b), but not otherwise, from being re-registered as a PLC,
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- may be disregarded for the purpose of determining whether subsection (1)(b) to (d) is complied with in relation to the company, and a share so disregarded shall be treated for the purposes of subsection (1)(a) as if it were not part of the allotted share capital of the company.
- (3) A share shall not be disregarded by virtue of subsection (2)(a) if the aggregate in nominal value of that share and the other shares which it is proposed so to disregard is more than one-tenth of the nominal value of the company's allotted share capital (not including any share disregarded by virtue of subsection (2)(b)).
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- Shares allotted by company applying to re-register as PLC between balance sheet date and passing of special resolution**
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- 1290.** (1) This section applies where—
- (a) shares are allotted by a company applying to re-register as a PLC between the balance sheet date and the passing of the special resolution to re-register, and
- (b) those shares have been allotted as fully or partly paid up as to their nominal value, or any premium on them, otherwise than in cash.
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- (2) Where this section applies the company shall not make an application for re-registration as a PLC under this Part unless, before the making of the application—
- (a) the consideration for the allotment referred to in subsection (1) has been valued in accordance with the provisions of Chapter 3 of Part 17 that are applied by this section, and
- (b) a report with respect to the consideration's value has been made to the company in accordance with those provisions during the 6 months immediately preceding the date of that allotment,
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- but this is subject to subsection (4).
- (3) Without prejudice to subsection (4), the following provisions of Chapter 3 of Part 17,
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namely—

- (a) *section 1030(5) to (11)*,
- (b) *section 1031(4)*, and
- (c) *section 1032*,

shall apply for the purposes of this section as they apply for the purposes of subsection (1) of *section 1030* and as if the references in them to that subsection (1) were references to subsection (2) of this section and with any other necessary modifications.

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- (4) The provisions of *Chapter 3* of *Part 17* that operate to disapply the requirement under *section 1030(1)* for a valuation of the consideration referred to in that provision to be carried out (and the making of a report thereon) shall operate to disapply the requirement under subsection (2) for a valuation of the consideration referred to in that subsection to be carried out (and the making of a report thereon).
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- (5) For the purpose of those foregoing provisions (as they operate by virtue of the preceding subsection), those provisions shall apply as if the references in them to subsection (1) of *section 1030* were references to subsection (2) of this section and with any other necessary modifications.
- (6) In this section “balance sheet date” means the date as of which the balance sheet referred to in *section 1288(1)(a)* is prepared.

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Application of certain other provisions of *Part 17* on allotments to a company that passed resolution for re-registration

1291. *Sections 1027 to 1035 and 1038, 1039 and 1040* shall apply to a company which has passed and not revoked a resolution that the company be re-registered a PLC as those sections apply to a PLC.

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Power of unlimited company to provide for reserve share capital on re-registration

1292. An unlimited company having a share capital may, by its special resolution for re-registration as a limited company in pursuance of this Part, do either or both of the following things:

- (a) increase the nominal amount of its share capital by increasing the nominal amount of each of its shares, but subject to the condition that no part of the increased capital shall be capable of being called up, except in the event and for the purposes of the company being wound up;
- (b) provide that a specified portion of its uncalled share capital shall not be capable of being called up except in the event and for the purposes of the company being wound up.

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Particular requirements for re-registration of limited company as unlimited

1293. (1) A limited company may be re-registered as an unlimited company if, in addition to compliance by the company with the relevant *Chapter 2* requirements, all the members of it have assented to its being so re-registered and the following

requirements are complied with—

- (a) the company delivers to the Registrar—

- (i) the prescribed form of assent to the company's being re-registered as an unlimited company subscribed to by, or on behalf of, all members of the company, and
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(ii) subject to *subsection (2)*, the financial statements specified in *subsection (3)* and the report specified in *subsection (6)*,

and

- (b) the statement of compliance includes confirmation by a director or secretary of the company that—
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- (i) the persons by whom, or on whose behalf, the form of assent referred to in *paragraph (a)* is subscribed constitute the whole membership of the company, and

(ii) if any of the members have not, themselves, subscribed that form, that the directors have taken all reasonable steps to satisfy themselves that each person who subscribed it on behalf of a member was lawfully empowered to do.
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- (2) *Subsection (1)(a)(ii)* does not apply if—

- (a) within the period of 3 months prior to the date of the application to re-register, the company has delivered to the Registrar, in accordance with *Part 6*, an annual return with the financial statements required by that Part annexed to it, or
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- (b) the company was incorporated in that period of 3 months.

- (3) The financial statements referred to in *subsection (1)(a)(ii)* are financial statements of the company covering a period that—
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- (a) ends on a date that is not more than 3 months prior to the date of the application to re-register, and

(b) subject to *subsection (4)*, is of at least 12 months duration.

- (4) If, by reason of the company's recent incorporation, it is not possible for the duration of the foregoing period — that will be covered by the foregoing financial statements — to be one of 12 months, then the period covered by them shall be a period beginning on the date of the company's incorporation and ending on the first-mentioned date in *subsection (3)(a)*.
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- (5) The provisions of *Part 6* as the form and content of, and the notes to accompany, the financial statements required by that Part shall apply to the financial statements specified in *subsection (3)*.
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- (6) Unless the company would be entitled to avail itself of the audit exemption conferred by *Chapter 15* or *16* of that Part in respect of financial statements that are required to be prepared by that Part (being statements that would cover the period covered by the financial statements specified in *subsection (3)*), the provisions of *Part 6* as to the auditing of financial statements required to be prepared by that Part shall apply to the financial statements specified in *subsection (3)*; accordingly there shall accompany
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the latter statements that are delivered to the Registrar a report of the company's statutory auditors on them that complies with *Part 6*.

(7) For the purposes of this section—

(a) subscription to a form of assent by the personal representative of a deceased member of a company shall be deemed to be subscription by the member, 5

(b) an assignee in bankruptcy of a person who is a member of a company shall, to the exclusion of that person, be deemed to be a member of the company.

(8) Where a company is re-registered as an unlimited company, a person who at the time when the application for it to be re-registered was delivered to the Registrar, was a past member of the company and did not thereafter again become a member thereof shall not, in the event of the company's being wound up, be liable to contribute to the assets of the company more than he or she would have been liable to contribute thereto had it not been so-registered. 10

(9) *Subsection (10)* applies if the provisions of *Part 6* on abridged financial statements (being statements that would cover the period covered by the financial statements specified in *subsection (3)*) could be availed of by the company with respect to the financial statements required by that Part to be prepared. 15

(10) Where this subsection applies, then the provisions of *Part 6* on abridged financial statements may be availed of by the company with respect to the financial statements specified in *subsection (3)* and those provisions shall have effect accordingly and the reference in *subsection (6)* to a report of the company's statutory auditors shall, if those provisions are availed of by the company, be read as a reference to a special report of those auditors referred to in *section 356*. 20

Particular requirements for re-registration of company as a CLG

1294. (1) A company may be re-registered as a company limited by guarantee if, in addition to compliance by the company with the relevant *Chapter 2* requirements, the following requirements are complied with— 25

(a) where the company is a company with a share capital, all the members of it have assented to its being re-registered as a company limited by guarantee and the conditions specified in *subsection (2)* are satisfied, and 30

(b) where the company is an unlimited company, in addition to the requirements of paragraph (a), the special resolution required by *section 1282(1)(a)* includes a statement that the liability of the members of the resultant company is to be limited as provided for in the relevant alterations of its constitution made by that resolution. 35

(2) The conditions referred to in *subsection (1)(a)* are—

(a) the company delivers to the Registrar the prescribed form of assent to the company's being re-registered as a company limited by guarantee subscribed to by, or on behalf of, all members of the company,

(b) the statement of compliance includes confirmation by a director or secretary of the company that— 40

- (i) the persons by whom, or on whose behalf, the form of assent referred to in *paragraph (a)* is subscribed constitute the whole membership of the company, and
- (ii) if any of the members have not, themselves, subscribed that form, that the directors have taken all reasonable steps to satisfy themselves that each person who subscribed it on behalf of a member was lawfully empowered to do,
- and
- (c) unless the position concerning the allotted share capital of the company, at the date of the application for re-registration, is as referred to in *subsection (3)*, the court, on application to it by the company in that behalf, sanctions its re-registration as a company limited by guarantee and gives directions as to how its company capital is to be treated in the framework of the resultant company.
- (3) The position mentioned in *subsection (2)(c)*, concerning the company's allotted share capital, is that the following conditions are satisfied—
- (a) no amount is paid up on it, and
- (b) its nominal value does not exceed the aggregate maximum amount that the company's shareholders, who become members of the resultant company on the issue of the certificate of incorporation under *section 1282(6)*, would be liable to pay by virtue of the latter company's memorandum were the latter immediately then to be wound up.
- (4) For the purposes of this section—
- (a) subscription to a form of assent by the personal representative of a deceased member of a company shall be deemed to be subscription by the member,
- (b) an assignee in bankruptcy of a person who is a member of a company shall, to the exclusion of that person, be deemed to be a member of the company.

Particular requirements for re-registration of company as a DAC limited by shares

1295. (1) A company may be re-registered as a DAC limited by shares if, in addition to compliance by the company with the relevant *Chapter 2* requirements, the following requirements are complied with:

- (a) where the company is a PLC—
- (i) the period during which an application under *section 1284* for the cancellation of the special resolution has expired without any such application having been made, or
- (ii) where such an application has been made, the application has been withdrawn, or
- (iii) either—
- (I) an order, not falling within *clause (II)*, has been made under *section 1284* confirming the resolution, or
- (II) if an order has been made under that section confirming the resolution

but providing that re-registration shall not take effect unless specified terms and conditions are satisfied, those terms and conditions are satisfied,

and, in either case, a certified copy of that order has been delivered to the Registrar;

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and

- (b) where the company is an unlimited company, the special resolution required by *section 1282(1)(a)* includes a statement that the liability of the members of the resultant company is to be limited by shares and specifying what is to be the authorised share capital of the resultant company and the fixed amount of the shares into which that share capital is to be divided.

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Particular requirements for re-registration of company as a DAC limited by guarantee

1296. (1) A company may be re-registered as a DAC limited by guarantee if, in addition to compliance by the company with the relevant *Chapter 2* requirements, the following requirements are complied with—

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- (a) where the company is a PLC—

(i) the period during which an application under *section 1284* for the cancellation of the special resolution has expired without any such application having been made, or

(ii) where such an application has been made, the application has been withdrawn, or

(iii) either—

(I) an order, not falling within *clause (II)*, has been made under *section 1284* confirming the resolution, or

(II) if an order has been made under that section confirming the resolution but providing that re-registration shall not take effect unless specified terms and conditions are satisfied, those terms and conditions are satisfied,

and, in either case, a certified copy of that order has been delivered to the Registrar,

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- (b) where the company is an unlimited company, the special resolution required by *section 1282(1)(a)* includes a statement that the liability of the members of the resultant company is to be limited as provided for in the relevant alterations of its constitution made by that resolution, and

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- (c) where the company is a company with a share capital, all the members of it have assented to its being re-registered as a DAC limited by guarantee and the conditions specified in *subsection (2)* are satisfied.

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(2) The conditions referred to in *subsection (1)(c)* are—

- (a) the company delivers to the Registrar the prescribed form of assent to the company's being re-registered as a DAC limited by guarantee subscribed to by, or

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- on behalf of, all members of the company,
- (b) the statement of compliance includes confirmation by a director or secretary of the company that—
- (i) the persons by whom, or on whose behalf, the form of assent referred to in *paragraph (a)* is subscribed constitute the whole membership of the company, and
 - (ii) if any of the members have not, themselves, subscribed that form, that the directors have taken all reasonable steps to satisfy themselves that each person who subscribed it on behalf of a member was lawfully empowered to do,
- and
- (c) unless the position concerning the allotted share capital of the company, at the date of the application for re-registration, is as referred to in *subsection (3)*, the court, on application to it by the company in that behalf, sanctions its re-registration as a DAC limited by guarantee and gives directions as to how its company capital is to be treated in the framework of the resultant company.
- (3) The position mentioned in *subsection (2)(c)*, concerning the company's allotted share capital, is that the following conditions are satisfied—
- (a) no amount is paid up on it, and
 - (b) its nominal value does not exceed the aggregate maximum amount that the company's shareholders, who become members of the resultant company on the issue of the certificate of incorporation under *section 1282(6)*, would be liable to pay by virtue of the latter company's memorandum were the latter immediately then to be wound up.
- (4) For the purposes of this section—
- (a) subscription to a form of assent by the personal representative of a deceased member of a company shall be deemed to be subscription by the member,
 - (b) an assignee in bankruptcy of a person who is a member of a company shall, to the exclusion of that person, be deemed to be a member of the company.

PART 21

EXTERNAL COMPANIES

CHAPTER 1

Preliminary

Interpretation (Part 21)

1297. (1) In this Part—

“1968 Directive” means Council Directive No. 68/151/EEC of 9 March 1968;

“1989 Directive” means Council Directive No. 89/666/EEC of 21 December 1989;	
“accounting documents” means, in relation to a financial year of an external company, the following documents—	
(a) the company’s accounts for that period, including, if it has one or more subsidiaries, any consolidated accounts of the group;	5
(b) any annual report of the directors of the company for that period;	
and <i>subsections (2)</i> and <i>(3)</i> supplement this definition;	
“branch” has the same meaning as it has in the 1989 Directive;	
“certified” means certified by—	
(a) a director or secretary of the external company before any of the persons or other bodies specified in <i>paragraphs (b)</i> to <i>(d)</i> ;	10
(b) any person authorised to take statutory declarations;	
(c) any notary or notary public;	
(d) a court;	
in the prescribed manner to be a true copy or a correct translation;	15
“constitutive documents”, in relation to an external company, means its memorandum of association and articles of association or its charter, statutes or other instrument constituting or defining its constitution;	
“credit or financial institution” means a credit institution or financial institution to which Council Directive 89/117/EEC of 13 February 1989 applies;	20
“EEA company” means a body corporate whose members’ liability in respect of such body corporate is limited, which is incorporated in a state (other than the State) that is an EEA state;	
“external company” means an EEA company or a non-EEA company;	
“financial year” in relation to an external company, means the period for which the external company prepares its accounts in accordance with the law of the state in which it is incorporated;	25
“non-EEA company” means a body corporate whose members’ liability in respect of such body corporate is limited, which is incorporated in a state that is not an EEA state.	30
(2) Subject to <i>subsection (3)</i> , “documents”, in the definition of “accounting documents” in <i>subsection (1)</i> , means documents as audited in accordance with the laws of the state in which the external company is incorporated and, accordingly, “documents” in that definition includes the report of the auditors on—	
(a) the accounts referred to in <i>paragraph (a)</i> of it, and	35
(b) any directors’ annual report referred to in <i>paragraph (b)</i> of it.	
(3) <i>Subsection (2)</i> does not apply if—	
(a) in a case where the external company is an EEA company, the foregoing accounts	

have not (in circumstances permitted by the relevant Community act) been audited in accordance with the laws of the EEA state concerned, or

- (b) in a case where the external company is a non-EEA company, the foregoing accounts have not (in circumstances permitted by the laws of the state concerned) been audited in accordance with those laws.

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Application to external companies of certain provisions of *Parts I to 14*

1298. (1) In this section “relevant external company” means an external company that satisfies the following conditions—

- (a) either—

(i) after the commencement of this section, a branch in the State is established by the external company, or

(ii) immediately before that commencement, a branch in the State stands established by it,

and

(b) subject to *subsection (2)(b)*, the foregoing branch is not subsequently closed, or has not otherwise ceased to be established in the State, at the time this section falls to be applied.

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(2) For the purposes of *subsection (1)*—

(a) in relation to the application of *Part 7* by this section, the relevant time that this section falls to be applied at shall be taken to be the time of the creation by the company of the charge, the acquisition by it of the property or the creation of the judgment mortgage referred to in *subsection (4)(a), (b) or (c)*, as the case may be, and

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(b) in relation to the application of *Part 13* by this section, it suffices, for a company to be a relevant external company, that it satisfies the condition specified in paragraph (a) of *subsection (1)*.

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(3) *Section 132* shall apply to a relevant external company as it applies to a company referred to in *section 132*.

(4) Subject to *subsection (5)*, *Part 7* shall apply to—

(a) charges on property in the State which are created after the commencement of this section by a relevant external company,

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(b) charges on property in the State which is acquired after that commencement by such a company, and

(c) judgment mortgages created after that commencement and affecting property in the State of such a company,

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as that Part applies to charges created, or charges on property acquired, by a company referred to in that Part or, as the case may be, judgment mortgages affecting property of a company so referred to.

(5) Without prejudice to the application generally of the provisions of *Part 7* by

- subsection (4) and, in particular, the consequence of a charge being void under section 409(1), the following provisions of that Part, namely, sections 409(3) and (4) and 410(2), may not, with respect to a charge created by a relevant external company, be availed of by the company or a person referred to in section 410(2) unless the company has complied with, as the case may be—*
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- (a) *section 1299(1) and (2), or*
 - (b) *section 1299(1) and (2) as applied by section 1301.*
- (6) Subject to *subsection (7), Parts 13 and 14* (other than *section 798*) shall apply to a relevant external company as *Part 13 and 14*, as the case may be, applies to a company referred to in that Part.
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- (7) The following provisions have effect as regards the foregoing application of *Parts 13 and 14*—
- (a) in *section 747*—
 - (i) *paragraphs (a) to (d)* (which confer standing on certain persons to apply to have one or more competent inspectors appointed to investigate the affairs of a company) of *subsection (2)* shall not apply, and
 - (ii) the following shall be substituted for *paragraph (e)* of *subsection (2)*:
 “(e) a person who is a creditor of the company, but only if the person is the company’s creditor by reference to a liability which has arisen under and by virtue of business carried on in the State by the company.”;
 - (b) *section 763* (investigation of share dealing by inspector appointed by Director) shall not apply;
 - (c) in *section 797* (court may order compliance by company or officer) “officer” shall include the one or more persons authorised by the relevant external company to ensure compliance with this Part;
 - (d) references to an insolvent company in *Chapters 3, 5 and 6 of Part 14* shall be read as including references to a relevant external company that is insolvent if, but only if, the latter is an unregistered company (within the meaning of *Chapter 3 of Part 22*) that is being wound up pursuant to that Chapter;
 - (e) for the avoidance of doubt, the reference in *subsection (6)* to a company referred to in *Part 14*— so far as it is in *Chapter 3, 4, 5 or 6* of that Part that the reference occurs — includes, as well as a private company limited by shares, any other company referred to in *section 819(6)* where the following is the context—
 - (i) the context of the reference in *section 819(1)* to a person’s being appointed or acting as a director or secretary of a company, or taking part in the formation or promotion of a company;
 - (ii) the context of *section 825*;
 - (iii) the context of *section 838*;
 - (iv) the context of a provision that otherwise imposes a restriction on a company by reference to the fact of its having a restricted person (within the meaning
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- of section 826) or otherwise makes provision in consequence of that fact; and
- (v) the context of a provision that otherwise makes provision in consequence of a person's being disqualified (within the meaning of section 838);
 - (f) in section 879(1), for "Parts 1 to 13 or Part 15" there shall be substituted "Parts 1 to 13 or Part 15 or 22";
 - (g) in section 880(1), for "Parts 1 to 13 or Part 15" there shall be substituted "Parts 1 to 13 or Part 15 or 22"; and
 - (h) the principal place of business in the State of the relevant external company shall be deemed to be its registered office.
- (8) This section is in addition to section 1307(2) and (3) (which relate to the application of sections 270 and 271 to external companies and certain persons having responsibilities in relation to them). 10

CHAPTER 2

Filing obligations of external companies

- Filing obligations of EEA company** 15
- 1299.** (1) An EEA company that establishes a branch in the State shall, within 30 days after the date of its doing so, deliver to the Registrar a certified copy of its constitutive documents.
- (2) An EEA company that establishes a branch in the State shall, within 30 days after the date of its doing so, notify the Registrar of, or as the case may be, deliver to the Registrar (in either case in the prescribed manner) the following particulars or matters— 20
- (a) its name and legal form and the name of the branch if that is different from its name;
 - (b) a copy of its certificate of incorporation;
 - (c) the address of the branch;
 - (d) the activities at the branch;
 - (e) the place of registration of the company and the number under which it is registered;
 - (f) a list of its directors and secretary and any other persons who are authorised to represent the company in dealings with third parties and in legal proceedings together with the following particulars relating to each such person: 30
- (i) present forename and surname and any former forename and surname;
 - (ii) date of birth;
 - (iii) usual residential address;
 - (iv) nationality;
 - (v) business occupation, if any; 35

- (vi) particulars of any other directorships of bodies corporate, whether incorporated in the State or elsewhere, held by that person; and
- (vii) the extent of that person's powers in relation to the activities of the branch;
- (g) the name and addresses of some one or more persons resident in the State who is or are—
- (i) authorised to accept service of documents required to be served on the EEA company, and
- (ii) authorised to ensure compliance with the provisions of this Part together with a consent signed by each such person to act in that capacity;
- (h) unless it is a credit or financial institution, copies of its latest accounting documents, that is to say the latest accounting documents—
- (i) prepared in relation to a financial year of the company (in accordance with the laws of the EEA state in which it is incorporated), and
- (ii) made public (in accordance with those laws) before the end of the period allowed for compliance with *subsection (1)* in respect of the branch, or if earlier, the date on which the company complies with *subsection (1)* in respect of the branch.
- (3) An EEA company that establishes a branch in the State shall also deliver to the Registrar, in the prescribed manner, the following documents and notices within 30 days after the date of the occurrence of the event concerned, namely—
- (a) any document making or evidencing an alteration in its constitutive documents,
- (b) every amended text of its constitutive documents,
- (c) notice of a change among the persons referred to in *subsection (2)(f)* or *(g)* or in any of the particulars relating to such persons, specifying the date of the change,
- (d) notice of a change in the address referred to in *subsection (2)(c)* together with the new address of the branch,
- (e) notice of the winding up of the company, the appointment of one or more liquidators, particulars concerning them and their powers and the termination of the winding up in accordance with disclosure by the company as provided for in Article 2(1)(h), (j) and (k) of the 1968 Directive and particulars concerning insolvency proceedings, arrangements, compositions or any analogous proceedings to which the company is subject, and
- (f) notice of the closure of the branch or its otherwise ceasing to be established in the State.
- (4) *Section 149(12)* shall apply for the purposes of *subsection (2)(f)*.
- (5) The reference in *subsection (2)(h)* to a copy of an accounting document is a reference to a copy that satisfies the following conditions—
- (a) it is a true copy of the original save for the difference that the signature or signatures on the original, and any date or dates thereon, shall appear in typeset form on the copy; and

- (b) it is accompanied by a certificate of a director and the secretary of the company, that bears the signature of the director and the secretary in electronic or written form, stating that the copy is a true copy of the original (and one such certificate relating to all of the accounting documents mentioned in *subsection (2)* suffices and the foregoing statement need not be qualified on account of the difference permitted by *paragraph (a)* as to the form of a signature or of a date).
- (6) The documents and information referred to in *subsection (2)*, and in *subsection (3)*, other than *paragraphs (a)* and *(b)* of that subsection, shall be made available by the Registrar to the system of interconnection of registers.
- (7) For the purposes of communications between registers (through the system of interconnection of registers) the Registrar shall assign a unique identifier to each branch which shall include elements to identify the branch as a branch in the State, to identify the number assigned to the branch in the register and other appropriate elements to avoid identification errors.
- (8) On receipt of information, through the system of interconnection of registers, that an EEA company, that has established a branch or branches in the State, has been struck off the register in the state in which it is incorporated, the Registrar shall, without delay, delete from the register the documents and information delivered or notified under this section or any other provision of this Chapter in relation to the company but not in any case in which the company has been so struck off as a result of any change in the legal form of the company, a merger or division, or a cross border transfer of its registered office.
- (9) If *subsection (1)*, *(2)* or *(3)* is not complied with by an EEA company, the company and any officer of it who is in default shall be guilty of a category 3 offence.

Accounting documents to be filed by EEA company

- 1300.** (1) Subject to *subsection (7)*, for so long as a branch of it stands established in the State, an EEA company shall in each year deliver to the Registrar, in the prescribed manner, the following documents.
- (2) Those documents are a copy of the accounting documents, for the financial year concerned, that the EEA company is required to cause to be prepared, and to be made public, in accordance with the laws of the EEA state in which it is incorporated.
- (3) Those accounting documents shall be so delivered to the Registrar not later than 30 days after the last date upon which the EEA company was required to cause such accounting documents to be made public in accordance with the laws of the EEA state in which it is incorporated.
- (4) The reference in *subsection (2)* to a copy of an accounting document is a reference to a copy that satisfies the following conditions—
- (a) it is a true copy of the original save for the difference that the signature or signatures on the original, and any date or dates thereon, shall appear in typeset form on the copy, and
- (b) it is accompanied by a certificate of a director and the secretary of the company, that bears the signature of the director and the secretary in electronic or written form, stating that the copy is a true copy of the original (and one such certificate

- relating to all of the accounting documents mentioned in *subsection (2)* suffices and the foregoing statement need not be qualified on account of the difference permitted by *paragraph (a)* as to the form of a signature or of a date).
- (5) If this section is not complied with by an EEA company, the company and any officer of it who is in default shall be guilty of a category 3 offence. 5
 - (6) Without prejudice to the generality of *subsections (1)* and *(2)* of *section 865*, summary proceedings in relation to an offence under this section may be brought and prosecuted by the Registrar.
 - (7) This section shall not apply to a company that is a credit or financial institution.

Filing obligations of non-EEA company

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1301. (1) If a non-EEA company establishes a branch in the State, the same requirements under *section 1299(1)* and *(2)* as apply to an EEA company's doing so shall apply to the non-EEA company and, accordingly, *section 1299(1)* and *(2)* shall apply to the non-EEA company, but with the following modifications.

- (2) Those modifications are that— 15

- (a) the following paragraph shall be substituted for *paragraph (e)* of *section 1299(2)*:
“(e) if the law of the state in which the company is incorporated requires entry in a register, the place of registration of the company and the number under which it is registered;”;

and 20

- (b) the following paragraphs shall be substituted for *paragraph (h)* of *section 1299(2)*:

“(h) unless it is a credit or financial institution, copies of its latest accounting documents, that is to say the latest accounting documents— 25

- (i) prepared in relation to a financial year of the company (in accordance with the laws of the state in which it is incorporated), and

- (ii) made public (in accordance with those laws), or, if not required by those laws to be made public, prepared as so mentioned, before the end of the period allowed for compliance with *subsection (1)* in respect of the branch, or if earlier, the date on which the company complies with *subsection (1)* in respect of the branch, 30

- (i) each of the following so far as not ascertainable from its constitutive documents— 35

- (i) the company's principal place of business,

- (ii) the company's objects, and

- (iii) the place where the company is incorporated.”.

(3) A non-EEA company that establishes a branch in the State shall also deliver to the Registrar, in the prescribed manner, within 30 days after the date of the occurrence of the particular event referred to in <i>section 1299(3)(a)</i> to <i>(d)</i> or, as appropriate, <i>paragraph (b)</i> or <i>(c)</i> of this subsection—	
(a) any document or notice referred to in <i>section 1299(3)(a)</i> to <i>(d)</i> ,	5
(b) notice of the winding up of the company, the appointment of one or more liquidators, particulars concerning them and their powers and the termination of the winding up and particulars concerning insolvency proceedings, arrangements, compositions or any analogous proceedings to which the company is subject, and	
(c) notice of the closure of the branch or its otherwise ceasing to be established in the State.	10
(4) <i>Section 1299(4)</i> (application of <i>section 149(12)</i>) applies for the purposes of <i>section 1299(2)(f)</i> as the latter has effect in relation to a non-EEA company by virtue of this section.	
(5) <i>Section 1299(5)</i> applies for the purposes of <i>section 1299(2)(h)</i> as the latter has effect in relation to a non-EEA company by virtue of this section.	15
(6) If <i>section 1299(1)</i> or <i>(2)</i> (as applied by this section), or <i>subsection (3)</i> , is not complied with by a non-EEA company, the company and any officer of it who is in default shall be guilty of a category 3 offence.	
Accounting documents to be filed by non-EEA company	20
1302. (1) Subject to <i>subsection (10)</i> , for so long as a branch of it stands established in the State, a non-EEA company shall in each year deliver to the Registrar, in the prescribed manner, the following documents.	
(2) Those documents are a copy of the accounting documents, for the financial year concerned, that the non-EEA company is required to cause to be prepared, and, if such be the case, to be made public, in accordance with the laws of the state in which it is incorporated, but this is subject to <i>subsections (3)</i> and <i>(4)</i> .	25
(3) If there is no requirement, under the laws of the state in which it is incorporated, that accounting documents be caused to be prepared by it, the non-EEA company shall, subject to <i>subsection (10)</i> , for each year in which a branch of it stands established as mentioned in <i>subsection (1)</i> —	30
(a) cause to be prepared in accordance with—	
(i) Council Directive 78/660/EEC and, where appropriate, Council Directive 83/349/EEC, or	
(ii) international financial reporting standards,	35
accounts and a directors' annual report on them, and	
(b) unless the circumstances are such that auditing of those accounts is not required by the relevant Community act, cause those accounts and that annual report to be audited in accordance with Directive 2006/43/EC.	
(4) If a non-EEA company to which <i>subsection (2)</i> applies so opts, there may, instead of	40

the accounting documents referred to in that subsection, be delivered by it, in the prescribed manner, to the Registrar—

(a) a copy of the accounts, and a directors' annual report on them, prepared as mentioned in *subsection (3)* (being accounts and such a report that have been audited as mentioned in *paragraph (b)* of that subsection unless the exception in that paragraph applies), and

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(b) a copy of the auditor's report on those accounts and that annual report unless the foregoing exception applies.

(5) A copy of the accounting documents or accounts and other documents referred to in *subsection (2)* or *(4)*, as the case may be, shall be delivered to the Registrar not later than 30 days after—

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(a) subject to *paragraph (b)*—

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(i) in the case of those accounting documents, the last date on which, in accordance with the laws of the state in which it is incorporated, the non-EEA company was required to make public such accounting documents, or

(ii) in the case of the accounts and other documents referred to in *subsection (4)*, the last date on which, in accordance with those laws, the non-EEA company would have been required to make those accounts and other documents public were they accounting documents referred to in *subsection (2)*,

and

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(b) if there is no requirement, under the laws of the state in which it is incorporated, that the non-EEA company cause to be published accounting documents that have been prepared by it, the date on which the preparation of those accounting documents or accounts and other documents is completed.

(6) In the case of a non-EEA company to which *subsection (3)* applies, a copy of the accounts and the directors' annual report referred to in that subsection and the auditor's report, if any, thereon, shall be delivered to the Registrar not later than 30 days after the date on which their preparation is completed.

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(7) *Section 1300(4)* applies for the purposes of the construction of references in this section to a copy of accounting documents or accounts and other documents as it applies for the purpose of the construction of the reference to a copy of accounting documents in *section 1300(2)*.

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(8) If this section is not complied with by a non-EEA company, the company and any officer of it who is in default shall be guilty of a category 3 offence.

(9) Without prejudice to the generality of *subsections (1)* and *(2)* of *section 865*, summary proceedings in relation to an offence under this section may be brought and prosecuted by the Registrar.

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(10) This section shall not apply to a company that is a credit or financial institution.

Return of capital by non-EEA company

1303. (1) Subject to *subsection (2)*, a non-EEA company shall, at the same time as it delivers to the Registrar the accounting documents or accounts and other documents referred to

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in *section 1302*, deliver to the Registrar a statement, in the prescribed form, indicating the amount of the called up share capital of the company as of a date not earlier than 2 months before the date of the statement's delivery.

- (2) *Subsection (1)* shall not apply where the information which would be contained in the foregoing statement is contained in the documentation referred to in *section 1299(1)* as applied by *section 1301(1)*. 5

CHAPTER 3

Disclosure in certain business documents and translation of documents

Disclosure on letters and order forms

1304. (1) For so long as a branch of an EEA company stands established in the State, every letter and order form that issues from or in respect of that branch shall bear the following particulars: 10

- (a) the place of registration of the company and the number under which it is registered;
 - (b) the name of the company (if different from the name of its branch), its legal form and the address of its registered office; 15
 - (c) in the case of a company which is being wound up, the fact that that is so; and
 - (d) the fact that the branch is registered in the State and the number under which it is registered in the office of the Registrar.
- (2) If on any foregoing letter or order form there is reference to the share capital of the EEA company, the company shall ensure that the reference is not stated otherwise than as a reference to the paid-up share capital of the company. 20

(3) For so long as a branch of a non-EEA company stands established in the State, every letter and order form that issues from or in respect of that branch shall bear the following particulars— 25

- (a) the name of the company (if different from the name of its branch);
- (b) if the law of the state in which the company is incorporated requires entry in a register, the place of the registration of company and the number under which it is registered; and
- (c) the fact that the branch is registered in the State and the number under which it is registered in the office of the Registrar. 30

(4) If on any foregoing letter or order form there is reference to the share capital of the non-EEA company, the company shall ensure that the reference is not stated otherwise than as a reference to the paid-up share capital of the company.

(5) If *subsection (1)* or *(2)* is not complied with by an EEA company, the company and any officer of it who is in default shall be guilty of a category 3 offence. 35

(6) If *subsection (3)* or *(4)* is not complied with by a non-EEA company, the company and any officer of it who is in default shall be guilty of a category 3 offence.

Translation of documents

1305. (1) Every document required to be delivered or notified by an external company to the Registrar under any of *sections 1299 to 1302* shall, if it is not in the Irish or English language, have annexed to it a certified translation of it in the Irish or English language. 5

(2) In any case of a discrepancy between the text, in its original language, of a document referred to in *subsection (1)* and the certified translation of it annexed as required by that subsection, the latter may not be relied upon by the external company against a third party. A third party may, nevertheless, rely on that translation against the external company, unless the company proves that the third party had knowledge of the text of the document in its original language. 10

(3) In *subsection (2)*, “third party” means a person other than the external company or a member, officer or employee of it.

CHAPTER 4

Service of documents

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Service of documents

1306. (1) Subject to *subsection (2)*, any document required to be served on an external company referred to in *section 1299 or 1301* shall be sufficiently served if addressed to any person particulars of whom have been delivered to the Registrar under *section 1299(2)(g)* (or, as the case may be, that provision as applied by *section 1301*) and left at or sent by post to the address which has been so delivered. 20

(2) A document may be served on an external company referred to in *section 1299 or 1301* by leaving it at or sending it by post to any branch established by it in the State—

(a) where the external company makes default in delivering to the Registrar the particulars of a person resident in the State who is authorised to accept, on behalf of the company, service of the document, or 25

(b) if at any time all the persons whose particulars have been so delivered are dead or have ceased to so reside, or refuse to accept service on behalf of the external company, or for any reason it cannot be served.

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(3) This section shall cease to apply to an external company on the expiration of 2 years after the date on which it has delivered the notice referred to in *section 1299(3)(f)* or, as the case may be, *section 1301(3)(c)*.

(4) If notice of a change among the persons referred to in *section 1299(2)(g)* or in any of the particulars relating to such persons has been delivered by the company concerned to the Registrar in accordance with this Part, then the references in this section to any person, particulars in respect of whom have been delivered to the Registrar under the provision referred to in *subsection (1)*, shall be read having regard to the position that obtains in consequence of that change as so notified. 35

CHAPTER 5

Compliance

Duty of securing compliance with this Part

1307. (1) The duty of securing compliance by an external company with this Part shall, without prejudice to the duty of the external company concerned, also lie upon the one or more persons authorised by the external company to ensure compliance with this Part. 5
- (2) *Sections 270 and 271* shall apply to an external company.
- (3) If any person authorised, as mentioned in *subsection (1)*, by an external company would not otherwise be regarded as an officer of it for the purposes of *sections 270 and 271*, such a person shall be deemed to be an officer of the external company for the purposes of those sections. 10

PART 22

UNREGISTERED COMPANIES AND JOINT STOCK COMPANIES

CHAPTER 1

Application of Act to unregistered companies

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Application of certain provisions of Act to unregistered companies

1308. (1) Subject to *subsections (2) to (7)*, the provisions specified in *Schedule 14* shall apply to all bodies corporate incorporated in and having a principal place of business in the State as if they were companies registered under this Act. 20
- (2) The foregoing provisions shall not apply by virtue of this section to any of the following bodies—
- (a) any body corporate incorporated by or registered under any public general statute,
 - (b) any body corporate not formed for the purpose of carrying on a business which has for its objects the acquisition of gain by the body or by the individual members thereof, 25
 - (c) any body corporate which is prohibited by statute or otherwise from making any distribution of its income or property among its members while it is a going concern or when it is being wound up, and
 - (d) any body corporate for the time being exempted by a direction given by the Minister for the purposes of this section, 30
- each of which is referred to in this section as an “excluded body”.
- (3) The foregoing provisions shall apply also in like manner in relation to any unincorporated body of persons entitled by virtue of letters patent to any of the privileges conferred by the Chartered Companies Act 1837 and not registered under any other public general statute but subject to the like exceptions as are provided for 35

in the case of bodies corporate by *paragraphs (b), (c) and (d)* of *subsection (2)* (and any such incorporated body that is the subject of any of those exceptions is also referred to in this section as an “excluded body”).

(4) *Subsections (5) and (6)* operate to—

(a) extend the effect of a certain provision (being a provision that excludes the application of provisions of this Act to public limited companies), or 5

(b) exclude the application of certain provisions of this Act,

to a body depending on whether it has, or, as the case may be, has not the status of a body that has securities admitted to trading on a regulated market in an EEA state (and a body that has securities admitted to such trading is referred to in those subsections as a “traded body”). 10

(5) The provisions of *section 1004* that exclude the application of a provision of *Parts 1 to 14* to a public limited company shall (in so far as that provision would otherwise apply to a traded body by virtue of this section) operate to exclude the application of that provision to a traded body. 15

(6) In addition to the exceptions contained in *subsection (2)*, the following provisions specified in *Schedule 14*, namely—

(a) the several provisions of *Part 17*, and

(b) *Part 23*, shall not apply to a body unless it is a traded body.

(7) This section shall not repeal or revoke, in whole or in part, any enactment, charter or other instrument constituting or regulating any body in relation to which the foregoing provisions are applied by virtue of this section, but in relation to any such body, the operation of any such enactment, charter or instrument shall be suspended in so far as it is inconsistent with any of the foregoing provisions as they apply for the time being to that body. 20 25

(8) A body referred to in this section (other than an excluded body or one to which *subsection (9)* applies) and which has not already done so, shall forthwith deliver to the Registrar a certified copy of the charter, statutes, memorandum and articles or other instrument constitution or defining the constitution of the body.

(9) A body referred to in this section (other than an excluded body) and which comes into existence on or after the commencement of this section shall, within 3 months after the date of its coming into existence, deliver to the Registrar a certified copy of the charter, statutes, memorandum and articles or other instrument constituting or defining the constitution of the body. 30

(10) If default is made by a body in complying with *subsection (8)* or *(9)*, the body and any officer of it who is in default shall be guilty of a category 3 offence. 35

(11) In this section “public general statute” means an Act (as defined in section 2(1) of the Interpretation Act 2005) that either—

(a) was passed after 6 December 1922, not being—

(i) a private Act of the Oireachtas of Saorstát Éireann, or 40

(ii) a private Act of the Oireachtas;

or

(b) was passed on or before 6 December 1922, not being—

- (i) a private Act, or
- (ii) a local and personal Act,

of the parliament concerned.

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Minister's power to make regulations in relation to *Schedule 14*

1309. (1) The Minister may, if he or she considers it necessary to do so in the interests of the orderly and proper regulation of the business of the bodies referred to in *section 1308* (not being bodies referred to in that section as excluded bodies), make regulations adding to, or subtracting from, the list of the provisions of this Act specified in *Schedule 14*.

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(2) Where it is proposed to make a regulation under this section a draft of the proposed regulation shall be laid before each House of the Oireachtas and the regulation shall not be made until a resolution approving of the draft has been passed by each such House.

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CHAPTER 2

Registration of certain bodies (other than joint stock companies) as companies

Definitions (*Chapter 2*)

1310. In this Chapter—

“registration date” shall be read in accordance with *section 1319(2)*;

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“registration resolution” shall be read in accordance with *section 1312(1)*.

Registration as a company of body to which *section 1308(1)* applies

1311. (1) A body corporate specified in *subsection (1)* of *section 1308*, not being—

(a) a body referred to in that section as an excluded body, or

(b) a joint stock company within the meaning of *Chapter 5*,

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may apply to be registered under this Chapter as—

(i) a private company limited by shares,

(ii) a designated activity company,

(iii) a public limited company,

(iv) a company limited by guarantee, or

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(v) an unlimited company,

but this is subject to the provisions of Chapter and the appropriate requirements under the applicable Part of this Act being satisfied.

- (2) Registration on foot of such an application shall not be invalid by reason that it has taken place with a view to the company's being wound up.
- (3) Notwithstanding anything in this Part and, in particular, the definition of "joint stock company" in *Chapter 5*, subsection (1) applies to, amongst other bodies corporate, the Governor and Company of the Bank of Ireland and *Chapter 5* shall not apply to the latter body corporate. 5

Requirements for registration under this Chapter as company

- 1312.** (1) A body corporate shall not be registered under this Chapter as any particular type of company referred to in *section 1311* without the assent (in this Chapter referred to as a "registration resolution") to its registration as that type of company given by a majority of such of its members as, being entitled so to do, vote in person or, where proxies are allowed, by proxy at a general meeting summoned for the purpose. 10
- (2) In computing any majority under this section, when a poll is demanded, regard shall be had to the number of votes to which the member is entitled according to the regulations of the body corporate concerned. 15
- (3) Before a registration resolution is moved, a statement in accordance with subsection (4) shall be sent, 21 days before the date of the moving of the resolution, by the body corporate concerned to every member of it entitled to notice of the meeting of it at which the registration resolution is to be moved.
- (4) Every statement required by subsection (3) shall— 20
- (a) state the type of company that the body corporate is proposed to be registered as,
 - (b) state the name of the proposed company,
 - (c) state the reasons for the proposal to register,
 - (d) summarise the principal implications of the registration for members; and
 - (e) indicate the place where there may be obtained or inspected, in either case free of charge, the memorandum of association and articles of association of the proposed company that comply, or, if the proposed company is a private company limited by shares, the constitution of it referred to in *section 19* that complies, with the requirements of this Act, 25
- and copies of that memorandum and articles or that constitution shall, accordingly, be made available for such supply or inspection to or by every member entitled to the foregoing notice at the place so indicated. 30
- (5) As long as a document referred to in subsection (4)(e) is also made available for such supply or inspection in hardcopy form, it shall be permissible to include in the foregoing statement, as well as the indication required by subsection (4)(e) concerning the hardcopy form, an indication that that document may be— 35
- (a) inspected on, and
 - (b) downloaded and printed from,
- a website of the body corporate free of charge.
- (6) If an assent of the body corporate's members to such registration has (by means of a 40

registration resolution in accordance with *subsection (1)*) been given, a body corporate may, in the prescribed form, apply to the Registrar to be registered under this Chapter as the type of company concerned.

(7) Such an application shall be made within 30 days after the date of the meeting at which that assent was given. 5

(8) Such an application shall be accompanied by the following documents:

(a) a copy of the statement required by *subsection (3)* and of the registration resolution, each certified by a director or other officer of the body corporate;

(b) a list showing the names and addresses of all persons who, on a date specified in the list (not being more than 28 days before the date on which the application is received by the Registrar) were members of the body corporate, specifying the shares or stock held by them respectively (distinguishing, in cases where the shares or stock are numbered, each share or unit of stock by its number); 10

(c) the nominal share capital of the body corporate and the number of shares into which it is divided, or the amount of stock of which it consists; 15

(d) the number of shares of the body corporate taken and the amount paid on each share; and

(e) the memorandum of association and articles of association of the proposed company.

Particular requirements for registration of body corporate as a PLC

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1313. (1) A body corporate may be registered under this Chapter as a PLC if, in addition to the preceding section and *section 1314* being complied with, the following requirements are complied with—

(a) the body corporate delivers, with the application under *section 1312(6)*, the following documents to the Registrar— 25

(i) a copy of a balance sheet of the body prepared as at a date not more than 7 months before the date of receipt by the Registrar of the application,

(ii) an unqualified report by the body's statutory auditors on that balance sheet,

(iii) a copy of a written statement by those auditors that, at the balance sheet date, the amount of the body's net assets was not, in their opinion, less than the aggregate of its called-up share capital and undistributable reserves, 30

(iv) a copy of any report prepared under *section 1314*, and

(v) a statement by a director or secretary of the body confirming—

(I) that the requirements of *section 1314* and *section 1315(2)* (where applicable) have been complied with, and

(II) that, between the balance sheet date and the date of the making by the body of application for registration, there has been no change in the financial position of the body that has resulted in the amount of the body's net assets becoming less than the aggregate of its called-up share capital and undistributable reserves, 35

and

- (b) where the liability of the members of the body is unlimited, the registration resolution includes a statement that the liability of the members of the proposed company is to be limited by shares and specifying what is to be the authorised share capital of the proposed company and the fixed amount of the shares into which that share capital is to be divided. 5
- (2) The Registrar may accept a statement under *paragraph (a)(v) of subsection (1)* as sufficient evidence that the requirements referred to in *clause (I)* of that provision have been complied with. 10
- (3) The Registrar shall not, on foot of the application to register a body corporate under this Chapter as a PLC, issue a certificate of incorporation under *section 1319* if it appears to the Registrar that—
- (a) by, either of the means specified in *section 84(2)(b)*, a reduction of the body's capital has taken place after the date of the passing of the registration resolution, and 15
- (b) the reduction has the effect of bringing the nominal value of the body's allotted share capital below the authorised minimum.
- (4) A qualification shall be treated for the purposes of the definition of an "unqualified report" in *subsection (7)* as being not material in relation to any balance sheet if, but only if, the person making the report states in writing that the thing giving rise to the qualification is not material for the purposes of determining, by reference to that balance sheet, whether, at the balance sheet date, the amount of the body corporate's net assets was not less than the aggregate of its called-up share capital and undistributable reserves. 20
- (5) For the purposes of the making, in relation to the foregoing balance sheet, of a report falling within the definition of an "unqualified report" in *subsection (7)*, *section 290* and the other relevant provisions of *Part 6* (so far as applicable to balance sheets as distinct from the other elements of financial statements) shall be deemed to have effect in relation to that balance sheet with the following modifications. 25
- (6) Those modifications are such modifications as are necessary by reason of the fact (if such is the case) that that balance sheet is prepared otherwise than in respect of a financial year. 30
- (7) In this section—
- “undistributable reserves” has the same meaning as in *section 1084*;
- “unqualified report” means, in relation to the balance sheet of a body corporate, a report stating without material qualification— 35
- (a) that, in the opinion of the person making the report, the balance sheet complies with *section 290* and the other relevant provisions of *Part 6* (so far as applicable to balance sheets as distinct from the other elements of financial statements); and
- (b) without prejudice to *paragraph (a)*, that in the opinion of that person, the balance sheet gives a true and fair view of the body's assets, liabilities and equity as at the balance sheet date. 40

Requirements as to share capital of body corporate applying to register as a PLC

1314. A body corporate shall not be registered under this Chapter as a PLC unless, at the time the registration resolution is passed—

- (a) the nominal value of the body's allotted share capital is not less than the authorised minimum, 5
- (b) each of its allotted shares is paid up at least as to one-quarter of the nominal value of that share and the whole of any premium on it,
- (c) where any share in the body or any premium payable on it has been fully or partly paid up by an undertaking given by any person that that person or another should do work or perform services for the body or another, the undertaking has been performed or otherwise discharged, and 10
- (d) where shares have been allotted as fully or partly paid up to their nominal value or any premium payable on them otherwise than in cash and the consideration for the allotment consists of or includes an undertaking (other than one to which paragraph (c) applies) to the body either—
 - (i) that undertaking has been performed or otherwise discharged, or
 - (ii) there is a contract between the body and any person pursuant to which that undertaking must be performed within 5 years after that time.15

Shares allotted by body corporate applying to register as PLC between balance sheet date and passing of registration resolution

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1315. (1) This section applies where—

- (a) shares are allotted by a body corporate applying to register under this Chapter as a PLC between the balance sheet date and the passing of the registration resolution, and
 - (b) those shares have been allotted as fully or partly paid up as to their nominal value, or any premium on them, otherwise than in cash. 25
- (2) Where this section applies the body corporate shall not make an application under this Chapter to register as a PLC unless, before the making of the application—
- (a) the consideration for the allotment referred to in subsection (1) has been valued in accordance with the provisions of *Chapter 3 of Part 17* that are applied by this section, and 30
 - (b) a report with respect to the consideration's value has been made to the body in accordance with those provisions during the 6 months immediately preceding the date of that allotment,
- but this is subject to subsection (4). 35
- (3) Without prejudice to subsection (4), the following provisions of *Chapter 3 of Part 17*, namely—
- (a) *section 1030(5) to (11)*,
 - (b) *section 1031(4)*, and

(c) *section 1032,*

shall apply for the purposes of this section as they apply for the purposes of subsection (1) of *section 1030* and as if the references in them to that subsection (1) were references to subsection (2) of this section and with any other necessary modifications.

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(4) The provisions of *Chapter 3* of *Part 17* that operate to disapply the requirement under *section 1030(1)* for a valuation of the consideration referred to in that provision to be carried out (and the making of a report thereon) shall operate to disapply the requirement under subsection (2) for a valuation of the consideration referred to in that subsection to be carried out (and the making of a report thereon).

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(5) For the purpose of those foregoing provisions (as they operate by virtue of the preceding subsection), those provisions shall apply as if the references in them to subsection (1) of *section 1030* were references to subsection (2) of this section and with any other necessary modifications.

(6) In this section “balance sheet date” means the date as of which the balance sheet referred to in *section 1313(1)(a)* is prepared.

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Application of certain other provisions of *Part 17* on allotments to a body that passed resolution for registration as a PLC

1316. *Sections 1027 to 1035 and 1038, 1039 and 1040* shall apply to a body corporate which has passed and not revoked a resolution that the body be registered under this Chapter as a PLC as those sections apply to a PLC.

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Regulations for special cases

1317. (1) With respect to—

(a) an application that may be made by a body corporate, being a body corporate which does not have a share capital, to register under this Chapter as a company which does have a share capital, or

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(b) an application that may be made by a body corporate to register under this Chapter as a company that is not a PLC,

the Minister may make regulations specifying requirements, additional to those contained in the preceding provisions of this Chapter, that must be complied with before the application may be acceded to by the Registrar.

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(2) The requirements that may be so specified may, in the case of an application referred to in subsection (1)(a), include requirements analogous to those in *section 1283*.

(3) Where it is proposed to make a regulation under this section a draft of the proposed regulation shall be laid before each House of the Oireachtas and the regulation shall not be made until a resolution approving of the draft has been passed by each such House.

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Change of name for purposes of registration

1318. (1) Subject to subsection (2), where the name of a body seeking registration under this

Chapter is one by which it may not be so registered by reason of the name being, in the opinion of the Registrar, undesirable, it may, with the approval of the Registrar signified in writing, change its name with effect from its registration under this Chapter.

- (2) The like assent of the members of the body shall be required to the change of name as is by *section 1312(1)* required to the registration under this Chapter. 5

Registration and its effects

1319. (1) On compliance with the requirements of this Chapter with respect to registration, the Registrar shall certify in writing that the body applying for registration is incorporated, on a date specified by the Registrar, as the type of company specified in the application and shall issue to the company a certificate of incorporation in respect of it, and upon the foregoing date the company shall be so incorporated. 10

- (2) In this Chapter, the foregoing date is referred to as the “registration date”. 15

- (3) A certificate issued under this section in respect of a company shall be conclusive evidence that the requirements of this Chapter in respect of registration and of matters precedent and incidental thereto have been complied with and that the company is duly registered under this Act. 15

- (4) On and from the registration date the following provisions have effect:

(a) the provisions of this Act relating to the numbering of shares shall not apply to stock that had been issued, or shares, not numbered, that had been issued, by the company in its former status before that date; 20

(b) for the purposes of any provision of this Act which requires delivery of a document or return to the Registrar, the company shall not be obliged to so deliver any document or return, which relates to the period prior to the registration date, if it would not have been required to deliver such document or return had it not registered as a company; 25

(c) in the event of the company being wound up, every person shall be a contributory, in respect of the debts and liabilities of the company in its former status contracted before the registration date, who is liable to pay or contribute to the payment of— 30

(i) any debt or liability of the company in its former status contracted or incurred before that date,

(ii) any sum for the adjustment of the rights of the members among themselves in respect of any such debt or liability, or

(iii) the costs and expenses of winding up the company, 35

so far as relates to the foregoing debts or liabilities,

(d) in the event of the company being wound up, every contributory shall be liable to contribute to the assets of the company, in the course of the winding up, all sums due from him or her in respect of any such liability as is mentioned in *paragraph (c)*, and, in the event of the death or bankruptcy of any contributory, the provisions of this Act relating to the personal representatives of deceased 40

contributors and to the assignees in bankruptcy of bankrupt contributors, respectively, shall apply.

(5) All property, real and personal (including things in action), belonging to or vested in a body corporate registering under this Chapter as a company, shall, on the registration date, pass to and vest in that company for all the estate and interest of the body corporate therein. 5

(6) Registration under this Chapter shall not affect—

(a) the rights or liabilities of the company in its former status in respect of any debt or obligation incurred, or any contract entered into by, to, with or on behalf of, it in its former status before the registration date, or 10

(b) the priority of any mortgage, charge, pledge or other security or encumbrance created by the company in its former status before the registration date.

(7) All actions and other legal proceedings which, at the registration date, are pending by or against the company in its former status, or any officer or member thereof, may be continued in the same manner as if the registration of it in its new status had not taken place. 15

Supplemental provisions in relation to section 1319

1320. Without prejudice to the generality of *section 1319(4)* to (7), the following provisions shall have effect where a body corporate registers under this Chapter as a company, that is to say— 20

(a) a reference (express or implied) to the body corporate in any instrument made, given, passed, or executed before the registration date shall be read as a reference to the company,

(b) all contracts, agreements, conveyances, mortgages, deeds, leases, licences, other instruments, undertakings and notices (whether or not in writing) entered into by, made with, given to or by, or addressed to the body corporate (whether alone or with any other person) before the registration date and subsisting immediately before the registration date shall, to the extent that they were previously binding on and enforceable by, against, or in favour of the body corporate, be binding on and enforceable by, against, or in favour of the company as fully and effectually in every respect as if, instead of the body corporate, the company had been the person by whom they were entered into, with whom they were made, or to or by whom they were given or addressed as the case may be, 25

(c) an instruction, order, direction, mandate, or authority given to the body corporate and subsisting immediately before the registration date shall be deemed to have been given to the company, 30

(d) a security held by the body corporate as security for a debt or other liability to the body corporate incurred before the registration date shall be available to the company as security for the discharge of that debt or liability and, where the security extends to future or prospective debts or liabilities, shall be available as security for the discharge of debts or liabilities to the company incurred on or after the registration date, and, in relation to a security, the company, shall be entitled to all the rights and priorities (howsoever arising) and shall be subject to 35

- all liabilities to which the body corporate would have been entitled or subject if the body corporate had not become registered as a company,
- (e) all the rights and liabilities of the body corporate as bailor or bailee of documents or chattels shall be vested in and assumed by the company,
 - (f) a negotiable instrument or order for payment of money which, before the registration date is drawn on or given to or accepted or endorsed by the body corporate or payable at a place of business of the body corporate shall, unless the context otherwise requires, have the same effect on and after the registration date as if it had been drawn on or given to or accepted or endorsed by the company instead of the body corporate or was payable at the place of business of the company,
 - (g) nothing effected or authorised by this Chapter—
 - (i) shall be regarded as placing the body corporate, or the company, or any other person, in breach of contract or confidence or as otherwise making any of them guilty of a civil wrong, or
 - (ii) shall be regarded as giving rise to a right to any person to terminate or cancel any contract or arrangement or to accelerate the performance of any obligation, or
 - (iii) shall be regarded as placing the body corporate or the company, or any other person in contravention or breach of any enactment or rule of law or contractual provision prohibiting, restricting or regulating the assignment or transfer of any property or the disclosure of any information, or
 - (iv) shall release any surety, wholly or in part, from any obligation, or
 - (v) shall invalidate or discharge any contract or security.

Consequential repeals

- 1321.** (1) The statutes specified in *Part 1 of Schedule 15* are repealed to the extent specified in the third column of that Part.
- (2) The charters or instruments specified in *Part 2 of Schedule 15* are revoked to the extent specified in the second column of that Part.

CHAPTER 3

Winding up of unregistered company

Chapter 3 — construction of expression “unregistered company”

- 1322.** For the purposes of this Chapter “unregistered company” includes any trustee savings bank licensed under the Trustee Savings Banks Act 1989, any partnership whether limited or not, any association and any company other than—
- (a) a company as defined by *section 2(1)*,
 - (b) a partnership, association or company which consists of less than 8 members and is not formed outside the State.

Restriction of this Chapter

1323. This Chapter is subject to Chapters I (general provisions) and III (secondary insolvency proceedings) of the Insolvency Regulation. 5

Winding up of unregistered companies

1324. (1) Subject to the provisions of this Chapter, any unregistered company may be wound up under *Part II* and all the provisions of *Part II* relating to winding up shall apply to an unregistered company with the exceptions and additions mentioned in this section. 5

(2) The principal place of business in the State of an unregistered company shall, for all the purposes of the winding up, be deemed to be the registered office of the company. 10

(3) No unregistered company shall be wound up under this Act voluntarily. 10

(4) The circumstances in which an unregistered company may be wound up are as follows:

(a) if the company is dissolved or has ceased to carry on business or is carrying on business only for the purpose of winding up its affairs; 15

(b) if the company is unable to pay its debts; 15

(c) if the court is of the opinion that it is just and equitable that the company should be wound up. 15

(5) A petition for winding up a trustee savings bank licensed under the Trustee Savings Banks Act 1989 may be presented by the Minister for Finance as well as by any person authorised under the other provisions of this Act to present a petition for winding up a company. 20 20

(6) Where a company incorporated outside the State which has been carrying on business in the State ceases to carry on business in the State it may be wound up as an unregistered company under this Part notwithstanding that it has been dissolved or otherwise ceased to exist as a company under or by virtue of the laws of the country under which it was incorporated. 25 25

Cases in which unregistered company shall be deemed to be unable to pay its debts

1325. (1) In any of the following 4 cases, that is to say, those to which *subsections (2) to (5)* relate, an unregistered company shall be deemed to be unable to pay its debts for the purposes of this Chapter. 30

(2) This subsection relates to a case in which—

(a) a creditor, by assignment or otherwise, to whom the company is indebted in a sum exceeding €10,000 then due, has served on the company— 35

(i) by leaving at its principal place of business in the State,

(ii) by delivering to the secretary or some director or principal officer of the company, or

(iii) by serving otherwise in such manner as the court may approve or direct,

a demand in writing requiring the company to pay the sum so due, and

- (b) the company has, for 21 days after the date of the service of the demand, neglected to pay the amount or to secure or compound for it to the satisfaction of the creditor.
- (3) This subsection relates to a case in which—
- (a) any action or other proceeding has been instituted against any person who is a member of the company for any debt or demand due, or claimed to be due, from the company or from the person in his or her character as member of it,
 - (b) notice in writing that that action or proceeding has been instituted has been served, by the means referred to in subsection (2)(a)(i), (ii) or (iii), on the company, and
 - (c) the company has not, within 10 days after the date of service of the notice, paid, secured or compounded for the debt or demand or procured the action or proceeding to be stayed or indemnified the defendant to his or her reasonable satisfaction against the action or proceeding and against all costs, damages and expenses to be incurred by the defendant by reason of the action or proceeding.
- (4) This subsection relates to a case in which, in the State or in any state recognised by the Minister for the purposes of section 1412 there has been returned unsatisfied execution or other process issued on a judgement, decree or order obtained in any court in favour of a creditor against—
- (a) the company,
 - (b) any person, being a member of the company, in his or her character as such member, or
 - (c) any person authorised to be sued as nominal defendant on behalf of the company.
- (5) This subsection relates to a case in which it is otherwise proved to the satisfaction of the court that the company is unable to pay its debts.

Contributories in winding up of unregistered company

- 1326.** (1) In the event of an unregistered company being wound up, every person shall be deemed to be a contributory who is liable to pay or contribute to the payment of—
- (a) any debt or liability of the company,
 - (b) any sum for the adjustment of the rights of the members among themselves, or
 - (c) the costs and expenses of winding up the company,
- and every contributory shall be liable to contribute to the assets of the company, all sums due from him or her in respect of any such liability as is mentioned in the preceding paragraphs.
- (2) In the event of the death or bankruptcy of any contributory, the provisions of this Act relating to the personal representatives of deceased contributories and to the assignees in bankruptcy of bankrupt contributories, respectively, shall apply.

Power of court to stay or restrain proceedings

1327. The provisions of this Act relating to staying and restraining actions and proceedings against a company at any time after the presentation of a petition for winding up and before the making of a winding-up order shall, in the case of an unregistered company where the application to stay or restrain is by a creditor, extend to actions and proceedings against any contributory of the company. 5

Actions stayed on winding-up order

1328. Where an order has been made for winding up an unregistered company, no action or proceeding shall be proceeded with or commenced against any contributory of the company in respect of any debt of the company, except by leave of the court and subject to such terms as the court may impose. 10

Provisions of this Chapter to be cumulative

1329. The provisions of this Chapter relating to unregistered companies shall be in addition to and not in restriction of any provisions contained in *Part II* relating to winding up companies by the court and the court or liquidator may exercise any powers or do any act in the case of unregistered companies which might be exercised or done by it or him or her in winding up companies formed and registered under this Act. 15

CHAPTER 4

Provisions concerning companies registered, but not formed, under former Acts and certain other existing companies

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Application of Act to companies registered but not formed under former Companies Acts

1330. (1) Subject to subsection (2), this Act shall apply to every company registered (in a register kept in the State) but not formed under—

- (a) the Joint Stock Companies Acts,
- (b) the Companies Act 1862,
- (c) the Companies (Consolidation) Act 1908, or
- (d) the prior Companies Acts,

in the same manner as it is in *Chapter 5* declared to apply to companies registered but not formed under this Act. 25

(2) In this Act a reference, express or implied, to the date of registration shall, in the case of a company registered but not formed under a foregoing enactment, be read as a reference to the date at which the company was registered under—

- (a) the Joint Stock Companies Acts,
- (b) the Companies Act 1862,
- (c) the Companies (Consolidation) Act 1908, or
- (d) the prior Companies Acts,

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as the case may be.

Application of Act to unlimited companies re-registered as limited companies under certain former enactments

1331. (1) Subject to *subsection (2)*, this Act shall apply to every unlimited company registered (in a register kept in the State) as a limited company in pursuance of—

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(a) the Companies Act 1879, or

(b) section 57 of the Companies (Consolidation) Act 1908,

in the same manner as it applies to an unlimited company re-registered in pursuance of this Act as a limited company.

(2) In this Act a reference, express or implied, to the date of registration shall, in the case of an unlimited company registered as a limited company in pursuance of an enactment referred to in *paragraph (a) or (b)*, as the case may be, of *subsection (1)*, be read as a reference to the date on which it was registered as such in pursuance of the enactment referred to in that paragraph.

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Provisions as to companies registered under Joint Stock Companies Acts

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1332. (1) A company registered under the Joint Stock Companies Acts may cause its shares to be transferred in manner hitherto in use, or in such other manner as the company may direct.

(2) The power conferred by this Act on a company (not being a private company limited by shares) to alter its articles shall, in the case of an unlimited company formed and registered under the Joint Stock Companies Acts, extend to altering any regulations relating to the amount of capital or to its distribution into shares, notwithstanding that those regulations are contained in the memorandum.

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CHAPTER 5

Registration of joint stock companies under this Act

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Interpretation (Chapter 5)

1333. In this Chapter—

“joint stock company” means a company—

(a) having a permanent paid up or nominal share capital of fixed amount divided into shares, also of fixed amount, or held and transferable as stock, or divided and held partly in one way and partly in the other; and

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(b) formed on the principle of having for its members the holders of those shares or that stock, and no other persons,

and such a company when registered with limited liability under this Chapter shall be deemed to be a company limited by shares;

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“registration date” shall be read in accordance with *section 1339(2)*;

“registration resolution” shall be read in accordance with section 1334(6).

Companies capable of being registered

1334. (1) With the exceptions and subject to the provisions contained in this section, any—

(a) company registered under the Joint Stock Companies Acts; or

(b) joint stock company,

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may at any time register under this Chapter as—

(i) a private company limited by shares,

(ii) a designated activity company,

(iii) a company limited by guarantee, or

(iv) an unlimited company,

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and the registration shall not be invalid by reason that it has taken place with a view to the company’s being wound up.

(2) This section shall not apply to a company unless it has its registered office or principal place of business in the State.

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(3) A company having the liability of its members limited by statute or letters patent, and not being a joint stock company, shall not register under this Chapter.

(4) A company, having the liability of its members limited by statute or letters patent, shall not register under this Chapter as an unlimited company or as a company limited by guarantee.

(5) A company that is not a joint stock company shall not register under this Chapter as a company limited by shares.

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(6) A company shall not be registered under this Chapter as any particular type of company referred to in subsection (1) without the assent (in this Chapter referred to as a “registration resolution”) to its registration as that type of company given, subject to subsection (7), by a majority of such of its members as are present in person or by proxy at a general meeting summoned for the purpose.

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(7) Where a company, not having the liability of its members limited by statute or letters patent, is about to register as a limited company, the majority required to assent as mentioned in subsection (6) shall consist of not less than three-fourths of the members present in person or by proxy at the meeting.

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(8) Where a company is about to register as a company limited by guarantee, the assent to its being so registered shall be accompanied by a resolution declaring that each member undertakes to contribute to the assets of the company, in the event of its being wound up while he or she is a member, or within one year after the date on which he or she ceases to be a member—

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(a) for payment of the debts and liabilities of the company contracted before he or she ceased to be a member,

(b) for payment of the costs and expenses of winding up, and

- (c) for the adjustment of the rights of the contributories among themselves, such amount as may be required, not exceeding an amount specified in the resolution.
- (9) In computing any majority under this section when a poll is demanded, regard shall be had to the number of votes to which each member is entitled according to the regulations of the company. 5
- (10) *Section 1318* shall apply for the purposes of this section as it applies for the purposes of *Chapter 2* with the substitution for the reference in *subsection (2)* of that section to *section 1312(1)* of a reference to *subsection (6)* or *(7)*, as the case may be, of this section and any other necessary modifications.

Requirements for registration of joint stock companies 10

1335. Before the registration of a joint stock company under this Chapter as a company, there shall be delivered to the Registrar the following documents—

- (a) a list showing the names, addresses and occupations of all persons who on a day named in the list, not being more than 6 days before the day of registration, were members of the company, specifying the shares or stock held by them respectively (distinguishing, in cases where the shares are numbered, each share by its number), 15
- (b) a copy of any statute, charter, letters patent, deed of settlement, contract of co-partnery or other instrument constituting or regulating the company, and
- (c) if the company is intended to be registered as a limited company, a statement specifying the following particulars in relation to that proposed limited company—
 - (i) the nominal share capital of the company and the number of shares into which it is divided, or the amount of stock of which it consists,
 - (ii) the number of shares taken and the amount paid on each share, 25
 - (iii) the name of the company with the addition of, as appropriate—
 - (I) “limited” or “teoranta”,
 - (II) “designated activity company” or “cuideachta ghníomhaiochta ainmnithe”,
 - (III) “company limited by guarantee” or “cuideachta faoi theorainn rathaiochta”, 30
 - (IV) “unlimited company” or “cuideachta neamhtheoranta”, as the last word or words thereof, and
 - (iv) in the case of a company intended to be registered as a company limited by guarantee, the resolution declaring the amount of the guarantee. 35

Verifications of lists of members and directors of company for purposes of registration

1336. The lists of members and directors and any other particulars relating to the company required to be delivered under this Chapter to the Registrar shall be verified by a

declaration of any 2 or more directors or other principal officers of the company.

Registrar may require evidence as to nature of company

1337. The Registrar may require such evidence as the Registrar thinks necessary for the purpose of satisfying himself or herself whether any company which proposes to be registered under this Chapter is or is not a joint stock company. 5

Addition of “limited” or “teoranta”, etc., to name

1338. (1) Subject to *subsection (2)*, when a company registers under this Chapter with limited liability, the words—

- (a) “limited” or “teoranta”,
 - (b) “designated activity company” or “cuideachta ghníomhaíochta ainmnithe”, 10
 - (c) “company limited by guarantee” or “cuideachta faoi theorainn rathaiochta”,
- as the case may be, shall form and be registered as part of its name.

(2) *Subsection (1)* shall not be taken as excluding the operation of *section 973 or 1180*.

(3) When a company registers under this Chapter with unlimited liability, the words “unlimited company” or “cuideachta neamhtheoranta” shall form and be registered as 15 part of its name.

Certificate of registration of existing company

1339. (1) On compliance with the requirements of this Chapter with respect to registration, the Registrar shall certify in writing that the company applying for registration is incorporated, on a date specified by the Registrar, as the type of company specified in the application and shall issue to the company a certificate of incorporation in respect of it, and upon the foregoing date the company shall be so incorporated. 20

(2) In this Chapter, the foregoing date is referred to as the “registration date”.

(3) A certificate issued under this section in respect of a company shall be conclusive evidence that the requirements of this Chapter in respect of registration and of matters precedent and incidental thereto have been complied with and that the company is duly registered under this Act. 25

Effects of registration under this Chapter

1340. (1) When a company is registered under this Chapter, the following provisions shall have effect. 30

(2) *Section 1319(5) and (6)* and, subject to *subsection (3)*, *section 1319(7)* shall apply to the company as they apply to a body corporate that has registered under *Chapter 2* as a company.

(3) Notwithstanding *section 1319(7)*, execution shall not issue against the effects of any individual member of the company on any judgment, decree or order obtained in any such action or proceeding as is mentioned in *section 1319(7)*, but in the event of the property and effects of the company being insufficient to satisfy the judgment, decree 35

- or order, an order may be obtained for winding up the company.
- (4) *Subsection (5)* applies unless the company has registered under this Chapter as a private company limited by shares.
- (5) All provisions contained in any statute or instrument constituting or regulating the company, including, in the case of a company registered as a company limited by guarantee, the resolution declaring the amount of the guarantee, shall be deemed to be conditions and regulations of the company, in the same manner and with the same incidents as if—
- (a) so much of them as would, if the company had been formed under this Act, have been required to be inserted in the memorandum, were contained in a registered memorandum, and 10
 - (b) the residue of them were contained in registered articles.
- (6) If the company has registered under this Chapter as a private company limited by shares, all provisions contained in any statute or instrument constituting or regulating the company shall be deemed to be conditions and regulations of the company, in the same manner and with the same incidents as if they were contained in a registered constitution. 15
- (7) All the provisions of this Act shall apply to the company and the members, contributories and creditors thereof, in the same manner in all respects as if it had been formed under this Act, subject as follows— 20
- (a) the provisions of this Act relating to the numbering of shares shall not apply to any stock that had been issued, or shares, not numbered, that had been issued, by the company in its former status before the registration date,
 - (b) subject to the provisions of this section, the company shall not have power to alter any provision contained in any statute relating to the company, 25
 - (c) subject to the provisions of this section, the company shall not have power, without the sanction of the Minster, to alter any provision contained in any letters patent relating to the company,
 - (d) the company shall not have power to alter any provision contained in a charter or letters patent relating to the objects of the company, 30
 - (e) in the event of the company being wound up, every person shall be a contributory, in respect of the debts and liabilities of the company in its former status contracted before registration, who is liable to pay or contribute to the payment of—
 - (i) any debt or liability of the company in its former status contracted or incurred before the registration date, 35
 - (ii) any sum for the adjustment of the rights of the members among themselves in respect of any such debt or liability,
 - (iii) the costs and expenses of winding up the company,
 so far as relates to the foregoing debts or liabilities, 40
 - (f) in the event of the company being wound up, every contributory shall be liable to

contribute to the assets of the company, in the course of the winding up, all sums due from him or her in respect of any such liability as is mentioned in *paragraph (e)*, and in the event of the death or bankruptcy of any contributory, the provisions of this Act relating to the personal representatives of deceased contributories and to the assignees in bankruptcy of bankrupt contributories, respectively, shall apply.

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(8) The provisions of this Act relating to—

- (a) the registration of an unlimited company as limited,
- (b) the powers of an unlimited company on registration as a limited company to increase the nominal amount of its share capital and to provide that a portion of its share capital shall not be capable of being called up except in the event of winding up,
- (c) the power of a limited company to determine that a portion of its share capital shall not be capable of being called up except in the event of winding up,

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shall apply notwithstanding any provisions contained in any statute, charter or other instrument constituting or regulating the company.

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(9) Nothing in this section shall authorise the company, not being a private company limited by shares, to alter any such provisions contained in any instrument constituting or regulating the company as would, if the company had originally been formed under this Act, have been required to be contained in the memorandum and are not authorised to be altered by this Act.

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(10) None of the provisions of this Act (apart from *section 212(4)*) shall derogate from any power of altering its constitution or regulations which may, by virtue of any statute or other instrument constituting or regulating the company, be vested in the company.

(11) In this section “instrument” includes deed of settlement, contract of co-partnery and letters patent.

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Power to substitute memorandum and articles for deed of settlement

1341. (1) Subject to *subsections (2) to (4)*, a company registered under this Chapter may, by special resolution, alter the form of its constitution by substituting a memorandum and articles for a deed of settlement.

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(2) The provisions of *sections 977 and 978* relating to applications to the court for cancellation of alterations of the objects of a designated activity company and matters consequential on the passing of resolutions for such alterations shall, so far as applicable, apply to an alteration under this section with the following modifications:

- (a) there shall be substituted for the copy of the altered memorandum, required to be delivered to the Registrar, a copy of the substituted memorandum and articles; and
- (b) on the delivery to the Registrar of a copy of the substituted memorandum and articles or on the date when the alteration is no longer liable to be cancelled by order of the court, whichever last occurs, the substituted memorandum and articles shall apply to the company in the same manner as if it were a company registered under this Act, with that memorandum and those articles, and the

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- company's deed of settlement shall cease to apply to the company.
- (3) An alteration under this section may be made either with or without any alteration of the objects of the company under this Act.
- (4) In this section "deed of settlement" includes any contract of co-partnery or other instrument constituting or regulating the company, not being a statute, charter or letters patent. 5

Power of court to stay or restrain proceedings

1342. The provisions of this Act relating to staying and restraining actions and proceedings against a company at any time after the presentation of a petition for winding up and before the making of a winding-up order shall, in the case of a company registered under this Chapter, where the application to stay or restrain is by a creditor, extend to actions and proceedings against any contributory of the company. 10

Actions stayed on winding-up order

1343. Where an order has been made for winding up a company registered under this Chapter, no action or proceeding shall be commenced or proceeded with against the company or any contributory of the company, in respect of any debt of the company except by leave of the court and subject to such terms as the court may impose. 15

PART 23

PUBLIC OFFERS OF SECURITIES, FINANCIAL REPORTING BY TRADED COMPANIES, PREVENTION OF MARKET ABUSE, ETC.

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CHAPTER 1

Public offers of securities

Interpretation (Chapter 1)

1344. (1) In this Chapter—

"2003 Prospectus Directive" means Directive 2003/71/EC of the European Parliament and of the Council of 4 November 2003, including that Directive as it stands amended for the time being; 25

"body corporate" includes a company;

"EU prospectus law" means—

- (a) the measures adopted for the time being by a Member State (including the State or an EEA state, to implement the 2003 Prospectus Directive); 30
- (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 35

Member State (including the State) or an EEA state in respect of the Prospectus Regulation;

“expert”, save where a different construction in respect of that expression applies for the purposes of this Chapter by virtue of Irish prospectus law, includes engineer, valuer, accountant and any other 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; 5

“Irish prospectus law” means—

(a) the measures adopted for the time being by the State to implement the 2003 Prospectus Directive (whether an Act of the Oireachtas, regulations under section 10
3 of the European Communities Act 1972, regulations under *section 1350* or any other enactment (other than, save where the context otherwise admits, this Chapter);

(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 15

(c) any supplementary and consequential measures adopted for the time being by the State in respect of the Prospectus Regulation;

“issuer” means a body corporate or other legal entity which issues or proposes to issue securities; 20

“local offer” means an offer of securities to the public in the State where—

(a) the offer expressly limits the amount of the total consideration for the offer to less than €2,500,000 (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 1350* in relation to analogous limits specified by those regulations for any purpose); 25

(b) the securities are other than those referred to in any of paragraphs (a) to (g) or paragraph (i) or (j) of Article 1(2) of the 2003 Prospectus Directive; and

(c) the offer is not of a kind described in Article 3(2) of the 2003 Prospectus Directive; 30

“Minister” means the Minister for Finance;

“offer of securities to the public” has the same meaning as it has in Irish prospectus law;

“offering document” means a document prepared for a local offer which document, if prepared in connection with an offer to which the 2003 Prospectus Directive applies, would be a prospectus; 35

“offeror” means a body corporate or other legal entity or an individual which or who offers securities to the public;

“promoter” means, subject to *subsection (5)*, a promoter who was a party to the preparation of a prospectus, or of the portion thereof containing an untrue statement; 40

“prospectus” means a document or documents in such form and containing such

information as may be required by or under this Chapter or EU prospectus law, howsoever the document or documents are constituted, but does not include any advertisements in newspapers or journals derived from the foregoing;

“Prospectus Regulation” means Commission Regulation (EC) No. 809/2004 of 29 April 2004, implementing Directive 2003/71/EC of the European Parliament and of the Council as regards information contained in prospectuses as well as the format, incorporation by reference and publication of such prospectuses and dissemination of advertisements;

“securities” has the same meaning as it has in Irish prospectus law, and includes shares and debentures of a company.

(2) A word or expression that is used in this Chapter and is also used in the 2003 Prospectus Directive shall have in this Chapter the same meaning as it has in that Directive, unless—

- (a) the contrary intention appears, or
- (b) Irish prospectus law provides otherwise.

(3) For the purposes of this Chapter—

(a) a statement included in a prospectus shall be deemed to be untrue if it is misleading in the form and context in which it is included, and

(b) a statement shall be deemed to be included in a prospectus if it is contained therein or in any report or memorandum appearing on the face thereof or by reference incorporated therein.

(4) Without limiting the meaning of that expression in any other context in which it is used in this Chapter, “statement” in *section 1349(2)* (other than *paragraph (b)* thereof) and any other section of this Chapter that makes provision in respect of an expert, includes a report and a valuation.

(5) Nothing in this Chapter shall limit or diminish any liability which any person may incur under the general law.

(6) For the purposes of *sections 1345* and *1347*, the following persons shall be deemed not to be a promoter or a person who has authorised the issue of the prospectus—

- (a) a professional adviser to any person referred to in *section 1345* acting as such,
- (b) an underwriter or professional adviser to an underwriter acting as such.

(7) The person referred to as the “purchaser” in the following case shall be deemed to be an underwriter for the purposes of *subsection (6)(b)*.

(8) That case is one in which—

- (a) a person (the “offeror”) intends to make an offer of securities to the public; and
- (b) another person (the “purchaser”—

(i) agrees to purchase those securities with the intention of their immediate resale, to give effect to that intention of the offeror, at a profit or subject to payment by the offeror to the purchaser of a commission; and

- (ii) binds himself or herself to purchase, or procure the purchase of, any of the securities not so resold.

Civil liability for misstatements in prospectus

1345. (1) Subject to *sections 1346 and 1347*, the following persons shall be liable to pay compensation to all persons who acquire any securities on the faith of a prospectus for the loss or damage they may have sustained by reason of—

- (a) any untrue statement included therein; or
- (b) any omission of information required by EU prospectus law to be contained in the prospectus;

namely—

- (i) the issuer who has issued the prospectus or on whose behalf the prospectus has been issued;
- (ii) the offeror of securities to which the prospectus relates;
- (iii) every person who has sought the admission of the securities to which the prospectus relates to trading on a regulated market;
- (iv) the guarantor of the issue of securities to which the prospectus relates;
- (v) every person who is a director of the issuer at the time of the issue of the prospectus;
- (vi) every person who has authorised himself or herself to be named and is named in the prospectus as a director of the issuer or as having agreed to become such a director either immediately or after an interval of time;
- (vii) every person being a promoter of the issuer;
- (viii) every person who has authorised the issue of the prospectus (not being the competent authority designated under Irish prospectus law).

(2) In addition to the persons specified in *subsection (1)* as being liable in the circumstances there set out, an expert who has given the consent required by *section 1349* to the inclusion in a prospectus of a statement purporting to be made by him or her shall, subject to *sections 1346 and 1347*, be liable to pay compensation to all persons who acquire any securities on the faith of the prospectus for the loss or damage they may have sustained by reason of an untrue statement in the prospectus purporting to be made by him or her as an expert.

Exceptions and exemptions

1346. (1) A person shall not be liable under *section 1345* solely on the basis of a summary of a prospectus, including any translation thereof, unless it is misleading, inaccurate or inconsistent when read together with other parts of the prospectus.

(2) Subject to *subsection (4)*, a person shall not be liable under *section 1345* if he or she proves—

- (a) that, having consented to become a director of the issuer, he or she withdrew, in

- writing, his or her consent before the issue of the prospectus, and that it was issued without his or her authority or consent; or
- (b) that the prospectus was issued without his or her knowledge or consent and that, on becoming aware of its issue, he or she forthwith gave reasonable public notice that it was issued without his or her knowledge or consent; or 5
- (c) that after the issue of the prospectus and before the acquisition of securities thereunder by the person referred to in *section 1345*, he or she, on becoming aware of any untrue statement therein or omission of material information required by EU prospectus law to be contained therein, withdrew, in writing, his or her consent thereto and gave reasonable public notice of the withdrawal and of the reason therefor; or 10
- (d) that—
- (i) as regards—
- (I) every untrue statement not purporting to be made on the authority of an expert or of a public official document or statement; 15
- (II) the omission from the prospectus of any information required by EU prospectus law to be contained therein;
- he or she had reasonable grounds to believe, and did up to the time of the issue of the securities believe, that the statement was true or that the matter whose omission caused loss was properly omitted; and 20
- (ii) as regards every untrue statement purporting to be a statement by an expert or contained in what purports to be a copy of or extract from a report or valuation of an expert, it fairly represented the statement, or was a correct and fair copy of or extract from the report or valuation, and he or she had reasonable grounds to believe and did up to the time of the issue of the prospectus believe that the person making the statement was competent to make it and, where required by *section 1349*, that that person had given his or her consent to the inclusion of the statement in the prospectus and had not withdrawn, in writing, that consent before the publication of the prospectus or, to the defendant's knowledge, before issue of securities thereunder; and 25
- (iii) as regards every untrue statement purporting to be a statement made by an official person or contained in what purports to be a copy of or extract from a public official document, it was a correct and fair representation of the statement or copy of or extract from the document. 30
- (3) In *subsections (4)* and *(5)* “by reason of the relevant consent”, in relation to an expert, means by reason of his or her having given the consent required of him or her by *section 1349* to the inclusion in the prospectus of the statement concerned. 35
- (4) *Subsection (2)* shall not apply in the case of an expert, by reason of the relevant consent, in respect of an untrue statement purporting to be made by him or her as an expert. 40
- (5) An expert who, apart from this subsection, would be liable under *section 1345*, by reason of the relevant consent, in respect of an untrue statement purporting to be made by him or her as an expert shall not be so liable if he or she proves—

- (a) that having given his or her consent to the inclusion in the prospectus of the statement, he or she withdrew it in writing before publication of the prospectus; or
- (b) that, after publication of the prospectus and before the acquisition of securities thereunder by the person referred to in *section 1345*, on becoming aware of the untrue statement, withdrew his or her consent in writing and gave reasonable public notice of the withdrawal and of the reason therefor; or
- (c) that he or she was competent to make the statement and that he or she had reasonable grounds to believe and did up to the time of such acquisition of the securities believe that the statement was true.

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Restriction of liability where non-equity securities solely involved

1347. Where a prospectus is issued solely in respect of non-equity securities—

- (a) only—
 - (i) the offeror or the person who has sought the admission of the securities to which the prospectus relates to trading on a regulated market; and
 - (ii) subject to, and to the extent provided in, *paragraph (c)*, the guarantor (if any);

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and no other person referred to in *section 1345* shall be liable under that section in the circumstances in which that section applies unless—

- (I) the prospectus expressly provides otherwise; or
- (II) that other such person is convicted on indictment of an offence created by Irish prospectus law or an offence under *section 1353* in respect of the issue of that prospectus;
- (b) neither *section 223(1)* nor *226(1)* shall apply to the directors or secretary of the issuer to the extent that such application would thereby impose a liability under *section 1345* on such directors or secretary; and
- (c) no liability shall attach under *section 1345* to a guarantor of such securities save in respect of statements included in, or information omitted from, the prospectus that relate to the guarantor or the guarantee given by the guarantor.

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Indemnification of certain persons

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1348. (1) This section applies where—

- (a) a prospectus contains the name of a person as a director of the issuer, or as having agreed to become a director thereof, and the person has not consented to become a director, or has withdrawn, in writing, his or her consent before the issue of the prospectus, and has not authorised or consented to the issue thereof; or
- (b) the consent of an expert is required by *section 1349* to the inclusion in a prospectus of a statement purporting to be made by the expert and he or she either has not given that consent or has withdrawn, in writing, that consent before the issue of the prospectus.

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- (2) The directors of the issuer, except any without whose knowledge or consent the prospectus was issued, and any other person who authorised the issue thereof shall be liable to indemnify the person named as mentioned in *subsection (1)* or, as the case may be, whose consent was required as so mentioned against each of the following:
- (a) all damages, costs and expenses to which the person may be made liable by reason of the person's name having been inserted in the prospectus or of the inclusion therein of a statement purporting to be made by the person as an expert, as the case may be;
 - (b) all costs and expenses in defending himself or herself against any action or legal proceeding brought against him or her in respect thereof.

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Expert's consent to issue of prospectus containing statement by him or her

- 1349.** (1) The prohibition in *subsection (2)* only applies in relation to a prospectus if EU prospectus law requires the inclusion in the prospectus of a statement of the kind referred to in *paragraph (b)* of that subsection.
- (2) A prospectus including a statement that is attributed to an expert shall not be issued unless—
- (a) the expert has given and has not, before publication of the prospectus, withdrawn, in writing, his or her consent to the inclusion in the prospectus of the statement in the form and context in which it is included, and
 - (b) a statement that the expert has given and has not withdrawn, in writing, that consent appears in the prospectus.
- (3) If any prospectus is issued in contravention of this section, the issuer and every person who is knowingly a party to the issue thereof shall be guilty of a category 3 offence.

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Regulations (*Chapter 1*)

- 1350.** (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.

Saver for existing Prospectus Regulations

- 1351.** (1) Regulations made under section 46 of the Investment Funds, Companies and Miscellaneous Provisions Act 2005 and in force immediately before the

commencement of this section shall continue in force as if they were regulations made under *section 1350* and may be amended or revoked accordingly.

- (2) Without prejudice to *Schedule 6* or to the generality of section 26(2)(f) of the Interpretation Act 2005, the reference in Regulation 107(4) of the Prospectus Directive 2003/71/EC Regulations 2005 (S.I. No. 324 of 2005) to section 47 of the Investment Funds, Companies and Miscellaneous Provisions Act 2005 shall, after the commencement of this section, be read as a reference to *section 1352*.
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- (3) The adaptation of reference effected by *subsection (2)* does not affect the operation of section 27 of the Interpretation Act 2005 as it concerns a prosecution initiated before or after the repeal by this Act of section 47 of the Investment Funds, Companies and Miscellaneous Provisions Act 2005 in respect of an offence referred to in that section 47 committed before that repeal.
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Penalties on conviction on indictment and defences in respect of certain offences

1352. (1) A person who is guilty of an offence created by Irish prospectus law (being an offence expressed by that law to be an offence to which this section applies) shall, without prejudice to any penalties provided by that law in respect of a summary conviction for the offence, be liable, on conviction on indictment, to a fine not exceeding €1,000,000 or imprisonment for a term not exceeding 5 years or both.
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- (2) In any proceedings against a person in respect of an offence created by Irish prospectus law, it shall be a defence to prove—
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- (a) as regards any matter not disclosed in the prospectus concerned, that the person did not know it; or
 - (b) the contravention arose from an honest mistake of fact on the person's part; or
 - (c) the contravention was in respect of matters which, having regard to the circumstances of the case, was immaterial or as respects which, having regard to those circumstances, the person ought otherwise reasonably to be excused.
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Untrue statements and omissions in prospectus: criminal liability

1353. (1) Where a prospectus is issued and—

- (a) includes any untrue statement; or
 - (b) omits any information required by EU prospectus law to be contained in it;
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- any person who authorised the issue of the prospectus (not being the competent authority designated under Irish prospectus law) shall be guilty of a category 2 offence unless he or she proves—
- (i) as regards an untrue statement, either that the statement was, having regard to the circumstances of the case, immaterial or that he or she honestly believed and did, up to the time of the issue of the prospectus, believe that the statement was true; or
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 - (ii) as regards any information omitted, either that the omission was, having regard to the circumstances of the case, immaterial or that he or she did not know it; or

- (iii) that the making of the statement or omission was otherwise such as, having regard to the circumstances of the case, ought reasonably to be excused.
- (2) Without prejudice to the generality of *section 865(1)*, summary proceedings in relation to an offence under this section may be brought and prosecuted by the competent authority designated under Irish prospectus law. 5
- (3) If at a trial for an offence under this section or an offence created by Irish prospectus law, the judge or jury has to consider whether the defendant honestly believed a particular thing or was honestly mistaken in relation to a particular thing, the presence or absence of reasonable grounds for such a belief or for his or her having been so mistaken is a matter to which the judge or jury is to have regard, in conjunction with any other relevant matters, in considering whether the defendant so believed or was so mistaken. 10

Requirements about minimum subscriptions, matters to be stated in offer documentation in that regard, etc.

- 1354.** (1) No allotment shall be made of any share capital of a PLC offered for subscription unless— 15
- (a) that capital is subscribed for in full, or
 - (b) the offer states that, even if the capital is not subscribed for in full, the amount of that capital subscribed for may be allotted in any event or in the event of the conditions specified in the offer being satisfied, 20
- and, where conditions are so specified, no allotment of the capital shall be made by virtue of paragraph (b) unless those conditions are satisfied.
- (2) Without prejudice to the generality of *subsection (1)*, where a prospectus states— 25
- (a) the minimum amount which, in the opinion of the directors, must be raised from an issue of shares; and
 - (b) that no allotment shall be made of any of those shares unless that minimum amount has been subscribed and the sum payable on application for the amount so stated has been paid up;
- then no such allotment shall be made unless that minimum amount has been subscribed and the foregoing sum so payable has been paid up. 30
- (3) The amount stated in the prospectus as mentioned in *subsection (2)* shall be reckoned exclusively of any amount payable otherwise than in cash.
- (4) Any condition requiring or binding any applicant for shares to waive compliance with any requirement of *subsections (1) to (3)* or *section 1355* as it applies to those subsections shall be void. 35
- (5) *Subsections (2) and (3)* and, so far as it relates to those subsections, *subsection (4)* shall not apply to any allotment of shares subsequent to the first allotment of shares offered to the public for subscription.

Supplemental provisions in relation to section 1354

1355. (1) *Subsection (2)* applies where either—

- (a) shares have been allotted in contravention of *section 1354(1)*; or
- (b) the conditions referred to in *section 1354(2)* have not been satisfied on the expiration of 40 days after the date of first issue of the prospectus concerned.

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(2) Where this subsection applies—

- (a) all money received from applicants for shares shall be repaid forthwith after—
 - (i) in a case falling within *subsection (1)(a)*, the contravention referred to in that provision; or
 - (ii) in a case falling within *subsection (1)(b)*, the expiration of the period of 40 days referred to in that provision;

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to the applicants without interest;

- (b) if any such money is not so repaid after that contravention or, in a case falling within *subsection (1)(b)*, the expiration of 48 days after the date of first issue of the prospectus concerned, the directors of the PLC shall, subject to *subsection (3)*, be jointly and severally liable to repay that money with interest at the appropriate rate from that contravention or, as the case may be, the expiration of the 48th day.

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(3) A director shall not be liable as mentioned in *subsection (2)(b)* if he or she proves that the default in the repayment of the money was not due to any misconduct or negligence on his or her part.

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(4) *Section 1354(1)* shall apply in the case of shares offered as wholly or partly payable otherwise than in cash as it applies in the case of shares offered for subscription and—

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- (a) in *section 1354(1)* the word “subscribed” shall be read accordingly; and

- (b) *section 1354(4)* and *subsections (1) to (3)* of this section shall accordingly apply in the first-mentioned case as they apply in the second-mentioned case, but with the following modifications.

(5) Those modifications are that references in *subsections (2) and (3)* to the repayment of money received from applicants for shares shall be read as including references to the return of any other consideration so received (including, if the case so requires, the release of the applicant from any undertaking) or, if it is not reasonably practicable to return the consideration, the payment of money equal to the value of the consideration at the time it was so received, and references to interest shall have effect accordingly.

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Further supplemental provisions in relation to section 1354: effect of irregular allotment

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1356. (1) An allotment made by a PLC to an applicant in contravention of *section 1354(1)* or (2) shall be voidable at the instance of the applicant within 30 days after the date of the allotment and not later, and shall be so voidable notwithstanding that the PLC is in the course of being wound up.

(2) Where an allotment is avoided under this section, the PLC shall, within 30 days after

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the date of avoidance, deliver to the Registrar a notice to that effect and *subsection (10) of section 1023* shall apply in relation to this subsection as it applies in relation to *subsection (9)* of that section.

- (3) If any director of a PLC knowingly contravenes, or permits or authorises the contravention of, any of the provisions of *section 1354* with respect to allotment, he or she shall be liable to compensate the PLC and the allottee, respectively, for any loss, damage, costs or expenses which the PLC or allottee has sustained or incurred by reason of the contravention.
- (4) No proceedings to recover any such loss, damage, costs or expenses shall be commenced after the expiration of 2 years after the date of the delivery to the Registrar of the return of allotments in question.

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Local offers

1357. (1) An offering document prepared for a local offer shall contain the following statements in print in clearly legible type:

- (a) on the front page or otherwise in a prominent position:

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“This document,

— has not been prepared in accordance with Directive 2003/71/EC on prospectuses or any measures made under that Directive or the laws of Ireland or of any EU Member State or EEA treaty adherent state that implement that Directive or those measures,

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— has not been reviewed, prior to its being issued, by any regulatory authority in Ireland or in any other EU Member State or EEA treaty adherent state,

and therefore may not contain all the information required where a document is prepared pursuant to that Directive or those laws.”;

- (b) elsewhere in the offering document:

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- (i) where the offering document contains information on past performance:

“*Past performance may not be a reliable guide to future performance.*”;

- (ii) where the offering document contains information on simulated performance:

“*Simulated performance may not be a reliable guide to future performance.*”;

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- (iii) “*Investments may fall as well as rise in value.*”;

- (iv) where securities are described as being likely to yield income or as being suitable for an investor particularly seeking income from his or her investment, and where the income from the securities can fluctuate:

“*Income may fluctuate in accordance with market conditions and taxation arrangements.*”;

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- (v) where the primary market for the securities or the currency of the underlying business is in a currency other than euro:

“*Changes in exchange rates may have an adverse effect on the value, price*

or income of the securities.”;

- (vi) where the securities do not constitute a readily realisable investment:

“It may be difficult for investors to sell or realise the securities and/or obtain reliable information about their value or the extent of the risks to which they are exposed.”.

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- (2) Any requirement of *subsection (1)* as to the inclusion of a particular statement in an offering document shall be regarded as satisfied if words substantially to the effect of that statement are instead included in that document.
- (3) If an offeror fails to comply with *subsection (1)* the offeror shall be guilty of a category 3 offence.
- (4) No offering document prepared for a local offer shall be issued by or on behalf of a PLC or in relation to an intended PLC unless, on or before the date of its publication, a copy of the offering document has been delivered to the Registrar.

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Exclusion of Investment Intermediaries Act 1995

- 1358.** (1) Any document issued in connection with an offer of securities by or on behalf of an issuer, offeror or person seeking admission of securities to trading on a regulated market shall not be regarded as constituting an investment advertisement within the meaning of section 23 of the Investment Intermediaries Act 1995.
- (2) In *subsection (1)* “document” includes, in the case of a local offer, an offering document.

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Power to make certain rules and issue guidelines

- 1359.** (1) In this section “competent authority” means the competent authority designated under Irish prospectus law.
- (2) The competent authority may make rules imposing or enabling the competent authority to impose requirements on persons on whom an obligation or obligations are imposed by Irish prospectus law, being requirements—
- (a) to do or not to do specified things so as to secure that the provisions of Irish prospectus law are complied with and, in particular (without limiting the generality of this paragraph), to adopt specified procedures and use specified forms in the provision of information to the competent authority;
- (b) to do or not to do specified things so as to secure the effective supervision by the competent authority of activities of the kind to which Irish prospectus law relates and, in particular (without limiting the generality of this paragraph), to make such reports or disclose such matters, at such times and in such manner, to the competent authority or other specified persons as are provided for by the rules or specified by the competent authority pursuant to the rules, being reports or a disclosure of matters that is or are required by virtue or in consequence of the operation of Irish prospectus law.
- (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

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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 (1)* 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. 5
- (5) Rules under this section may contain such consequential, incidental or supplemental provisions as the competent authority considers necessary or expedient.
- (6) Rules under this section shall not contain any provision that is inconsistent with Irish prospectus law or require the provision of information to any person, the provision of which is not reasonably related to the purposes for which the applicable provisions of the 2003 Prospectus Directive have been adopted. 10
- (7) The provisions of Irish prospectus law that are expressed by that law to be made for the purpose of enabling the imposition of administrative sanctions shall apply in relation to a contravention of rules under this section as they apply in relation to a contravention of a provision of Irish prospectus law and, accordingly, a sanction that may be imposed pursuant to the first-mentioned provisions of Irish prospectus law in respect of a contravention of a provision of that law may, in accordance with that law, be imposed in respect of a contravention of rules under this section. 15
- (8) The competent authority may issue guidelines in writing as to the steps that may be taken to comply with Irish prospectus law. 20
- (9) Rules made under section 51 of the Investment Funds, Companies and Miscellaneous Provisions Act 2005 and in force immediately before the commencement of this section shall continue in force as if they were rules made under this section and may be amended or revoked accordingly. 25

Certain agreements void

1360. A condition—

- (a) requiring or binding an applicant for securities to waive compliance with any requirement of—
(i) this Chapter; or 30
(ii) EU prospectus law;
or
- (b) where EU prospectus law applies, purporting to affect him or her with notice of any contract, document or matter not specifically referred to in the prospectus concerned; 35

shall be void.

CHAPTER 2

Market abuse

Interpretation (Chapter 2)

1361. (1) In this Chapter—

“2003 Market Abuse Directive” means Directive 2003/6/EC of the European Parliament and of the Council of 28 January 2003 on insider dealing and market manipulation (market abuse), including that Directive as it stands amended for the time being;

“Irish market abuse law” means—

(a) the measures adopted for the time being by the State to implement the 2003 Market Abuse Directive and the supplemental Directives (whether an Act of the Oireachtas, regulations under section 3 of the European Communities Act 1972, regulations under *section 1362* or any other enactment (other than, save where the context otherwise admits, this Chapter);

(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 the Market Abuse Regulation;

“Market Abuse Regulation” means Commission Regulation 2273/2003 of 22 December 2003;

“Minister” means the Minister for Finance;

“supplemental Directives” means—

(a) Commission Directive No. 2003/124/EC of 22 December 2003;

(b) Commission Directive No. 2003/125/EC of 22 December 2003; and

(c) Commission Directive No. 2004/72/EC of 29 April 2004.

(2) A word or expression that is used in this Chapter and is also used in the 2003 Market Abuse Directive or the supplemental Directives shall have, in this Chapter, the same meaning as it has in the 2003 Market Abuse Directive or the supplemental Directives, unless—

(a) the contrary intention appears; or

(b) Irish market abuse law provides otherwise.

Regulations (Chapter 2)

1362. (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). 5

(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 31 of the Investment Funds, Companies and Miscellaneous Provisions Act 2005) for the purposes of the first-mentioned Act; 10

(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. 15

Saver for existing Market Abuse Regulations

1363. (1) Regulations made under section 30 of the Investment Funds, Companies and Miscellaneous Provisions Act 2005 and in force immediately before the commencement of this section shall continue in force as if they were regulations made under *section 1362* and may be amended or revoked accordingly. 20

(2) Without prejudice to *Schedule 6* or to the generality of section 26(2)(f) of the Interpretation Act 2005, the reference in Regulation 49(2) of the Market Abuse (Directive 2003/6/EC) Regulations 2005 (S.I. No. 342 of 2005) to section 32 of the Investment Funds, Companies and Miscellaneous Provisions Act 2005 shall, after the commencement of this section, be read as a reference to *section 1364*, but this is subject to *subsection (3)*. 25

(3) The adaptation of reference effected by *subsection (2)* does not affect the operation of section 27 of the Interpretation Act 2005 as it concerns a prosecution initiated before or after the repeal by this Act of section 32 of the Investment Funds, Companies and Miscellaneous Provisions Act 2005 in respect of an offence referred to in that section 32 committed before that repeal. 30

Conviction on indictment of offences under Irish market abuse law: penalties

1364. A person who is guilty of an offence created by Irish market abuse law (being an offence expressed by that law to be an offence to which this section applies) shall, without prejudice to any penalties provided by that law in respect of a summary conviction for the offence, be liable, on conviction on indictment, to a fine not exceeding €10,000,000 or imprisonment for a term not exceeding 10 years or both. 35

Civil liability for certain breaches of Irish market abuse law

1365. (1) If a person contravenes a provision of Irish market abuse law (being a provision the purpose of which is expressed by that law to be for the implementation of Article 2, 3 40

- or 4 of the 2003 Market Abuse Directive) the person shall be liable—
- (a) to compensate any other party to the transaction concerned who was not in possession of the relevant information for any loss sustained by that party by reason of any difference between the price at which the financial instruments concerned were acquired or disposed of and the price at which they would have been likely to have been acquired or disposed of in such a transaction at the time when the first-mentioned transaction took place if that information had been generally available; and
 - (b) to account to the body corporate or other legal entity which issued the financial instruments concerned for any profit accruing to the first-mentioned person from acquiring or disposing of those instruments.
- (2) If a person contravenes a provision of Irish market abuse law (being a provision the purpose of which is expressed by that law to be for the implementation of Article 5 of the 2003 Market Abuse Directive) the person shall be liable—
- (a) to compensate any other party who acquired or disposed of financial instruments by reason of the contravention; and
 - (b) to account to the body corporate or other legal entity which issued the financial instruments concerned for any profit accruing to the first-mentioned person from acquiring or disposing of those instruments.
- (3) *Subsections (1) and (2)* are without prejudice to any other cause of action which may lie against the person for contravening the provision concerned.
- (4) An action under *subsection (1)* or *(2)* shall not be commenced more than 2 years after the date of the contravention concerned.

Supplementary rules, etc., by competent authority

- 1366.** (1) In this section “competent authority” means the competent authority designated under Irish market abuse law.
- (2) The competent authority may make rules imposing or enabling the competent authority to impose requirements on persons on whom an obligation or obligations are imposed by Irish market abuse law, being requirements—
- (a) to do or not to do specified things so as to secure that the provisions of Irish market abuse law are complied with and, in particular (without limiting the generality of this paragraph), to adopt specified procedures and use specified forms in the provision of information to the competent authority;
 - (b) to do or not to do, specified things so as to secure the effective supervision by the competent authority of activities of the kind to which Irish market abuse law relates and, in particular (without limiting the generality of this paragraph), to make such reports or disclose such matters, at such times and in such manner, to the competent authority or other specified persons as are provided for by the rules or specified by the competent authority pursuant to the rules, being reports or a disclosure of matters that is or are required by virtue or in consequence of the operation of Irish market abuse law.
- (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.

- (4) Rules under this section may contain such consequential, incidental or supplemental provisions as the competent authority considers necessary or expedient. 5
- (5) Rules under this section shall not contain any provision that is inconsistent with Irish market abuse law or require the provision of information to any person, the provision of which is not reasonably related to the purposes for which the applicable provisions of the 2003 Market Abuse Directive or the supplemental Directives have been adopted. 10
- (6) The provisions of Irish market abuse law that are expressed by that law to be made for the purpose of enabling the imposition of administrative sanctions shall apply in relation to a contravention of rules under this section as they apply in relation to a contravention of a provision of Irish market abuse law and accordingly, a sanction that may be imposed pursuant to the first-mentioned provisions of Irish market abuse law in respect of a contravention of a provision of that law may, in accordance with that law, be imposed in respect of a contravention of rules under this section. 15
- (7) The competent authority may issue guidelines in writing as to the steps that may be taken to comply with Irish market abuse law. 20
- (8) Rules made under section 34 of the Investment Funds, Companies and Miscellaneous Provisions Act 2005 and in force immediately before the commencement of this section shall continue in force as if they were rules made under this section and may be amended or revoked accordingly.

Application of Irish market abuse law to certain markets

- 1367.** (1) The Minister, after consultation with the competent authority designated under Irish market abuse law, may, by provisional order, provide that one or more provisions of Irish market abuse law that apply in relation to a market to which the 2003 Market Abuse Directive applies shall, with such modifications if any, as are specified in the order, apply to a market specified in the order. 30
- (2) The Minister may, by provisional order, amend or revoke a provisional order under this section (including a provisional order under this subsection).
- (3) A provisional order under this section shall not have effect unless or until it is confirmed by an Act of the Oireachtas.

CHAPTER 3

35

Requirement for corporate governance statement and application of certain provisions of Parts 5 and 6 where company is a traded company

Definition (Chapter 3)

- 1368.** In this Chapter “traded company” means—

- (a) a public limited company; 40

- (b) a designated activity company;
- (c) a company limited by guarantee; or
- (d) a public unlimited company or a public unlimited company, that has no share capital;

that in the case of a public limited company has shares or debentures, or in the case of any of the other foregoing types of company has debentures, admitted to trading on a regulated market in an EEA state.

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Corporate governance statement in the case of a traded company

1369. (1) Subject to *subsection (3)*, there shall be included in the directors' report referred to in *section 325* of a traded company a statement (which shall be known and is in this section referred to as a "corporate governance statement") in respect of the financial year concerned.

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(2) The corporate governance statement shall be included as a specific section of the directors' report, and shall include, at least, all of the following information:

- (a) a reference to—

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- (i) the corporate governance code—

(I) to which the company is subject and where the relevant text is publicly available; or

(II) which the company has voluntarily decided to apply and where the relevant text is publicly available;

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and

(ii) all relevant information concerning corporate governance practices applied in respect of the company which are additional to any statutory requirement, and where the information on such corporate governance practices is available for inspection by the public;

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(b) where the company departs, in accordance with any statutory provision, from a corporate governance code referred to in *clause (I)* or *(II)* of *paragraph (a)(i)*—

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(i) an explanation by the company as to which parts of the corporate governance code it departs from in accordance with the statutory provision and the extent to which it departs from such code; and

(ii) the reasons for such departure;

and where the company has decided not to apply any provisions of a corporate governance code referred to in *clause (I)* or *(II)* of *paragraph (a)(i)*, the company shall explain its reasons for doing so;

(c) a description of the main features of the internal control and risk management systems of the company in relation to the financial reporting process;

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(d) the information required under Regulation 21(2)(c), (d), (f), (h) and (i) of the European Communities (Takeover Bids (Directive 2004/25/EC)) Regulations 2006 (S.I. No. 255 of 2006), where the company is subject to those Regulations;

- (e) a description of the operation of the shareholder meeting, the key powers of the shareholder meeting, shareholders' rights and the exercise of such rights;
- (f) the composition and operation of the board of directors and the committees of the board of directors with administrative, management and supervisory functions.
- (3) The information required under *subsection (2)* may be set out in a separate report published in conjunction with the director's report in accordance with *subsection (4)* or *(5)*, or provided by a reference in the directors' report to where the separate report is publicly available on the website of the company, and where a separate report is provided, the corporate governance statement may contain a reference to the annual report where the information referred to in *subsection (2)(d)* is provided. 5
- (4) Where a company prepares a corporate governance statement in the form of a separate report, such report shall be attached to every balance sheet, referred to in *section 341*, laid before the annual general meeting of the company and shall be signed on behalf of the directors by 2 of the directors of the company. 10
- (5) Where a company prepares a corporate governance statement in the form of a separate report, a copy of such report shall—
- (a) be published on the website of the company, and a statement that a copy of the report has been so published, together with the address of the website of the company, shall be included in the report of the directors of the company; or
- (b) be annexed to the annual return of the company. 20
- (6) The reference in *subsection (5)(b)* to a copy of the report is a reference to a copy that satisfies the following conditions:
- (a) it is a true copy of the original save for the difference that the signature or signatures on the original, and any date or dates thereon, shall appear in typeset form on the copy; and 25
- (b) it is accompanied by a certificate of a director and the secretary of the company, that bears the signature of the director and the secretary in electronic or written form, stating that the copy is a true copy of the original (and the foregoing statement need not be qualified on account of the difference permitted by *paragraph (a)* as to the form of a signature or of a date). 30
- (7) Where a company prepares a corporate governance statement the statutory auditors of the company, when preparing the report required by *section 391* in respect of the company, shall—
- (a) establish that the company has prepared a corporate governance statement and whether such statement contains the information required by *subsection (2)(a), (b), (e) and (f)*; 35
- (b) provide an opinion concerning the consistency or otherwise of the information given in the corporate governance statement under *subsection (2)(c)* relating to the financial year concerned which is consistent with the outcome of their evaluation and testing of the relevant systems for the purposes of preparing that report and the auditors shall state in the report under *section 391* whether, in their opinion, such information is so consistent; and 40

- (c) provide an opinion as to whether the information given in the corporate governance statement under subsection (2)(d) relating to the financial year concerned is consistent.
- (8) Subsection (2)(a), (b), (e) and (f) shall not apply to a traded company which has only issued securities, other than shares, admitted to trading on a regulated market, unless such company has issued shares which are traded in a multilateral trading facility. 5
- (9) In subsection (8) “multilateral trading facility” has the meaning assigned to it by Article 4(1), point (15) of Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004.

Application of section 225 to a traded company

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1370. Section 225 shall apply to a traded company as if, in subsection (1):

- (a) the following subparagraph were substituted for subparagraph (ii) of paragraph (a) of the definition of “relevant obligations”:

“(ii) a serious Market Abuse offence, a serious Prospectus offence or a serious Transparency offence;”; 15

and

- (b) the following definition were inserted after the definition of “serious Prospectus offence”:

“ ‘serious Transparency offence’ means an offence referred to in section 1377.”.

Application of sections 279 and 280 to a traded company excluded

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1371. (1) There is excluded from the definition of “relevant holding company” in section 279(1) a holding company that is a traded company.

- (2) No category of holding company that is a traded company may be the subject of regulations under section 280.

Application of sections 290(7)(b), 293 and 362 to a traded company

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1372. (1) Section 290(7) shall apply to a traded company as if the following paragraph were substituted for paragraph (b):

“(b) the company ceases to be a company with securities admitted to trading on a regulated market in an EEA state; or”. 30

- (2) In a case where a traded company has, at the end of its financial year, securities of it admitted to trading on a regulated market in an EEA state section 293 shall apply to it as if—

- (a) the following subsection were substituted for subsection (3):

“(3) A company that is required to prepare group financial statements shall prepare the statements in accordance with international financial reporting standards and section 295.”; 35

- (b) the following subsection were substituted for subsection (4):

- “(4) Group financial statements prepared in accordance with international financial reporting standards and *section 295* shall be known, and are in this Act referred to, as ‘IFRS group financial statements’.”;
- and
- (c) *subsections (5) to (8)* were omitted. 5
- (3) Without prejudice to its adaptation by *sections 996(2)* and *1217(2)*, *section 362* shall apply to a designated activity company and a company limited by guarantee as if the cases specified in that section in which the audit exemption, as referred to *section 358(1)* or *(2)*, as the case may be, is not available to a company, or a holding company and its subsidiary undertakings, included a case in which the company or holding company, as appropriate, is a traded company. 10

Certain exemptions from consolidation of financial statements not available to traded company

- 1373.** (1) In a case where the lower holding company referred to in *section 299* is a traded company the following paragraph shall be added at the end of *subsection (4)* of that section: 15
- “(f) the lower holding company does not have any shares, debentures or other debt securities admitted to trading on a regulated market in an EEA state.”.
- (2) In a case where the lower holding company referred to in *section 300* is a traded company the following paragraph shall be added at the end of *subsection (4)* of that section: 20
- “(g) the lower holding company does not have any shares, debentures or other debt securities admitted to trading on a regulated market in an EEA state.”. 25

CHAPTER 4

Transparency requirements regarding issuers of securities admitted to trading on certain markets

Interpretation (Chapter 4)

- 1374.** (1) In this Chapter— 30
- “Minister” means the Minister for Finance;
- “Transparency (Regulated Markets) Directive” means Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and amending Directive 2001/34/EC, including the first-mentioned Directive as it stands amended for the time being; 35
- “transparency (regulated markets) law” means—
- (a) the measures adopted for the time being by the State to implement the Transparency (Regulated Markets) Directive (whether an Act of the Oireachtas,

- regulations under section 3 of the European Communities Act 1972, regulations under *section 1375* or any other enactment (other than, save where the context otherwise admits, this Chapter));
- (b) any measures directly applicable in the State in consequence of the Transparency (Regulated Markets) Directive and, without prejudice to the generality of this paragraph, includes any Regulation or Decision made by the Commission pursuant to the procedure referred to in Article 27(2) of that Directive; and 5
- (c) any supplementary and consequential measures adopted for the time being by the State in respect of any Regulation or Decision made by the Commission in consequence of the Transparency (Regulated Markets) Directive pursuant to the foregoing procedure; 10
- “supplemental Directive” means any Directive made by the Commission in consequence of the Transparency (Regulated Markets) Directive pursuant to the procedure referred to in Article 27(2) of that Directive.
- (2) A word or expression that is used in this Chapter and is also used in the Transparency (Regulated Markets) Directive shall have in this Chapter the same meaning as it has in that Directive. 15
- Power to make certain regulations (Chapter 4)**
- 1375.** (1) The Minister may make regulations for the purposes of—
- (a) giving effect to the Transparency (Regulated Markets) Directive or any supplemental Directive; and 20
- (b) supplementing and making consequential provision in respect of any Regulation or Decision made by the Commission in consequence of the first-mentioned Directive in *paragraph (a)* pursuant to the procedure referred to in Article 27(2) of that Directive. 25
- (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 30
- (b) provisions creating civil liability in respect of contraventions of the regulations so as to enable any person suffering loss thereby to recover compensation for that loss.
- (3) Civil liability shall not be created by regulations under *subsection (2)* in respect of a contravention of regulations under this section save in respect of such a contravention that involves either—
- (a) an untrue or misleading statement; or
- (b) the omission from a statement of any matter required to be included in it; 35
- being, in either case, a statement—
- (i) that is contained in a publication made in purported compliance with a provision 40

- of transparency (regulated markets) law specified in the regulations; and
- (ii) in respect of which a person suffers a loss by reason of the person's acquiring or contracting to acquire securities (or an interest in them) in reliance on that publication at a time when, and in circumstances in which, it was reasonable for the person to rely on that publication, and the following condition is fulfilled in respect of that publication.
- (4) That condition is that a person discharging responsibilities within the issuer of the securities referred to in *subsection (3)* in relation to that publication (being responsibilities of a kind specified in regulations under this section)—
- (a) knew the statement concerned to be untrue or misleading or was reckless as to whether it was untrue or misleading; or
 - (b) knew the omission concerned to be dishonest concealment of a material fact.
- (5) Regulations under this section may also make, for the purposes of those regulations, provision analogous to that which is made by *Chapter 5 of Part 5 and Chapter 4 of Part 17*.
- (6) This section is without prejudice to section 3 of the European Communities Act 1972.

Saver for existing Transparency Regulations

- 1376.** (1) Regulations made under section 20 of the Investment Funds, Companies and Miscellaneous Provisions Act 2006 and in force immediately before the commencement of this section shall continue in force as if they were regulations made under *section 1375* and may be amended or revoked accordingly.
- (2) Without prejudice to *Schedule 6* or to the generality of section 26(2)(f) of the Interpretation Act 2005, the reference in Regulation 76(6) of the Transparency (Directive 2004/109/EC) Regulations 2007 (S.I. No. 277 of 2007) to section 21 of the Investment Funds, Companies and Miscellaneous Provisions Act 2006 shall, after the commencement of this section, be read as a reference to *section 1377*.
- (3) The adaptation of reference effected by *subsection (2)* does not affect the operation of section 27 of the Interpretation Act 2005 as it concerns a prosecution initiated before or after the repeal by this Act of section 21 of the Investment Funds, Companies and Miscellaneous Provisions Act 2006 in respect of an offence referred to in that section 21 committed before that repeal.

Conviction on indictment of offences under transparency (regulated markets) law

- 1377.** A person who is guilty of an offence created by transparency (regulated markets) law (being an offence expressed by that law to be an offence to which this section applies) shall, without prejudice to any penalties provided by that law in respect of a summary conviction for the offence, be liable, on conviction on indictment, to a fine not exceeding €1,000,000 or imprisonment for a term not exceeding 5 years or both.

Supplementary rules, etc., by competent authority

- 1378.** (1) In this section “competent authority” means the competent authority designated under transparency (regulated markets) law for the purposes of the provisions of the

- Transparency (Regulated Markets) Directive (other than Article 24(4)(h) of that Directive).
- (2) The competent authority may make rules imposing or enabling the competent authority to impose requirements on persons on whom an obligation or obligations are imposed by transparency (regulated markets) law, being requirements—
- (a) to do or not to do specified things so as to secure that the provisions of transparency (regulated markets) law are complied with and, in particular (without limiting the generality of this paragraph), to adopt specified procedures and use specified forms in the provision of information to the competent authority;
 - (b) to do or not to do specified things so as to secure the effective supervision by the competent authority, of activities of the kind to which transparency (regulated markets) law relates and, in particular (without limiting the generality of this paragraph), to make such reports or disclose such matters, at such times and in such manner, to the competent authority or other specified persons, as are provided for by the rules or specified by the competent authority pursuant to the rules, being reports or a disclosure of matters that is or are required by virtue or in consequence of the operation of transparency (regulated markets) law.
- (3) Rules under this section may, in particular, include rules necessary for the performance by the competent authority of the functions under Article 24 of the Transparency (Regulated Markets) Directive, other than paragraph (4)(h) of that Article.
- (4) Rules under this section may contain such consequential, incidental or supplemental provisions as the competent authority considers necessary or expedient.
- (5) Rules under this section shall not contain any provision that is inconsistent with transparency (regulated markets) law or require the provision of information to any person the provision of which is not reasonably related to the purposes for which the applicable provisions of the Transparency (Regulated Markets) Directive have been adopted.
- (6) The provisions of transparency (regulated markets) law that are expressed by that law to be made for the purpose of enabling the imposition of administrative sanctions shall apply in relation to a contravention of—
- (a) rules under this section; and
 - (b) rules adopted by the Supervisory Authority under *section 906(3)* concerning the matters that relate to its functions under *section 905(2)(n)*,
- as they apply in relation to a contravention of a provision of transparency (regulated markets) law and, accordingly, a sanction that may be imposed pursuant to the first-mentioned provisions of transparency (regulated markets) law in respect of a contravention of a provision of that law may, in accordance with that law, be imposed in respect of a contravention of rules referred to in either of the foregoing paragraphs.
- (7) The competent authority may issue guidelines in writing as to the steps that may be taken to comply with transparency (regulated markets) law.
- (8) Rules made under section 22 of the Investment Funds, Companies and Miscellaneous

Provisions Act 2006 and in force immediately before the commencement of this section shall continue in force as if they were rules made under this section and may be amended or revoked accordingly.

Application of transparency (regulated markets) law to certain markets

- 1379.** (1) The Minister, after consultation with the competent authority referred to in *section 1378(1)*, may, by provisional order, provide that one or more provisions of transparency (regulated markets) law that apply in relation to a market to which the Transparency (Regulated Markets) Directive applies shall, with such modifications, if any, as are specified in the order, apply to a market specified in the order. 5
- (2) A provisional order under this section shall not have effect unless or until it is confirmed by an Act of the Oireachtas. 10

PART 24

INVESTMENT COMPANIES

CHAPTER 1

Preliminary and interpretation

15

Interpretation (Part 24)

- 1380.** (1) In this Part—

“investment company” has the meaning given to it by *section 1381*;

“Minister” means the Minister for Finance;

“management company” means a company designated by an investment company to undertake the management of the investment company; 20

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

“sub-fund” means a portfolio of assets and liabilities maintained by an investment company in accordance with its articles and which has been approved by the Central Bank as a separate sub-fund of the investment company; 25

“UCITS Regulations” means the European Communities (Undertakings for Collective Investment in Transferable Securities) Regulations 2011 (S.I. No. 352 of 2011);

“umbrella fund” means an investment company which has one or more sub-funds and which is authorised by the Central Bank pursuant to *section 1390*.

- (2) For the purposes of the application by this Part of certain provisions of the UCITS Regulations to investment companies, those provisions shall be read as one with this Part. 30

Definition of “investment company” and construction of references to nominal value of shares, etc.

- 1381.** (1) In this Part “investment company” means a company (not being a company to which

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- the UCITS Regulations apply) that is—
- (a) a public limited company, the sole object of which is stated in its memorandum to be the collective investment of its funds in property with the aim of spreading investment risk and giving members of the company the benefit of the results of the management of its funds; and 5
 - (b) the articles or memorandum of which provide—
 - (i) that the actual value of the paid up share capital of the company shall at all times be equal to the value of the assets of any kind of the company after the deduction of its liabilities; and
 - (ii) subject to *subsection (2)*, that the shares of the company shall, at the request of any of the holders thereof, be purchased by the company directly or indirectly out of the company's assets. 10
- (2) To the extent as may be approved and subject to such conditions as may be applied by the Central Bank, a company that otherwise falls within *subsection (1)* shall be regarded as an investment company within the meaning of this Part notwithstanding that the articles or memorandum of it do not provide for the matters referred to in *subsection (1)(b)(ii)*. 15
- (3) For the purposes of *subsection (1)(b)(ii)*, action taken by an investment company to ensure that the stock exchange value of its shares does not deviate from its net asset value by more than a percentage specified in its articles (which deviation shall not be so specified as greater than 5 per cent) shall be regarded as the equivalent of purchase of its shares by the investment company. 20
- (4) The memorandum or articles of an investment company shall be regarded as providing for the matters referred to in *paragraphs (a) and (b) of subsection (1)* notwithstanding the inclusion in the memorandum or articles with respect thereto of incidental or supplementary provisions. 25
- (5) A reference in any provision of this Act to the nominal value of an issued or allotted share in, or of the issued or allotted share capital of, a company shall, in the case of an investment company, be read as a reference to the value of the consideration for which the share or share capital (as the case may be) has been issued or allotted. 30

Application of *Parts 1 to 14* to investment companies

- 1382.** (1) The provisions of *Parts 1 to 14* apply to an investment company save to the extent that they are—
- (a) disappled to public limited companies by *section 1004*; or
 - (b) disappled by *subsection (3)* or modified by another provision of this Part. 35
- (2) For the purposes of that application, *section 10* shall have effect as if it read:
- “Unless expressly provided otherwise, a reference in *Parts 2 to 14* to a company is a reference to an investment company.”.
- (3) In addition to those of them disappled, as mentioned in *subsection (1)(a)*, the provisions of *Parts 1 to 14* specified in the Table to this section shall not apply to an investment company. 40

- (4) The specification in the foregoing Table of a provision (a “specified provision”) of *Parts 1 to 14* also operates to disapply to an investment company any other provision of those Parts (notwithstanding that it is not specified in that Table) that makes consequential, incidental or supplemental provision on, or in relation to, the specified provision.

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Table

Subject matter	Provision disapplyed	
Nominal value of shares	<i>Section 66(1) and 2(a)</i>	
Allotment of shares	<i>Section 69(3) and (6) to (10)</i>	
Allotment of shares	<i>Section 70(1), (2), (3), (7), (8), (10) and (11)</i>	10
Payment of shares	<i>Section 71(2), (3) and (5)</i>	
Financial assistance	<i>Section 82</i>	
Variation of company capital	<i>Section 83(3), (4) and (5)</i>	
Reduction of company capital	<i>Section 84</i>	
Notice to Registrar of certain alterations in share capital	<i>Sections 92 and 93</i>	15
Restriction on company acquiring its own shares	<i>Sections 102 and 103</i>	
Acquisition of own shares	<i>Sections 105 to 107 and 99 to 112</i>	20
Holding by subsidiary of shares in its holding company	<i>Sections 114 to 116</i>	
Restrictions on distribution of profits and assets	<i>Sections 117 to 123</i>	
Procedure for declarations, payments, etc. of dividends and other things	<i>Sections 124 and 125</i>	25
Bonus issues	<i>Section 126</i>	
Access to documents during business hours	<i>Section 127</i>	
Audit committees	<i>Section 167</i>	
Inspection of registers, provision of copies of information in them, etc.	<i>Sections 215 to 217</i>	30
Holding of own shares or shares in holding company	<i>Section 320(1)</i>	
Directors’ report: acquisition or disposal of own shares	<i>Section 328</i>	
Signature of statutory auditor’s report to appear on certain copies	<i>Section 337(4) and (5)(b)</i>	35
Annual return and documents annexed to it	<i>Chapter 13 of Part 6</i>	
Exclusions, exemptions and special arrangements with regard to public disclosure of financial information	<i>Chapter 14 of Part 6</i>	
Audit exemption	<i>Chapter 15 of Part 6</i>	40

Subject matter	Provision disapplied
Special audit exemption for dormant companies	<i>Chapter 16 of Part 6</i>
Company may be required to contribute to debts of related companies	<i>Section 599</i>

5

Application of *Part 17* to investment companies

1383. (1) The provisions of *Part 17* apply to an investment company save to the extent that they are disapplied by subsection (3) or (4).

(2) For the purposes of that application, references in *Part 17* to a public limited company (however expressed) shall be read as references to a public limited company that is an investment company. 10

(3) The definitions of “authorised minimum” and “authorised share capital” in *section 1002(1)* shall not apply to an investment company.

(4) The provisions of *Part 17* specified in the Table to this section shall not apply to an investment company. 15

Table

Subject matter	Provision disapplied
Ministerial power in relation to a defined expression	<i>Section 1002(2)</i>
Way of forming a PLC and form of its constitution	<i>Section 1006(1) to (4) and sections 1007 to 1009</i> 20
Restriction on commencement of business by a PLC	<i>Section 1012</i>
Power to allot certain securities and notification of allotments	<i>Section 1023(3), (4) and (8)</i> 25
Pre-emption rights	<i>Sections 1024 and 1025</i>
Expert’s report on non-cash consideration (requirements in respect thereof and dispensations therefrom)	<i>Sections 1030 to 1037</i>
Treatment of shares held by or on behalf of a PLC	<i>Sections 1042 and 1043</i> 30
Application of certain provisions of <i>section 82(6)</i> in relation to PLCs	<i>Section 1045</i>
Interests in shares: disclosure of individual and group acquisitions	<i>Chapter 4 of Part 17</i> 35
Acquisition of own shares and certain acquisitions by subsidiaries	<i>Chapter 5 of Part 17</i>
Distribution by a PLC	<i>Chapter 6 of Part 17</i>
Application of <i>section 167</i> to PLC that is not a public-interest entity under S.I. No. 220 of 2010	<i>Section 1099</i> 40

Subject matter	Provision disapplied	
Additional rights of shareholders in certain PLCs (provisions implementing Shareholders' Rights Directive 2007/36/EC)	<i>Sections 1101 to 1112</i>	5
Obligation to convene extraordinary general meeting in event of serious loss of capital	<i>Section 1113</i>	
Reorganisations	<i>Chapter 13 of Part 17</i>	

Adaptation of certain provisions of UCITS Regulations

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1384. Regulations 17(11), 40(2), 42(4)(d), 104(2), 125 to 127, 129 to 131, 134(1) to 134(9), 135(1) and 135(2) of the UCITS Regulations apply to an investment company as they apply to the bodies to which those Regulations relate subject to the following modifications—

- (a) a reference in those Regulations to a term or expression specified in the second column of the Table to this section at any reference number shall be read, where the context admits, as a reference to the term or expression specified in the third column of that Table at that reference number; and
- (b) references to cognate terms or expressions in those Regulations shall be read accordingly.

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Table

Ref. No. (1)	Term or expression referred to in UCITS Regulations (2)	Construction of term or expression for purposes of this section (3)	
1	“repurchase”	“purchase”	25
2	“these Regulations”	“Part 24 of the Companies Act 2014”	
3	“UCITS”	“investment company”	
4	“unit”	“share”	
5	“unit-holder”	“shareholder”	30

CHAPTER 2

Incorporation and registration

Way of forming an investment company

1385. (1) An investment company may be formed for any lawful purpose by any person or persons subscribing to a constitution and complying with the relevant provisions of—

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- (a) *Chapter 2 of Part 2*, as applied by this Part; and
- (b) this Part;

in relation to registration of an investment company.

- (2) Without prejudice to the means by which an investment company may be formed under the relevant provisions referred to in *subsection (1)*, a company may be registered as an investment company by means of—
- (a) the re-registration, or registration, as an investment company of a body corporate pursuant to *Part 20* or *22*; 5
 - (b) the merger of 2 or more bodies corporate pursuant to *Chapter 16* of *Part 17*;
 - (c) the division of a body corporate pursuant to *Chapter 17* of *Part 17*;
 - (d) the continuance, as an investment company, pursuant to *Chapter 9*, of a legal entity de-registering as a company in another jurisdiction; or
 - (e) the merger operation provided for by the European Communities (Cross-Border Mergers) Regulations 2008 (S.I. No. 157 of 2008). 10
- (3) The liability of a member of an investment company at any time shall be limited to the amount, if any, unpaid on the shares registered in the member's name at that time.
- (4) *Subsection (3)* is without prejudice to any other liability to which a member may be subject as provided by this Act. 15

Investment company to carry on activity in the State

1386. An investment company shall not be formed and registered unless it appears to the Registrar that the company, when registered, will carry on an activity in the State, being an activity that is mentioned in its memorandum.

- ### **The form of an investment company's constitution** 20
- 1387.** (1) Subject to *subsection (3)*, the constitution of an investment company shall be in the form of a memorandum of association and articles of association which together are referred to in this Part as a "constitution".
- (2) The memorandum of association of an investment company shall state—
- (a) its name; 25
 - (b) that it is a public limited company registered under this Part;
 - (c) its object as specified in *section 1381(1)(a)*;
 - (d) in respect of its share capital—
 - (i) that the share capital of the company shall be equal to the value for the time being of the issued share capital of the company; 30
 - (ii) the division of that share capital into a specified number of shares without assigning any nominal value thereto; and
 - (iii) that the issued share capital of the company for the time being shall not be less than a minimum amount nor more than a maximum amount specified in the memorandum. 35
- (3) The constitution of an investment company shall—
- (a) in addition to the matters specified in *subsection (2)*, state the number of shares

- (which shall not be less than one) taken by each subscriber to the constitution;
- (b) be in accordance with the form set out in *Schedule 16* or as near thereto as circumstances permit;
 - (c) be printed in an entire format, that is to say the memorandum and articles shall be contained in the one document, being a document either in legible form or (as long as it is capable of being reproduced in legible form) in non-legible form; and
 - (d) either—
 - (i) be signed by each subscriber in the presence of at least one witness who shall attest the signature; or
 - (ii) be authenticated in the manner referred to in *section 888*.10

Supplemental provisions in relation to constitution and continuance in force of existing memorandum and articles

1388. (1) This section—

- (a) contains provisions as to the articles of an investment company;
- (b) provides that, in certain circumstances, a default position shall obtain in relation to the articles of an investment company; and15
- (c) continues in force the memorandum and articles of an investment company to which Part XIII of the Act of 1990 applies.

(2) In this section—

“mandatory provision” means a provision of any of *Parts 1 to 14* or *Part 17* (as applied by this Part) or of this Part that is not an optional provision;20

“optional provision” means a provision of any of *Parts 1 to 14* or *Part 17* (as applied by this Part) or of this Part that—

- (a) contains a statement to the effect, or is governed by provision elsewhere to the effect, that the provision applies save to the extent that the constitution provides otherwise or unless the constitution states otherwise; or25
- (b) is otherwise of such import.

(3) The articles of an investment company—

- (a) shall contain such regulations in relation to the investment company with respect to such aspects of the activity of collective investment referred to in *section 1381(1)(a)*, or matters related thereto, as are deemed appropriate; and30
- (b) may contain other regulations in relation to the investment company.

(4) So far as the articles of an investment company do not exclude or modify an optional provision, that optional provision shall apply in relation to the investment company.

(5) The memorandum and articles of an investment company to which Part XIII of the Act of 1990 applies and registered before the commencement of this section shall, save to the extent that they are inconsistent with a mandatory provision, continue in force but may be altered or added to under and in accordance with the conditions35

- under which memorandums or articles, whenever registered, are permitted by this Act to be altered or added to.
- (6) References in the provisions of a memorandum or articles so continued in force to any provision of the prior Companies Acts shall be read as references to the corresponding provision of this Act. 5
- (7) To the extent that an investment company to which Part XIII of the Act of 1990 applies was, immediately before the commencement of this section, governed by the regulations of Part I of Table A in the First Schedule to the Act of 1963, it shall, after that commencement, continue to be governed by those regulations but—
- (a) this is save to the extent that those regulations are inconsistent with a mandatory provision; 10
 - (b) those regulations may be altered or added to under and in accordance with the conditions under which articles, whenever registered, are permitted by this Act to be altered or added to; and
 - (c) references in the regulations to any provision of the prior Companies Acts shall be read as references to the corresponding provision of this Act. 15

Status of existing investment company

- 1389.** (1) In this section “existing investment company” means an investment company to which Part XIII of the Act of 1990 applies and which—
- (a) was incorporated under the prior Companies Acts; and 20
 - (b) is in existence immediately before the commencement of this section.
- (2) An existing investment company shall, on and from the commencement of this section, continue in existence and be deemed to be an investment company to which this Part applies.

Authorisation by Central Bank

- 1390.** (1) An investment company shall not carry on business in the State unless it has been authorised to do so by the Central Bank on the basis of criteria approved by the Minister.
- (2) A person shall not carry on business on behalf of an investment company, in so far as relates to the purchase or sale of the shares of the investment company, unless the investment company has been authorised in the manner referred to in *subsection (1)*. 30
- (3) The Central Bank shall not authorise an investment company to carry on business in the State unless the company has paid up share capital which, in the opinion of the Bank, will be sufficient to enable it to conduct its business effectively and meet its liabilities. 35
- (4) An application by an investment company for the authorisation referred to in *subsection (1)* shall be made in writing to the Central Bank and contain such information as the Bank may specify for the purpose of determining the application (including such additional information as the Bank may specify in the course of determining the application). 40

- (5) Where the Central Bank proposes to grant an authorisation to an investment company under this section and the Bank is satisfied that the company will raise capital by providing facilities for the direct or indirect participation by the public in the profits and income of the company, the Bank shall, in granting the authorisation, designate the company as a specially designated investment company which may raise capital in that manner, and “specially designated company” in this section and *section 1391* shall be read accordingly. 5
- (6) An existing investment company (within the meaning of *section 1389*) that, immediately before the commencement of this section, is a designated company within the meaning of section 256(5) of the Act of 1990, shall be regarded as a specially designated company for the purposes of this section and *section 1391*; a reference in any other enactment to a designated company (within the meaning of that section 256(5)) shall, on and from the commencement of this section, be read as a reference to a specially designated company. 10
- (7) In the event that a specially designated company does not provide facilities for the direct or indirect participation by the public in the profits and income of the company within a period, not greater than 6 months, which shall be specified in the authorisation under this section, the company shall, on the expiry of the period so specified, be deemed to have ceased to be a specially designated company; for the purposes of the application of this subsection to a company referred to in *subsection (6)* the foregoing reference to an authorisation under this subsection shall be read as a reference to an authorisation under section 256 of the Act of 1990 and, accordingly, a company referred to in *subsection (6)* is subject to the same cessation of its status, as is provided by this subsection for investment companies otherwise, where— 15
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- (a) the period specified in the authorisation under that section 256 expires after the commencement of this section; and
 - (b) the company has not provided facilities for the direct or indirect participation by the public in the profits and income of the company within that period.
- (8) An investment company which is not a specially designated company shall not raise capital by providing facilities for the direct or indirect participation by the public in the profits and income of the company. 30
- (9) A company incorporated outside the State which, if it were incorporated in the State, would be an investment company to which this Part applies, other than a migrating company as defined in *section 1403*, shall not advertise or market its shares in any way in the State without the approval of the Central Bank, which approval may be subject to such conditions as the Bank considers appropriate and prudent for the purposes of the orderly and proper regulation of so much of the business of companies of that type as is conducted in the State. 35
- (10) If a company contravenes *subsection (1), (8) or (9)*, the company and any officer of it who is in default shall be guilty of a category 2 offence. 40
- (11) If a person contravenes *subsection (2)*, the person shall be guilty of a category 2 offence.

Powers of Central Bank

1391. (1) Notwithstanding any other powers which may be available to the Central Bank under any other enactment, the Central Bank may impose such conditions for the granting of an authorisation to a company under *section 1390* as it considers appropriate and prudent for the purposes of the orderly and proper regulation of the business of investment companies. 5

(2) Conditions imposed under *subsection (1)* may be imposed generally, or by reference to particular classes of company or business (including, but not limited to, whether or not an investment company is a specially designated company), or by reference to any other matter the Central Bank considers appropriate and prudent for the purposes of the orderly and proper regulation of the business of investment companies. 10

(3) The power to impose conditions referred to in *subsection (1)* includes a power to impose such further conditions from time to time as the Central Bank considers appropriate and prudent for the purposes of the orderly and proper regulation of the business of investment companies. 15

(4) As appropriate—

(a) conditions imposed by the Central Bank on an investment company may (without prejudice to the generality of *subsections (1)* to *(3)*) make provision for;

(b) as respects the person or other body referred to in *paragraph (iii)* or *(v)*, there is otherwise conferred on the Bank power to make provision for; 20

the following:

(i) the prudential requirements of the investment policies of the company;

(ii) without prejudice to *Chapter 1 of Part 23* and regulations thereunder (so far as they are applicable to securities issued by companies of the closed-end type), prospectuses and other information disseminated by the company; 25

(iii) the vesting of the assets or specified assets of the company in a person nominated by the Central Bank with such of the powers or duties of a trustee with regard to the company as are specified by the Bank;

(iv) such other supervisory and reporting requirements and conditions relating to its business as the Central Bank considers appropriate and prudent to impose on the company from time to time for the purposes referred to in the foregoing subsections; 30

(v) supervisory and reporting requirements and conditions relating to the business of a management company as the Central Bank considers appropriate or prudent to impose on the management company from time to time. 35

(5) A company shall comply with any conditions relating to its authorisation or business imposed by the Central Bank.

(6) A person or other body referred to in *subsection (4)(iii)* or *(v)* in relation to whom requirements or conditions are imposed by the Central Bank in accordance with *subsection (4)* shall comply with such requirements or conditions. 40

(7) If a company fails to comply with a condition referred to in *subsection (5)*, the company and any officer of it who is in default shall be guilty of a category 2 offence.

- (8) If a person or other body fails to comply with a requirement or condition referred to in subsection (6), the person or body, and (in the case of a body) any officer of it who is in default, shall be guilty of a category 2 offence.

Default of investment company or failure in performance of its investments

- 1392.** (1) An authorisation by the Central Bank under section 1390 of an investment company shall not constitute a warranty by the Bank as to the creditworthiness or financial standing of that company. 5
- (2) The Central Bank shall not be liable by virtue of that authorisation or by reason of its performance of the functions conferred on it by this Part in relation to investment companies for any default of the investment company unless the Bank acted in bad faith in performing such functions. 10

CHAPTER 3

Share capital

Power of company to purchase own shares

- 1393.** (1) Subject to subsection (2), the purchase by an investment company of its own shares shall be on such terms and in such manner as may be provided by its articles. 15
- (2) An investment company shall not purchase its own shares, for the purposes referred to in section 1381(1)(b)(ii), unless they are fully paid, but nothing in this subsection shall prevent a purchase being made in accordance with section 1394(2).
- (3) For the avoidance of doubt, nothing in this Act shall require an investment company to create any reserve account. 20

Treatment of purchased shares

- 1394.** (1) Shares of an investment company which have been purchased by the company shall be cancelled and the amount of the company's issued share capital shall be reduced by the amount of the consideration paid by the company for the purchase of the shares. 25
- (2) Notwithstanding subsection (1), an umbrella fund may, for the account of any of its sub-funds, and in accordance with conditions imposed by the Central Bank pursuant to section 1391, acquire by subscription or transfer for consideration, shares of any class or classes, howsoever described, representing other sub-funds of the same umbrella fund provided that the acquisition is for a purpose otherwise than that provided for in section 1381(1)(b)(ii). 30

CHAPTER 4

Financial statements

Statutory financial statements

- 1395.** (1) Notwithstanding section 290(3), an investment company may, in respect of its entity financial statements, opt to prepare those financial statements in accordance with both of the following, namely: 35

- (a) an alternative body of accounting standards; and
- (b) *section 292*;
- as if the references in *section 292* to international financial reporting standards were references to that alternative body of accounting standards.
- (2) In the application of *subsections (6), (7) and (8)* of *section 290* to an investment company which has opted under *subsection (1)* to prepare its entity financial statements in accordance with an alternative body of accounting standards—
- (a) the reference in that *subsection (6)* 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 (6), (7) and (8)*, “ABAS” (which shall be read as referring to that alternative body of accounting standards).
- (3) For the purposes of this section, financial statements shall not be regarded as having been prepared in accordance with an alternative body of accounting standards unless the financial statements 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 the Supervisory Authority; and
- (b) may consult with any other persons whom the Minister considers should be consulted.
- (6) Regulations made under section 3(3) of the Act of 1990 prescribing, for the purposes of the definition of ‘alternative body of accounting standards’ in section 260(4A) of the Act of 1990, bodies having authority to lay down standards of the kind referred to in that definition, and which regulations are in force immediately before the commencement of this section, shall continue in force as if they were regulations made under *section 12* for the purposes of *subsection (4)* and may be amended or revoked accordingly.

Requirement for corporate governance statement and modification of certain provisions of Parts 5 and 6 as they apply to investment companies

1396. *Chapter 3 of Part 23 has effect in relation to, amongst other companies, an investment company that has shares or debentures admitted to trading on a regulated market in an EEA state.*

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CHAPTER 5

Winding up

Circumstances in which company may be wound up by the court

1397. (1) *Section 569(1)(e) shall not apply to an investment company but provision for the winding up of an investment company on the grounds that it is just and equitable to do so is made by this section.*

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(2) This section is in addition to the cases set out in *section 569* (so far as not disappled by *subsection (1)*) in which an investment company may be wound up by the court.

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(3) An investment company may be wound up by the court if the court is of opinion that it is just and equitable that the company should be wound up and the following conditions are satisfied—

(a) the petition for such winding up has been presented by the trustee of the company, that is to say, the person nominated by the Central Bank under *section 1391(4)(iii)* in respect of the company;

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(b) that trustee has notified the company of its intention to resign as such trustee and 6 or more months have elapsed after the date of the giving of that notification without a trustee having been appointed to replace it;

(c) the court, in considering that petition, has regard to—

(i) any conditions imposed under *section 1391* in relation to the resignation from office of such a trustee and the replacement of it by another trustee; and

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(ii) whether a winding up would best serve the interests of shareholders in the company;

and

(d) the petition for such winding up has been served on the company (if any) discharging, in relation to the first-mentioned company, functions of a management company.

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CHAPTER 6

Restoration

Restoration by the court

1398. *Section 741 shall apply to an investment company as if, in *subsection (1)(a)*, “2 years” were substituted for “20 years”.*

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CHAPTER 7

Public offers of securities, prevention of market abuse, etc.

Application of Chapters 1, 2 and 4 of Part 23 to investment companies

1399. Chapters 1, 2 and 4 of Part 23—

(a) so far as they are applicable to companies other than public limited companies that fall within *Part 17*; and

(b) with the exception, in particular, of *sections 1354 to 1356*;

shall apply to an investment company.

CHAPTER 8

Umbrella funds and sub-funds

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Segregated liability of investment company sub-funds

1400. (1) Notwithstanding any statutory provision or rule of law to the contrary, but subject to Schedule 17—

(a) any liability incurred on behalf of or attributable to any sub-fund of an umbrella fund shall be discharged solely out of the assets of that sub-fund; and

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(b) no umbrella fund nor any director, receiver, examiner, liquidator, provisional liquidator or other person shall apply, nor be obliged to apply, the assets of any such sub-fund in satisfaction of any liability incurred on behalf of or attributable to any other sub-fund of the same umbrella fund;

whether such liability was incurred before, on or after 30 June 2005.

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(2) *Schedule 17* provides that *subsection (1)* shall not apply to an umbrella fund which was authorised and commenced trading (as that latter expression is to be read in accordance with that Schedule) before 30 June 2005 unless the conditions specified in that Schedule are satisfied.

Requirements to be complied with by, and other matters respecting, an umbrella fund to which section 1400(1) applies

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1401. (1) An umbrella fund to which section 1400(1) applies shall—

(a) ensure that the words “An umbrella fund with segregated liability between sub-funds” are included in all its letterheads and in any agreement entered into by it in writing with a third party; and

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(b) disclose to a third party that it is a segregated liability umbrella fund before it enters into an oral contract with the third party.

(2) If an umbrella fund fails to comply with *subsection (1)(a)* or *(b)*, the umbrella fund and any officer of it who is in default shall be guilty of a category 3 offence.

(3) There shall be implied in every contract, agreement, arrangement or transaction entered into by an umbrella fund to which *section 1400(1)* applies the following

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terms, that:

- (a) the party or parties contracting with the umbrella fund shall not seek, whether in any proceedings or by any other means whatsoever or wheresoever, to have recourse to any assets of any sub-fund of the umbrella fund in the discharge of all or any part of a liability which was not incurred on behalf of that sub-fund; 5
- (b) if any party contracting with the umbrella fund shall succeed by any means whatsoever or wheresoever in having recourse to any assets of any sub-fund of the umbrella fund in the discharge of all or any part of a liability which was not incurred on behalf of that sub-fund, that party shall be liable to the umbrella fund to pay a sum equal to the value of the benefit thereby obtained by it; and 10
- (c) if any party contracting with the umbrella fund shall succeed in seizing or attaching by any means, or otherwise levying execution against, any assets of a sub-fund of an umbrella fund in respect of a liability which was not incurred on behalf of that sub-fund, that party shall hold those assets or the direct or indirect proceeds of the sale of such assets on trust for the umbrella fund and shall keep those assets or proceeds separate and identifiable as such trust property. 15
- (4) All sums recovered by an umbrella fund as a result of any such trust as is described in subsection (3)(c) shall be credited against any concurrent liability pursuant to the implied term set out in subsection (3)(b). 20
- (5) Any asset or sum recovered by an umbrella fund pursuant to the implied term set out in paragraph (b) or (c) of subsection (3) or by any other means whatsoever or wheresoever in the events referred to in those paragraphs shall, after the deduction or payment of any costs of recovery, be applied so as to compensate the sub-fund affected. 25
- (6) In the event that assets attributable to a sub-fund to which section 1400(1) applies are taken in execution of a liability not attributable to that sub-fund, and in so far as such assets or compensation in respect thereof cannot otherwise be restored to that sub-fund affected, the directors of the umbrella fund, with the consent of the custodian, shall certify or cause to be certified, the value of the assets lost to the sub-fund affected and transfer or pay from the assets of the sub-fund or sub-funds to which the liability was attributable, in priority to all other claims against such sub-fund or sub-funds, assets or sums sufficient to restore to the sub-fund affected, the value of the assets or sums lost to it. 30

Further matters respecting an umbrella fund to which section 1400(1) applies

- 1402.** (1) Without prejudice to the other provisions of sections 1400 and 1401, Schedule 17 and this section, a sub-fund of an umbrella fund is not a legal person separate from that umbrella fund, but an umbrella fund may sue and be sued in respect of a particular sub-fund and may exercise the same rights of set-off, if any, as between its sub-funds as apply at law in respect of companies and the property of a sub-fund is subject to orders of the court as it would have been if the sub-fund were a separate legal person. 35
- (2) Nothing in section 1400 or 1401, Schedule 17 or this section shall prevent the application of any enactment or rule of law which would require the application of the assets of any sub-fund in discharge of some or all of the liabilities of any other sub-fund on the grounds of fraud or misrepresentation and, in particular, by reason of the 40

application of *section 443, 557, 604 or 608.*

(3) A sub-fund may be wound up in accordance with *section 569(1)(d)* or *586(2)* as if the sub-fund were a separate company but, in any such case, the appointment of the liquidator or any provisional liquidator and the powers, rights, duties and responsibilities of the liquidator or any provisional liquidator shall be confined to the sub-fund or sub-funds which is or are being wound up. 5

(4) For the purposes of *subsection (3)*, all references made in *section 569(1)(d)* or *586(2)*, and in all relevant provisions of this Act relating to the winding up of a company pursuant to *section 569(1)(d)* or *586(2)*, to one of the following words shall be read as follows: 10

(a) “company” shall be read as referring to the sub-fund or sub-funds which is or are being wound up;

(b) a “member” or “members” shall be read as referring to the holders of the shares in that sub-fund or sub-funds; and

(c) “creditors” shall be read as referring to the creditors of that sub-fund or sub-funds. 15

CHAPTER 9

Migration of funds

Definitions (*Chapter 9*)

1403. (1) In this Chapter— 20

“migrating company” means a body corporate which is established and registered under the laws of a relevant jurisdiction and which is a collective investment undertaking;

“registration documents” has the meaning given to it by *section 1404*;

“relevant jurisdiction”, other than in *sections 1408 and 1409*, means the place, outside the State, prescribed under *subsection (2)* where the migrating company is established and registered at the time of its application under *section 1405*. 25

(2) The Minister may make regulations prescribing places, outside the State, for the purposes of the definition of “relevant jurisdiction” in *subsection (1)*, where he or she is satisfied that the law of the place concerned makes provision for migrating companies to continue under the laws of the State or for companies to continue under the laws of that place in a substantially similar manner to continuations under *section 1405*. 30

“Registration documents”— meaning

1404. (1) In this Chapter “registration documents”, in relation to a migrating company, means 35 the following documents:

(a) a copy, certified and authenticated in the prescribed manner, of the certificate of registration or equivalent certificate or document issued with respect to the migrating company under the laws of the relevant jurisdiction;

- (b) a copy, certified and authenticated in the prescribed manner, of the memorandum and articles of the migrating company or equivalent constitutive document of the migrating company;
- (c) a list setting out particulars in relation to the directors and secretary of the migrating company in accordance with the provisions of *section 149*; 5
- (d) a statutory declaration, in the prescribed form, of a director of the migrating company made not more than 28 days before the date on which the application is made to the Registrar to the effect that—
- (i) the migrating company is, as of the date of the declaration, established and registered in the relevant jurisdiction, no petition or other similar proceeding to wind up or liquidate the migrating company has been notified to it and remains outstanding in any place, and no order has been notified to the migrating company or resolution adopted to wind up or liquidate the migrating company in any place; 10
 - (ii) the appointment of a receiver, liquidator, examiner or other similar person has not been notified to the migrating company and, at the date of the declaration, no such person is acting in that capacity in any place with respect to the migrating company or its property or any part thereof; 15
 - (iii) the migrating company is not, at the date of the declaration, operating or carrying on business under any scheme, order, compromise or other similar arrangement entered into or made by the migrating company with creditors in any place; 20
 - (iv) at the date of the declaration the migrating company has served notice of the proposed registration on the creditors of the migrating company;
 - (v) any consent or approval to the proposed registration in the State required by any contract entered into or undertaking given by the migrating company has been obtained or waived, as the case may be; and
 - (vi) the registration is permitted by and has been approved in accordance with the memorandum and articles of association or equivalent constitutive document of the migrating company; 30
- (e) a declaration of solvency prepared in accordance with *section 1410*;
- (f) a schedule of the charges or security interests created or granted by the migrating company that would, if such charges or security interests had been created or granted by a company incorporated under this Act, have been registrable under *Chapter 2 of Part 7* and such particulars of those security interests and charges as are specified in relation to charges by *section 414*; 35
- (g) notification of the proposed name of the migrating company if different from its existing name; and
- (h) a copy of the memorandum and articles of the migrating company which the migrating company has resolved to adopt, which shall be in the Irish language or the English language, which shall take effect on registration under *section 1405* and which the migrating company undertakes not to amend before registration without the prior authorisation of the Registrar. 40

- (2) If the original of any of the documents referred to in *subsection (1)* is not written in the Irish or the English language, then “registration documents” in this Chapter, in so far as that expression relates to such a document, means a translation of the document into the Irish or the English language certified as being a correct translation of it by a person who is competent to so certify.

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Continuation of foreign investment company

1405. (1) A migrating company may apply to the Registrar to be registered as an investment company in the State by way of continuation.

- (2) Where an application is made under *subsection (1)*, the Registrar shall not register the migrating company as an investment company in the State unless he or she is satisfied that all of the requirements of this Act in respect of the registration and of matters precedent and incidental thereto have been complied with and, in particular, but without prejudice to the generality of the foregoing, he or she is satisfied that—

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(a) the migrating company has delivered to the Registrar an application for the purpose, in the prescribed form and signed by a director of the migrating company, together with the registration documents;

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(b) the name or, if relevant, the proposed new name of the migrating company has not been determined to be undesirable pursuant to *section 26*;

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(c) the migrating company has delivered to the Registrar notice of the address of its proposed registered office in the State;

(d) the migrating company has applied to the Central Bank to be authorised to carry on business as an investment company under *section 1390* and the Central Bank has notified the migrating company and the Registrar that it proposes to authorise the migrating company to so carry on business.

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- (3) An application under this section shall be accompanied by a statutory declaration in the prescribed form made by a solicitor engaged for this purpose by the migrating company, or by a director of the migrating company, and stating that the requirements mentioned in *subsection (2)* have been complied with. The Registrar may accept such a declaration as sufficient evidence of compliance.

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- (4) The Registrar shall, as soon as is practicable after receipt of the application for registration, publish notice of it in the CRO Gazette.

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- (5) Where the Registrar receives a notification under *subsection (2)(d)*, the Registrar—

(a) may issue a certificate of registration of the migrating company by way of continuation of the migrating company as an investment company under the laws of the State; and

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(b) if he or she issues such a certificate, shall enter in the register maintained for the purpose of *section 414*, in relation to charges and security interests of the migrating company specified in *paragraph (f)* of the definition of “registration documents” in *section 1404(1)*, the particulars specified by *section 414* which have been supplied by the migrating company.

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- (6) The migrating company shall, as soon as may be after being registered under *subsection (5)*, apply to be de-registered in the relevant jurisdiction.

- (7) The Registrar shall enter in the register of companies the date of registration of the migrating company and shall forthwith publish notice in the CRO Gazette of the following matters:
- (a) the date of the registration of the migrating company under this section;
 - (b) the relevant jurisdiction; and
 - (c) the previous name of the migrating company if different from the name under which it is being registered.
- (8) From the date of registration, the migrating company shall be deemed to be an investment company formed and registered under this Part and shall continue for all purposes under this Act, and the provisions of this Part shall apply to the migrating company, but this section does not operate—
- (a) to create a new legal entity;
 - (b) to prejudice or affect the identity or continuity of the migrating company as previously established and registered under the laws of the relevant jurisdiction for the period that the migrating company was established and registered in the relevant jurisdiction;
 - (c) to affect any contract made, resolution passed or any other act or thing done in relation to the migrating company during the period that the migrating company was so established and registered;
 - (d) to affect the rights, authorities, functions and liabilities or obligations of the migrating company or any other person; or
 - (e) to render defective any legal proceedings by or against the migrating company.
- (9) Without prejudice to the generality of subsection (8)—
- (a) the failure of a migrating company to send to the Registrar the particulars of a charge or security interest created before the date of registration shall not prejudice any rights which any person in whose favour the charge was made or security interest created may have thereunder; and
 - (b) any legal proceedings that could have been continued or commenced by or against the migrating company before its registration under this section may, notwithstanding the registration, be continued or commenced by or against the migrating company after registration.

Supplemental provisions in relation to section 1405

- 1406.** (1) The migrating company shall—
- (a) notify the Registrar in the prescribed form; and
 - (b) notify the Central Bank;
- within 3 days after the date of its de-registration in the relevant jurisdiction, of that de-registration.
- (2) On registration of the migrating company under *section 1405(5)*, the Central Bank shall forthwith authorise the migrating company to carry on business under this Part.

- (3) If there is any material change in any of the information contained in the statutory declaration mentioned in *paragraph (d)* of the definition of “registration documents” in *section 1404(1)* after the date of the declaration and before the date of the registration under *section 1405*, the director who made that statutory declaration, and any other director who becomes aware of that material change shall forthwith deliver a new statutory declaration to the Registrar relating to the change. 5
- (4) If the migrating company fails to comply with any provision of *section 1405* or this section, the Registrar may send to the company by post a registered letter stating that, unless the migrating company rectifies the failure within 30 days after the date of the letter and confirms that it has rectified the failure, a notice may be published in the CRO Gazette with a view to striking the migrating company off the register. 10
- (5) If the failure mentioned in *subsection (4)* is not rectified within 30 days after the date of the sending of the letter referred to in that subsection, the Registrar may publish in the CRO Gazette a notice stating that, at the expiration of 1 month after the date of that notice, the migrating company mentioned therein will, unless the matter is resolved, be struck off the register, and the migrating company will be dissolved. 15
- (6) At the expiration of the time mentioned in the notice, the Registrar may, unless cause to the contrary is previously shown by the migrating company, strike the company off the register, and shall publish notice thereof in the CRO Gazette, and on that publication, the migrating company shall be dissolved. 20
- (7) For the purposes of this section, *section 736* shall apply as if the reference in it to *Chapter 1* of *Part 12* included a reference to this section and, accordingly, the other provisions of *Chapter 2* of that Part shall apply with any necessary modifications.

Definitions for the purposes of de-registration provisions contained in sections 1408 and 1409

1407. (1) In *sections 1408* and *1409*—

“applicant” means an investment company that applies under *section 1408* to be de-registered under *section 1409*;

“relevant jurisdiction” means the place, outside the State, prescribed under *subsection (2)* in which the investment company proposes to be registered; 30

“transfer documents”, in relation to an applicant, means the following documents:

(a) a statutory declaration, in the prescribed form, of a director of the applicant made not more than 28 days before the date on which the application is made to the Registrar to the effect that—

(i) the applicant will, upon registration, continue as a body corporate under the laws of the relevant jurisdiction; 35

(ii) no petition or other similar proceeding to wind up or liquidate the applicant has been notified to the applicant and remains outstanding in any place, and no order has been notified to the applicant or resolution adopted to wind up or liquidate the applicant in any place; 40

(iii) the appointment of a receiver, liquidator, examiner or other similar person has not been notified to the applicant and, at the date of the declaration, no

such person is acting in that capacity in any place with respect to the applicant or its property or any part thereof;

(iv) the applicant is not, at the date of the declaration, operating or carrying on business under any scheme, order, compromise or other similar arrangement entered into or made by the applicant with creditors in any place; 5

(v) the application for de-registration is not intended to defraud persons who are, at the date of the declaration, creditors of the applicant;

(vi) any consent or approval to the proposed de-registration required by any contract entered into or undertaking given by the applicant has been obtained or waived, as the case may be; and 10

(vii) the de-registration is permitted by the memorandum and articles of the applicant;

(b) a declaration of solvency prepared in accordance with the provisions of *section 1410*; and

(c) a copy of a special resolution of the applicant that approves the proposed de-registration and the transfer of the applicant to the relevant jurisdiction. 15

(2) The Minister may make regulations prescribing places, outside the State, for the purposes of the definition of “relevant jurisdiction” in *subsection (1)*, where he or she is satisfied that the law of the place concerned makes provision for bodies corporate that are substantially similar to applicants under *section 1408* to continue under the laws of the State in a substantially similar manner to continuations under *section 1405* or for companies to continue under the laws of that place. 20

De-registration of companies when continued under the law of place outside the State

1408. (1) An applicant which proposes to be registered in a relevant jurisdiction by way of continuation as a body corporate may apply to the Registrar to be de-registered in the State. 25

(2) Where an application is made under *subsection (1)*, the Registrar shall not de-register, under *section 1409*, the applicant as a company in the State unless he or she is satisfied that all of the requirements of this Act in respect of the de-registration and of matters precedent and incidental thereto have been complied with and, in particular, but without prejudice to the generality of the foregoing, he or she is satisfied that— 30

(a) the applicant has delivered to the Registrar an application for the purpose, in the prescribed form and signed by a director of the applicant, together with the transfer documents;

(b) the applicant has informed the Central Bank of its intention to be de-registered and the Central Bank has notified the Registrar that it has no objection to the de-registration, so long as the applicant complies with any conditions that the Central Bank may impose on the applicant; and

(c) the applicant has delivered to the Registrar notice of any proposed change in its name and of its proposed registered office or agent for service of process in the relevant jurisdiction. 40

- (3) An application under this section shall be accompanied by a statutory declaration in the prescribed form made by a solicitor engaged for this purpose by the applicant, or by a director of the applicant, and stating that the requirements mentioned in subsection (2) have been complied with. The Registrar may accept such a declaration as sufficient evidence of compliance. 5
- (4) The Registrar shall, as soon as is practicable after receipt of the application for de-registration, publish notice of it in the CRO Gazette.
- (5) Where an application is made under subsection (1), a person mentioned in subsection (6) may apply to the court, on notice to the applicant, the Central Bank, the Registrar and all creditors of the applicant, not later than 60 days after the date of the publication of the notice under subsection (4), for an order preventing the proposal or passage of a resolution specified in paragraph (c) of the definition of “transfer documents” in section 1407(1) from taking effect in relation to the application, and the court may, subject to subsection (9), make such an order accordingly. 10
- (6) The following persons may apply for an order under subsection (5): 15
- (a) the holders of not less than 5 per cent of the issued share capital of the applicant and who have not voted in favour of the resolution; or
 - (b) any creditor of the applicant.
- (7) Notice of an application for an order under subsection (5) may be given to the creditors concerned by publication in at least one national newspaper in the State. 20
- (8) The Central Bank and the applicant concerned shall each be entitled to appear and be heard on an application made pursuant to subsection (5).
- (9) The court may make an order under subsection (5) only if it is satisfied that— 25
- (a) the proposed de-registration of the applicant would contravene the terms of an agreement or arrangement between the applicant and any shareholder or creditor of the applicant; or
 - (b) the proposed de-registration would be materially prejudicial to any shareholder or creditor of the applicant and the interests of shareholders and creditors or both taken as a whole would be materially prejudiced.
- (10) An order made under subsection (5) shall specify the period in respect of which it shall remain in force. 30
- (11) An order of the court under subsection (5) is final and conclusive and not appealable.

Supplemental provisions in relation to section 1408

- 1409.** (1) Unless the court orders otherwise, when one or more than one application is made under section 1408(5), a resolution specified in paragraph (c) of the definition of “transfer documents” in section 1407(1) in relation to a company shall not take effect until— 35
- (a) where the application or all the applications to the court are withdrawn—
 - (i) the day on which the resolution is passed;
 - (ii) the day next following the day on which the last outstanding application is

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- withdrawn; or
- (iii) the 31st day following the publication of the notice under *section 1408(7)*;
whichever is the latest; and
- (b) where all applications to the court are not withdrawn—
- (i) the day on which the resolution is passed;
 - (ii) the day specified in the order or, if no date is specified in the order, the day next following the day on which the period for which the order is specified to remain in force expires or otherwise ceases to be in force; or
 - (iii) the day next following the decision of the court;
whichever is the latest.
- (2) When the applicant is registered as a company under the laws of the relevant jurisdiction, it shall give notice, in the prescribed form, to the Registrar of that fact within 3 days after the date of its becoming so registered, including its new name, if any, and, as soon as practicable after receiving that notice, the Registrar shall issue a certificate of de-registration of the applicant.
- (3) The Registrar shall enter in the register of companies the date of the de-registration of the applicant and shall, within 7 days after the date of issue of the certificate under subsection (2), publish in the CRO Gazette notice of the following matters:
- (a) the date of the de-registration of the applicant under this section;
 - (b) the relevant jurisdiction; and
 - (c) the new name of the applicant if different from the name under which it was registered.
- (4) From the date of registration of the applicant in the relevant jurisdiction, it shall cease to be a company for all purposes of this Act and shall continue for all purposes as a body corporate under the laws of the relevant jurisdiction, but this section does not operate—
- (a) to create a new legal entity;
 - (b) to prejudice or affect the identity or continuity of the applicant as previously constituted under the laws of the State for the period that the applicant was so constituted;
 - (c) to affect any contract made, resolution passed or any other act or thing done in relation to the applicant during the period that the applicant was constituted under the laws of the State;
 - (d) to affect the rights, authorities, functions and liabilities or obligations of the applicant or any other person; or
 - (e) to render defective any legal proceedings by or against the applicant.
- (5) Without prejudice to the generality of subsection (4), any legal proceedings that could have been continued or commenced by or against the applicant before its de-registration under this section may, notwithstanding the de-registration, be continued

or commenced by or against the applicant after registration.

Statutory declaration as to solvency

- 1410.** (1) Where an application is made under *section 1405* or *1408*, a director of the migrating company or applicant, as the case may be, making the application shall make a statutory declaration, in the prescribed form, stating that he or she has made a full inquiry into its affairs and has formed the opinion that it is able to pay its debts as they fall due. 5
- (2) A declaration under *subsection (1)* shall have no effect for the purposes of this section unless— 10
- (a) it is made not more than 28 days before the date on which the application is made to the Registrar;
 - (b) it states the assets and liabilities of the migrating company or applicant as at the latest practicable date before the date of making of the declaration and in any event at a date not more than 3 months before the date of that making; and
 - (c) a report made by an independent person under *subsection (3)* is attached to the declaration, along with a statement by the independent person that he or she has given and has not withdrawn consent to the making of the declaration with the report attached to it. 15
- (3) The report mentioned in *subsection (2)(c)* shall state whether, in the independent person's opinion, based on the information and explanations given to him or her, the opinion of the director mentioned in *subsection (1)* and the statement of the migrating company's or applicant's assets and liabilities referred to in *subsection (2)(b)* are reasonable. 20
- (4) For the purposes of *subsection (3)*, the independent person shall be a person who, at the time the report is made, is— 25
- (a) in the case of an application under *section 1405*, qualified to be the auditor of the migrating company under the laws of the relevant jurisdiction; and
 - (b) in the case of an application under *section 1408*, qualified to be the statutory auditor of the applicant.
- (5) A director who makes a declaration under this section without having reasonable grounds for the opinion that the migrating company or applicant is able to pay its debts as they fall due shall be guilty of a category 2 offence. 30
- (6) Where the migrating company or applicant is wound up within 1 year after the date on which the application is made to the Registrar and its debts are not paid or provided for in full within that year, it shall be presumed, unless the contrary is shown, that the director did not have reasonable grounds for his or her opinion. 35

PART 25

MISCELLANEOUS

CHAPTER 1

Provisions concerning foreign insolvency proceedings (including those covered by the Insolvency Regulation)

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Preliminary and interpretation (Chapter 1)

1411. (1) In addition to their application to Part 11, sections 1414 to 1423 shall apply to insolvency proceedings dealt with in Part 10.

(2) Save as provided in section 1417 and except where the context otherwise requires, references in this Chapter to numbered Articles without qualification are references to Articles so numbered of the Insolvency Regulation. 10

Recognition of winding up orders of non-European Union states and Denmark

1412. (1) Any order made by a court of any state recognised for the purposes of this section and made for, or in the course of, winding up a company may be enforced by the High Court in the same manner in all respects as if the order has been made by the High Court. 15

(2) When an application has been made to the High Court under this section, an office copy of any order sought to be enforced shall be sufficient evidence of the order.

(3) In this section—

“company” means a body corporate incorporated outside the State; 20

“recognised” means recognised by order made by the Minister for the purposes of this section and no such order may be made in relation to a state that is a Member State (other than Denmark).

Purpose of sections 1414 to 1423

1413. The purpose of sections 1414 to 1423 is to re-enact the European Communities (Corporate Insolvency) Regulations 2002 (S.I. No. 333 of 2002), apart from their provisions in so far as they relate to insolvency proceedings. 25

Registration of judgments given in insolvency proceedings

1414. (1) Without prejudice to Article 16(1) of the Insolvency Regulation, a liquidator appointed in insolvency proceedings who intends— 30

(a) to request under Article 21 of the Insolvency Regulation that notice of the judgment opening the proceedings and, where appropriate, the decision appointing him or her be published in the State; or

(b) to take any other action in the State under the Insolvency Regulation;

shall deliver to the Registrar a certified copy of the judgment and, where appropriate, of the decision appointing the liquidator. 35

- (2) Registration under *subsection (1)* may also be effected by the Registrar on application by a liquidator who does not intend to take any action in the State under the Insolvency Regulation.
- (3) The certified copy or copies mentioned in *subsection (1)* shall be accompanied by—
- (a) if the judgment or decision is not expressed in the Irish or the English language, a translation, certified to be correct by a person competent to do so, into either of those languages;
 - (b) the prescribed form; and
 - (c) the prescribed fee.
- (4) The Registrar shall issue a certificate of registration to the liquidator. 10
- (5) In any proceedings a document purporting to be—
- (a) a certified copy of a judgment opening insolvency proceedings or a decision appointing a liquidator in such proceedings, or
 - (b) a translation of such a document which is certified as correct by a person competent to do so, 15
- shall, without further proof, be admissible as evidence of the judgment, the liquidator's appointment or the translation, unless the contrary is shown.

Publication in relation to insolvency proceedings outside State

1415. *Section 711* shall apply to insolvency proceedings (as defined in *section 2(1)*) as it applies to insolvency proceedings (as defined in *section 710*). 20

Registration of insolvency judgments

1416. A request by a liquidator under Article 22 of the Insolvency Regulation that the judgment opening the insolvency proceedings be registered in a public register shall be made to the Registrar.

Enforcement in State of insolvency judgments

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1417. (1) In this section—

“Brussels 1 Regulation” means Council Regulation (EC) No. 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters;

“insolvency judgment” means a judgment referred to in Article 25 of the Insolvency Regulation; 30

“Master” means the Master of the High Court.

(2) Except where the context otherwise requires, references in this section to numbered Articles without qualification are references to Articles so numbered of the Brussels 1 Regulation.

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(3) Having regard to Article 68, references in Article 25 of the Insolvency Regulation to enforcement of insolvency judgments in accordance with certain Articles of the

Brussels Convention are to be read as references to enforcement of those judgments in accordance with Articles 38 to 58.

- (4) An application under the Brussels 1 Regulation for the enforcement in the State of an insolvency judgment shall be made to the Master. 5
- (5) The Master shall determine the application by order in accordance with the Brussels 1 Regulation. 10
- (6) The Master shall declare the insolvency judgment enforceable immediately on completion of the formalities provided for in Article 53 without any review under Articles 34 and 35 and shall make an enforcement order in relation to the judgment. 15
- (7) An order under *subsection (5)* may provide for the enforcement of part only of the insolvency judgment concerned. 10
- (8) An application to the Master under Article 39 for an enforcement order in respect of an insolvency judgment may include an application for any preservation measures the High Court has power to grant in proceedings that, apart from the provisions of this Chapter, are within its jurisdiction. 15
- (9) Where an enforcement order is made, the Master shall grant any such preservation measures so applied for. 20
- (10) For the purposes of this Chapter, references in Articles 42, 43, 45, 47, 48, 52, 53 and 57 to a declaration of enforceability are to be treated as references to an enforcement order under this section. 20
- (11) Subject to the restrictions on enforcement contained in Article 47(3), if an enforcement order has been made respecting an insolvency judgment, the judgment—
 (a) shall, to the extent to which its enforcement is authorised by the enforcement order, be of the same force and effect as a judgment of the High Court; and
 (b) may be enforced by the High Court, and proceedings taken on it, as if it were a judgment of that Court. 25

Interest on insolvency judgments and payment of costs

1418. (1) Where, on application for an enforcement order respecting an insolvency judgment, it is shown—

- (a) that the judgment provides for the payment of a sum of money; and 30
 (b) that, in accordance with the law of the Member State in which the judgment was given, interest on the sum is recoverable under the judgment at a particular rate or rates and from a particular date or time;

the enforcement order, if made, shall provide that the person liable to pay the sum shall also be liable to pay the interest, apart from any interest on costs recoverable under *subsection (2)*, in accordance with the particulars noted in the order, and the interest shall be recoverable by the applicant as though it were part of the sum. 35

- (2) An enforcement order may provide for the payment to the applicant by the respondent of the reasonable costs of or incidental to the application for the enforcement order.
- (3) A person required by an enforcement order to pay costs shall be liable to pay interest 40

- on the costs as if they were the subject of an order for the payment of costs made by the High Court on the date on which the enforcement order was made.
- (4) Interest shall be payable on a sum referred to in *subsection (1)(a)* only as provided for in this section.

Currency of payments under enforceable insolvency judgments

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1419. (1) An amount payable in the State under an insolvency judgment by virtue of an enforcement order shall be payable in the currency of the State.

(2) If the amount is stated in the insolvency judgment in any currency except the currency of the State, payment shall be made on the basis of the exchange rate prevailing, on the date the enforcement order is made, between the currency of the State and any such currency.

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(3) For the purposes of this section a certificate purporting to be signed by an officer of an authorised institution and to state the exchange rate prevailing on a specified date between a specified currency and the currency of the State shall be admissible as evidence of the facts stated in the certificate.

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(4) In this section “authorised institution” means—

- (a) a credit institution;
- (b) a building society within the meaning of the Building Societies Act 1989;
- (c) a trustee savings bank licensed under the Trustee Savings Banks Act 1989; or
- (d) An Post.

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Preservation measures

1420. (1) A request under Article 38 for measures to secure and preserve any of the debtor’s assets in the State shall be made to the High Court.

(2) On such a request, the High Court—

- (a) may grant any such measures that the court has power to grant in proceedings that, apart from the provisions of this Chapter, are within its jurisdiction; and
- (b) may refuse to grant the measures sought if, in its opinion, the fact that, apart from this section, the court does not have jurisdiction in relation to the subject matter of the proceedings makes it inexpedient for it to grant the measures.

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Venue

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1421. The jurisdiction of the Circuit Court or District Court in proceedings that may be instituted in the State by a liquidator in exercise of his or her powers under Article 18 of the Insolvency Regulation may be exercised by the judge for the time being assigned—

- (a) in the case of the Circuit Court, to the circuit, and
- (b) in the case of the District Court, to the district court district,

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in which the defendant ordinarily resides or carries on any profession, business or occupation.

Language of claims in relation to insolvency proceedings outside State

1422. *Section 714 shall apply to insolvency proceedings (as defined in section 2(1)) as it applies to insolvency proceedings (as defined in section 710).*

Non-recognition or non-enforcement of judgments

1423. It shall be for the High Court to determine whether judgments referred to in Article 25(1), or insolvency proceedings or judgments referred to in Article 26, should not be recognised or enforced on grounds mentioned in those provisions.

CHAPTER 2

Other miscellaneous provisions

Deemed consent to disclosure with respect to interest in shares or debentures acquired

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1424. The acquisition by any person of an interest in shares or debentures of a company registered in the State shall be deemed to be a consent by that person to the disclosure by the person, his or her agents or his or her intermediaries of any information required to be disclosed in relation to shares or debentures by or under this Act.

Extension of *Chapter 1 of Part 9* to any company liable to be wound up

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1425. *Chapter 1 (other than section 455) of Part 9 shall apply to any company liable to be wound up under this Act.*

Application of sections 113 to 115 to bodies corporate generally

1426. (1) In addition to its application where the company firstly referred to in subsection (1) of it is—

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- (a) a private company limited by shares; or
- (b) by virtue of any of *Parts 16 to 24*, any other type of company,

section 113 shall apply to a body corporate that is not a company, and the foregoing reference in subsection (1) of it to a company, and the other relevant references in that section, shall be read accordingly.

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(2) In addition to their application where the company firstly referred to in subsection (1) of either section is—

- (a) a private company limited by shares; or
- (b) by virtue of any of *Parts 16 to 22*, any other type of company,

sections 114 and 115 shall apply to a body corporate that is not a company, and the foregoing reference in subsection (1) of section 114 or 115 to a company, and the other relevant references in either such section, shall be read accordingly.

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Saving for enactments providing for winding up under certain former Companies Acts

1427. Nothing in *Part 11* or any other Part of this Act shall affect the operation of any enactment which provides for any association, partnership or company being wound up,

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or being wound up as a company or as an unregistered company under the Companies (Consolidation) Act 1908 or any enactment repealed by that Act.

Application of section 405 to every type of company and society

1428. Section 405 shall apply to—

- (a) any company within the meaning of *Chapter 4 of Part 14*; 5
- (b) any friendly society within the meaning of the Friendly Societies Acts 1896 to 1977; and
- (c) any society registered under the Industrial and Provident Societies Acts 1893 to 1978;

as it applies to a private company limited by shares. 10

Restriction of section 58 of the Solicitor's Act 1954

1429. Notwithstanding section 58 of the Solicitor's Act 1954, a statutory auditor may draw or prepare any document for the purposes of this Act other than a deed or a constitution and, in the case of the latter (where the company is not a private company limited by shares), whether a memorandum of association or articles of association, or both. 15

Prohibition of partnerships with more than 20 members

1430. (1) No company, association or partnership consisting of more than 20 persons shall be formed for the purpose of carrying on any business (other than the business of banking), that has for its object the acquisition of gain by the company, association or partnership, or by the individual members thereof, unless— 20

- (a) it is registered as a company under this Act;
- (b) it is formed in pursuance of some other statute; or
- (c) it is a partnership formed for the purpose of—

(i) carrying on practice as accountants in a case where each partner is a statutory auditor; 25

(ii) carrying on practice as solicitors in a case where each partner is a solicitor;

(iii) carrying on or promoting the business of thoroughbred horse breeding, being a partnership to which, subject to *subsection (5)*, the Limited Partnerships Act 1907 relates; or

(iv) the provision of investment and loan finance and ancillary facilities and services to persons engaged in industrial or commercial activities, being a partnership—

(I) that consists of not more than 50 persons; and

(II) to which, subject to *subsection (5)*, the Limited Partnerships Act 1907 relates. 30

(2) Subject to *subsection (3)*, the Minister may by order declare that the prohibition in *subsection (1)* shall not apply to a partnership that is of a description, and that has 35

- been or is formed for a purpose, specified in the order.
- (3) The Minister shall not make an order under *subsection (2)* unless, after consultation with the Company Law Review Group, the Minister is satisfied that the public interest will not be adversely affected by the discontinuance, in consequence of the order, of the prohibition in *subsection (1)* in relation to the partnerships concerned. 5
- (4) This section shall not apply to an investment limited partnership within the meaning of the Investment Limited Partnerships Act 1994.
- (5) The provisions of section 4 (2) of the Limited Partnerships Act 1907 shall not apply to a partnership specified in *subsection (1)(c)* nor to a partnership specified in an order made under *subsection (2)*. 10

Prohibition of banking partnership with more than 10 members

1431. No company, association or partnership consisting of more than 10 persons shall be formed for the purpose of carrying on the business of banking, unless it is registered as a company under this Act, or is formed in pursuance of some other statute.

Signing of statutory financial statements in case of credit institution registered after 15 August 1879

1432. For the purposes of *section 324* as it applies to a credit institution that is—

- (a) a company registered under this Act; or
 - (b) an existing company registered under a former enactment relating to companies (within the meaning of *section 5*) after 15 August 1879; 20
- the statutory financial statements shall be signed by the secretary of the company and—
- (i) where there are more than 3 directors of the company — by at least 3 directors of the company; and
 - (ii) where there are not more than 3 directors — by all the directors of the company.

Application of sections 1397 and 1398 to companies that are UCITS

1433. Each of the following—

- (a) *section 1397* (circumstances in which company may be wound up by the court); and
- (b) *section 1398* (restoration by the court);

shall, with the necessary modifications, apply to a company to which the European Communities (Undertakings for Collective Investment in Transferable Securities) Regulations 2011 (S.I. No. 352 of 2011) apply as those sections apply to an investment company. 30

Relationship between Chapters 1 and 2 of Part 9 and Irish Takeover Panel Act 1997

1434. (1) For the avoidance of doubt, nothing in *Chapter 1* or *2* of *Part 9* prejudices the jurisdiction of the Irish Takeover Panel under the Irish Takeover Panel Act 1997 with 35

respect to a compromise or scheme of arrangement that is proposed between a relevant company (within the meaning of that Act) and its members or any class of them and which constitutes a takeover or other relevant transaction within the meaning of that Act and, accordingly, that Panel has, and shall be deemed always to have had, power to make rules under section 8 of that Act in relation to a takeover or other relevant transaction of the foregoing kind, to the same extent and subject to the like conditions, as it has power to make rules under that section in relation to any other kind of takeover or other relevant transaction.

5

- (2) The Irish Takeover Panel, in exercising its powers under the Irish Takeover Panel Act 1997, and the court, in exercising its powers under *Chapter 1* or *2* of *Part 9*, shall each have due regard to the other's exercise of powers under that Act or either such Chapter, as the case may be.

10

Eligibility to act as public auditor

1435. (1) In this section “public auditor” means a public auditor for the purposes of—

(a) the Industrial and Provident Societies Acts 1893 to 1978; or

15

(b) the Friendly Societies Acts 1896 to 1977.

- (2) A person shall not act as a public auditor, of the society or friendly society concerned, in respect of any financial year of it that begins after the commencement of this section unless the person is a member of a body of accountants recognised by the Supervisory Authority for the purposes of this section and stands approved by that body to so act.

20

- (3) In respect of any financial year of the society or friendly society concerned that begins before the commencement of this section, the provisions of the Act of 1990 in relation to the eligibility of a person to act as a public auditor shall, notwithstanding *section 4*, continue in force.

25

- (4) A person who contravenes *subsection (2)* shall be guilty of a category 2 offence.

Disapplication of section 7 of Official Languages Act 2003

1436. (1) Section 7 of the Official Languages Act 2003 shall not apply in relation to this Act.

- (2) The text of this Act shall be made available electronically in each of the official languages as soon as practicable after its enactment.

30

SCHEDULE 1

Section 19.

FORM OF CONSTITUTION OF PRIVATE COMPANY LIMITED BY SHARES

CONSTITUTION

OF

5

[name of company as below]

1. The name of the company is: THE SOUTH EASTERN COUNTIES FLOORING AND TILING COMPANY LIMITED.
2. The company is a private company limited by shares, registered under *Part 2* of the *Companies Act 2014*.
3. The liability of the members is limited.
4. The share capital of the company is €50,000 divided into 50,000 shares of €1 each. / The share capital of the company is divided into shares of €1 each.
5. Supplemental Regulations (if any).

10

We, the several persons whose names and addresses are subscribed, wish to be formed into a company in pursuance of this constitution, and we agree to take the number of shares in the capital of the company set opposite our respective names.

15

Names, Addresses and Descriptions of Subscribers	Number of Shares taken by each Subscriber
1. Mary Kelly Address: Description:	2,700
2. Alan Redmond Address: Description:	300
Total shares taken:	3,000

20

25

As appropriate:

signatures in writing of the above subscribers, attested by witness as provided for below; or

authentication in the manner referred to in *section 888*.

30

Dated the _____ day of _____ 20____

Witness to the above Signatures:

Name: _____

Address: _____

SCHEDULE 2

Section 4.

REPEALS AND REVOCATIONS

PART 1

ACTS OF THE OIREACHTAS REPEALED

Number and Year	Short title	Extent of Repeal	5
No. 33 of 1963	Companies Act 1963	The whole Act	
No. 31 of 1977	Companies (Amendment Act) 1977	The whole Act	
No. 10 of 1982	Companies (Amendment) Act 1982	The whole Act	
No. 13 of 1983	Companies (Amendment) Act 1983	The whole Act	10
No. 25 of 1986	Companies (Amendment) Act 1986	The whole Act	
No. 27 of 1988	Bankruptcy Act 1988	Section 51(2)	
No. 27 of 1990	Companies (Amendment) Act 1990	The whole Act	
No. 33 of 1990	Companies Act 1990	The whole Act	
No. 8 of 1999	Companies (Amendment) Act 1999	The whole Act	15
No. 30 of 1999	Companies (Amendment) (No. 2) Act 1999	The whole Act	
No. 28 of 2001	Company Law Enforcement Act 2001	The whole Act	
No. 44 of 2003	Companies (Auditing and Accounting) Act 2003	The whole Act	20
No. 12 of 2005	Investment Funds, Companies and Miscellaneous Provisions Act 2005	Parts 3, 4, 5 and 6	
No. 41 of 2006	Investment Funds, Companies and Miscellaneous Provisions Act 2006	Parts 2 and 3	25
No. 20 of 2009	Companies (Amendment) Act 2009	The whole Act	
No. 45 of 2009	Companies (Miscellaneous Provisions) Act 2009	Sections 1 to 4	
No. 22 of 2012	Companies (Amendment) Act 2012	The whole Act	
No. 46 of 2013	Companies (Miscellaneous Provisions) Act 2013	Sections 2 to 7	30

PART 2

STATUTORY INSTRUMENTS REVOKED

Number and Year	Citation	Extent of Revocation	35
S.I. No. 163 of 1973	European Communities (Companies) Regulations 1973	The whole Statutory Instrument	
S.I. No. 137 of 1987	European Communities (Mergers and Divisions of Companies) Regulations 1987	The whole Statutory Instrument	

Number and Year	Citation	Extent of Revocation	
S.I. No. 201 of 1992	European Communities (Companies: Group Accounts) Regulations 1992	The whole Statutory Instrument	5
S.I. No. 395 of 1993	European Communities (Branch Disclosures) Regulations 1993	The whole Statutory Instrument	10
S.I. No. 275 of 1994	European Communities (Single Member Private Limited Companies) Regulations 1994	The whole Statutory Instrument	15
S.I. No. 437 of 2001	European Communities (Single-Member Private Limited Companies) Regulations 1994 (Amendment) Regulations 2001	The whole Statutory Instrument	20
S.I. No. 333 of 2002	European Communities (Corporate Insolvency) Regulations 2002	The whole Statutory Instrument	25
S.I. No. 765 of 2004	European Communities (Fair Value Accounting) Regulations 2004	The whole Statutory Instrument	30
S.I. No. 839 of 2004	European Communities (Companies) Regulations 2004	The whole Statutory Instrument	35
S.I. No. 49 of 2007	European Communities (Companies) (Amendment) Regulations 2007	The whole Statutory Instrument	40
S.I. No. 450 of 2009	European Communities (Directive 2006/46/EC) Regulations 2009	The whole Statutory Instrument	
S.I. No. 83 of 2010	European Communities (Directive 2006/46/EC) (Amendment) Regulations 2010	The whole Statutory Instrument	
S.I. No. 306 of 2011	European Communities (Mergers and Divisions of Companies) (Amendment) Regulations 2011	The whole Statutory Instrument	
S.I. No. 304 of 2012	European Union (Accounts) Regulations 2012	The whole Statutory Instrument	
S.I. No. 308 of 2012	Companies (Amendment) (No. 2) Act 1999 (Section 32) Order 2012	The whole Statutory Instrument	

SCHEDULE 3

Section 291.

ACCOUNTING PRINCIPLES, FORM AND CONTENT OF ENTITY FINANCIAL STATEMENTS

PART I

CONSTRUCTION OF REFERENCES TO PROVISIONS OF SCHEDULE	5
1. (1) Without prejudice to the generality of section 9 of the Interpretation Act 2005 and its application to the body of this Act and to <i>Schedules 1, 2 and 5 to 17</i> —	
(a) a reference in this Schedule to a paragraph or Part is a reference to a paragraph or Part of this Schedule, unless it is indicated that a reference to some other enactment is intended;	10
(b) a reference in this Schedule to a section is a reference to the section of the Part in which the reference occurs, unless it is indicated that a reference to some other enactment is intended; and	
(c) a reference in this Schedule to a subparagraph or clause is a reference to the subparagraph or clause of the provision in which the reference occurs, unless it is indicated that a reference to some other enactment is intended.	15
(2) Provisions providing for the interpretation of certain expressions appearing in this Schedule are contained in <i>Part VI</i> .	

PART II

GENERAL RULES AND FORMATS	20
SECTION A	
GENERAL RULES	
2. (1) Subject to the provisions of this Schedule—	
(a) every balance sheet of a company shall show the items listed in either of the balance sheet formats set out in <i>Section B</i> ; and	25
(b) every profit and loss account of a company shall show the items listed in any one of the profit and loss accounts formats so set out,	
in either case in the order and under the headings and sub-headings given in the format adopted.	
(2) <i>Subparagraph (1)</i> shall not be read as requiring the heading or sub-heading for any item in the balance sheet, or profit and loss account, of a company to be distinguished by any letter or number assigned to that item in the formats set out in <i>Section B</i> .	30
3. (1) Where, in accordance with <i>paragraph 2(1)</i> , a company's balance sheet or profit and loss account for any financial year has been prepared by reference to one of the formats set out in <i>Section B</i> , the directors of the company shall adopt the same format in preparing the financial statements for subsequent financial years unless, in their opinion, there are special reasons for a change.	35

- (2) Where any change is made in the format adopted in preparing a balance sheet or profit and loss account of a company, the reasons for the change, together with full particulars of the change, shall be given in a note to the financial statements in which the new format is first adopted.
4. (1) Any item required in accordance with *paragraph 2* to be shown in the balance sheet or profit and loss account of a company may be shown in greater detail than that required by the format adopted. 5
- (2) The balance sheet, or profit and loss account, of a company may include an item representing or covering the amount of any asset or liability or income or expenditure not otherwise covered by any of the items listed in the format adopted but the following shall not be treated as assets in the balance sheet of a company— 10
- (a) preliminary expenses;
 - (b) expenses of and commission on any issue of shares or debentures; and
 - (c) costs of research. 15
- (3) Any items to which an Arabic number is assigned in any of the formats set out in *Section B* may be combined in the financial statements of a company—
- (a) in any case where the individual amounts of such items are not material to assessing the financial position or profit or loss of the company for the financial year concerned, or 20
 - (b) in any case where the combination of such items facilitates that assessment.
- (4) Where items are combined in a company's financial statements pursuant to *subparagraph (3)(b)*, the individual amounts of any items so combined shall be disclosed in a note to the financial statements.
- (5) In preparing the balance sheet, or profit and loss account, of a company, the directors of the company shall adapt the arrangement and headings and sub-headings otherwise required by *paragraph 2* in respect of items to which an Arabic number is assigned in the format adopted, in any case where the special nature of the company's business requires such adaptation. 25
- (6) Every profit and loss account of a company shall show the amount of the profit or loss of the company on ordinary activities before taxation. 30
5. In respect of every item shown in the balance sheet, or profit and loss account, or notes thereto, of a company, the corresponding amount for the financial year immediately preceding that to which the balance sheet or profit and loss account relates shall also be shown and, if that corresponding amount is not comparable with the amount to be shown for the item in question in respect of the financial year to which the balance sheet or profit and loss account relates, the former amount may be adjusted, and particulars of the adjustment and the reasons therefor shall be given in a note to the financial statements. 35
6. (1) Subject to *subparagraph (2)*, a heading or sub-heading corresponding to an item listed in the format adopted in preparing the balance sheet or profit and loss account of a company shall not be included in the balance sheet or profit and loss 40

account, as the case may be, if there is no amount to be shown for that item in respect of the financial year to which the balance sheet or profit and loss account relates.	
(2) <i>Subparagraph (1)</i> shall not apply in any case where an amount can be shown for the item in question in respect of the financial year immediately preceding that to which the balance sheet or profit and loss account relates, and that amount shall be shown under the heading or sub-heading required by the format adopted as aforesaid.	5
7. Amounts in respect of items representing assets or income may not be set off in the financial statements of a company against amounts in respect of items representing liabilities or expenditure, as the case may be, or <i>vice versa</i> .	10
SECTION B	
THE REQUIRED FORMATS FOR FINANCIAL STATEMENTS	
<i>Preliminary</i>	
8. References in this Part to the items listed in any of the formats set out in this Part are references to those items read together with any notes following the formats which apply to any of those items.	15
9. A number in brackets following any item in, or any heading to, any of the formats set out in this Part is a reference to the note of that number in the notes following the formats.	20
10. In the notes following the formats—	
(a) the heading of each note gives the required heading or sub-heading for the item to which it applies and a reference to any letters and numbers assigned to that item in the formats set out in this Part; and	
(b) references to a numbered format are references to the balance sheet format or (as the case may require) to the profit and loss account format of that number set out in this Part.	25
BALANCE SHEET FORMATS	
<i>Format I</i>	
A. Fixed Assets	30
I. Intangible assets	
1. Development costs	
2. Concessions, patents, licences, trade marks and similar rights and assets (1)	
3. Goodwill (2)	
4. Payments on account	35
II. Tangible assets	
1. Land and buildings	
2. Plant and machinery	

3. Fixtures, fittings, tools and equipment	
4. Payments on account and assets in course of construction	
III. Financial assets	
1. Shares in group undertakings	
2. Loans to group undertakings	5
3. Participating interests	
4. Loans to undertakings in which a participating interest is held	
5. Other investments other than loans	
6. Other loans	
B. Current Assets	10
I. Stocks	
1. Raw materials and consumables	
2. Work in progress	
3. Finished goods and goods for resale	
4. Payments on account	15
II. Debtors (3)	
1. Trade debtors	
2. Amounts owed by group undertakings	
3. Amounts owed by undertakings in which a participating interest is held	
4. Other debtors	20
5. Called up share capital not paid	
6. Prepayments and accrued income	
III. Investments	
1. Shares in group undertakings	
2. Other investments	25
IV. Cash at bank and in hand	
C. Creditors: Amounts falling due within one year	
1. Debenture loans (4)	
2. Bank loans and overdrafts	
3. Called up share capital presented as a liability (8)	30
4. Payments received on account (5)	
5. Trade creditors	
6. Bills of exchange payable	

7. Amounts owed to group undertakings	
8. Amounts owed to undertakings in which a participating interest is held	
9. Other creditors including tax and social insurance (6)	
10. Accruals (7)	
11. Deferred income (7)	5
D. Net current assets (liabilities)	
E. Total assets less current liabilities	
F. Creditors: Amounts falling due after more than one year	
1. Debenture loans (4)	
2. Bank loans and overdrafts	10
3. Called up share capital presented as a liability (8)	
4. Payments received on account (5)	
5. Trade creditors	
6. Bills of exchange payable	
7. Amounts owed to group undertakings	15
8. Amounts owed to undertakings in which a participating interest is held	
9. Other creditors including tax and social insurance (6)	
10. Accruals (7)	
11. Deferred income (7)	
G. Provisions for liabilities	20
1. Retirement benefit obligations	
2. Taxation, including deferred taxation	
3. Other provisions for liabilities	
H. Capital and reserves	
I. Called up share capital presented as equity (8)	25
II. Share premium account	
III. Revaluation reserve	
IV. Other reserves	
1. Other undenominated capital	
2. Reserve for own shares held	30
3. Reserves provided for by the constitution	
4. Other reserves (specified as necessary)	
V. Profit and loss account	

BALANCE SHEET FORMATS

Format 2

ASSETS

A. Fixed Assets

I. Intangible assets	5
1. Development costs	
2. Concessions, patents, licences, trade marks and similar rights and assets (1)	
3. Goodwill (2)	
4. Payments on account	
II. Tangible assets	10
1. Land and buildings	
2. Plant and machinery	
3. Fixtures, fittings, tools and equipment	
4. Payments on account and assets in course of construction	
III. Financial assets	15
1. Shares in group undertakings	
2. Loans to group undertakings	
3. Participating interests	
4. Loans to undertakings in which a participating interest is held	
5. Other investments other than loans	20
6. Other loans	

B. Current Assets

I. Stocks	
1. Raw materials and consumables	
2. Work in progress	25
3. Finished goods and goods for resale	
4. Payments on account	
II. Debtors (3)	
1. Trade debtors	
2. Amounts owed by group undertakings	30
3. Amounts owed by undertakings in which a participating interest is held	
4. Other debtors	
5. Called up share capital not paid	

6. Prepayments and accrued income	
III. Investments	
1. Shares in group undertakings	
2. Other investments	
IV. Cash at bank and in hand	5
LIABILITIES	
A. Capital and reserves	
I. Called up share capital presented as equity (8)	
II. Share premium account	
III. Revaluation reserve	10
IV. Other reserves	
1. Other undenominated capital	
2. Reserve for own shares held	
3. Reserves provided for by the constitution	
4. Other reserves (specify as necessary)	15
V. Profit and loss account	
B. Provisions for liabilities	
1. Retirement benefit obligations	
2. Taxation, including deferred taxation	
3. Other provisions for liabilities	20
C. Creditors (9)	
1. Debenture loans (4)	
2. Bank loans and overdrafts	
3. Called up share capital presented as a liability (8)	
4. Payments received on account (5)	25
5. Trade creditors	
6. Bills of exchange payable	
7. Amounts owed to group undertakings	
8. Amounts owed to undertakings in which a participating interest is held	
9. Other creditors including tax and social insurance (6)	30
10. Accruals (7)	
11. Deferred income (7)	

NOTES ON THE BALANCE SHEET FORMATS

(1) <i>Concessions, patents, licences, trade marks and similar rights and assets</i>	
(<i>Formats 1 and 2, items A. I. 2</i>)	
Amounts in respect of assets shall only be included in a company's balance sheet under this item if either—	
(a) the assets were acquired for valuable consideration and are not required to be shown under goodwill, or	5
(b) the assets in question were created by the company itself.	
(2) <i>Goodwill</i>	
(<i>Formats 1 and 2, items A. I. 3</i>)	
Amounts representing goodwill shall only be included to the extent that the goodwill was acquired for valuable consideration.	10
(3) <i>Debtors</i>	
(<i>Formats 1 and 2, items B. II. 1 to 6</i>)	
The amount falling due after more than one year shall be shown separately for each item included under debtors.	15
(4) <i>Debenture loans</i>	
(<i>Format 1, item C. 1 and F. 1 and Format 2, item C.1</i>)	
The amount of any convertible loans shall be shown separately and the terms and conditions under which those loans are convertible into share capital shall be disclosed in the notes to the financial statements.	20
(5) <i>Payments received on account</i>	
(<i>Format 1, items C. 4 and F. 4 and Format 2, item C.4</i>)	
Payments received on account of orders shall be shown for each of these items in so far as they are not shown as deductions from stocks.	25
(6) <i>Other creditors including tax and social insurance</i>	
(<i>Format 1, items C. 9 and F. 9 and Format 2, item C.9</i>)	
The amount for creditors in respect of taxation and social insurance shall be shown separately from the amount for other creditors and in respect of taxation there shall be stated separately the amounts included in respect of income tax payable on emoluments to which Chapter 4 of Part 42 of the Taxes Consolidation Act 1997 applies, any other income tax, corporation tax, capital gains tax, value-added tax and any other tax.	30
(7) <i>Accruals and deferred income</i>	
(<i>Format 1, items C. 10 and 11 and F. 10 and 11 and Format 2, items C.10 and 11</i>)	
The amount in respect of Government grants, that is to say, grants made by or on behalf of the Government, included in this item shall be shown separately in a note to the financial statements unless it is shown separately in the balance sheet.	35
(8) <i>Called up share capital</i>	
(<i>Format 1, item C. 3, F. 3 and H. I, and Format 2, item A. I and C. 3</i>)	

In accordance with the accounting principle in *paragraph 17*, called up share capital must be analysed between shares that are presented as liabilities and share capital.

(9) *Creditors*

(*Format 2, items C. I to II*)

Amounts falling due within one year and after one year shall be shown separately for each of these items and their aggregate shall be shown separately for all of these items.

5

PROFIT AND LOSS ACCOUNT FORMATS

Format 1(13)

1. Turnover	
2. Cost of Sales (10)	10
3. Gross Profit or Loss	
4. Distribution costs (10)	
5. Administrative expenses (10)	
6. Other operating income	
7. Income from shares in group undertakings	15
8. Income from participating interests	
9. Income from other financial assets (11)	
10. Other interest receivable and similar income (11)	
11. Amounts written off financial assets and investments held as current assets	
12. Interest payable and similar charges (12)	20
13. Tax on profit or loss on ordinary activities	
14. Profit or loss on ordinary activities after taxation	
15. Extraordinary income	
16. Extraordinary charges	
17. Extraordinary profit or loss	25
18. Tax on extraordinary profit or loss	
19. Other taxes not shown under the above items	
20. Profit or loss for the financial year	

PROFIT AND LOSS ACCOUNT FORMATS

Format 2

30

1. Turnover
2. Variation in stocks of finished goods and in work in progress
3. Own work capitalised
4. Other operating income

5.	(a) Raw materials and consumables	
	(b) Other external charges	
6.	Staff costs:	
	(a) Wages and salaries	
	(b) Social insurance costs	5
	(c) Other retirement benefit costs	
	(d) Other compensation costs	
7.	(a) Depreciation and other amounts written off tangible and intangible fixed assets	
	(b) Exceptional amounts written off current assets	
8.	Other operating charges	10
9.	Income from shares in group undertakings	
10.	Income from participating interests	
11.	Income from other financial assets (11)	
12.	Other interest receivable and similar income (11)	
13.	Amounts written off financial assets and investments held as current assets	15
14.	Interest payable and similar charges (12)	
15.	Tax on profit or loss on ordinary activities	
16.	Profit or loss on ordinary activities after taxation	
17.	Extraordinary income	
18.	Extraordinary charges	20
19.	Extraordinary profit or loss	
20.	Tax on extraordinary profit or loss	
21.	Other taxes not shown under the above items	
22.	Profit or loss for the financial year	

PROFIT AND LOSS ACCOUNT FORMATS 25

Format 3(13)

A.	Charges	
1.	Cost of sales (10)	
2.	Distribution costs (10)	
3.	Administrative expenses (10)	30
4.	Amounts written off financial assets and investments held as current assets	
5.	Interest payable and similar charges (12)	
6.	Tax on profit or loss on ordinary activities	

7. Profit or loss on ordinary activities after taxation	
8. Extraordinary charges	
9. Tax on extraordinary profit or loss	
10. Other taxes not shown under the above items	
11. Profit or loss for the financial year	5
 B. Income	
1. Turnover	
2. Other operating income	
3. Income from shares in group undertakings	
4. Income participating interests	10
5. Income from other financial assets (11)	
6. Other interest receivable and similar income (11)	
7. Profit or loss on ordinary activities after taxation	
8. Extraordinary income	
9. Profit or loss for the financial year	15

PROFIT AND LOSS ACCOUNT FORMATS

Format 4

A. Charges	
1. Reduction in stocks of finished goods and in work in progress	
2. (a) Raw materials and consumables	20
(b) Other external charges	
3. Staff costs:	
(a) Wages and salaries	
(b) Social insurance costs	
(c) Other retirement benefit costs	25
(d) Other compensation costs	
4. (a) Depreciation and other amounts written off tangible and intangible fixed assets	
(b) Exceptional amounts written off current assets	
5. Other operating charges	
6. Amounts written off financial assets and investments held as current assets	30
7. Interest payable and similar charges (12)	
8. Tax on profit or loss on ordinary activities	

9. Profit or loss on ordinary activities after taxation	
10. Extraordinary charges	
11. Tax on extraordinary profit or loss	
12. Other taxes not shown under the above items	
13. Profit or loss for the financial year	5
 B. Income	
1. Turnover	
2. Increase in stocks of finished goods and in work in progress	
3. Own work capitalised	
4. Other operating income	10
5. Income from shares in group undertakings	
6. Income from participating interests	
7. Income from other financial assets (11)	
8. Other interest receivable and similar income (11)	
9. Profit or loss on ordinary activities after taxation	15
10. Extraordinary income	
11. Profit or loss for the financial year	

NOTES ON THE PROFIT AND LOSS ACCOUNT FORMATS

(10) *Cost of sales: Distribution costs: Administrative expenses*

(Format 1, items 2, 4 and 5 and Format 3, items A. 1, 2 and 3) 20

These items shall be stated after taking into account any necessary provisions for depreciation or diminution in value of assets.

(11) *Income from other financial assets: other interest receivable and similar income*

(Format 1, items 9 and 10; Format 2, items 11 and 12; Format 3, items B. 5 and 6; Format 4, items B. 7 and 8) 25

Income and interest derived from group undertakings shall be shown separately from income and interest derived from other sources.

(12) *Interest payable and similar charges*

(Format 1, item 12; Format 2, item 14; Format 3, item A. 5; Format 4, item A. 7)

The amount payable to group undertakings shall be shown separately. 30

(13) *Formats 1 and 3*

The amounts of any provisions for depreciation and diminution in value of tangible and intangible fixed assets falling to be shown under items 7(a) and A. 4(a), respectively, in Formats 2 and 4 shall be disclosed in a note to the financial statements in any case where the profit and loss account is prepared by reference to Format 1 or Format 3. 35

PART III
ACCOUNTING PRINCIPLES AND VALUATION RULES
SECTION A
ACCOUNTING PRINCIPLES

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| <i>Preliminary</i> | 5 |
| 11. Subject to <i>paragraph 18</i> , the amounts to be included in the financial statements of a company in respect of the items shown shall be determined in accordance with the principles set out in <i>paragraphs 12 to 17</i> . | |
| <i>Accounting principles</i> | |
| 12. The company shall be presumed to be carrying on business as a going concern. | 10 |
| 13. Accounting policies shall be applied consistently from one financial year to the next. | |
| 14. The amount of any item in the financial statements shall be determined on a prudent basis and in particular— | |
| (a) only profits realised at the financial year end date shall be included in the profit and loss account; and | 15 |
| (b) all liabilities which have arisen in the course of the financial year to which the financial statements relate or of a previous financial year shall be taken into account, even if such liabilities only become apparent between the financial year end date and the date on which the financial statements are signed under <i>section 324</i> . | 20 |
| 15. All income and charges relating to the financial year to which the financial statements relate shall be taken into account without regard to the date of receipt or payment. | |
| 16. In determining the aggregate amount of any item the amount of each individual asset or liability that falls to be taken into account shall be determined separately. | |
| 17. The presentation of amounts within items in the profit and loss account and balance sheet shall have regard to the substance of the reported transaction or arrangement in accordance with applicable accounting standards. | 25 |

Departure from the accounting principles

- | | |
|---|----|
| 18. If it appears to the directors of a company that there are special reasons for departing from any of the principles stated above in preparing the company's financial statements in any particular year, they may so depart, but particulars of the departure, the reasons for it and its effect on the balance sheet and profit and loss account of the company shall be stated in a note to the financial statements. | 30 |
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SECTION B
HISTORICAL COST ACCOUNTING RULES

- | | |
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| <i>Preliminary</i> | 35 |
| 19. Subject to <i>Sections C and D</i> , the amounts to be included in respect of all items shown in a company's financial statements shall be determined in accordance with the rules set out in <i>paragraphs 20 to 31</i> . | |

FIXED ASSETS

General rules

20. Subject to any provision for depreciation or diminution in value made in accordance with *paragraph 21 or 22* the amount to be included in respect of any fixed asset shall be its purchase price or production cost. 5

Rules for depreciation and diminution in value

21. In the case of any fixed asset which has a limited useful economic life, the amount of—

- (a) its purchase price or production cost; or
- (b) where it is estimated that any such asset will have a residual value at the end of the period of its useful economic life, its purchase price or production cost less than estimated residual value, 10

shall be reduced by provisions for depreciation calculated to write off that amount systematically over the period of the asset's useful economic life.

22. (1) Where a financial asset of a description falling to be included under item A. III of either of the balance sheet formats set out in *Part II* has diminished in value, provisions for diminution in value may be made in respect of it and the amount to be included in respect of it may be reduced accordingly; and any such provisions which are not shown separately in the profit and loss account shall be disclosed (either separately or in aggregate) in a note to the financial statements. 15 20

- (2) Provisions for diminution in value shall be made in respect of any fixed asset which has diminished in value if the reduction in its value is expected to be permanent (whether its useful economic life is limited or not) and the amount to be included in respect of it shall be reduced accordingly; and any such provisions which are not shown separately in the profit and loss account shall be disclosed (either separately or in aggregate) in a note to the financial statements. 25

- (3) Where the reasons for which any provision was made in accordance with *subparagraph (1) or (2)* have ceased to apply to any extent, that provision shall be written back to the extent that it is no longer necessary; and any amounts written back in accordance with this subparagraph which are not shown in the profit and loss account shall be disclosed (either separately or in aggregate) in a note to the financial statements. 30

Rules for determining particular fixed asset items

23. (1) Notwithstanding that an item in respect of "development costs" is included under "fixed assets" in the balance sheet formats set out in *Part II*, an amount may only be included in a company's balance sheet in respect of that item in special circumstances. 35

- (2) If an amount is included in a company's balance sheet in respect of development costs, the following information shall be given in a note to the financial statements—

- (a) the period over which the amount of those costs originally capitalised is being or is to be written off, and

	(b) the reasons for capitalising the costs in question.	
24. (1)	The application of <i>paragraphs 20 to 22</i> in relation to goodwill (in any case where goodwill is treated as an asset) is subject to the following provisions of this paragraph.	5
(2)	Subject to <i>subparagraph (3)</i> , the amount of the consideration for any goodwill acquired by a company shall be reduced by provisions for depreciation calculated to write off that amount systematically over a period chosen by the directors of the company.	
(3)	The period chosen shall not exceed the useful economic life of the goodwill in question.	10
(4)	In any case where any goodwill acquired by a company is shown or included as an asset in the company's balance sheet, the period chosen for writing off the consideration for that goodwill and the reasons for choosing that period shall be disclosed in a note to the financial statements.	
	CURRENT ASSETS	15
25.	Subject to <i>paragraph 26</i> , the amount to be included in respect of any current asset shall be its purchase price or production cost.	
26. (1)	If the net realisable value of any current asset is lower than its purchase price or production cost, the amount to be included in respect of that asset shall be the net realisable value.	20
(2)	Where the reasons for which any provision for diminution in value was made under <i>subparagraph (1)</i> have ceased to apply to any extent, that provision shall be written back to the extent that it is no longer necessary.	
	MISCELLANEOUS	
	<i>Excess of money owed over value received as an asset item</i>	25
27. (1)	Where the amount repayable on any debt owed by a company is greater than the value of the consideration received in the transaction giving rise to the debt, the amount of the difference may be treated as an asset.	
(2)	Where any such amount exists—	
(a)	it shall be written off by reasonable amounts each year and shall be completely written off before repayment of the debt; and	30
(b)	if the amount not written off is not shown as a separate item in the company's balance sheet, it shall be disclosed in a note to the financial statements.	
	ASSETS INCLUDED AT A FIXED AMOUNT	35
28. (1)	Subject to <i>subparagraph (2)</i> , assets which fall to be included—	
(a)	amongst the fixed assets of a company under the item "tangible assets"; or	
(b)	amongst the current assets of a company under the item "raw materials and consumables",	

may be included at a fixed quantity and value.

- (2) *Subparagraph (1)* applies to assets of a kind which are constantly being replaced, where—

(a) their overall value is not material to assessing the company's state of affairs; and

(b) their quantity, value and composition are not subject to material variation.

5

DETERMINATION OF PURCHASE PRICE OR PRODUCTION COST

29. (1) The purchase price of an asset shall be determined by adding to the actual price paid any expenses incidental to its acquisition.

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- (2) The production cost of an asset shall be determined by adding to the purchase price of the raw materials and consumables used the amount of the costs incurred by the company which are directly attributable to the production of that asset.

- (3) In addition there may be included in the production cost of an asset—

(a) a reasonable proportion of the costs incurred by the company which are only indirectly attributable to the production of that asset, but only to the extent that they relate to the period of production, and

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(b) interest on capital borrowed to finance the production of that asset, to the extent that it accrues in respect of the period of production,

provided, however, in a case within *clause (b)*, that the inclusion of the interest in determining the cost of that asset and the amount of the interest so included is disclosed in a note to the financial statements.

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- (4) In the case of current assets, distribution costs may not be included in production costs.

30. (1) Subject to the qualification mentioned subsequently in this subparagraph, the purchase price or production cost of—

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(a) any assets which fall to be included under any item shown in a company's balance sheet under the general item "stocks"; and

(b) any assets which are fungible assets (including investments),

may be determined by the application of any of the methods mentioned in *subparagraph (2)* in relation to any such assets of the same class.

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The method chosen must be one which appears to the directors to be appropriate in the circumstances of the company.

- (2) Those methods are—

(a) the method known as "first in, first out" (FIFO);

(b) a weighted average price; and

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(c) any other method similar to any of the methods mentioned above.

- (3) Where, in the case of any company—

(a) the purchase price or production cost of assets falling to be included under

any item shown in the company's balance sheet has been determined by the application of any method permitted by this paragraph; and

- (b) the amount shown in respect of that item differs materially from the relevant alternative amount given below in this paragraph,

the amount of that difference shall be disclosed in a note to the financial statements.

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(4) Subject to *subparagraph (5)*, for the purposes of *subparagraph (3)(b)*, the relevant alternative amount, in relation to any item shown in a company's balance sheet, is the amount which would have been shown in respect of that item if assets of any class included under that item at an amount determined by any method permitted by this paragraph had instead been included at their replacement cost as at the financial year end date.

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(5) The relevant alternative amount may be determined by reference to the most recent actual purchase price or production cost before the financial year end date of assets of any class included under the item in question instead of by reference to their replacement cost as at that date, but only if the former appears to the directors of the company to constitute the more appropriate approach in the case of assets of that class.

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(6) For the purpose of this paragraph, assets of any description shall be regarded as fungible if assets of that description are substantially indistinguishable from one another.

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SUBSTITUTION OF ORIGINAL STATED AMOUNT WHERE PRICE OR COST UNKNOWN

31. Where there is no record of the purchase price or production cost of any asset of a company or of any price, expense or costs relevant for determining its purchase price or production cost in accordance with *paragraph 29* or any such record cannot be obtained without unreasonable expense or delay, its purchase price or production cost shall be taken for the purposes of *paragraphs 20* to *26* to be the value ascribed to it in the earliest available record of its value made on or after its acquisition or production by the company.

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SECTION C

ALTERNATIVE ACCOUNTING RULES

Preliminary

32. (1) The rules set out in *Section B* are referred to subsequently in this Schedule as the historical cost accounting rules.

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(2) Those rules, with the omission of *paragraphs 19, 24 and 28 to 31*, are referred to subsequently in this Part as the depreciation rules; and references subsequently in this Schedule to the historical cost accounting rules do not include the depreciation rules as they apply by virtue of *paragraph 35*.

33. Subject to *paragraphs 35 to 37*, the amounts to be included in respect of assets of any description mentioned in *paragraph 34* may be determined on any basis so mentioned.

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Alternative accounting rules

34. (1) Intangible fixed assets, other than goodwill, may be included at their current cost.
(2) Tangible fixed assets may be included at a market value determined as at the date of their last valuation or at their current cost.
(3) Financial fixed assets may be included either—

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- (a) at a market value determined as at the date of their last valuation; or
(b) at a value determined on any basis which appears to the directors to be appropriate in the circumstances of the company,

but in the latter case particulars of the method of valuation adopted and of the reasons for adopting it shall be disclosed in a note to the financial statements.

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- (4) Investments of any description falling to be included under item B. III of either of the balance sheet formats set out in *Part II* may be included at their current cost.
(5) Stocks may be included at their current cost.

Application of depreciation rules

35. (1) Where the value of any asset of a company is determined on any basis mentioned in *paragraph 34*, that value shall be, or (as the case may require) be the starting point for determining, the amount to be included in respect of that asset in the company's financial statements, instead of its purchase price or production cost or any value previously so determined for that asset; and the depreciation rules shall apply accordingly in relation to any such asset with the substitution for any reference to its purchase price or production cost of a reference to the value most recently determined for that asset on any basis mentioned in *paragraph 34*.

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- (2) The amount of any provision for depreciation required in the case of any fixed asset by *paragraph 21* or *22* as it applies by virtue of *subparagraph (1)* is referred to subsequently in this paragraph as the adjusted amount; and the amount of any provision which would be required by that paragraph in the case of that asset according to the historical cost accounting rules is referred to as the historical cost amount.

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- (3) Where *subparagraph (1)* applies in the case of any fixed asset, the amount of any provision for depreciation in respect of that asset—

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- (a) included in any item shown in the profit and loss account in respect of amounts written off assets of the description in question; or
(b) taken into account in stating any item so shown which is required by *note (10)* of the notes on the profit and loss account formats set out in *Part II* to be stated after taking into account any necessary provisions for depreciation or diminution in value of assets included under it,

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may be the historical cost amount instead of the adjusted amount, provided that, if the amount of the provision for depreciation is the historical cost amount, the amount of any difference between the two shall be shown separately in the profit and loss account or in a note to the financial statements.

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Additional information in case of departure from historical cost accounting rules

36. (1) This paragraph applies where the amounts to be included in respect of assets covered by any items shown in a company's financial statements have been determined on any basis mentioned in *paragraph 34*. 5
- (2) The items affected and the basis of valuation adopted in determining the amounts of the assets in question in the case of each such item shall be disclosed in a note to the financial statements. 10
- (3) In the case of each balance sheet item affected (except stocks) either—
- (a) the comparable amounts determined according to the historical cost accounting rules; or
 - (b) the differences between those amounts and the corresponding amounts actually shown in the balance sheet in respect of that item, 15
- shall be shown separately in the balance sheet or in a note to the financial statements.
- (4) In *subparagraph (3)*, references in relation to any item to the comparable amounts determined as there mentioned are references to— 15
- (a) the aggregate amount which would be required to be shown in respect of that item if the amounts to be included in respect of all the assets covered by that item were determined according to the historical cost accounting rules; and 20
 - (b) the aggregate amount of the cumulative provisions for depreciation or diminution in value which would be permitted or required in determining those amounts according to those rules. 20

Revaluation Reserve

37. (1) With respect to any determination of the value of an asset of a company on any basis mentioned in *paragraph 34*, the amount of any profit or loss arising from that determination (after allowing, where appropriate, for any provisions for depreciation or diminution in value made otherwise than by reference to the value so determined and any adjustments of any such provisions made in the light of that determination) shall be credited or (as the case may be) debited to a separate reserve (referred to in this paragraph as the “revaluation reserve”). 25
- (2) The amount of the revaluation reserve shall be shown in the company's balance sheet under a separate sub-heading in the position given for the item “revaluation reserve” in *Format 1* or *2* of the balance sheet formats set out in *Part II*. 30
- (3) An amount may be transferred—
- (a) from the revaluation reserve—
- (i) to the profit and loss account, if the amount was previously charged to that account, or it represents realised profit; or 35
 - (ii) on capitalisation;
- (b) to or from the revaluation reserve in respect of the taxation relating to any profit or loss credited or debited to the reserve;
- and the revaluation reserve shall be reduced to the extent that the amounts 40

transferred to it are no longer necessary for the purpose of the valuation methods used.

- (4) In *subparagraph (3)(a)(ii)* “capitalisation”, in relation to an amount standing to the credit of the revaluation reserve, means applying it in wholly or partly paid up unissued shares in the company to be allotted to members of the company as fully or partly paid shares. 5
- (5) The revaluation reserve shall not be reduced except as mentioned in this paragraph.
- (6) The treatment for taxation purposes of amounts credited or debited to the revaluation reserve shall be disclosed in a note to the financial statements. 10

SECTION D

FAIR VALUE ACCOUNTING RULES

Inclusion of financial instruments at fair value

38. (1) Subject to *subparagraphs (2) to (4)* and *paragraph 39*, financial instruments, including derivative financial instruments, may be accounted for at fair value. 15
- (2) Subject to *paragraph 41*, *subparagraph (1)* does not apply to financial instruments which constitute liabilities unless—
- (a) they are held as part of a trading portfolio; or
 - (b) they are derivative financial instruments.
- (3) *Subparagraph (1)* does not apply to— 20
- (a) financial instruments (other than derivative financial instruments) held to maturity;
 - (b) loans and receivables originated by the company and not held for trading purposes;
 - (c) interests in subsidiary undertakings, associated undertakings and joint ventures; 25
 - (d) equity instruments issued by the company;
 - (e) contracts for contingent consideration in a business combination; and
 - (f) other financial instruments with such special characteristics that the instruments, according to generally accepted accounting principles or practice, should be accounted for differently from other financial instruments. 30
- (4) If the fair value of a financial instrument cannot be determined reliably by any of the methods described in *paragraph 40*, *subparagraph (1)* does not apply to that financial instrument and it shall be measured using the accounting rules set out in *Section B* or *C*. 35
- (5) In this paragraph—
- “associated undertaking” has the meaning given to it by *paragraph 20* of *Schedule 4*;

- “joint venture” has the meaning given to it by paragraph 19 of Schedule 4.
39. (1) Financial instruments which constitute liabilities, other than such instruments referred to in subparagraphs (2)(a) and (b) of paragraph 38, may be accounted for by a company at fair value if—
- (a) they are accounted for in accordance with international accounting standards as adopted by the Commission Regulation on or before 5 September 2006; and
 - (b) the associated disclosure requirements, provided for in international financial reporting standards, are made.
- (2) Financial instruments referred to in paragraph 38(3) may be accounted for by a company at fair value if—
- (a) they are accounted for in accordance with international accounting standards as adopted by the Commission Regulation, on or before 5 September 2006; and
 - (b) the associated disclosure requirements, provided for in international financial reporting standards, are made.
- (3) In this paragraph “Commission Regulation” means Commission Regulation (EC) No. 1725/2003 of 29 September 2003.
- Methods for determining fair value*
40. (1) The fair value of a financial instrument is its value determined in accordance with this paragraph.
- (2) If a reliable market can readily be identified for the financial instrument, its fair value is to be determined by reference to its market value.
- (3) If a reliable market cannot readily be identified for the financial instrument but can be identified for its components or for a similar instrument, its fair value is to be determined by reference to the market value of its components or of the similar instrument.
- (4) If neither subparagraph (2) nor (3) applies, the fair value of the financial instrument is to be a value resulting from generally accepted valuation models and techniques.
- (5) Any valuation models and techniques used for the purposes of subparagraph (4) shall ensure a reasonable approximation of the market value.
- Inclusion of hedged items at fair value*
41. A company may include any assets and liabilities that qualify as hedged items under a fair value hedge accounting system, or identified portions of such assets and liabilities, at the amount required under that system.
- Other assets that may be included at fair value*
42. (1) This paragraph applies to—
- (a) investment property; and

(b) living animals and plants;

that, under relevant international financial reporting standards, may be included in financial statements at fair value.

- (2) Such investment property and such living animals and plants may be included at fair value, provided that all such investment property or, as the case may be, all such living animals and plants are so included where their fair value can reliably be determined.
- (3) In this paragraph, “fair value” means fair value determined in accordance with relevant international financial reporting standards.

Accounting for changes in fair value of financial instruments

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43. (1) This paragraph applies where a financial instrument is valued at fair value in accordance with *paragraph 38* or *41* or where an asset is valued in accordance with *paragraph 42*.

- (2) Notwithstanding *paragraph 14*, but subject to *subparagraphs (3)* and *(4)*, a change in the fair value of the financial instrument or of the investment property or living animal or plant shall be included in the profit and loss account.
- (3) Where—

(a) the financial instrument accounted for is a hedging instrument under a system of hedge accounting that allows some or all of the change in value not to be shown in the profit and loss account; or

(b) the change in value relates to an exchange difference arising on a monetary item that forms part of a company’s net investment in a foreign entity;

the amount of the change in value shall be credited or (as the case may be) debited to a separate reserve to be known as the “fair value reserve”.

(4) Where the instrument accounted for—

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(a) is an available for sale financial asset; and

(b) is not a derivative;

the change in value may be credited or (as the case may be) debited to the fair value reserve.

The fair value reserve

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44. (1) An amount shall be transferred—

(a) from the fair value reserve to the profit and loss account if the related asset is impaired, transferred or disposed of; or

(b) from the fair value reserve in respect of tax relating to any amount transferred under *clause (a)*.

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(2) The fair value reserve shall be adjusted when amounts therein are no longer necessary for the purposes of *paragraph 43(3)* or *(4)*.

(3) The fair value reserve shall not be reduced except as provided for in this paragraph.

- (4) The treatment for taxation purposes of amounts credited or debited to the fair value reserve shall be disclosed in a note to the financial statements.

PART IV

INFORMATION REQUIRED BY WAY OF NOTES TO FINANCIAL STATEMENTS

Preliminary

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45. Any information required in the case of any company by the following provisions of this Part shall (if not given in the company's financial statements) be given by way of a note to those financial statements.

Information supplementing the balance sheet

46. *Paragraphs 47 to 61* require information which either supplements the information given with respect to any particular items shown in the balance sheet or is otherwise relevant to assessing the company's financial position in the light of the information so given.

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Debentures

47. (1) If the company has issued any debentures during the financial year to which the financial statements relate, the following information shall be given—

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- (a) the reason for making the issue;
- (b) the classes of debentures issued; and
- (c) in respect of each class of debentures, the amount issued and the consideration received by the company for the issue.

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- (2) Where any of the company's debentures are held by a nominee of or trustee for the company, the nominal amount of the debentures and the amount at which they are stated in the accounting records kept by the company in accordance with section 281 shall be stated.

Fixed assets

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48. (1) In respect of each item which is or would, but for *paragraph 4(3)(b)*, be shown under the general item "fixed assets" in the company's balance sheet, the following information shall be given—

- (a) the appropriate amounts in respect of that item as at the date of the beginning of the financial year and as at the financial year end date respectively;

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- (b) the effect on any amount shown in the balance sheet in respect of that item of—

 - (i) any revision of the amount in respect of any assets included under that item made during that year on any basis mentioned in *paragraph 34*;

 - (ii) acquisitions during that year of any assets;

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 - (iii) disposals during that year of any assets; and

 - (iv) any transfers of assets of the company to and from that item during that year.

(2) The reference in <i>subparagraph (1)(a)</i> to the appropriate amounts in respect of any item as at any date there mentioned is a reference to amounts representing the aggregate amounts determined, as at that date, in respect of assets falling to be included under that item either—	
(a) on the basis of purchase price or production cost (determined in accordance with <i>paragraphs 29 and 30</i>); or	5
(b) on any basis mentioned in <i>paragraph 34</i> ;	
(leaving out of account in either case any provisions for depreciation or diminution in value).	
(3) In respect of each item within <i>subparagraph (1)</i> —	10
(a) the cumulative amount of provisions for depreciation or diminution in value of assets included under that item as at each date mentioned in <i>subparagraph (1)(a)</i> ;	
(b) the amount of any such provisions made in respect of the financial year concerned;	15
(c) the amount of any adjustments made in respect of any such provisions during that year in consequence of the disposal of any assets; and	
(d) the amount of any other adjustments made in respect of any such provisions during that year;	
shall also be stated.	20
49. Where any fixed assets of the company (other than listed investments) are included under any item shown in the company's balance sheet at an amount determined on any basis mentioned in <i>paragraph 34</i> , the following information shall be given—	
(a) the years (so far as they are known to the directors) in which the assets were severally valued and the several values; and	25
(b) in the case of assets that have been valued during the financial year, the names of the persons who valued them or particulars of their qualifications for doing so and (in either case) the bases of valuation used by them.	
<i>Financial assets and investments held as current assets</i>	
50. (1) In respect of the amount of each item which is or would, but for <i>paragraph 4(3)(b)</i> , be shown in the company's balance sheet under the general items "financial assets" or "investments held as current assets" there shall be stated how much of that amount is ascribable to listed investments.	30
(2) Where the amount of any listed investments is stated for any item in accordance with <i>subparagraph (1)</i> , the following amounts shall also be stated—	35
(a) the aggregate market value of those investments where it differs from the amount so stated; and	
(b) both the market value and stock exchange value of any investments of which the former value is, for the purposes of the financial statements, taken as being higher than the latter.	40

Information about fair valuation of assets and liabilities

51. (1) This paragraph applies where financial instruments have been included at fair value by virtue of *paragraph 38 or 41*. 5
- (2) There shall be stated—
- (a) the significant assumptions underlying the valuation models and techniques where fair values have been determined in accordance with *paragraph 40(5)*; 10
- (b) for each category of financial instrument the fair value of the financial instruments in that category and the amounts—
- (i) included in the profit and loss account; and
- (ii) credited or debited to the fair value reserve; 15
- in respect of instruments in that category;
- (c) for each class of derivative financial instrument, the extent and nature of the instruments including significant terms and conditions that may affect the amount, timing and certainty of future cash flows; and
- (d) a table showing movements in the fair value reserve during the financial year. 20
52. Where the company has derivative financial instruments that it has not accounted for at fair value, there shall be stated for each class of such derivatives—
- (a) the fair value of the derivatives in that class, if such a value can be determined in accordance with *paragraph 40*; and 25
- (b) the extent and nature of the derivatives.
53. Where—
- (a) a company has financial assets which could be included at fair value by virtue of *paragraph 38*; 25
- (b) those assets are included in the company's financial statements at an amount in excess of their fair value; and
- (c) the company has not made provision for the diminution in value of those assets in accordance with *paragraph 22(1)*;
- there shall be stated—
- (i) the amount at which either the individual assets or appropriate groupings of those assets is stated in the company's financial statements; 30
- (ii) the fair value of those assets or groupings; and
- (iii) the reasons for not making a provision for diminution in value of those assets, including the nature of the evidence that provides the basis for the belief that the amount at which they are stated in the financial statements will be recovered. 35

Information where investment property and living animals and plants included at fair value

54. (1) This paragraph applies where the amounts to be included in a company's

financial statements in respect of investment property or living animals and plants have been determined in accordance with *paragraph 42*.

(2) The balance sheet items affected and the basis of valuation adopted in determining the amounts of the assets concerned in the case of each such item shall be disclosed in a note to the financial statements. 5

(3) In the case of investment property, for each balance sheet item affected there shall be shown, either separately in the balance sheet or in a note to the financial statements—

(a) the comparable amounts determined according to the historical cost accounting rules; or 10

(b) the differences between those amounts and the corresponding amounts actually shown in the balance sheet in respect of that item.

(4) In *subparagraph (3)*, references in relation to any item to the comparable amounts determined in accordance with that subparagraph are references to—

(a) the aggregate amount which would be required to be shown in respect of that item if the amounts to be included in respect of all the assets covered by that item were determined according to the historical cost accounting rules; and 15

(b) the aggregate amount of the cumulative provisions for depreciation or diminution in value which would be permitted or required in determining those amounts according to those rules. 20

Dividends, reserves and provisions for liabilities

55. (1) The profit and loss account reserve of a company for a financial year shall show—

(a) the aggregate amount of dividends paid in the financial year (other than dividends for which a liability existed at the immediately preceding financial year end date); 25

(b) the aggregate amount of dividends the company is liable to pay at the financial year end date (other than dividends for which a liability existed at the immediately preceding financial year end date);

(c) separately, any transfer between the profit and loss account reserve and other reserves; 30

(d) any other increase or reduction in the balance on the profit and loss account reserve since the immediately preceding financial year end date;

(e) the profit or loss brought forward at the beginning of the financial year; and

(f) the profit or loss carried forward at the end of the financial year. 35

(2) The aggregate amount of dividends proposed by the directors for approval of the members at the next general meeting shall be stated in a note to the financial statements.

56. (1) Where any amount is transferred—

(a) to or from any reserves; or 40

- (b) to any provision for liabilities; or
- (c) from any provision for liabilities other than for the purpose for which the provision was established;

and the reserves or provisions for liabilities are or would, but for *paragraph 4(3)(b)*, be shown as separate items in the company's balance sheet, the information mentioned in *subparagraph (2)* shall be given in respect of each such reserve or provisions for liabilities.

(2) That information is—

- (a) the amount of the reserves or provisions for liabilities as at the date of the beginning of the financial year and as at the financial year end date respectively;
- (b) any amount transferred to or from the reserves or provisions for liabilities during that year; and
- (c) the source and application respectively of any amounts so transferred.

(3) Particulars shall be given of each provision included in the item "other provisions for liabilities" in the company's balance sheet in any case where the amount of that provision is material.

Provision for taxation

57. The amount of any provision for deferred taxation shall be shown separately from the amount of any provision for other taxation.

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Details of indebtedness

58. (1) In respect of each item shown under "creditors" in the company's balance sheet there shall be stated—

(a) the aggregate amount of any debts included under that item which are payable or repayable otherwise than by instalments and fall due for payment or repayment after the end of the period of 5 years beginning with the day next following the end of the financial year; and

(b) in the case of any debts so included which are payable or repayable by instalments, the amount of any instalments which fall due for payment after the end of that period.

(2) Subject to *subparagraph (3)*, in relation to each debt falling to be taken into account under *subparagraph (1)*, the terms of payment or repayment and the rate of any interest payable on the debt shall be stated.

(3) If the number of debts is such that, in the opinion of the directors, compliance with *subparagraph (2)* would result in a statement of excessive length, it shall be sufficient to give a general indication of the terms of payment or repayment and the rates of any interest payable on the debts.

(4) In respect of each item shown under "creditors" in the company's balance sheet there shall be stated—

(a) the aggregate amount of any debts included under that item in respect of

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- which any security has been given; and
- (b) an indication of the nature of the securities so given.
- (5) References in *subparagraph (1)* to an item shown under “creditors” in the company’s balance sheet include references, where amounts falling due to creditors within one year and after more than one year are distinguished in the balance sheet—
- (a) in a case within *subparagraph (1)*, to an item shown under the latter of those categories; and
- (b) in a case within *subparagraph (4)*, to an item shown under either of those categories;
- and references to items shown under “creditors” include references to items which would, but for *paragraph 4(3)(b)*, be shown under that heading.
59. If any fixed cumulative dividends on the company’s shares are in arrears, there shall be stated, distinguishing between those shares presented as a liability and other shares—
- (a) the amount of the arrears; and
- (b) the period for which the dividends or, if there is more than one class, each class of them are in arrears.
- Guarantees and other financial commitments*
60. (1) Particulars shall be given of any charge on the assets of the company to secure the liabilities of any other person, including, where practicable, the amount secured.
- (2) The following information shall be given with respect to any other contingent liability not provided for:
- (a) the amount or estimated amount of that liability;
- (b) its legal nature; and
- (c) whether any valuable security has been provided by the company in connection with that liability and, if so, what.
- (3) There shall be stated, where practicable—
- (a) the aggregate amount or estimated amount of contracts for capital expenditure, so far as not provided for; and
- (b) the aggregate amount or estimated amount of capital expenditure authorised by the directors which has not been contracted for.
- (4) Particulars shall be given of:
- (a) any unfunded retirement benefit commitments included under any provision shown in the company’s balance sheet; and
- (b) any such commitments for which no provision has been made;
- and, where any such commitment relates wholly or partly to retirement benefits

payable to past directors of the company, separate particulars shall be given of that commitment so far as it relates to such retirement benefits.

(5) The following information shall also be given:

- (a) the nature of every retirement benefit scheme operated by, or on behalf of, the company including information as to whether or not each scheme is a defined benefit scheme or a defined contribution scheme;
- (b) whether each such scheme is externally funded or internally financed;
- (c) whether any retirement benefit costs and liabilities are assessed in accordance with the advice of a professionally qualified actuary and, if so, the date of the most recent relevant actuarial valuation;
- (d) whether and, if so, where any such actuarial valuation is available for public inspection.

(6) Particulars shall also be given of any other financial commitments which—

- (a) have not been provided for; and
- (b) are relevant to assessing the company's financial position.

Miscellaneous matters

61. Particulars shall be given of any case where the purchase price or production cost of any asset is for the first time determined under *paragraph 31*.

Information supplementing the profit and loss account

62. *Paragraphs 63 to 66* require information which either supplements the information given with respect to any particular items shown in the profit and loss account or otherwise provides particulars of income or expenditure of the company or of circumstances affecting the items shown in the profit and loss account.

Separate statement of certain items of income and expenditure

63. Each of the following amounts shall be stated—

- (a) the amount of interest on or any similar charges in respect of—
 - (i) bank loans and overdrafts made to the company;
 - (ii) loans to the company from group undertakings;
 - (iii) loans of any other kind made to the company;
- and
- (b) the amount of income from listed and unlisted investments.

Particulars of tax

64. (1) The basis on which the charge for corporation tax, income tax and other taxation on profits (whether payable in or outside the State) is computed shall be stated.

(2) Particulars shall be given of any special circumstances which affect the liability in respect of taxation on profits, income or capital gains for the financial year concerned or the liability in respect of taxation of profits, income or capital gains

for succeeding financial years.

- (3) The amount of the charge for corporation tax, income tax and other taxation on profits or capital gains, so far as charged to revenue, including taxation payable outside the State on profits (distinguishing where practicable between corporation tax and other taxation) shall be stated.
- (4) The amounts referred to in *subparagraph (3)* shall be stated separately in respect of each of the amounts which is or would, but for *paragraph 4(3)(b)*, be shown under the following items in the profit and loss account, that is to say, “tax on profit or loss on ordinary activities” and “tax on extraordinary profit or loss”.

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Particulars of turnover

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65. (1) If, in the course of the financial year, the company has carried on business of 2 or more classes which, in the opinion of the directors, differ substantially from each other, there shall be stated in respect of each class (describing it) the amount of the turnover attributable to that class.

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- (2) If, in the course of the financial year, the company has supplied markets which, in the opinion of the directors, differ substantially from each other, the amount of the turnover attributable to each such market shall also be stated.

- (3) In *subparagraph (3)* “market” means a market delimited by geographical bounds.

- (4) In analysing for the purposes of this paragraph the source (in terms of business or in terms of market) of turnover, the directors of the company shall have regard to the manner in which the company’s activities are organised.

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- (5) For the purpose of this paragraph—

- (a) classes of business which, in the opinion of the directors, do not differ substantially from each other shall be treated as one class; and

- (b) markets which, in the opinion of the directors, do not differ substantially from each other shall be treated as one market;

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and any amounts properly attributable to one class of business or (as the case may be) to one market which are not material may be included in the amount stated in respect of another.

- (6) Where, in the opinion of the directors, the disclosure of any information required by this paragraph would be seriously prejudicial to the interests of the company, that information need not be disclosed, but the fact that any such information has not been disclosed must be stated.

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Miscellaneous matters

66. (1) Where any amount relating to any preceding financial year is included in any item in the profit and loss account, the effect shall be stated.

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- (2) Particulars shall be given of any extraordinary income or charges arising in the financial year.

- (3) The effect shall be stated of any transactions that are exceptional by virtue of size or incidence notwithstanding the fact that they fall within the ordinary activities of the company.

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- (4) Any amount expended on research and development in the financial year, and any amount committed in respect of research and development in subsequent years, shall be stated.
- (5) Where, in the opinion of the directors, the disclosure of any information required by *subparagraph (4)* would be prejudicial to the interests of the company, that information need not be disclosed, but the fact that any such information has not been disclosed shall be stated. 5

Related party transactions

67. (1) Particulars shall be given in the notes to the financial statements of a company of transactions which have been entered into with related parties by the company if such transactions are material and have not been concluded under normal market conditions and the particulars shall include the amount of such transactions, the nature of the related party relationship and other information about the transactions which is necessary for an understanding of the financial position of the company. 10
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- (2) The provision of particulars and other information about individual transactions may be aggregated according to their nature, except where separate information is necessary for an understanding of the effects of related party transactions on the financial position of the company.
- (3) *Subparagraph (1)* shall not apply to transactions which are entered into between 2 or more members of a group if any subsidiary undertaking which is party to the transaction is wholly owned by such a member. 20
- (4) A word or expression that is used in this paragraph and is also used in Directive 2006/46/EC of the European Parliament and the Council of 14 June 2006 has the meaning in this paragraph that it has in that Directive. 25
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General

68. Where sums originally denominated in foreign currencies have been brought into account under any items shown in the balance sheet or profit and loss account, the basis on which those sums have been translated into euro or, if different, the functional currency of the company, shall be stated. 30
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PART V

SPECIAL PROVISIONS WHERE A COMPANY IS A HOLDING COMPANY OR SUBSIDIARY UNDERTAKING

Entity financial statements

69. (1) This Part applies where the company is a holding company, whether or not it is itself a subsidiary undertaking. 35
- (2) Where a company is a holding company or a subsidiary undertaking and any item required by *Part II* to be shown in the company's balance sheet, in relation to group undertakings, includes—
- (a) amounts attributable to dealings with or interests in any holding undertaking or fellow subsidiary undertaking; or 40
- (b) amounts attributable to dealings with or interests in any subsidiary

undertaking of the company;

the aggregate amounts within *clauses (a)* and *(b)*, respectively, shall be shown as separate items, either by way of subdivision of the relevant item in the balance sheet or in a note to the company's financial statements.

Guarantees and other financial commitments in favour of group undertakings

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70. Commitments within any of the *subparagraphs (1)* to *(6)* of *paragraph 60* (guarantees and other financial commitments) which are undertaken on behalf of or for the benefit of—

- (a) any holding undertaking or fellow subsidiary undertaking; or
- (b) any subsidiary undertaking of the company;

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shall be stated separately from the other commitments within that subparagraph, and commitments within *clause (a)* shall also be stated separately from those within *clause (b)*.

71. (1) Subject to *subparagraph (2)*, where the company is a holding undertaking, the number, description and amount of the debentures of the company held by its subsidiary undertakings or their nominees shall be disclosed in a note to the company's financial statements.

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(2) *Subparagraph (1)* does not apply in relation to any debentures—

- (a) in the case of which the subsidiary undertaking is concerned as personal representative; or
- (b) in the case of which it is concerned as trustee;

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provided that in the latter case neither the company nor a subsidiary undertaking of the company is beneficially interested under the trust, otherwise than by way of security only for the purposes of a transaction entered into by it in the ordinary course of a business which includes the lending of money.

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72. (1) Where a company is a subsidiary undertaking, the information specified in *subparagraphs (2)*, *(3)* and *(4)* shall be stated with respect to the holding undertaking of—

- (a) the largest group of undertakings for which group financial statements are drawn up and of which the company is a member; and

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- (b) the smallest such group of undertakings.

(2) The name of the holding undertaking shall be stated.

(3) There shall be stated—

- (a) if the holding undertaking is incorporated, the country in which it is incorporated; or

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- (b) if it is unincorporated, the address of its principal place of business.

(4) If copies of the group financial statements referred to in *subparagraph (1)* are available to the public, there shall be stated the addresses from which copies of the financial statements can be obtained.

Provisions of general application

73. (1) This paragraph applies where a company is a holding company and either—
(a) does not prepare group financial statements; or
(b) prepares group financial statements which do not deal with one or more of its subsidiary undertakings; 5
and references in this paragraph to subsidiary undertakings shall be read, in a case within *clause (b)*, as references to such of the subsidiary undertakings of the company concerned as are excluded from the group financial statements.
- (2) Subject to the following provisions of this paragraph, there shall be given in the notes to the company's entity financial statements— 10
(a) the reasons why subsidiary undertakings are not dealt with in group financial statements; and
(b) a statement—
(i) showing any qualifications contained in the reports of the statutory auditors of the subsidiary undertakings on their financial statements for their respective financial years ending with or during the financial year of the company; and 15
(ii) of any note or saving contained in those financial statements to call attention to a matter which, apart from the note or saving, would properly have been referred to in such a qualification; 20
in so far as the matter which is the subject of the qualification or note is not covered by the company's entity financial statements and is material from the point of view of its members.
- (3) Subject to the following provisions of this paragraph, the aggregate amount of the total investment of the holding company in the shares of the subsidiary undertakings shall be stated in a note to the company's entity financial statements by way of the equity method of accounting. 25
(4) In so far as information required by any of the preceding provisions of this paragraph to be stated in a note to the company's entity financial statements is not obtainable, a statement to that effect shall be given instead in a note to those entity financial statements. 30
(5) Where, in any case within *subparagraph (1)(b)*, the company prepares group financial statements, references in the preceding subparagraphs to the company's entity financial statements shall be read as references to the group financial statements. 35
74. Where a company has subsidiary undertakings whose financial years did not end with that of the company, the following information shall be given in relation to each such subsidiary undertaking (whether or not dealt with in any group financial statements prepared by the company) by way of a note to the company's entity financial statements or (where group financial statements are prepared) to the group financial statements, that is to say— 40

- (a) the reasons why the company's directors consider that the subsidiary undertakings' financial years should not end with that of the company; and
- (b) the dates on which the subsidiary undertakings' financial years ending last before that of the company respectively ended or the earliest and latest of those dates.

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PART VI

INTERPRETATION OF CERTAIN EXPRESSIONS IN SCHEDULE

Assets: fixed or current

75. For the purposes of this Schedule, assets of a company shall be taken to be fixed assets if they are intended for use on a continuing basis in the company's activities, and any assets not intended for such use shall be taken to be current assets.

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Capitalisation

76. References in this Schedule to capitalising any work or costs are references to treating that work or those costs as a fixed asset.

Investment property

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77. In this Schedule "investment property" means land or buildings (or both) held to earn rentals or for capital appreciation (or both).

Listed investments

78. In this Schedule, "listed investments" means investments as respects which there has been granted a listing on—

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- (a) any regulated market or other stock exchange in the State;
- (b) any regulated market or other stock exchange of repute in any other EEA state; or
- (c) any stock exchange of repute in a state that is not an EEA state.

Loans

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79. For the purposes of this Schedule, a loan shall be treated as falling due for payment, and an instalment of a loan shall be treated as falling due for payment, on the earliest date on which the lender could require repayment or (as the case may be) payment, if the lender exercised all options and rights available to him or her.

Materiality

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80. Amounts which in the particular context of any provision of this Schedule are not material may be disregarded for the purposes of that provision.

Provisions

81. (1) References in this Schedule to provisions for depreciation or diminution in value of assets are references to any amount written off by way of providing for depreciation or diminution in value of assets.
- (2) Any reference in the profit and loss account formats set out in *Part II* to the depreciation of, or amounts written off, assets of any description is a reference to

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the movement in any provision for depreciation or diminution in value of assets of that description.

82. References in this Schedule to provisions for liabilities are references to any amount retained as reasonably necessary for the purpose of providing for any liability the nature of which is clearly defined and which exists at the financial year end date but, as respects the amount of which or the date on which it will be settled, there is uncertainty. 5

Purchase price

83. References in this Schedule (however expressed) to the purchase price of an asset of a company or of any raw materials or consumables used in the production of any such asset shall be read as including references to any consideration (whether in cash or otherwise) given by the company in respect of that asset or in respect of those materials or consumables (as the case may require). 10

SCHEDULE 4

Section 294.

ACCOUNTING PRINCIPLES, FORM AND CONTENT OF GROUP FINANCIAL STATEMENTS

PART I

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|-----|--|----|
| | CONSTRUCTION OF REFERENCES TO PROVISIONS OF SCHEDULE | 5 |
| 1. | Without prejudice to the generality of section 9 of the Interpretation Act 2005 and its application to the body of this Act and to <i>Schedules 1, 2 and 5 to 17</i> — | |
| (a) | a reference in this Schedule to a paragraph or Part is a reference to a paragraph or Part of this Schedule, unless it is indicated that a reference to some other enactment is intended; and | 10 |
| (b) | a reference in this Schedule to a subparagraph or clause is a reference to the subparagraph or clause of the provision in which the reference occurs, unless it is indicated that a reference to some other enactment is intended. | |

PART II

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|-----|--|----|
| | GENERAL RULES AND FORMATS | 15 |
| | GENERAL RULES | |
| 2. | (1) Group financial statements shall comply, except for any necessary modifications to take account of differences between group financial statements and entity financial statements, with the provisions of <i>Schedule 3</i> as if the undertakings included in the consolidation (the “group”) were a single company. | 20 |
| (2) | In particular, for the purposes of <i>paragraph 69 of Schedule 3</i> (dealings with or interests in group undertakings) as it applies to group financial statements— | |
| (a) | any subsidiary undertakings of the holding company not dealt with in the group financial statements shall be treated as a subsidiary undertaking of the group; and | 25 |
| (b) | if the holding company is itself a subsidiary undertaking, the group shall be treated as a subsidiary undertaking of any holding undertaking of the holding company, and the reference to fellow subsidiary undertakings shall be read accordingly. | |
| 3. | (1) The group balance sheet and group profit and loss account shall consolidate in full the information contained in the separate balance sheets and profit and loss accounts of the holding company and of the subsidiary undertakings included in the consolidation, subject to the adjustments required or permitted by the following provisions of this Schedule and to such other adjustments (if any) as may be appropriate in accordance with generally accepted accounting practice. | 30 |
| (2) | If the financial year of a subsidiary undertaking dealt with in the group financial statements differs from that of the holding company, the group financial statements shall be drawn up— | |
| (a) | from the entity financial statements of the subsidiary undertaking for its financial year last ending before the end of the holding company’s financial | 40 |

- year provided that the financial year ended no more than 3 months before that of the holding undertaking; or
- (b) from interim financial statements drawn up by the subsidiary undertaking as at the end of the holding company's financial year.

AMENDMENTS TO FORMATS IN *SCHEDULE 3*

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Minority interest

4. (1) In applying Balance Sheet *Formats 1* and *2* set out in *Part II* of *Schedule 3* to group financial statements a separate item under the heading "Minority Interest" shall be shown—
- (a) in *Format 1* after *item H*; and 10
- (b) in *Format 2* under the general heading "LIABILITIES", between *items A* and *B*.
- (2) The amount to be shown under the heading "Minority Interest" referred to in *subparagraph (1)* shall be the amount of share capital and reserves attributable to shares in subsidiary undertakings consolidated in the group financial statements held by or on behalf of persons other than the holding company and its subsidiary undertakings. 15
5. (1) In applying Profit and Loss *Formats 1, 2, 3* and *4* set out in *Part II* of *Schedule 3* to group financial statements a separate item under the heading "Minority Interest" shall be shown— 20
- (a) in *Format 1*, before *item 20*;
- (b) in *Format 2*, before *item 22*;
- (c) in *Format 3*, before *item 11* in *Section A* and before *item 9* in *Section B*; and
- (d) in *Format 4*, before *item 13* in *Section A* and before *item 11* in *Section B*.
- (2) The amount to be shown under the heading "Minority Interest" in accordance with *subparagraph (1)* shall be the amount of any profit or loss for the year attributable to shares in subsidiary undertakings consolidated in the group financial statements held by or on behalf of persons other than the holding company and its subsidiary undertakings. 25

Other changes

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6. (1) The formats set out in *Part II* of *Schedule 3* shall have effect in relation to group financial statements with the following modifications.
- (2) In the Balance Sheet Formats, the items headed "Participating interests", that is—
- (a) in *Format 1*, *item A.III.3*; and
- (b) in *Format 2*, *item A.III.3* under the heading "ASSETS"; 35
- shall be replaced by 2 items, "Interests in associated undertakings" and "Other participating interests".
- (3) In the Profit and Loss Account Formats, the items headed "Income from participating interests", that is—

- (a) in *Format 1*, item 8;
- (b) in *Format 2*, item 10;
- (c) in *Format 3*, item B.4; and
- (d) in *Format 4*, item B.6,

shall be replaced by 2 items, “Income from interests in associated undertakings” 5 and “Income from other participating interests”.

PART III

ACCOUNTING PRINCIPLES AND VALUATION RULES

ACCOUNTING PRINCIPLES

General

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- 7. In determining the amounts to be included in the group financial statements, the accounting principles and valuation rules contained in *Part III* of *Schedule 3* shall apply and shall be applied consistently within those group financial statements.
- 8. (1) Subject to *subparagraph (2)*, a holding company shall apply the same methods of valuation in drawing up its group financial statements as it applies in drawing up its entity financial statements. 15
- (2) Subject to *paragraph 6*, *subparagraph (1)* shall not apply where, in the opinion of the directors, a departure from that paragraph is necessary for the purpose of giving a true and fair view.
- (3) Where there is any application of *subparagraph (2)*, the particulars of the departure and the reasons therefor shall be disclosed in the notes to the group financial statements. 20
- 9. (1) Where the assets and liabilities to be included in the group financial statements have been valued or otherwise determined by undertakings included in the consolidation according to accounting rules differing from those used in the group financial statements, the values or amounts shall be adjusted so as to accord with the rules used for the group financial statements. 25
- (2) The adjustments referred to in this paragraph need not be made if they are not material for the purpose of giving a true and fair view.
- (3) If, in the opinion of the directors of the holding company, there are special reasons for departing from *subparagraph (1)* they may do so but particulars of any such departure, the reasons therefor and its effect shall be stated in the notes to the group financial statements. 30

Preparing the consolidation

- 10. (1) Group financial statements shall show the assets, liabilities and financial position as at the end of the financial year and the profit or loss for the financial year of the holding company and the undertakings included in the consolidation as if they were a single undertaking. 35
- (2) In particular—

- (a) debts and claims between the undertakings included in the consolidation shall be eliminated in preparing the group financial statements;
- (b) income and expenditure relating to transactions between the undertakings included in the consolidation shall be eliminated in preparing the group financial statements; 5
- (c) where profits and losses resulting from transactions between the undertakings included in the consolidation are included in the book values of assets, they shall be eliminated in preparing the group financial statements;
- but *clauses (a) to (c)* need not be complied with where the amounts involved are not material for the purpose of giving a true and fair view. 10
11. (1) The methods of consolidation shall be applied consistently from one financial year to the next.
- (2) If, in the opinion of the directors of the holding company, there are special reasons for departing from *subparagraph (1)* they may do so but particulars of any such departure, the reasons therefor and its effect shall be stated in the notes to the group financial statements. 15
- Accounting for an acquisition*
12. (1) *Paragraphs 13 to 16* apply where an undertaking becomes a subsidiary undertaking of the holding company.
- (2) That event is referred to in those provisions as an “acquisition” and references to the undertaking acquired shall be read accordingly. 20
13. An acquisition shall be accounted for by the acquisition method of accounting unless the conditions for accounting for it as a merger as set out in *paragraph 15* are satisfied and the merger method of accounting is adopted.
14. (1) The acquisition method of accounting is as described in *subparagraphs (2) to (6)*. 25
- (2) The identifiable assets and liabilities of the undertaking acquired shall be included in the consolidated balance sheet at their fair values as at the date of acquisition.
- (3) In *subparagraph (2)* “identifiable assets or liabilities” means the assets or liabilities which are capable of being disposed of or discharged separately, without disposing of a business of the undertaking. 30
- (4) The income and expenditure of the undertaking acquired shall be brought into the group financial statements only as from the date of acquisition.
- (5) There shall be calculated the difference between the acquisition cost of the interest in the shares of the acquired undertaking incurred by the undertakings included in the group financial statements, and the interest of the undertakings included in the group financial statements in the adjusted capital and reserves of the undertaking acquired. 35
- (6) For the foregoing purpose—
- “acquisition cost” means the amount of any cash consideration and the fair value of any other consideration, together with such amounts (if any) in respect of fees 40

and other expenses of the acquisition as the holding company may determine to have been incurred in relation to the acquisition;	
“adjusted capital and reserves of the undertaking acquired” means its capital and reserves at the date of the acquisition after adjusting the identifiable assets and liabilities of the undertaking to fair values as at that date.	5
(7) The resulting amount, if positive, shall be treated as goodwill and the provisions of <i>Schedule 3</i> in relation to goodwill shall apply.	
(8) The resulting amount, if negative, shall be treated as a negative consolidation difference.	
15. The conditions for accounting for an acquisition as a merger are—	10
(a) that at least 90 per cent of the nominal value of the equity shares in the undertaking acquired is held by or on behalf of the undertakings consolidated in the group financial statements,	
(b) that the proportion referred to in <i>clause (a)</i> was attained pursuant to the arrangement providing for the issue of equity shares by the undertakings consolidated in the group financial statements,	15
(c) that the fair value of any consideration other than the issue of equity shares given pursuant to the arrangement by the undertakings consolidated in the group financial statements did not exceed 10 per cent of the nominal value of the equity shares issued.	20
16. (1) The merger method of accounting is as set out in <i>subparagraphs (2) to (6)</i> .	
(2) The assets and liabilities of the undertaking acquired shall be brought into the group financial statements at the amount at which they stand in the acquired undertaking’s financial statements, subject to any adjustment authorised or required by this Part.	25
(3) The income and expenditure of the acquired undertaking shall be included in the group financial statements for the entire financial year, including the period before the acquisition.	
(4) The group financial statements shall show corresponding amounts relating to the previous financial year as if the undertaking had been included in the consolidation throughout that year.	30
(5) There shall be set off against the aggregate of—	
(a) the appropriate amount in respect of shares issued by the undertakings consolidated in the group financial statements as part of the arrangement referred to in <i>paragraph 15(b)</i> in consideration for the acquisition of shares in the acquired undertaking; and	35
(b) the fair value of any other consideration for the acquisition of shares in the acquired undertaking, determined as at the date when those shares were acquired;	
the nominal value of the issued share capital of the acquired undertaking held by the undertakings consolidated in the group financial statements.	40

- (6) The resulting amount shall be shown as an adjustment to the consolidated reserves.
17. (1) Where a group is acquired, *paragraphs 12 to 16* apply with the following adaptations.
- (2) References to shares of the acquired undertaking shall be read as references to shares of the holding undertaking of the group acquired. 5
- (3) Other references to the acquired undertaking shall be read as references to the group acquired; and references to the assets and liabilities, income and expenditure and capital and reserves of the acquired undertaking shall be read as references to the assets and liabilities, income and expenditure and capital and reserves of the group after making the set offs and other adjustments required by this Part in the case of group financial statements. 10

Changes in the composition of the group

18. If the composition of the undertakings consolidated in the group financial statements has changed significantly in the course of a financial year, the group financial statements must include information which makes the comparison of successive sets of group financial statements meaningful. 15

ACCOUNTING FOR JOINT VENTURES AND ASSOCIATES IN GROUP FINANCIAL STATEMENTS

Joint ventures

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19. (1) Where a holding company or one of its subsidiary undertakings consolidated in the group financial statements manages another undertaking jointly with one or more undertakings not consolidated in the group financial statements, that other undertaking (the “joint venture”) may, if it is not—

(a) a body corporate; or 25

(b) a subsidiary undertaking of the holding company;

be proportionally consolidated in the group financial statements in proportion to the rights in its capital held by the holding company or the subsidiary undertakings consolidated in the group financial statements, as the case may be.

- (2) The provisions of this Schedule relating to the preparation of consolidated financial statements shall apply, with any necessary modifications, to the inclusion of joint ventures in the consolidated financial statements by proportional consolidation in accordance with *subparagraph (1)*. 30

Associated undertakings

20. (1) In *paragraph 21* “associated undertaking” means an undertaking in which an undertaking consolidated in the group financial statements has a participating interest and over whose operating and financial policy it exercises a significant influence and which is not—

(a) a subsidiary undertaking of the holding company; or

(b) a joint venture proportionally consolidated in accordance with *paragraph 19*. 35 40

- (2) Where an undertaking holds 20 per cent or more of the voting rights in another undertaking, it shall be presumed to exercise such an influence over it unless the contrary is shown.
- (3) The voting rights in an undertaking means the rights conferred on shareholders in respect of their shares or, in the case of an undertaking not having a share capital, on members, to vote at general meetings of the undertaking on all or substantially all matters.
- (4) The provisions of *section 7(5)* and *(6)* with respect to determining whether shares are held in a body corporate and with respect to reckoning the amount of voting rights held apply, with any necessary modifications, in determining for the purpose of this paragraph whether an undertaking holds 20 per cent or more of the voting rights in another undertaking.
21. (1) The interest of an undertaking consolidated in the group financial statements in an associated undertaking, and the amount of profit or loss attributable to such an interest, shall be shown in the group financial statements by way of the equity method of accounting including dealing with any goodwill arising in accordance with *paragraphs 20 to 22 and 24 of Schedule 3*.
- (2) Where the associated undertaking is itself a holding undertaking, the net assets and profits or losses to be taken into account are those of the holding and its subsidiary undertakings (after making any consolidation adjustments).
- (3) The equity method of accounting need not be applied if the amounts in question are not material for the purpose of giving a true and fair view.
- Participating interest*
22. (1) In *paragraph 20* and this paragraph “participating interest” means an interest held by one undertaking in the equity shares of another undertaking which it holds on a long term basis for the purpose of securing a contribution to that undertaking’s own activities by the exercise of control or influence arising from or related to that interest.
- (2) The reference in *subparagraph (1)* to an interest in equity shares includes—
- (a) an interest which is convertible into an interest in equity shares; and
- (b) an option to acquire equity shares or any such interest,
- and an interest or option falls within *clause (a)* or *(b)* notwithstanding that the equity shares to which it relates are, until the conversion or the exercise of the option, unissued.
- (3) Where an undertaking holds an interest in equity shares and such an interest represents 20 per cent or more of all such interests in the other undertaking it shall be presumed to hold that interest on the basis and for the purpose mentioned in *subparagraph (1)* unless the contrary is shown.
- (4) For the purpose of this paragraph an interest held on behalf of an undertaking shall be treated as held by it.
- (5) In the balance sheet and profit and loss formats set out in *Part II of Schedule 3*, “participating interest” does not include an interest in a group undertaking.

PART IV

INFORMATION REQUIRED BY WAY OF NOTES TO GROUP FINANCIAL STATEMENTS

- | | | | | | | | |
|-----|--|--|---|--|---|--|---------------------------|
| 23. | Without prejudice to <i>paragraph 2</i> , the notes to the group financial statements shall, in addition to providing the information required by <i>Schedule 3</i> , also state the information required by <i>paragraphs 24 to 28</i> .

24. | Where sums originally denominated in currencies, other than the currency in which the group financial statements are presented, have been brought into account under any items shown in the balance sheet or profit and loss account, the basis on which those sums have been translated into the currency in which the group financial statements are presented shall be stated.

25. | In respect of the aggregate of the amounts shown in the group balance sheet under the heading “Creditors” there shall be stated the information required by <i>paragraph 58</i> of <i>Schedule 3</i> as if references in that paragraph to a company were to the company and its subsidiary undertakings taken as a whole.

26. | In relation to each joint venture proportionately consolidated, there shall be stated the nature of the joint management arrangement.

27. | In relation to acquisitions taking place in the financial year, there shall be stated in the notes to the group financial statements—

(a) the name and registered office of the acquired undertaking, or where a group was acquired, the name and registered office of the holding undertaking of that group; and

(b) whether the acquisition has been accounted for by the acquisition method or the merger method of accounting.

28. | <i>Paragraph 67</i> (related party transactions) of <i>Schedule 3</i> shall, in the case of group financial statements, apply to all transactions entered into by the holding company, or any subsidiary undertaking included in the consolidation, with related parties, being transactions of the kind referred to in that paragraph but not being intra-group transactions. | 5
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|-----|--|--|---|--|---|--|---------------------------|

SCHEDULE 5

Section 142.

LIST OF COMPANIES FOR CERTAIN PURPOSES OF ACT (INCLUDING, IN PARTICULAR, *SECTIONS 142, 350, 362 AND 510*)

1. A company that is an authorised investment firm within the meaning of the European Communities (Markets in Financial Instruments) Regulations 2007 (S.I. No. 60 of 2007).	5
2. A company that is an authorised market operator.	
3. A company that is an associated undertaking or a related undertaking, of an authorised investment firm or an authorised market operator, within the meaning of the European Communities (Markets in Financial Instruments) Regulations 2007 (S.I. No. 60 of 2007).	10
4. A company to which Chapter VII, VIII or IX of Part II of the Central Bank Act 1989 applies.	
5. A company that is engaged in the business of accepting deposits or other repayable funds or granting credit for its own account.	15
6. A company that is an associated body of a building society within the meaning of the Building Societies Act 1989.	
7. A company that is an associated enterprise of a credit institution within the meaning of the European Communities (Consolidated Supervision of Credit Institutions) Regulations 1992 (S.I. No. 396 of 1992).	20
8. An investment company within the meaning of <i>Part 24</i> .	
9. A company that is a management company, trustee or custodian within the meaning of <i>Part 24</i> or of Part 2 of the Investment Funds, Companies and Miscellaneous Provisions Act 2005.	25
10. A company that is an undertaking for collective investment in transferable securities within the meaning of the European Communities (Undertakings for Collective Investment in Transferable Securities) Regulations 2011 (S.I. No. 352 of 2011).	
11. A company that is a management company or trustee of an undertaking for collective investment in transferable securities within the meaning of the European Communities (Undertakings for Collective Investment in Transferable Securities) Regulations 2011 (S.I. No. 352 of 2011).	30
12. A company that is a management company or trustee of a unit trust scheme within the meaning of the Unit Trusts Act 1990.	
13. A company that is a general partner or custodian of an investment limited partnership within the meaning of the Investment Limited Partnerships Act 1994.	35
14. A company that is an undertaking with close links with a financial undertaking within the meaning of the Supervision of Credit Institutions, Stock Exchange Member Firms and Investment Business Firms Regulations 1996 (S.I. No. 267 of 1996).	
15. Any other company the carrying on of business by which is required, by virtue of any enactment or instrument thereunder, to be authorised by the Central Bank.	40

16. A company that is the holder of an authorisation within the meaning of—
- (a) Regulation 2 of the European Communities (Non-Life Insurance) Regulations 1976 (S.I. No. 115 of 1976);
 - (b) Regulation 2 of the European Communities (Non-Life Insurance) Framework Regulations 1994 (S.I. No. 359 of 1994); 5
 - (c) Regulation 2 of the European Communities (Life Assurance) Regulations 1984 (S.I. No. 57 of 1984); or
 - (d) Regulation 2 of the European Communities (Life Assurance) Framework Regulations 1994 (S.I. No. 360 of 1994).
17. A company that is an insurance intermediary within the meaning of the Insurance Act 1989. 10
18. A company that is an excepted body within the meaning of the Trade Union Acts 1871 to 1990.

SCHEDULE 6

Section 5.

FURTHER SAVINGS AND TRANSITIONAL PROVISIONS

Continuity of company law not affected

1. The continuity of the operation of the law relating to companies shall not be affected by the substitution of this Act for the prior Companies Acts. 5

Status (generally) of instruments made under prior Companies Acts

2. Notwithstanding anything in section 26(2)(d) of the Interpretation Act 2005, no instrument made under any of the prior Companies Acts shall continue in force save as provided for in this Schedule. 10

Certain regulations saved

3. Any regulations made under section 28 or 48 of the Companies (Auditing and Accounting) Act 2003 and in force before the commencement of *Chapter 2* of *Part 15* shall continue in force as if made under the corresponding provision of that Chapter and may be amended or revoked accordingly. 15

Certain superannuation schemes saved

4. Every scheme made under section 9 of the Company Law Enforcement Act 2001 or section 20 of the Companies (Auditing and Accounting) Act 2003 and in force before the commencement of *Chapter 2* or *3*, as the case may be, of *Part 15* shall continue in force as if made under the corresponding provision of that Chapter and may be amended or revoked accordingly. 20

Certain other instruments saved

5. (1) As provided for in *section 1351, 1363 or 1376*, as appropriate—

(a) the Prospectus (Directive 2003/71/EC) Regulations 2005 (S.I. No. 324 of 2005) and any regulations amending those regulations; 25

(b) the Market Abuse (Directive 2003/6/EC) Regulations 2005 (S.I. No. 342 of 2005) and any regulations amending those regulations;

(c) the Transparency (Directive 2004/109/EC) Regulations 2007 (S.I. No. 277 of 2007) and any regulations amending those regulations,

shall continue in force and may be amended or revoked under *section 1350, 1362 or 1375*, as appropriate, accordingly. 30

(2) The Companies Act 1990 (Uncertificated Securities) Regulations 1996 (S.I. No. 68 of 1996) shall continue in force and may be amended or revoked under *section 1088* accordingly.

(3) As provided for in *section 1395(6)*, the Companies Act 1990 (Prescribed Alternative Accounting Standards Bodies) Regulations 2005 (S.I. No. 382 of 2005) and any regulations amending those regulations shall continue in force and may be amended or revoked under *section 12* accordingly. 35

Applicability of offence investigation and other powers in case of offences under prior Companies Acts

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6. (1) For the purposes of the exercise of any power conferred by this Act, a reference in the provision concerned of this Act to an offence under a provision or provisions of this Act shall be read as including a reference to an offence under the corresponding provision or provisions of the prior Companies Acts.
- (2) Without prejudice to the generality of *subparagraph (1)*, that subparagraph applies to the exercise of any power of investigation or search, entry or seizure conferred by this Act and, in particular, as respects the operation of any condition precedent, provided in the provision concerned of this Act, with respect to the power's exercise.
- (3) *Section 789* applies to a search warrant issued under section 20 of the Act of 1990 as it applies to a search warrant issued under *section 787*.
- Continuity of law relating to disqualifications and restrictions, etc.*
7. (1) Without prejudice to the generality of *paragraph 1*, the continuity of the law relating to disqualifications and restrictions is not affected by the substitution of *Chapters 3, 4 and 6 of Part 14* for Part VII of the Act of 1990.
- (2) Without prejudice to the generality of *paragraph 1*, any disqualification or declaration of restriction (within the meaning of Part VII of the Act of 1990) provided, made or granted under that Part and in force before the commencement of the corresponding provision of *Part 14* shall continue in force and operate as a disqualification or declaration of restriction provided, made or granted under that corresponding provision.
- (3) Without prejudice to the generality of *paragraph 6, section 839* (automatic disqualification on conviction of certain indictable offences) operates with respect to the circumstances of a person's being convicted of an indictable offence under the prior Companies Acts as it operates with respect to the circumstances of a person's being convicted of an indictable offence under this Act.
- (4) Without prejudice to the generality of *paragraph 6*, the powers of the court under *section 842* (court may make disqualification order) are exercisable by reference to matters or things done or omitted to be done under the prior Companies Acts as they are exercisable by reference to matters or things done or omitted to be done under this Act.
- (5) *Chapter 5* (Disqualification and Restriction Undertakings) of *Part 14* shall be read as being operative and as applicable in a case where the Director has reasonable grounds for the belief referred to in *section 850(2)* or *852(2)* by reference to matters or things done or omitted to be done, or circumstances, under the prior Companies Acts as they are operative and applicable in a case where the Director has reasonable grounds for such belief by reference to matters or things done or omitted to be done, or circumstances, under this Act.

Continuation of acts not completed

8. (1) Any thing commenced under a provision of the prior Companies Acts, before the repeal, by this Act, of that provision, and not completed before that repeal, may be continued and completed under the corresponding provision of this Act.

- (2) Without prejudice to the generality of the preceding subparagraph or *paragraph 1*, any petition presented for the winding up of a company or the appointment of an examiner to a company before the repeal of the provision concerned of the prior Companies Acts but not disposed of before the commencement of the corresponding provision of this Act may be proceeded with and heard under that corresponding provision and, likewise any subsequent act, application or proceeding in any such matter commenced but not completed before the corresponding provision of this Act is commenced may be so done, proceeded with or heard. 5
- (3) However, in any such case, the court concerned shall, subject to *subparagraph (4)*, have jurisdiction to make whatever order it thinks appropriate for ensuring the smooth transition from the law and procedure under the prior Companies Acts to the law and procedure under this Act (that is to say, this Act and the rules of court as they have been brought into conformity with this Act as mentioned in *section 564(4)*) and that jurisdiction of the court shall extend, in a case where a liquidator has proceeded to take substantive steps in a winding up ordered by the court before the commencement of the relevant provision of *Part 11*, to making a direction that the functions of the court officer known as “the Examiner” that were performable under the rules of the court, before they were so brought into conformity, shall be performable in that winding up. 10
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- (4) In exercising the jurisdiction referred to in *subparagraph (3)*, the court shall bear in mind the extent to which a power of a liquidator that is exercisable under the relevant provisions of *Part 11* and also was exercisable under the relevant provisions of the prior Companies Acts may be exercised without the sanction of the court under the first-mentioned provisions. 25
- (5) Notwithstanding anything in this paragraph or elsewhere, *sections 646 to 648* (liquidator’s remuneration) shall not apply to a winding up commenced before the commencement of the relevant provisions of *Part 11* and the matters dealt with by those sections shall be governed by the relevant provisions of the prior Companies Acts and the rules of court in force before the commencement of the first-mentioned provisions, and the second-mentioned provisions and rules of court shall, despite *section 4*, continue in force for that purpose accordingly. 30
- (6) Without prejudice to the generality of *subparagraph (1)* or *paragraph 1*, any investigation by inspectors appointed under the Act of 1990 before the commencement of the relevant provisions of *Part 13* but not completed before that commencement may be continued and completed under those relevant provisions. 35

Reckoning of periods of time in cases of acts continued under this Act

9. (1) Where any thing commenced under the prior Companies Acts but not completed before the commencement of the corresponding provision of this Act is continued to be carried on under that corresponding provision but the time specified in that provision for completing the thing is less than the time specified in that behalf in the repealed provision then, notwithstanding that corresponding provision, the period of time within which the thing may be completed under it shall be that specified in the repealed provision. 40
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- (2) In the converse case (that is to say, a case in which a greater period of time is specified in the corresponding provision of this Act than that specified in the repealed provision), the thing concerned may be completed within that greater period of time.

New Nomenclature for Certain Matters

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10. (1) Without prejudice to the generality of *paragraph 1*, neither the use of the expression “financial statements” in this Act, as distinct from the expression “accounts” used in the prior Companies Acts, nor the use, with respect to associated matters concerning accounts and financial reporting, in this Act of expressions different from those used in those other Acts affects the validity of the preparation, auditing, circulation or laying of documents or the delivery of them to the Registrar, being documents that—

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(a) are prepared in respect of a financial year beginning before the commencement of this Schedule and ending thereafter; and

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(b) bear a description by reference to the nomenclature used in the prior Companies Acts.

- (2) Without prejudice to the generality of *paragraphs 1* and *8*, the use of the expression “independent expert” in this Act, as distinct from the expression “independent accountant” used in the Companies (Amendment) Act 1990, does not affect the continued performance, after the commencement of this Schedule, by a person engaged before that commencement (by reference to that former nomenclature) of his or her functions in relation to an actual or prospective examinership.

20

References in enactments to provisions of prior Companies Acts

11. (1) A reference in any enactment to a provision of the prior Companies Acts, being a provision that is repealed by this Act and which corresponds to a provision of this Act, shall, unless the context otherwise requires, be read as a reference to that provision of this Act.

25

- (2) Without prejudice to the generality of *subparagraph (1)*—

(a) the reference in Regulation 22(2) of the European Communities (Takeover Bids (Directive 2004/25/EC)) Regulations 2006 (S.I. No. 255 of 2006) to section 204 of the Act of 1963 shall be read as a reference to *Chapter 2 of Part 9*;

30

(b) the reference in Regulation 81 of the Transparency (Directive 2004/109/EC) Regulations 2007 (S.I. No. 277 of 2007) to Chapter 2 of Part IV of the Act of 1990 shall be read as a reference to *Chapter 4 of Part 17*; and

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(c) the references in section 30 of the Multi-Unit Developments Act 2011 to section 311 or 311A of the Act of 1963 or section 12 or 12B of the Companies (Amendment) Act 1982, or to a particular provision of any such section, shall be read as references to *Chapter 1* or, as appropriate, *Chapter 2 of Part 12* or, as the case may be, the corresponding provision of either such Chapter.

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- (3) Nothing in this paragraph affects *section 6* (construction of references in other

Acts to companies registered under the Companies (Consolidation) Act 1908 and Act of 1963).

Provisions as to status of companies restored to register, having been struck off under former enactments

12. (1) Without prejudice to any specific provision in this Act in that behalf and the subsequent provisions of this paragraph, the provisions of this Act that shall apply to a company—

(a) struck off the register under any former enactment relating to companies (within the meaning of *section 5*); and

(b) subsequently restored to the register, whether under— 10

(i) the former enactment referred to in *section 744(3)*;

(ii) *Chapter 2 of Part 12*; or

(iii) section 30 of the Multi-Unit Developments Act 2011,

shall be those applicable to the type of company that corresponds to the type of company to which the company belonged before it was so struck off. 15

(2) Without prejudice to *subparagraphs (3)* and *(4)*, where any of this Act's provisions, as applicable to a particular type of company, operates differently by reference (however the matter is expressed) to the length of time that has elapsed after the provision's commencement, then the reference in *subparagraph (1)* to the provisions of this Act that are applicable to a type of company shall, in the case of that particular provision, be read as a reference to that provision as it is applicable to a company of the type concerned at the time of the particular company's restoration to the register (and then at a future date, as the case may be, as it is so applicable at that future date). 20

(3) If the company's type, before being so struck off, was that of a private company limited by shares and the date on which the company is restored to the register under *Chapter 2 of Part 12* or section 30 of the Multi-Unit Developments Act 2011 is subsequent to the expiry of the transition period (within the meaning of *Chapter 6 of Part 2*), then, subject, in the case of a restoration under *section 738* or *741*, to any direction or order of the court under *section 742*, *section 61(1)(a)* and *(b)* shall apply in relation to the company notwithstanding that the company was not an existing private company within the meaning of that *Chapter 6* and, accordingly, the company shall, on the date of its restoration to the register, be deemed to be a private company limited by shares to which *Parts 1 to 15* apply and the other provisions of *section 61* shall apply to it with any necessary modifications. 25 30 35

(4) *Subparagraph (3)* shall similarly apply (where the company's type, before being so struck off, was that of a private company limited by shares) if, by virtue of *subsection (3)* of *section 744*, the former enactment referred to in that subsection applies to the application for the company's restoration but with the modification that the reference in that subparagraph to a particular provision under which the application for restoration is made, or to a particular provision under which a direction or order of the court is made, shall be read as a reference to the corresponding provision of the former enactment concerned. 40

(5) If in any respect any difficulty arises during the period of 20 years after the commencement of *Chapter 2* of *Part 12* in bringing into operation that Chapter as it relates to a case falling within any of *subparagraphs (1)* to *(4)*, the Minister by regulations do anything which appears to be necessary or expedient for bringing that Chapter into operation as it relates to such a case.

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(6) The Minister's power to make regulations under *subparagraph (5)* extends to removing difficulties in cases in which a private company limited by shares was—

(a) struck off the register under any former enactment relating to companies (within the meaning of *section 5*); and

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(b) restored to the register under—

(i) the former enactment referred to in *section 744(3)*;

(ii) *Chapter 2* of *Part 12*; or

(iii) *section 30* of the Multi-Unit Developments Act 2011,

and, before the date it is so restored, there has elapsed a length of time that, in the Minister's opinion, represents a substantial portion (or greater) of the transition period (within the meaning of *Chapter 6* of *Part 2*).

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Authorisations, designations and approvals under Part XIII of the Act of 1990

13. Every authorisation, designation and approval under Part XIII of the Act of 1990 (including any condition imposed thereunder) that is in force immediately before the commencement of *Part 24* shall continue in force as if granted, made or imposed under *Part 24* and may be the subject of the like exercise of powers thereafter as authorisations, designations, approvals and conditions generally under *Part 24*.

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Generality of Interpretation Act 2005 not affected

14. Save for any express limitation by this Schedule of that Act's terms, this Schedule is without prejudice to the generality of the Interpretation Act 2005.

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Specific transitional provisions not affected

15. This Schedule is in addition to the special provision made in certain provisions of this Act for transitional matters as they relate to those provisions and, in the event of conflict between this Schedule and such special provisions, those special provisions prevail as they relate to those matters.

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SCHEDULE 7

Section 969.

FORM OF CONSTITUTION OF DESIGNATED ACTIVITY COMPANY LIMITED BY SHARES

CONSTITUTION

OF

5

[name of company as below]

MEMORANDUM OF ASSOCIATION

1. The name of the company is: THE SAFE SKIES SOFTWARE DESIGNATED ACTIVITY COMPANY.
2. The company is a designated activity company limited by shares, that is to say a private company limited by shares registered under *Part 16* of the *Companies Act 2014*. 10
3. The objects for which the company is established are the development, production and sale of computer software designed to enhance the safety of aviation and the doing of all such other things as are incidental or conducive to the attainment of the above object. 15
4. The liability of the members is limited.
5. The share capital of the company is €200,000, divided into 200,000 shares of €1 each.

ARTICLES OF ASSOCIATION

The following Regulations shall apply to the company:

20

[or, instead of the immediately foregoing words, the following sentence:-]*

The provisions of the *Companies Act 2014* are adopted.

*See section 970(5)

We, the several persons whose names and addresses are subscribed, wish to be formed into a company in pursuance of this constitution, and we agree to take the number of shares in the capital of the company set opposite our respective names.

25

Names, Addresses and Descriptions of Subscribers	Number of Shares taken by each Subscriber
1. Patrick McKenna Address: Description:	300
2. Bridget McCloy Address: Description:	2,700
Total shares taken:	3,000

30

35

As appropriate:

signatures in writing of the above subscribers, attested by witness as provided for below; or

authentication in the manner referred to in *section 888*.

Dated the ____ day of _____ 20____

Witness to the above Signatures:

Name: _____

Address: _____

SCHEDULE 8

Section 969.

FORM OF CONSTITUTION OF DESIGNATED ACTIVITY COMPANY LIMITED BY GUARANTEE

CONSTITUTION

OF

5

[name of company as below]

MEMORANDUM OF ASSOCIATION

1. The name of the company is: THE WESTERN COUNTIES TOURISM DEVELOPMENT DESIGNATED ACTIVITY COMPANY.
2. The company is a designated activity company limited by guarantee, that is to say a private company limited by guarantee and having a share capital registered under Part 16 of the *Companies Act 2014*. 10
3. The objects for which the company is established are the promotion of tourism in the western counties of Ireland by providing facilities for tourists and the doing of all such other things as are incidental or conducive to the attainment of the above object. 15
4. The liability of the members is limited.
5. Every member of the company undertakes to contribute to the assets of the company, if the company is wound up while he or she is a member or is wound up within one year after the date on which he or she ceases to be a member, for—
 - (a) the payment of the debts and liabilities of the company contracted before he or she ceases to be a member, and the costs, charges and expenses of winding up; and 20
 - (b) the adjustment of the rights of contributories among themselves, such amount as may be required, not exceeding €50.
6. The share capital of the company is €10,000, divided into 10,000 shares of €1 each. 25

ARTICLES OF ASSOCIATION

The following Regulations shall apply to the company:

[or; instead of the immediately foregoing words, the following sentence:-]*

The provisions of the *Companies Act 2014* are adopted.

**See section 970(5)*

30

We, the several persons whose names and addresses are subscribed, wish to be formed into a company in pursuance of this constitution, and we agree to take the number of shares in the capital of the company set opposite our respective names.

Names, Addresses and Descriptions of Subscribers	Number of Shares taken by each Subscriber
1. Ann Larkin Address: Description:	1,000

35

Names, Addresses and Descriptions of Subscribers	Number of Shares taken by each Subscriber
Total shares taken:	1,000

As appropriate:

5

signature in writing of the above subscriber, attested by witness as provided for below; or

authentication in the manner referred to in *section 888.*

Dated the ___ day of _____ 20___

Witness to the above Signatures:

Name: _____ 10

Address: _____

SCHEDULE 9

Section 1008.

FORM OF CONSTITUTION OF PUBLIC LIMITED COMPANY

CONSTITUTION

OF

5

[*name of company as below*]

MEMORANDUM OF ASSOCIATION

1. The name of the company is: THE NORTHERN MINING PUBLIC LIMITED COMPANY.
2. The company is a public limited company, registered under *Part 17* of the *Companies Act 2014*. 10
3. The objects for which the company is established are the mining of minerals of all kinds and the doing of all such other things as are incidental or conducive to the attainment of the above object.
4. The liability of the members is limited. 15
5. The share capital of the company is €30,000, divided into 30,000 shares of €1 each.

ARTICLES OF ASSOCIATION

The following Regulations shall apply to the company:

[*or, instead of the immediately foregoing words, the following sentence:-**]

The provisions of the *Companies Act 2014* are adopted. 20

*See section 1009(5)

We, the several persons whose names and addresses are subscribed, wish to be formed into a company in pursuance of this constitution, and we agree to take the number of shares in the capital of the company set opposite our respective names.

Names, Addresses and Descriptions of Subscribers	Number of Shares taken by each Subscriber	
1. Jerry O'Donovan Address: Description:	5	25
2. Agnieska Mooney Address: Description:	375	30
3. Cormac Vayner Address: Description:	225	35
4. Colleen Parsons Address:	55	

Names, Addresses and Descriptions of Subscribers	Number of Shares taken by each Subscriber
Description:	
Total shares taken:	660

As appropriate:

5

signature in writing of the above subscribers, attested by witness as provided for below; or

authentication in the manner referred to in *section 888.*

Dated the ____ day of _____ 20____

Witness to the above Signatures:

10

Name: _____

Address: _____

SCHEDULE 10

Section 1176.

FORM OF CONSTITUTION OF COMPANY LIMITED BY GUARANTEE

CONSTITUTION

OF

5

[*name of company as below*]

MEMORANDUM OF ASSOCIATION

1. The name of the company is: THE UNIVERSITY FOUNDATION COMPANY LIMITED BY GUARANTEE.
2. The company is a company limited by guarantee, registered under *Part 18* of the *Companies Act 2014*. 10
3. The objects for which the company is established are the raising of funds for the furtherance of education and research carried out by Irish universities and the doing of all such other things as are incidental or conducive to the attainment of the above object. 15
4. The liability of the members is limited.
5. Every member of the company undertakes to contribute to the assets of the company, if the company is wound up while he or she is a member or is wound up within one year after the date on which he or she ceases to be a member, for—
 - (a) the payment of the debts and liabilities of the company contracted before he or she ceases to be a member, and the costs, charges and expenses of winding up; and 20
 - (b) the adjustment of the rights of contributories among themselves,
 such amount as may be required, not exceeding €1.

ARTICLES OF ASSOCIATION 25

The following Regulations shall apply to the company:

1. The number of members with which the company proposes to be registered is 4.

[In addition to the immediately foregoing words, the following sentence may be included:-]*

The provisions of the *Companies Act 2014* are adopted. 30

*See section 1177(5).

We, the several persons whose names and addresses are subscribed, wish to be formed into a company in pursuance of this constitution.

Names, Addresses and Descriptions of Subscribers	
1. Francis McMaster Address: Description:	35
2. Colleen D. Cahill Address:	

Names, Addresses and Descriptions of Subscribers	
Description:	
3. Guy Tabarie	
Address:	
Description:	
4. Akosa Martins	
Address:	
Description:	

5

As appropriate:

signature in writing of the above subscribers, attested by witness as provided for 10
below; or

authentication in the manner referred to in *section 888.*

Dated the ____ day of _____ 20____

Witness to the above Signatures:

Name: _____

15

Address: _____

SCHEDULE 11

Section 1232.

FORM OF CONSTITUTION OF PRIVATE UNLIMITED COMPANY HAVING A SHARE CAPITAL

CONSTITUTION

OF

5

[*name of company as below*]

MEMORANDUM OF ASSOCIATION

1. The name of the company is: BIG WAREHOUSE UNLIMITED COMPANY.
2. The company is a private unlimited company having a share capital, registered under *Part 19 of the Companies Act 2014.*
3. The objects for which the company is established are the design and manufacture of clothing, and the doing of all such other things as are incidental or conducive to the attainment of the above object.
4. The share capital of the company is €200,000, divided into 200,000 shares of €1 each.
5. The liability of the members is unlimited.

10

15

ARTICLES OF ASSOCIATION

The following Regulations shall apply to the company:

[*or, instead of the immediately foregoing words, the following sentence:-**]

The provisions of the *Companies Act 2014* are adopted.

*See section 1234(5)

20

We, the several persons whose names and addresses are subscribed, wish to be formed into a company in pursuance of this constitution, and we agree to take the number of shares in the capital of the company set opposite our respective names.

25

30

35

Names, Addresses and Descriptions of Subscribers	Number of Shares taken by each Subscriber
1. Henry Klein Address: Description:	300
2. Brendan Pettit Address: Description:	2,700
3. Frances Little Address: Description:	500
Total shares taken:	3,500

As appropriate:

signature in writing of the above subscribers, attested by witness as provided for

below; or

authentication in the manner referred to in *section 888.*

Dated the ____ day of _____ 20____

Witness to the above Signatures:

Name: _____

5

Address: _____

SCHEDULE 12

Section 1232.

FORM OF CONSTITUTION OF PUBLIC UNLIMITED COMPANY HAVING A SHARE CAPITAL

CONSTITUTION

OF

5

[*name of company as below*]

MEMORANDUM OF ASSOCIATION

1. The name of the company is: ALL BREEDS DOG CARE UNLIMITED COMPANY.
2. The company is a public unlimited company having a share capital, registered under *Part 19 of the Companies Act 2014.*
3. The objects for which the company is established are the provision of general care, kennelling and grooming services in respect of all breeds of dog and the doing of all such other things as are incidental or conducive to the attainment of the above object.
4. The share capital of the company is €400,000, divided into 200,000 shares of €2 each.
5. The liability of the members is unlimited.

10

15

ARTICLES OF ASSOCIATION

The following Regulations shall apply to the company:

[*or, instead of the immediately foregoing words, the following sentence:-**]

The provisions of the *Companies Act 2014* are adopted.

*See section 1234(5)

20

We, the several persons whose names and addresses are subscribed, wish to be formed into a company in pursuance of this constitution, and we agree to take the number of shares in the capital of the company set opposite our respective names.

Names, Addresses and Descriptions of Subscribers	Number of Shares taken by each Subscriber	
1. Duncan Moloney Address: Description:	600	25
2. John Berry Address: Description:	850	30
3. Melissa Smith Address: Description:	500	
4. Dermot O'Kelly Address: Description:	100	35

Names, Addresses and Descriptions of Subscribers	Number of Shares taken by each Subscriber
Total shares taken:	2,050

As appropriate:

5

signature in writing of the above subscribers, attested by witness as provided for below; or

authentication in the manner referred to in *section 888.*

Dated the ___ day of _____ 20___

Witness to the above Signatures:

Name: _____ 10

Address: _____

SCHEDULE 13

Section 1233.

FORM OF PUBLIC UNLIMITED COMPANY NOT HAVING A SHARE CAPITAL

CONSTITUTION

OF

5

[*name of company as below*]

MEMORANDUM OF ASSOCIATION

1. The name of the company is: THE OLD HEAD LEISURE UNLIMITED COMPANY.
2. The company is a public unlimited company not having a share capital, registered under *Part 19* of the *Companies Act 2014*.
3. The objects for which the company is established are the provision of guided tours (including treks on foot or by means of bicycle) in and around the coastal areas of the counties of Kerry, Cork, Waterford and Wexford and the doing of all such things as are incidental or conducive to the attainment of the above object.
4. The liability of the members is unlimited.

10

15

ARTICLES OF ASSOCIATION

The following Regulations shall apply to the company:

1. The number of members with which the company proposes to be registered is 5.

[In addition to the immediately foregoing words, the following sentence may be included:-]*

20

The provisions of the *Companies Act 2014* are adopted.

*See section 1234(6).

We, the several persons whose names and addresses are subscribed, wish to be formed into a company in pursuance of this constitution.

Names, Addresses and Descriptions of Subscribers	
1. Máire de Barra Address: Description:	25
2. Carla Stewart Address: Description:	30
3. Liam Wallis Address: Description:	35
4. Emmett O'Toole Address: Description:	35
5. Jane Grey Address: Description:	40

As appropriate:

signature in writing of the above subscribers, attested by witness as provided for

below; or

authentication in the manner referred to in *section 888.*

Dated the ____ day of _____ 20____

Witness to the above Signatures:

Name: _____

5

Address: _____

SCHEDULE 14

Section 1308.

PROVISIONS APPLIED TO UNREGISTERED COMPANIES

Subject matter	Provision applied	
Interpretation generally	<i>Section 2</i>	5
Periods of time	<i>Section 3</i>	
Definition of “subsidiary”	<i>Section 7</i>	
Definitions of “holding company”, “wholly owned subsidiary” and “group of companies”	<i>Section 8</i>	10
Construction of references to directors, board of directors and interpretation of certain other plural forms	<i>Section 11</i>	
Amendment of constitution by special resolution and publication of certain notices	<i>Section 32(3)</i> and <i>section 33(1)(b) to (h) and (2)</i>	15
Registered person	<i>Section 39</i>	
Persons authorised to bind company	<i>Section 40</i>	
Official seal for sealing securities	<i>Section</i>	
Pre-incorporation contracts	<i>Section 45</i>	20
Registered office of company	<i>Section 50</i>	
Service of documents	<i>Section 51</i>	
Share premium	<i>Section 71(5)</i>	
Restriction of <i>section 71(5)</i> in the case of mergers	<i>Section 72</i>	25
Restriction of <i>section 71(5)</i> in the case of group reconstructions	<i>Section 73</i>	
Supplementary provisions in relation to <i>sections 72 and 73</i>	<i>Section 74</i>	
Financial assistance for acquisition of shares	<i>Section 82</i>	30
Reduction in company capital and associated provisions and court procedures	<i>Sections 84 to 87</i>	
Rectification of dealings in shares	<i>Section 100</i>	35
Acquisition of own shares	<i>Chapter 6 of Part 3</i>	
Distributions	<i>Chapter 7 of Part 3</i>	
Access to documents during business hours	<i>Section 127</i>	
Validity of acts of director or secretary	<i>Section 135</i>	40
Register of directors and secretaries	<i>Section 149</i>	

Subject matter	Provision applied	
Supplemental provisions (including offences) in relation to <i>section 149</i>	<i>Section 150</i>	
Particulars to be shown on all business letters of company	<i>Section 151</i>	5
Summary Approval Procedure	<i>Chapter 7 of Part 4</i> (in so far as it relates to sections 82, 84 and 239)	
Remedy in case of oppression	<i>Section 212</i>	
Form of registers, minutes, etc.	<i>Section 213</i>	
Use of computers, etc. for certain company records	<i>Section 214</i>	10
Inspection of registers, provision of copies of information in them and service of notices	<i>Chapter 10 of Part 4</i> (in so far as it relates to provisions applied by <i>section 1308</i>)	
Power of court to grant relief to officers of company	<i>Section 233</i>	15
Anticipated claim: similar power of relief as under <i>section 229</i>	<i>Section 234</i>	
Any provision exempting officers of company from liability void (subject to exceptions)	<i>Section 235</i>	20
Evidential provisions with respect to loans, other transactions, etc., between company and directors	<i>Chapter 3 of Part 5</i>	
Substantive prohibitions or restrictions on loans to directors and other particular transactions involving conflict of interest	<i>Chapter 4 of Part 5</i>	25
Disclosure of interests in shares and debentures	<i>Chapter 5 of Part 5</i>	
Meaning of “in default” in context of sanctions specified in respect of officers (whether directors or secretaries or not)	<i>Section 270</i>	30
Presumption that default permitted and certain defence	<i>Section 271</i>	
Financial statements, annual return and audit	<i>Part 6</i>	35
Definition (<i>Part 7</i>)	<i>Section 408</i>	
Registration of charges and priority	<i>Chapter 2 of Part 7</i>	
Examinerships	<i>Part 10</i>	
Investigations	<i>Part 13</i>	40
Court may order compliance by company or officer	<i>Section 797</i>	
Disclosure orders	<i>Chapter 2 of Part 14</i>	

Subject matter	Provision applied	
Restrictions on, and disqualification of, directors	<i>Chapters 3 to 6 of Part 14</i>	5
Provisions relating to offences generally	<i>Chapter 7 of Part 14</i>	
Additional general offences	<i>Chapter 8 of Part 14</i>	
Evidential matters	<i>Chapter 9 of Part 14</i>	
Fees	<i>Section 889</i>	
Inspection and production of documents kept by Registrar	<i>Section 891</i>	
Admissibility of certified copy or extract	<i>Section 892</i>	10
Certificate by Registrar admissible as evidence of facts stated	<i>Section 893</i>	
Capacity of a PLC	<i>Section 1013</i>	
Share capital	<i>Chapter 3 of Part 17</i>	
Interests in shares: disclosure of individual and group acquisitions	<i>Chapter 4 of Part 17</i>	15
Mergers and divisions	<i>Chapters 16 and 17 of Part 17</i>	
Public Offers of Securities, Financial Reporting by Traded Companies, Prevention of Market Abuse, etc.	<i>Part 23 (other than section 1370)</i>	20

SCHEDULE 15

Section 1321.

REPEALS AND REVOCATION IN RELATION TO UNREGISTERED COMPANIES

PART 1

STATUTES REPEALED

5

Session and Chapter or Number and Year	Short title	Extent of repeal	
21 & 22 Geo III, c 16	Bank of Ireland Act 1781	The whole Act so far as unrepealed	10
31 Geo III, c 22	Bank of Ireland Act 1791	The whole Act so far as unrepealed	
37 Geo III, c 50	Bank of Ireland Act 1797	The whole Act so far as unrepealed	
48 Geo III, c 103	Bank of Ireland Act 1808	The whole Act so far as unrepealed	15
1 & 2 Geo IV, c 72	Bank of Ireland Act 1821	The whole Act so far as unrepealed	
8 & 9 Vic, c 37	Bankers' (Ireland) Act 1845	So much of the Act as is unrepealed other than sections 25, 26 and 27	20
23 & 24 Vic, c 31	Bank of Ireland Act 1860	The whole Act	
27 & 28 Vic, c 78	Bank Notes (Ireland) Act 1864	The whole Act	
35 & 36 Vic, c 5	Bank of Ireland Charter Amendment Act 1872	The whole Act so far as unrepealed	25
55 & 56 Vic, c 48	Bank Act 1892	Sections 1, 3, 6 and 7	
No. 4 (Private) of 1929	Bank of Ireland Act 1929	The whole Act so far as unrepealed	30
No. 1 (Private) of 1935	Bank of Ireland Act 1935	The whole Act so far as unrepealed	
No. 23 of 1961	Finance Act 1961	Section 37	
No. 24 of 1971	Central Bank Act 1971	Section 51	35

PART 2

INSTRUMENTS OR CHARTERS REVOKED

40

Instrument or Charter	Extent of revocation
Commission (27 July 1782)	The whole instrument

Instrument or Charter	Extent of revocation
Charter of the Governor and Company of the Bank of Ireland (10 May 1783)	The whole Charter

SCHEDULE 16

Section 1387.

FORM OF CONSTITUTION OF INVESTMENT COMPANY

CONSTITUTION

OF

5

[name of company as below]

MEMORANDUM OF ASSOCIATION

1. The name of the company is: THE HIGH SCORE INVESTMENT PUBLIC LIMITED COMPANY.
2. The company is a public limited company, registered under *Part 24 of the Companies Act 2014.* 10
3. The object for which the company is established is the collective investment of its funds in property with the aim of spreading investment risk and giving members of the company the benefit of the results of the management of its funds.
4. The liability of the members is limited. 15
5. The share capital of the company shall be equal to the value for the time being of the issued share capital of the company.
6. [*Unless this is provided for in the articles of association*] The actual value of the paid up share capital of the company shall at all times be equal to the value of the assets of any kind of the company after the deduction of its liabilities. 20
7. The share capital of the company is divided into 1,000,000 shares.
8. The issued share capital of the company for the time being shall not be less than €5,000,000 nor more than €20,000,000.
9. [*Unless this is provided for in the articles of association or the company has the approval of the Central Bank not to so provide*] The shares of the company shall, at the request of any of the holders thereof, be purchased by the company directly or indirectly out of the company's assets. 25

ARTICLES OF ASSOCIATION

1. Regulations in relation to the company with respect to such aspects of the activity of collective investment referred to in *section 1381(1)(a)*, or matters related thereto, as are deemed appropriate. 30
2. Unless the memorandum of association provides for this, the matter referred to in *paragraph 6* above.
3. Unless the memorandum of association provides for this or the company has the approval of the Central Bank not to so provide, the matter referred to in *paragraph 9* above. 35
4. Other regulations (if any).

We, the several persons whose names and addresses are subscribed, wish to be formed into a company in pursuance of this constitution, and we agree to take the number of

shares in the capital of the company set opposite our respective names.

Names, Addresses and Descriptions of Subscribers	Number of Shares taken by each Subscriber
1. Thomas Friel Address: Description:	5
2. George Mooney Address: Description:	375
3. Cormac O'Hara Address: Description:	225
4. Sarah Weizmann Address: Description:	55
Total shares taken:	660

As appropriate:

signature in writing of the above subscribers, attested by witness as provided for below; or

authentication in the manner referred to in *section 888.*

20

Dated the ____ day of _____ 20____

Witness to the above Signatures:

Name: _____

Address: _____

SCHEDULE 17

Section 1400.

CONDITIONS TO BE SATISFIED FOR APPLICATION OF SEGREGATED LIABILITY TO SUB-FUNDS OF INVESTMENT COMPANY TRADING BEFORE 30 JUNE 2005

<i>Conditions for segregated liability to apply to sub-funds</i>	5
1. (1) <i>Section 1400(1)</i> shall not apply to an umbrella fund which was authorised and commenced trading (as that latter expression is to be read in accordance with this Schedule) before 30 June 2005 unless—	
(a) the members of the umbrella fund shall have resolved by special resolution that the provisions of <i>section 1400(1)</i> should apply to that umbrella fund; and	10
(b) the special resolution has taken effect in accordance with <i>paragraph 2</i> .	
(2) For the purposes of this Schedule, an umbrella fund shall be deemed to have commenced to trade before 30 June 2005 if—	
(a) shares, other than the subscriber shares issued for the purposes of incorporation of the umbrella fund, were issued in any sub-fund of that umbrella fund before 30 June 2005 and one or more of those shares remained in issue on that date; or	15
(b) the umbrella fund, or any person acting on its behalf, entered into an agreement with a third party before 30 June 2005, which remained in force on that date and pursuant to which the assets of any sub-fund may be applied in satisfaction of any liability incurred on behalf of or attributable to any other sub-fund of the same umbrella fund.	20
<i>Taking effect of special resolution referred to in paragraph 1</i>	
2. (1) If no application to the court is made pursuant to <i>paragraph 5</i> , a special resolution passed pursuant to <i>paragraph 1(1)</i> shall take effect on the date on which such resolution is passed or the 31st day after the date of service of notice on creditors issued pursuant to <i>paragraph 3(1)(b)</i> , whichever is the later.	25
(2) If an application is, or applications are, made to the court pursuant to <i>paragraph 5</i> , a special resolution pursuant to <i>paragraph 1(1)</i> shall not take effect until—	
(a) in the event that all applications made are withdrawn, the day on which such resolution is passed or the day next following the withdrawal of the last outstanding application, whichever is the later, subject to this day being no earlier than the 31st day after the date of service of notice on creditors issued pursuant to <i>paragraph 3(1)(b)</i> ; and	30
(b) in the event that all applications made are not withdrawn, whichever of the following is the later, that is to say, the later of the day on which such resolution is passed, and:	
(i) where an order is granted by the court pursuant to <i>paragraph 5</i> or on appeal pursuant to <i>paragraph 6</i> , the date specified in that order or, if no such date is specified, the day next following the date on which the period for which the order is specified to remain in force expires or, as appropriate, following the day on which it otherwise ceases to be in	35
(ii) where no order is granted by the court pursuant to <i>paragraph 5</i> or on appeal pursuant to <i>paragraph 6</i> , the day next following the date on which the period for which the order is specified to remain in force expires or, as appropriate, following the day on which it otherwise ceases to be in	40

force; or

- (ii) where no appeal against any decision of the court is lodged pursuant to *paragraph 6*, the day next following the date on which the period for such an appeal in relation to the last such determination of the court shall have elapsed; or
- (iii) where an appeal is lodged against any decision of the court pursuant to *paragraph 6*, the day next following the date on which the last outstanding such appeal is disposed of or withdrawn,

unless a court has otherwise ordered under *paragraph 5* or *6*.

Certain requirements concerning notice of meeting to consider special resolution

10

3. (1) Any notice of a meeting at which a special resolution of the type referred to in *paragraph 1(1)* is intended to be proposed—

(a) shall be accompanied by audited financial statements for the umbrella fund which—

(i) include a statement of the assets and liabilities of each sub-fund of the umbrella fund; and

(ii) are prepared as at a date which is not more than 4 months before the date on which the notice convening the meeting is served,

and such a statement is referred to subsequently in this paragraph and *paragraph 4* as a “statement of assets and liabilities”;

20

(b) shall be given to all creditors of the umbrella fund, accompanied by a copy of the statement of assets and liabilities, in accordance with the provisions of *paragraph 4*; and

(c) shall be delivered to the Registrar, accompanied by the statement of assets and liabilities, no later than the third day after the date on which the notice is first sent to members of the umbrella fund.

25

(2) If the means provided under *section 193* (unanimous written resolutions) are proposed to be used to pass the special resolution, the following provisions have effect—

(a) notice in writing of the proposed use of those means for that purpose shall be served on all members of the umbrella fund (and such notice shall not be valid if less than 30 days elapse between the date of service of it and the date of the signing of the resolution by the last member to sign);

(b) each of the requirements under *subparagraph (1)* with respect to the notice of a meeting shall apply to the notice in writing under *clause (a)*; and

(c) references in *subparagraph (1)* to the notice of a meeting shall be read as references to the notice in writing under *clause (a)*,

30

and references elsewhere in this Schedule to the notice of a meeting shall be read accordingly.

35

Notice to creditors of meeting to consider special resolution under paragraph 1(1)

40

4. (1) The requirement in *subparagraph (1)(a)* of *paragraph 3* to give all creditors of the umbrella fund notice of the meeting referred to in that paragraph shall be regarded as having been complied with if—
- (a) a notice in writing, accompanied by the statement of assets and liabilities, is sent to each relevant creditor of a sub-fund; and 5
 - (b) a notice is published in at least one national newspaper, stating that the umbrella fund intends to avail itself of *section 1400(1)* and that an application may be made in accordance with *paragraph 5* for an order pursuant to that paragraph.
- (2) For the purpose of this paragraph, a relevant creditor of a sub-fund is any creditor for whom provision was made, in accordance with the articles of association, in the net asset value of the sub-fund calculated— 10
- (a) in the case of a sub-fund in respect of which the net asset value is not calculated on a daily basis, as at the last valuation point for that sub-fund before the date of service of the notice pursuant to *paragraph 3(1)(b)*; and 15
 - (b) in the case of a sub-fund in respect of which the net asset value is calculated on a daily basis, as at the second last valuation point for that sub-fund.
- Application to court opposing special resolution under paragraph 1(1)*
5. (1) An application may be made to the court in accordance with this paragraph for an order preventing any resolution passed, or proposed to be passed, pursuant to *subparagraph (1)* of *paragraph 1* from taking effect in relation to any umbrella fund referred to in that paragraph. 20
- (2) An order under this paragraph may be granted only if the court considers that it would be just and equitable to do so.
- (3) Each order granted pursuant to this paragraph shall specify the period in respect of which the order shall remain in force and, without prejudice to the powers of the court to specify such period, may specify that the order shall cease to be in force on the date on which the applicant ceases to be a creditor of the umbrella fund or the date on which the applicant consents to the application of *section 1400(1)* to that umbrella fund, whichever is the later. 25
- (4) An application under this paragraph may only be made by a relevant creditor or relevant creditors constituting not less than 1 per cent in number of the creditors of any sub-fund, or the debts owed to whom account for not less than 1 per cent in value of the debts owed by any sub-fund, in each case as provided for in the net asset value of that sub-fund referred to in *paragraph 4*. 30
- (5) Any application pursuant to this paragraph shall be made by a relevant creditor within 28 days after the date of service of the notice referred to in *paragraph 3(1)(b)*, and may be made on behalf of the creditors entitled to make the application by one or more of their number as they may appoint in writing for such purpose.
- (6) Notice of an application to the court for the purposes of this paragraph shall be sent by the relevant creditor or relevant creditors to the umbrella fund and to the Central Bank within 2 days after the date on which the application is made, and the umbrella fund and the Central Bank shall each be entitled to appear and be 40

heard on an application made pursuant to this paragraph.

- (7) In considering whether it is just and equitable to make an order pursuant to this paragraph, the court shall have regard to the following matters:
- (a) the terms of any agreement or arrangement between the creditor or creditors and the umbrella fund or its delegates;
 - (b) the course of dealings between the creditor or creditors and the umbrella fund or its delegates;
 - (c) the conduct of the umbrella fund or its delegates towards the creditor or creditors;
 - (d) the extent to which the umbrella fund or its delegates represented to the creditor or creditors that the umbrella fund would have recourse to the assets of any other sub-fund to discharge the liabilities owed to the creditor or creditors;
 - (e) the extent to which it was reasonable for the relevant creditor or relevant creditors to expect to have recourse to the assets of any other sub-fund;
 - (f) any other matters which the court shall deem relevant.

Appeal from decision of court under paragraph 5

6. (1) Any creditor who has made an application pursuant to *paragraph 5*, or the umbrella fund in respect of which the application is made, may appeal to the Supreme Court against any decision of the court in respect of that application.
- (2) Notice of any such appeal shall be lodged within 5 days after the date on which the order is perfected by the court.
- (3) Notice of any appeal lodged by the umbrella fund shall be sent to the Central Bank and to the relevant creditor or relevant creditors who made the application pursuant to *paragraph 5* within 2 days after the date on which the appeal is made.
- (4) Notice of any appeal by the party which made the application pursuant to *paragraph 5* shall be sent to the Central Bank and to the umbrella fund within 2 days after the date on which the appeal is made.

BILLE

(*mar a ritheadh ag Dáil Éireann*)

dá ngairtear

Acht do chomhdhlúthú, maille le leasuithe,
achtacháin áirithe a bhaineann le cuideachtaí
agus do dhéanamh socrú i dtaobh nithe
gaolmhara.

BILL

(*as passed by Dáil Éireann*)

entitled

An Act to consolidate, with amendments, certain
enactments relating to companies and to
provide for related matters.

*Ritheadh ag Dáil Éireann,
2 Aibreán, 2014*

*Passed by Dáil Éireann,
2nd April, 2014*

BAILE ÁTHA CLIATH
ARNA FHOILSIÚ AG OIFIG AN tSOLÁTHAIR
Le ceannach díreach ó
FOILSEACHÁIN RIALTAIS,
52 FAICHE STIABHNA, BAILE ÁTHA CLIATH 2.
(Teil: 01 - 6476834 nó 1890 213434; Fax: 01 - 6476843)
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