



DÁIL ÉIREANN

AN BILLE FÁ GHLÉASANNA ÉIREANNACHA UM CHOMHBHAINISTIÚ SÓCMHAINNÍ, 2014 IRISH COLLECTIVE ASSET-MANAGEMENT VEHICLES BILL 2014

LEASUITHE COISTE COMMITTEE AMENDMENTS

DÁIL ÉIREANN

AN BILLE FÁ GHLÉASANNA ÉIREANNACHA UM CHOMHBHAINISTIÚ SÓCMHAINNÍ, 2014 —ROGHFHOCHOISTE

IRISH COLLECTIVE ASSET-MANAGEMENT VEHICLES BILL 2014 —SELECT SUB-COMMITTEE

Leasuithe Amendments

SECTION 2

1. In page 10, between lines 9 and 10, to insert the following:

““Community act” means an act adopted by an institution of the European Union;”.

—An tAire Airgeadais.

2. In page 10, line 21, to delete “section 155 of the Companies Act 1963” and substitute “*section 8 of the Companies Act 2014*”.

—An tAire Airgeadais.

3. In page 10, between lines 32 and 33, to insert the following:

““officer”, in relation to an ICAV, includes a director or secretary;”.

—An tAire Airgeadais.

4. In page 10, between lines 35 and 36, to insert the following:

““register of ICAVs” means the register kept by the Bank under *section 14*;”.

—An tAire Airgeadais.

5. In page 11, line 12, to delete “section 155 of the Companies Act 1963” and substitute “*section 7 of the Companies Act 2014*”.

—An tAire Airgeadais.

SECTION 14

6. In page 16, between lines 17 and 18, to insert the following:

“(2) The Bank shall keep up-to-date the register referred to in *subsection (1)* so that it reflects any alterations in the instrument of incorporation, changes in the situation of the registered office or head office and changes in the persons who are directors or secretaries of the ICAV.”.

—An tAire Airgeadais.

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7. In page 31, line 10, after “inspection” to insert “by a person entitled to inspect it”.

—An tAire Airgeadais.

8. In page 31, between lines 21 and 22, to insert the following:

“(6) The persons entitled to inspect the register of members of an ICAV are—

- (a) the Bank,
- (b) the Director of Corporate Enforcement, and
- (c) any statutory body which needs to inspect the register in order properly to exercise any of its functions.”.

—An tAire Airgeadais.

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9. In page 55, between lines 7 and 8, to insert the following:

“PART 6*

CHARGES AND DEBENTURES

CHAPTER 1

Interpretation

Definitions

87. (1) In this Part—

“charge”, in relation to an ICAV, means a mortgage or a charge, in an agreement (written or oral), that is created over an interest in any property of the ICAV (and in *section 88(8)*** and *sections 93***** to *98****** includes a judgment mortgage) but does not include a mortgage or a charge, in an agreement (written or oral), that is created over an interest in—

- (a) cash,
- (b) money credited to an account of a financial institution, or any other deposits,
- (c) shares, bonds or debt instruments,
- (d) units in collective investment undertakings or money market instruments, or
- (e) claims and rights (such as dividends or interest) in respect of any thing referred to in any of the foregoing paragraphs;

“property”, in relation to an ICAV, includes any assets or undertaking of the ICAV.

- (2) Any exclusion provided in *subsection (1)* to what is defined in that subsection as constituting a “charge” may be varied by order made by the Minister if the Minister considers that it is necessary or expedient to do so in consequence of any Community

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act adopted after the commencement of this section relating to financial collateral arrangements.

- (3) For the avoidance of doubt, in the case of a mortgage or charge created over both—
- (a) an interest in anything specified in any of *paragraphs (a) to (e) of subsection (1)*, and
 - (b) any property, assets or undertaking not falling within any of those paragraphs,
- the mortgage or charge shall, other than to the extent to which it is created over an interest in anything specified in any of the foregoing paragraphs of *subsection (1)*, be regarded as a charge within the meaning of this Part.”.

—An tAire Airgeadais.

[*This proposed new Part comprehends the inclusion of amendments 10 to 25.]

[**This is a reference to the section proposed to be inserted by amendment 10.]

[***This is a reference to the section proposed to be inserted by amendment 15.]

[****This is a reference to the section proposed to be inserted by amendment 20.]

10. In page 55, between lines 7 and 8, to insert the following:

“CHAPTER 2

Registration of charges and priority

Registration of charges created by ICAVs

88. (1) Every charge created by an ICAV shall be void against the liquidator and any creditor of the ICAV unless either the procedure set out in—
- (a) *subsection (3)* (the “one-stage procedure”), or
 - (b) *subsection (4)* (the “two-stage procedure”),
- with respect to the charge’s registration is complied with.
- (2) If, in purported compliance with the requirements of this Part as to the taking of steps in that behalf, there is received by the Bank particulars of a charge that omit the required particulars in respect of one or more properties to which the charge relates, *subsection (1)* shall be read as operating to render void (as against the liquidator and any creditor of the ICAV) the charge as it relates to the particular property or properties in respect of which that omission occurs but not otherwise.
- (3) The procedure for registration under this subsection referred to in *subsection (1)* as the one-stage procedure consists of the taking of steps so that there is received by the Bank, not later than 21 days after the date of the charge’s creation, particulars, in such form as may be specified by the Bank, of the charge.
- (4) The procedure for registration under this subsection referred to in *subsection (1)* as the two-stage procedure consists of the following, namely the taking of steps—
- (a) so that there is received by the Bank a notice stating the ICAV’s intention to create the charge (being a notice in such form and containing such particulars as

may be specified by the Bank, of the charge), and

- (b) so that, not later than 21 days after the date of the Bank's receipt of the notice under *paragraph (a)* (the "first-mentioned notice"), there is received by the Bank a notice, in such form as may be specified by the Bank, stating that the charge referred to in the first-mentioned notice has been created.
- (5) If the requirement under *paragraph (b)* of *subsection (4)* is not complied with, within the period specified in that paragraph, the notice received under *paragraph (a)* of that subsection in relation to the charge shall be removed by the Bank from the register.
- (6) *Subsection (1)* is without prejudice to any contract or obligation for repayment of the money secured by the charge concerned and when a charge becomes void under that subsection, the money secured by it shall immediately become payable.
- (7) Where a charge comprises property outside the State, such particulars, in such form as may be specified by the Bank, (and, as the case may be, the notice under *subsection (4)(b)*) may be sent for registration under this section, notwithstanding that further proceedings may be necessary to make the charge valid or effectual according to the law of the country in which the property is situate.
- (8) If there is a change among the one or more persons entitled to a charge registered under this Part, the fact of that change having occurred, and particulars of the person or persons now entitled to the charge, may be delivered, in such form as may be specified by the Bank, to the Bank and registered by it.
- (9) Nothing in this section or any other provision of this Part authorises the delivery to the Bank of a deed, or any supplemental document to it, and this Part does not impose or confer any duty or power on the Bank to examine any deed or any supplemental document to it."

—An tAire Airgeadais.

11. In page 55, between lines 7 and 8, to insert the following:

"Duty of ICAV with respect to registration under *section 88 and right of others to effect registration**

89. (1) It shall be the duty of the ICAV that creates the charge to comply with the procedure under *section 88(3)** or *(4)** with respect to the charge's registration but this is without prejudice to *subsection (2)*.
- (2) Any person interested in the charge may use the procedure under *section 88(3)** or *(4)** with respect to its registration and the person's using that procedure (and in compliance with *section 88(3)** or *(4)**) shall have the same effect as if the ICAV had used that procedure (and in compliance with *section 88(3)** or *(4)**).
- (3) Where such a person uses that procedure (and in compliance with *section 88(3)** or *(4)**), the person may recover from the ICAV the amount of fees properly paid by that person to the Bank in respect of the registration of the charge concerned."

—An tAire Airgeadais.

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[*This is a reference to the section proposed to be inserted by amendment 10.]

12. In page 55, between lines 7 and 8, to insert the following:

“Duty of ICAV to register charges existing on property acquired

90. (1) Where an ICAV acquires any property which is subject to a charge that, if it had been created by the ICAV after the acquisition of the property, would have given rise to the duty under *section 88(1)** on the part of the ICAV with respect to the charge’s registration, then the ICAV shall have the following duty.
- (2) That duty is to take steps so that there is received by the Bank, not later than 21 days after the date on which acquisition of the property concerned is completed, such particulars of the charge, in such form, as may be specified by the Bank.
- (3) If default is made in complying with this section, the ICAV and any officer of it who is in default commits a category 3 offence.”.

—An tAire Airgeadais.

[*This is a reference to the section proposed to be inserted by amendment 10.]

13. In page 55, between lines 7 and 8, to insert the following:

“Priority of charges

91. (1) Unless the priority of the charges is otherwise governed by an enactment (apart from this Act), the priority of charges created by an ICAV shall, subject to *subsection (4)*, be determined by reference to the date of receipt by the Bank of the particulars specified by the Bank, that is to say, a charge particulars in respect of which such particulars as may be specified by the Bank are received by the Bank on a date that is earlier than that on which those in respect of another charge are received by the Bank shall have priority over that other charge.
- (2) Where the date of receipt by the Bank of such particulars of several charges is the same, *subsection (1)* shall be read as operating to accord priority to the charge received earliest in time on the date concerned by the Bank and other references in this Part concerning priority by reference to the date of receipt shall be read and operate accordingly.
- (3) References in *subsection (1)* to the date of receipt of such particulars as are specified by the Bank are references to—
- (a) if the procedure under *subsection (3) of section 88** is complied with in relation to a particular charge, the date of receipt by the Bank of such particulars of the charge, provided in such form, as may be specified by the Bank, or
- (b) if the procedure under *subsection (4) of section 88** is complied with in relation to a particular charge, the date of receipt by the Bank of the notice, in such form and containing such particulars as may be specified by the Bank, in relation to the charge under *paragraph (a)* of that subsection.
- (4) *Subsection (1)* shall not affect any agreement between persons in whose favour

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charges have been created in relation to the priority that those charges shall, as between them, have.

- (5) In relation to particulars of a charge received by the Bank pursuant to *section 88(3)** or *(4)**, the following provisions apply so far as those particulars consist of particulars of a negative pledge—
- (a) the Bank shall not be under a duty to enter in the register under *section 93*** particulars of the negative pledge pursuant to that section, and
 - (b) the fact that the Bank has received the particulars of the negative pledge shall have no legal effect,
- but nothing in the foregoing affects the validity of the receipt by the Bank of the other particulars of the charge.
- (6) In this section “negative pledge” means any agreement entered into by the ICAV concerned and any other person or persons that provides that the ICAV shall not, or shall not otherwise than in specified circumstances—
- (a) borrow moneys or otherwise obtain credit from any person other than that person or those persons, or
 - (b) create or permit to subsist any charge, lien or other encumbrance or any pledge over the whole or any part of the property of the ICAV.”.

—An tAire Airgeadais.

[*This is a reference to the section proposed to be inserted by amendment 10.]

[**This is a reference to the section proposed to be inserted by amendment 15.]

14. In page 55, between lines 7 and 8, to insert the following:

“Registration of judgment mortgages

92. (1) If judgment is recovered against an ICAV and that judgment is subsequently converted into a judgment mortgage affecting any property of the ICAV, the judgment mortgage shall be void against the liquidator and any creditor of the ICAV unless the procedure set out in *subsection (2)* with respect to the judgment mortgage’s registration is complied with.
- (2) The procedure for registration under this subsection consists of the taking of steps so that there is received by the Bank, together with the relevant judgment mortgage document, such particulars of the judgment mortgage, in such form, as may be specified by the Bank, not later than 21 days after the following date.
- (3) That date is the date on which notification by the Property Registration Authority of the judgment mortgage’s creation is received by the judgment creditor.
- (4) In *subsection (2)* the “relevant judgment mortgage document” means a certified copy of, as appropriate—
- (a) Form 60, 60A or 60B set out in the Schedule of Forms to the Land Registration Rules 2012 (S.I. No. 483 of 2012) as amended by the Land Registration Rules

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2013 (S.I. No. 389 of 2013), or

- (b) Form 16 set out in the Schedule to the Registration of Deeds (No. 2) Rules 2009 (S.I. No. 457 of 2009),

used for the purposes of converting the judgment concerned into a judgment mortgage.

- (5) For the purposes of this section, it shall be presumed, until the contrary is proved, that the judgment creditor received notification, of the judgment mortgage's creation, from the Property Registration Authority on the third day after the date on which that notification is sent by it to the judgment creditor or his or her agent.
- (6) If rules are made under section 126 of the Registration of Title Act 1964 or, as the case may be, section 48 of the Registration of Deeds and Title Act 2006—
- (a) replacing a form that is referred to in *subsection (4)(a)* or *(b)*, as appropriate, the reference in that provision to the form shall be read as a reference to the form as so replaced, or
- (b) amending a form that is so referred to, the reference in that provision to the form shall be read as a reference to the form as it stands so amended.”.

—An tAire Airgeadais.

15. In page 55, between lines 7 and 8, to insert the following:

“Register of charges

93. (1) The Bank shall keep, in relation to each ICAV, a register of the charges requiring registration under this Part, and shall, on payment of the fee (if any) prescribed under section 32E of the Central Bank Act 1942, enter in the register, in relation to such charges, the following particulars:
- (a) without prejudice to *paragraphs (d)* and *(e)*, in the case of a charge created by the ICAV, the date of its creation and—
- (i) where the procedure for registration under *section 88(3)** is complied with, the date and time of receipt by the Bank under that provision of such particulars of the charge, in such form, as is specified by the Bank, and
- (ii) where the procedure for registration under *section 88(4)** is complied with, the respective dates and times of receipt by the Bank of the notices under *paragraphs (a)* and *(b)* of that provision in relation to the charge;
- (b) without prejudice to *paragraphs (d)* and *(e)*, in the case of a charge existing on property acquired by the ICAV, the date of the acquisition of the property by the ICAV;
- (c) without prejudice to *paragraphs (d)* and *(e)*, in the case of a judgment mortgage, the date of the mortgage's creation and the date and time, in relation to it, of receipt by the Bank, under *section 92(2)***, of the particulars specified by the Bank in such form as is so specified, together with the relevant judgment mortgage document referred to in that provision;

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- (d) short particulars of the property charged; and
 - (e) the persons entitled to the charge.
- (2) The register referred to in *subsection (1)* shall be kept in such form as the Bank considers appropriate and shall be made available for inspection free of charge on a website maintained or used by the Bank.”.

—An tAire Airgeadais.

[*This is a reference to the section proposed to be inserted by amendment 10.]

[**This is a reference to the section proposed to be inserted by amendment 14.]

16. In page 55, between lines 7 and 8, to insert the following:

“Certificate of registration

94. (1) The Bank shall give a certificate of the registration of any charge registered in pursuance of this Part.
- (2) Subject to *subsection (3)*, such a certificate shall be conclusive evidence that the requirements of this Part as to the registration of the charge have been complied with.
- (3) To the extent that the particulars of a charge delivered to the Bank in purported compliance with this Part omit the required particulars in respect of one or more properties to which the charge relates, the evidential effect of the certificate provided under *subsection (2)* shall not extend to the particular property or properties in respect of which that omission occurs.
- (4) Without prejudice to the generality of the definition, in *section 87**, of that expression, in *subsection (3)* “property” includes an interest in, or right over, property.”.

—An tAire Airgeadais.

[*This is a reference to the section proposed to be inserted by amendment 9.]

17. In page 55, between lines 7 and 8, to insert the following:

“Entries of satisfaction and release of property from charge

95. (1) The Bank may exercise the powers under *subsection (2)*, on evidence being given to its satisfaction with respect to any charge registered under this Part—
- (a) that the debt in relation to which the charge was created has been paid or satisfied in whole or in part, or
 - (b) that part of the property charged has been released from the charge or has ceased to form part of the ICAV’s property,
- and, where the satisfaction or release has not been signed by or on behalf of the chargee, after giving notice to the person who, for the time being, stands registered as the person entitled to such charge or to the judgment creditor, as the case may be.
- (2) Those powers are to enter on the register a memorandum—

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- (a) of satisfaction in whole or in part, or
 - (b) of the fact that part of the property has been released from the charge or has ceased to form part of the ICAV's property,
- as the case may be.
- (3) Where the Bank enters such a memorandum of satisfaction in whole, it shall, if required, furnish the ICAV with a copy of it.
 - (4) The Bank may accept as evidence of a satisfaction or release referred to in *subsection (1)(a) or (b)* a statement in such form as may be specified by the Bank, signed by a director and secretary of the ICAV, or by 2 directors of the ICAV, stating that the satisfaction or release has occurred.
 - (5) Where a person signs a statement referred to in *subsection (4)* knowing it to be false, the person commits a category 2 offence.
 - (6) Where a person signs a statement referred to in *subsection (4)* and in doing so did not honestly believe on reasonable grounds that the statement was true, and the High Court considers that the making of that statement—
 - (a) contributed to the ICAV being unable to pay its debts,
 - (b) prevented or impeded the orderly winding-up of the ICAV, or
 - (c) facilitated the defrauding of the creditors of the ICAV,the High Court, on the application of the liquidator or receiver of the property of, or any creditor or contributor of, the ICAV, may, if it thinks it proper to do so, make the following declaration.
 - (7) That declaration is that that signatory shall be personally liable, without limitation of liability, for all or such part as the High Court may specify of the debts and other liabilities of the ICAV.”.

—An tAire Airgeadais.

18. In page 55, between lines 7 and 8, to insert the following:

“Extension of time for registration of charges and rectification of register

96. (1) The High Court may grant the following relief where it is satisfied that the omission to register a charge within the time required by this Part or that the omission or misstatement of any particular with respect to any such charge or in a memorandum of satisfaction—
- (a) was accidental or due to inadvertence or to some other sufficient cause, or
 - (b) is not of a nature to prejudice the position of creditors or shareholders of the ICAV,
- or that on other grounds it is just and equitable to grant that relief in respect of such an omission or misstatement.
- (2) That relief is to order, on such terms and conditions as seem to the High Court just

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and expedient, that the time for registration shall be extended, or, as the case may be, that the omission or misstatement shall be rectified.

- (3) An application for relief under this section may be made on behalf of the ICAV or any other person interested.”.

—An tAire Airgeadais.

19. In page 55, between lines 7 and 8, to insert the following:

“Copies of instruments creating charges to be kept

97. (1) An ICAV shall keep a copy of every instrument creating any charge in relation to it and requiring registration under this Part, including, in the case of a judgment mortgage, a copy of the relevant judgment mortgage document that was received by the Bank.
- (2) All such copies kept by the ICAV shall be kept at the same place.
- (3) Such copies shall be kept at the same office as the register of members is kept and shall be open during business hours to the inspection of any member or creditor of the ICAV without charge.
- (4) If default is made in complying with *subsection (1)* or *(2)*, the ICAV concerned and any officer of it who is in default commits a category 3 offence.”.

—An tAire Airgeadais.

20. In page 55, between lines 7 and 8, to insert the following:

“Netting of Financial Contracts Act 1995 not to affect registration requirements

98. Nothing in section 4(1) of the Netting of Financial Contracts Act 1995 affects—
- (a) the requirement to register a charge under this Part, or
- (b) the consequences of failing to register a charge under this Part.”.

—An tAire Airgeadais.

21. In page 55, between lines 7 and 8, to insert the following:

“CHAPTER 3

Provisions as to debentures

Liability of trustees for debenture holders

99. (1) Subject to the provisions of this section, the following provision shall be void, namely, any provision contained—
- (a) in a trust deed for securing an issue of debentures, or
- (b) in any contract with the holders of debentures secured by a trust deed,

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in so far as it would have the effect of exempting a trustee of it from, or indemnifying him or her against, liability for breach of trust where he or she fails to show the degree of care and diligence required of him or her as trustee, having regard to the provisions of the trust deed conferring on him or her any powers, authorities or discretions.

(2) *Subsection (1)* shall not invalidate—

- (a) any release otherwise validly given in respect of anything done or omitted to be done by a trustee before the giving of the release, or
- (b) any provision enabling such a release to be given—
 - (i) on the agreement to the provision of a majority of not less than three-fourths in value of the debenture holders present and voting in person or, where proxies are permitted, by proxy at a meeting summoned for the purpose, and
 - (ii) either with respect to specific acts or omissions or on the trustee dying or ceasing to act.”.

—An tAire Airgeadais.

22. In page 55, between lines 7 and 8, to insert the following:

“Perpetual debentures

100. A condition contained in any debentures or in any deed for securing any debentures shall not be invalid by reason only that the debentures are by those means made irredeemable or redeemable only on the happening of a contingency however remote, or on the expiration of a period however long, notwithstanding any rule of law to the contrary.”.

—An tAire Airgeadais.

23. In page 55, between lines 7 and 8, to insert the following:

“Power to re-issue redeemed debentures

101. (1) Where an ICAV has redeemed any debentures then—

- (a) unless any provision to the contrary, whether express or implied, is contained in the instrument of incorporation of the ICAV or in any contract entered into by the ICAV, or
- (b) unless the ICAV has, by passing a resolution to that effect or by some other act, shown its intention that the debentures shall be cancelled,

the ICAV shall have power to re-issue the debentures either by re-issuing the same debentures or by issuing other debentures in their place.

- (2) On a re-issue of redeemed debentures, the person entitled to the debentures shall have the same priorities as if the debentures had never been redeemed.
- (3) Where an ICAV has deposited any of its debentures to secure advances from time to time on current account or otherwise, the debentures shall not be deemed to have been

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redeemed by reason only of the account of the ICAV having ceased to be in debit whilst the debentures have remained so deposited.”.

—An tAire Airgeadais.

24. In page 55, between lines 7 and 8, to insert the following:

“Specific performance of contracts to subscribe for debentures

102. A contract with an ICAV to take up and pay for any debentures of the ICAV may be enforced by an order for specific performance.”.

—An tAire Airgeadais.

25. In page 55, between lines 7 and 8, to insert the following:

“CHAPTER 4

Prohibition on registration of certain matters affecting shareholders

Registration against ICAV of certain matters prohibited

103. (1) Subject to *subsection (3)*, the Bank has, in relation to any ICAV, no jurisdiction to accept receipt of, or to register in the register—

- (a) an order of any authority (whether judicial or otherwise) affecting a shareholder of the ICAV, or
- (b) any notice of the making thereof.

(2) Any jurisdiction of an authority (whether judicial or otherwise) subsisting before the commencement of this section to make an order requiring that there be registered in the register, or that there be received by the Bank—

- (a) an order of that authority affecting a shareholder of an ICAV, or
 - (b) a notice of the making of an order referred to in *paragraph (a)*,
- shall, after that commencement, cease to be exercisable.

(3) Nothing in this section affects the jurisdiction of any authority (whether judicial or otherwise) by virtue of *section 132*.”.

—An tAire Airgeadais.

SECTION 94

26. In page 58, to delete lines 30 to 37, and in page 59, to delete line 1 and substitute the following:

“(c) the other information provided for in the *Schedule*.

(3) The annual accounts shall give a true and fair view of the assets, liabilities and financial position of the ICAV at the end of the financial year and of the profit or loss of the ICAV for the financial year.

(4) The annual accounts may be prepared in accordance with—

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- (a) generally accepted accounting practice in the State,
 - (b) international financial reporting standards, or
 - (c) subject to *subsection (5)*, an alternative body of accounting standards.
- (5) To the extent that the use of any alternative body of accounting standards does not contravene any provision of this Part, a true and fair view of the assets and liabilities, financial position and profit or loss of an ICAV may be given by the use by the ICAV of those standards in the preparation of its annual accounts.
- (6) In this section “alternative body of accounting standards” means standards that”.

—An tAire Airgeadais.

27. In page 59, between lines 9 and 10, to insert the following:

“(5) Before making regulations under *subsection (4)*, the Minister—

- (a) shall consult with the Bank, and
- (b) may consult any such other persons as he or she considers appropriate.”.

—An tAire Airgeadais.

28. In page 59, between lines 12 and 13, to insert the following:

“(6) The requirement for annual accounts prepared in accordance with International Financial Reporting Standards to present fairly the assets, liabilities, financial position, financial performance and cash flow of the ICAV at the end of the financial year is deemed to be equivalent to the true and fair view required to be given by *subsection (3)**.

(7) If the directors of an ICAV fail to comply with *subsection (1)*, *(2)* or *(3)** they commit a category 2 offence.”.

—An tAire Airgeadais.

[*This is a reference to the subsection proposed to be inserted by amendment 26.]

SECTION 98

29. In page 63, between lines 18 and 19, to insert the following:

“(2) The auditors’ report shall state clearly the statutory auditors’ opinion as to—

- (a) whether the annual accounts give a true and fair view—
 - (i) in the case of a balance sheet, of the assets, liabilities and financial position of the ICAV at the end of the financial year,
 - (ii) in the case of a profit and loss account, of the profit or loss of the ICAV for the financial year,

and

- (b) whether the annual accounts have been properly prepared in accordance with the relevant financial reporting framework.”.

—An tAire Airgeadais.

[SECTION 101]

SECTION 101

- 30.** In page 64, lines 35 to 41, to delete all words from and including “No” in line 35 down to and including line 41 and substitute the following:

“No person other than an approved statutory auditor or audit firm under Part 4 of the Audits Regulations shall be eligible for appointment as auditor of an ICAV.”.

—An tAire Airgeadais.

SECTION 103

- 31.** In page 65, line 33, after “person” to insert “eligible for appointment as auditor under *section 101*”.

—An tAire Airgeadais.

SECTION 105

- 32.** In page 66, to delete lines 6 to 8 and substitute the following:

“partnership constituted under the law of any country under which a partnership is a legal person.”.

—An tAire Airgeadais.

SECTION 118

- 33.** In page 71, lines 28 and 29, to delete all words from and including “An” in line 28 down to and including line 29 and substitute the following:

“An investment company or a UCITS constituted as a company with fixed capital or variable capital in accordance with Regulation 4(6)(b) or (c) of the UCITS Regulations may apply to the Bank to be registered as an ICAV by way of continuation.”.

—An tAire Airgeadais.

- 34.** In page 71, line 30, to delete “the form prescribed by regulations made by the Minister” and substitute “such form as may be specified by the Bank”.

—An tAire Airgeadais.

- 35.** In page 71, line 34, to delete “the manner prescribed by regulations made by the Minister” and substitute “such manner as may be specified by the Bank”.

—An tAire Airgeadais.

- 36.** In page 72, line 23, after “company” to insert “showing their priority which shall be as it would be were it to remain a company”.

—An tAire Airgeadais.

- 37.** In page 72, lines 27 and 28, to delete “the form prescribed by regulations made by the Minister” and substitute “such form as may be specified by the Bank”.

—An tAire Airgeadais.

[SECTION 122]

SECTION 122

38. In page 74, lines 23 and 24, to delete “send by ordinary post a registered letter stating that” and substitute “give notice to the ICAV that”.

—An tAire Airgeadais.

39. In page 74, line 28, to delete “sending of the letter” and substitute “giving of the notice”.

—An tAire Airgeadais.

40. In page 74, line 33, after “ICAV,” to insert “revoke the relevant authorisation of the ICAV and”.

—An tAire Airgeadais.

SECTION 123

41. In page 74, after line 35, to insert the following:

“PART 8*

MIGRATION

CHAPTER 1

Migration-in to become ICAV

Definitions

123. (1) In this Chapter—

“migrating body” 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 by *section 124***.

“relevant jurisdiction”, in relation to a migrating body, means the place, outside the State, prescribed under *subsection (2)* where the migrating body is established and registered at the time of its application under *section 125****.

- (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 bodies to continue under the laws of the State or for Irish collective asset-management vehicles to continue under the laws of that place in a substantially similar manner to continuations under *section 125****.”.

—An tAire Airgeadais.

[*This proposed new Part comprehends the inclusion amendments 42 to 48.]

**This is a reference to the section proposed to be inserted by amendment 42.]

***This is a reference to the section proposed to be inserted by amendment 43.]

42. In page 74, after line 35, to insert the following:

“Registration documents

124. (1) In this Chapter “registration documents”, in relation to a migrating body, means the following documents:

- (a) a copy, certified and authenticated in such manner as may be specified by the Bank, of the certificate of registration or equivalent certificate or document issued with respect to the migrating body under the laws of the relevant jurisdiction;
- (b) a copy, certified and authenticated in such manner as may be specified by the Bank, of the instrument of incorporation, or memorandum and articles, of the migrating body or equivalent constitutive document of the migrating body;
- (c) a list setting out particulars in relation to the directors and secretary of the migrating body in accordance with the provisions of *section 11*;
- (d) a statutory declaration of a director of the migrating body made, in such manner and form as may be specified by the Bank, not more than 28 days before the date on which an application is made to the Bank under *section 125** to the effect that—
 - (i) the migrating body 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 body has been notified to it and remains outstanding in any place, and no order has been notified to the migrating body or resolution adopted to wind up or liquidate the migrating body in any place,
 - (ii) the appointment of a receiver, liquidator or other similar person has not been notified to the migrating body and, at the date of the declaration, no such person is acting in that capacity in any place with respect to the migrating body or its property or any part of its property,
 - (iii) the migrating body 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 body with creditors in any place,
 - (iv) at the date of the declaration the migrating body has served notice of the proposed registration on the creditors of the migrating body,
 - (v) any consent or approval to the proposed registration in the State required by any contract entered into or undertaking given by the migrating body has been obtained or waived, and
 - (vi) the registration is permitted by and has been approved in accordance with the instrument of incorporation, or memorandum and articles, or equivalent constitutive document of the migrating body;
- (e) a declaration of solvency prepared in accordance with *Chapter 3***;

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- (f) a schedule of the charges or security interests created or granted by the migrating body that would, if such charges or security interests had been created or granted by an ICAV, have been registerable under *Part 6**** and the particulars of such charges and interests as are specified in relation to charges by that Part;
 - (g) notification of the proposed name of the migrating body if different from its existing name;
 - (h) a copy of the instrument of incorporation which the migrating body has resolved to adopt, which shall be in the Irish language or the English language, which shall take effect on registration under *section 125** and which the migrating body undertakes not to amend before registration without the prior authorisation of the Bank.
- (2) If the original of any of the documents referred to in *subsection (1)* is not written in the Irish language or the English language, then “registration documents” in so far as that expression relates to such a document, means a translation of the document into the Irish language or the English language certified as being a correct translation of it by a person who is competent to so certify.”.

—An tAire Airgeadais.

[*This is a reference to the section proposed to be inserted by amendment 43.]

[**This is a reference to the Chapter proposed to be inserted by amendment 48.]

[***This is a reference to the Part proposed to be inserted by amendment 9.]

43. In page 74, after line 35, to insert the following:

“Continuation of migrating body

125. (1) A migrating body may apply to the Bank to be registered as an ICAV in the State by way of continuation.
- (2) Where an application is made under *subsection (1)*, the Bank shall not register the migrating body as an ICAV in the State unless it is satisfied that all of the requirements of this Act in respect of the registration and of matters precedent and incidental to the registration have been complied with and, in particular, but without prejudice to the generality of the foregoing, the Bank is satisfied that—
- (a) the migrating body has delivered to the Bank an application for the purpose, in such manner and form as may be specified by the Bank and signed by a director of the migrating body, together with the registration documents,
 - (b) the name or, if relevant, the proposed new name of the migrating body is not, in the opinion of the Bank undesirable or misleading,
 - (c) the migrating body has delivered to the Bank notice of the address of its proposed registered office in the State, and
 - (d) the migrating body has applied to the Bank for a relevant authorisation and the Bank has notified the migrating body that it proposes to grant the relevant authorisation.
- (3) An application under *subsection (1)* shall be accompanied by a statutory declaration,

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in such form as may be specified by the Bank, made by a solicitor engaged for this purpose by the migrating body, or by a director of the migrating body, and stating that the requirements mentioned in *subsection (2)* have been complied with, and the Bank may accept such a declaration as sufficient evidence of compliance.

- (4) The Bank shall, as soon as is practicable after receipt of the application for registration, publish notice of it in the *Iris Oifigiúil*.
- (5) Where the Bank notified the migrating body as mentioned in *subsection (2)(d)* the Bank shall issue a registration order in relation to the migrating body by way of continuation of the migrating body as an ICAV under the laws of the State and, if it issues a registration order shall enter in the register of ICAVs the details of charges and securities interests of the migrating body.
- (6) The migrating body shall, as soon as may be after being registered under *subsection (5)*, apply to be de-registered in the relevant jurisdiction.
- (7) The Bank shall enter in the register of ICAVs the date of registration of the migrating ICAV and shall forthwith publish notice in the *Iris Oifigiúil* of the following matters:
 - (a) the date of the registration of the migrating body under this section;
 - (b) the relevant jurisdiction;
 - (c) the previous name of the migrating body if different from the name under which it is being registered as an ICAV.
- (8) From the date of registration, the migrating body shall be deemed to be an ICAV formed and registered under this Act and shall continue for all purposes under this Act, and the provisions of this Act shall apply to the migrating body, 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 body as previously established and registered under the laws of the relevant jurisdiction for the period that the migrating body 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 body during the period that the migrating body was so established and registered,
 - (d) to affect the rights, authorities, functions and liabilities or obligations of the migrating body or any other person, or
 - (e) to render defective any legal proceedings by or against the migrating body.
- (9) Without prejudice to the generality of *subsection (8)*—
 - (a) the failure of a migrating body to send to the Bank 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 under it, and

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- (b) any legal proceedings that could have been continued or commenced by or against the migrating body before its registration under this section may, notwithstanding the registration, be continued or commenced by or against the migrating body after registration.”.

—An tAire Airgeadais.

44. In page 74, after line 35, to insert the following:

“Supplementary provision in relation to *section 125**

126. (1) The migrating body shall notify the Bank, within 3 days after the date of its de-registration in the relevant jurisdiction, of that de-registration in such manner and form as may be specified by the Bank.
- (2) On registration of the migrating body under *section 125(5)** the Bank shall forthwith authorise the migrating body to carry on business.
- (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 124(1)*** after the date of the declaration and before the date of the registration under *section 125**, 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 Bank relating to the change.
- (4) If the migrating body fails to comply with any provision of *section 125** or this section, the Bank may give notice to the ICAV that, unless it 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 *Iris Oifigiúil* with a view to striking it off the register of ICAVs.
- (5) If the failure mentioned in *subsection (4)* is not rectified within 30 days after the date of the giving of the notice referred to in that subsection, the Bank may publish in the *Iris Oifigiúil* a notice stating that, at the expiration of 1 month after the date of that notice, the migrating body will, unless the matter is resolved, be struck off the register of ICAVs, and the migrating body will be dissolved.
- (6) At the expiration of the time mentioned in the notice the Bank may, unless cause to the contrary is shown by the migrating body, revoke the relevant authorisation of the migrating body and strike the migrating body off the register of ICAVs and shall publish notice thereof in the *Iris Oifigiúil*, and, on that publication, the migrating body shall be dissolved.
- (7) For the purposes of this section *section 136**** shall apply as if reference in it to *Chapter 1 of Part 9***** included a reference to this section and, accordingly, the other provisions of *Chapter 2**** of that Part shall apply with any necessary modifications.”.

—An tAire Airgeadais.

[*This is a reference to the section proposed to be inserted by amendment 43.]

**This is a reference to the section proposed to be inserted by amendment 42.]

***This is a reference to the section and Chapter proposed to be inserted by amendment 60.]

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[****This is a reference to the Part proposed to be inserted by amendment 49.]

45. In page 74, after line 35, to insert the following:

“CHAPTER 2

De-registration following migration out

Definitions

127. (1) In this Chapter—

“applicant” means an ICAV that applies under *section 128** to be de-registered under *section 129***;

“relevant jurisdiction”, in relation to an ICAV, means the place, outside the State, prescribed under *subsection (2)* in which the ICAV proposes to be registered;

“transfer documents”, in relation to an applicant, means the following documents:

- (a) a statutory declaration, in such form as may be specified by the Bank, of a director of the applicant made not more than 28 days before the date on which the application is made to the Bank to the effect that—
 - (i) the applicant will, upon registration, continue as a body corporate under the laws of the relevant jurisdiction,
 - (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,
 - (iii) the appointment of a receiver, liquidator 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 of its property,
 - (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,
 - (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, and
 - (vii) the de-registration is permitted by the instrument of incorporation of the applicant;
- (b) a declaration of solvency prepared in accordance with the provisions of *Chapter 3****;
- (c) a copy of a special resolution of the applicant that approves the proposed de-

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registration and the transfer of the applicant to the relevant jurisdiction.

- (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 128** to continue under the laws of the State in a substantially similar manner to continuations under *section 125***** or for Irish collective asset-management vehicles to continue under the laws of that place.”.

—An tAire Airgeadais.

[*This is a reference to the section proposed to be inserted by amendment 46.]

**This is a reference to the section proposed to be inserted by amendment 47.]

***This is a reference to the Chapter proposed to be inserted amendment 48.]

****This is a reference to the section proposed to be inserted by amendment 43.]

46. In page 74, after line 35, to insert the following:

“De-registration of ICAVs when continued under law of place outside the State

128. (1) An ICAV which proposes to be registered in a relevant jurisdiction by way of continuation as a body corporate may apply to the Bank to be de-registered in the State.

- (2) Where an application is made under *subsection (1)*, the Bank shall not de-register the applicant as an ICAV in the State unless it is satisfied that all of the requirements of this Act in respect of the de-registration and of matters precedent and incidental to de-registration have been complied with and, in particular, but without prejudice to the generality of the foregoing, it is satisfied that—
- (a) the applicant has delivered to the Bank an application for the purpose, in such form as may be specified by the Bank and signed by a director of the applicant, together with the transfer documents;
 - (b) the applicant has paid any levies or fees prescribed under section 32D or 32E of the Central Bank Act 1942 which are due,
 - (c) the applicant complies with any conditions that the Central Bank may impose on the applicant, and
 - (d) the applicant has delivered to the Bank notice of any proposed change in its name and of its proposed registered office or agent for service of process in the relevant jurisdiction.
- (3) An application under this section shall be accompanied by a statutory declaration, in such form as may be specified by the Bank, 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, and the Bank may accept such a declaration as sufficient evidence of compliance.
- (4) The Bank shall, as soon as is practicable after receipt of the application for de-registration, publish notice of it in the *Iris Oifigiúil*.

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- (5) Where an application is made under *subsection (1)* a person mentioned in *subsection (6)* may apply to the High Court, on notice to the applicant, the Bank 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 127(1)** from taking effect in relation to the application, and the High Court may, subject to *subsection (9)* make such an order accordingly.
- (6) The following persons may apply for an order under *subsection (5)*:
 - (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.
- (8) The Bank and the applicant shall each be entitled to appear and be heard on an application under *subsection (5)*.
- (9) The court may make an order under this section only if it is satisfied that—
 - (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.
- (11) An order of the court under *subsection (5)* is final and conclusive and not appealable.”.

—An tAire Airgeadais.

[*This is a reference to the section proposed to be inserted by amendment 45.]

47. In page 74, after line 35, to insert the following:

“Provisions supplementary to section 128*

- 129.** (1) Unless the High Court orders otherwise, when one or more than one application is made under *section 128(5)**, a resolution specified in *paragraph (c)* of the definition of “transfer documents” in *section 127(1)*** in relation to an ICAV shall not take effect until—
- (a) where the application or all the applications to the High 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 on the creditors under *section 128(7)**,

whichever is the latest, and

(b) where all applications to the High 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 High Court,

whichever is the latest.

- (2) When the applicant is registered as a body corporate under the laws of the relevant jurisdiction, it shall give notice, in such form as may be specified by the Bank, to the Bank 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 Bank shall revoke the applicant's relevant authorisation and issue a certificate of de-registration of the applicant.
- (3) The Bank shall enter in the register of ICAVs the date of the de-registration of the applicant and shall, within 7 days of the date of issue of the certificate under *subsection (2)*, publish in the *Iris Oifigiúil* notice of the following matters:
- (a) the date of the de-registration of the applicant under this section;
 - (b) the relevant jurisdiction;
 - (c) the new name of the applicant if different from the name under which it was registered as an ICAV.
- (4) From the date of registration of the applicant in the relevant jurisdiction, it shall cease to be an ICAV 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.

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- (5) Without prejudice to the generality of *subsection (2)* any legal proceedings that could have been continued or commenced by or against the applicant before its de-registration under this Chapter may, notwithstanding the de-registration, be continued or commenced by or against the applicant after registration in the relevant jurisdiction.”.

—An tAire Airgeadais.

[*This is a reference to the section proposed to be inserted by amendment 46.]

[**This is a reference to the section proposed to be inserted by amendment 45.]

48. In page 74, after line 35, to insert the following:

“CHAPTER 3

Declaration of solvency

Statutory declaration as to solvency

130. (1) Where an application is made under *Chapter 1** or *2*** a director of the migrating body or ICAV making the application shall make a statutory declaration, in such form as may be specified by the Bank, stating that he or she has made a full inquiry into its affairs and has formed the opinion that the migrating body or ICAV is able to pay its debts as they fall due.
- (2) A declaration under *subsection (1)* shall have no effect for the purposes of this Chapter unless—
- (a) it is made not more than 28 days before the date on which the application is made to the Bank,
 - (b) it contains a statement of the migrating body’s or ICAV’s assets and liabilities as at the latest practicable date before the date of the 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.
- (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 ICAV’s or applicant’s assets and liabilities referred to in *subsection (2)(b)*, are reasonable.
- (4) For the purposes of *subsection (3)*, the independent person shall be a person who, at the time the report is made, is—
- (a) in the case of an application under *Chapter 1**, qualified to be the auditor of the migrating body under the laws of the relevant jurisdiction, and
 - (b) in the case of an application under *Chapter 2*** qualified to be the auditor of the

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ICAV.

- (5) A director who makes a declaration under this section without having reasonable grounds for the opinion that the migrating body or ICAV is able to pay its debts as they fall due commits a category 2 offence.
- (6) Where the migrating body or ICAV is wound up within 1 year after the date on which the application is made to the Bank 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.”.

—An tAire Airgeadais.

[*This is a reference to the Chapter proposed to be inserted by amendment 41.]

[**This is a reference to the Chapter proposed to be inserted by amendment 45.]

SECTION 125

49. In page 75, between lines 20 and 21, to insert the following:

“PART 9*

STRIKE OFF AND RESORTATION

CHAPTER 1

Strike off of ICAV

When Bank may strike ICAV off register

125. (1) Except in the case of an application by an ICAV to be struck off the register of ICAVs, the Bank may strike an ICAV off the register of ICAVs if—
- (a) the ICAV is not an authorised ICAV,
 - (b) there exists one or more of the grounds for striking off set out in *section 126***, and
 - (c) the Bank has followed the procedure set out in *sections 127***, 128****, 130***** and 133(1)******.
- (2) In the case of an application by an ICAV to be struck off the register of ICAVs, the Bank may strike the ICAV off the register of ICAVs if—
- (a) the ICAV is not an authorised ICAV,
 - (b) the conditions for striking off set out in *section 131****** have been satisfied, and
 - (c) the Bank has followed the procedure set out in *sections 132***** and 133(2)******.”.

—An tAire Airgeadais.

[Acceptance of this amendment involves the deletion of section 125 of the Bill.]

[SECTION 125]

[*This proposed new Part comprehends the inclusion amendments 50 to 66.]

[**This is a reference to the section proposed to be inserted by amendment 50.]

[***This is a reference to the section proposed to be inserted by amendment 51.]

[****This is a reference to the section proposed to be inserted by amendment 52.]

[*****This is a reference to the section proposed to be inserted by amendment 54.]

[*****This is a reference to the section proposed to be inserted by amendment 57.]

[*****This is a reference to the section proposed to be inserted by amendment 55.]

[*****This is a reference to the section proposed to be inserted by amendment 56.]

50. In page 75, between lines 20 and 21, to insert the following:

“Grounds for involuntary strike off

126. The grounds referred to in *section 125(1)(b)** are:

- (a) the Bank has reasonable cause to believe that the ICAV no longer complies with *section 13*;
- (b) the ICAV, not being authorised under the UCITS Regulations, has not applied for authorisation under *section 18* by the end of the period of 12 months since the date the coming into operation of a registration order in relation to the ICAV;
- (c) the ICAV is being wound up and the Bank has reasonable cause to believe that no liquidator is acting;
- (d) the ICAV is being wound up and the Bank has reasonable cause to believe that the affairs of the ICAV are fully wound up and that the returns required to be made by the liquidator have not been made for a period of 6 consecutive months;
- (e) there are no persons recorded by the Bank as being current directors of the ICAV.”.

—An tAire Airgeadais.

[*This is a reference to the section proposed to be inserted by amendment 49.]

51. In page 75, between lines 20 and 21, to insert the following:

“Bank’s notice to ICAV of intention to strike it off register

127. (1) The Bank may give notice in accordance with *section 128** of the Bank’s intention to strike an ICAV off the register of ICAVs on a ground set out in any of *paragraphs (a) to (e)* of *section 126***.

(2) The Bank shall send the notice—

- (a) except where *paragraph (b)* applies, to the ICAV,
- (b) if the ground for striking off is that set out in *section 126(c)*** or *(d)*** and an individual is recorded by the Bank as the liquidator of the ICAV, to the liquidator.

(3) The Bank shall also send a copy of the notice to such persons, if any, as are recorded by the Bank as being current directors of the ICAV but non-compliance with this subsection does not affect the validity of a notice that otherwise complies with *subsection (1)*.

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- (4) Instead of giving a notice under *subsection (1)*, the Bank may publish a notice in the *Iris Oifigiúil* containing the information required by *section 128** if no notice of the situation of the registered office of the ICAV has been given to the Bank as required by *sections 7 and 11(2)*.”.

—An tAire Airgeadais.

[*This is a reference to the section proposed to be inserted by amendment 52.]

[**This is a reference to the section proposed to be inserted by amendment 50.]

52. In page 75, between lines 20 and 21, to insert the following:

“Contents of Bank’s notice to ICAV

128. (1) The Bank’s notice under *section 127** shall—

- (a) state that the issue of the notice is the first step in a process that may lead to the ICAV being struck off the register of ICAVs,
 - (b) state the ground or grounds for striking off being invoked by the Bank,
 - (c) state that the ICAV will be dissolved if it is struck off the register of ICAVs,
 - (d) specify the remedial step,
 - (e) specify the date on or before which the remedial step must be taken, and
 - (f) state that failure to take the remedial step on or before the date so specified may result in the Bank giving public notice of an intention to strike the ICAV off the register of ICAVs.
- (2) The date to be specified for the purposes of *subsection (1)(e)* shall be a date falling not less than 28 days after the date of the notice.”.

—An tAire Airgeadais.

[*This is a reference to the section proposed to be inserted by amendment 51.]

53. In page 75, between lines 20 and 21, to insert the following:

“Meaning of remedial step

129. For the purposes of *sections 128**, *130*** and *133****, the remedial step is whichever of the following applies:

- (a) in the case of the ground for striking off set out in *section 126(a)*****, having brought itself into compliance with *section 13*;
- (b) in the case of the ground for striking off set out in *section 126(b)*****, having applied for or been granted authorisation under *section 18*;
- (c) in the case of the ground for striking off set out in *section 126(c)***** or *(d)*****, having provided to the Bank the details of the liquidator and of up to date periodic statements having been furnished;
- (d) in the case of the ground for striking off set out in *section 126(e)*****, having

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given notification to the Bank under *section 65(6)* of the appointment of a director of the ICAV.”.

—An tAire Airgeadais.

[*This is a reference to the section proposed to be inserted by amendment 52.]

[**This is a reference to the section proposed to be inserted by amendment 54.]

[***This is a reference to the section proposed to be inserted by amendment 57.]

[****This is a reference to the section proposed to be inserted by amendment 50.]

54. In page 75, between lines 20 and 21, to insert the following:

“Public notice of intention to strike company off register

130. (1) If the Bank has given a notice under *section 127** and the remedial step has not been taken on or before the date specified in that notice for the purposes of *section 128(1)(e)***, the Bank may, by publishing a notice in the *Iris Oifigiúil* that complies with *subsection (2)*, give public notice of the Bank’s intention to strike the ICAV off the register of ICAVs.

(2) The notice shall—

(a) specify the ground for striking the ICAV off,

(b) specify the remedial step,

(c) specify the date on or before which the remedial step must be taken, and

(d) state that, unless that remedial step is taken on or before the date so specified, the Bank may strike the ICAV off and, if the Bank does so, the ICAV will be dissolved.

(3) The date to be specified for the purposes of *subsection (2)(c)* shall be a date falling not less than 28 days after the date of publication of the notice.”.

—An tAire Airgeadais.

[*This is a reference to the section proposed to be inserted by amendment 51.]

[**This is a reference to the section proposed to be inserted by amendment 52.]

55. In page 75, between lines 20 and 21, to insert the following:

“Conditions for voluntary strike off

131. (1) An ICAV may apply to the Bank to be struck off the register of ICAVs if the following conditions are satisfied:

(a) the circumstances relating to the ICAV are such as to give the Bank reasonable cause to believe that it has never carried on business or has ceased to carry on business;

(b) the ICAV has, within 3 months before the date of the application, by special resolution—

(i) resolved to apply to the Bank to be struck off on the ground that it has never carried on business or has ceased to carry on business, and

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- (ii) resolved that pending the determination of its application to be struck off (or, should it sooner occur, the cancellation, at its request, of this process), the ICAV will not carry on any business or incur any liabilities;
 - (c) the ICAV has delivered to the Bank a certificate, in such form as may be specified by the Bank and signed by each director, certifying that as at the date of the application—
 - (i) the amount of any assets of the ICAV does not exceed €150,
 - (ii) the amount of any liabilities of the ICAV (including contingent and prospective liabilities) does not exceed €150, and
 - (iii) the ICAV is not a party to ongoing or pending litigation;
 - (d) the Bank has received from the Revenue Commissioners written confirmation dated not more than 3 months before the date on which the Bank receives the application that the Revenue Commissioners do not object to the ICAV being struck off the register of ICAVs;
 - (e) the ICAV has caused an advertisement, in such form as may be specified by the Bank, of its intention to apply to be struck off to be published within 30 days before the date of the application in at least 1 daily newspaper circulating in the State.
- (2) Where an application under this section by an ICAV to be struck off the register of ICAVs is made within one year after the date on which the ICAV has changed its name or its registered office (or both), then, as the case may be—
- (a) the former name of the ICAV, as well as the existing name of the ICAV,
 - (b) the former address, as well as the current address, of the ICAV's registered office, or
 - (c) both its former name and the former address of its registered office, as well as the existing name of the ICAV and the current address of its registered office,
- shall be stated in the advertisement referred to in *subsection (1)(e)*.”.

—An tAire Airgeadais.

56. In page 75, between lines 20 and 21, to insert the following:

“Public notice in case of voluntary strike off

132. (1) As soon as practicable after the receipt of an application by an ICAV to be struck off that satisfies the conditions set out in *section 131** the Bank shall, by publishing a notice in the *Iris Oifigiúil* that complies with *subsection (2)*, give public notice of the Bank's intention to strike the ICAV off the register of ICAVs.
- (2) The notice shall—
- (a) state that the ICAV has applied to be struck off,
 - (b) state—

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- (i) that any person may deliver to the Bank an objection to the striking off of the ICAV in such form as may be specified by the Bank, and
 - (ii) that any such objection must be confined to the ground that one or more of the conditions set out in *section 131(1)** have not been satisfied,
- (c) specify the period within which such an objection may be delivered to the Bank, and
- (d) state that, unless the Bank has received—
- (i) an objection to the striking-off of the ICAV within that period, being an objection that the Bank sustains, or
 - (ii) a request for the cancellation of the process of strike off in accordance with *subsection (4)*,
- the Bank may strike the ICAV off the register of ICAVs and, if the Bank does so, the ICAV will be dissolved.
- (3) The period to be specified for the purposes of *subsection (2)(c)* shall be the period ending 90 days after the date of publication of the notice.
- (4) Within the period specified for the purposes of *subsection (2)(c)*, the ICAV may request of the Bank, by delivering to the Bank a notice in that behalf in such form as may be specified by the Bank, the cancellation of the process of its being struck off the register of ICAVs.”.

—An tAire Airgeadais.

[*This is a reference to the section proposed to be inserted by amendment 55.]

57. In page 75, between lines 20 and 21, to insert the following:

“Striking off (involuntary and voluntary cases) and dissolution

133. (1) If the Bank has given a notice under *section 130** and the remedial step has not been taken on or before the date specified in that notice for the purposes of *subsection (2)(c)* of that section, the Bank may strike the ICAV off the register of ICAVs.
- (2) If the Bank has given a notice under *section 132*** and—
- (a) no objection referred to in *subsection (2)(b)* of that section has been delivered to the Bank within the period specified in that notice for the purposes of *subsection (2)(c)* of that section or the Bank is of opinion that there is no reasonable basis to such an objection that has been so delivered, and
 - (b) the ICAV has not requested, in accordance with *subsection (4)* of that section, the cancellation of the process of its being struck off,
- the Bank may strike the ICAV off the register of ICAVs.
- (3) The Bank shall publish in the *Iris Oifigiúil* a notice of the striking of an ICAV off the register of ICAVs.
- (4) The ICAV is dissolved on the date of publication by the Bank of the notice in the *Iris*

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Oifigiúil of its being struck off and that date is referred to subsequently in this Part as the “date of dissolution”.”.

—An tAire Airgeadais.

[*This is a reference to the section proposed to be inserted by amendment 54.]

[**This is a reference to the section proposed to be inserted by amendment 56.]

58. In page 75, between lines 20 and 21, to insert the following:

“Effect of removal and dissolution

134. (1) The liability, if any, of an officer or member of an ICAV that has been dissolved under *section 133(4)** shall continue and may be enforced as if the ICAV had not been dissolved.

(2) Nothing in this section or in *section 133** shall affect the power of the High Court to wind up an ICAV that has been struck off the register of ICAVs or dissolved under that section.

(3) For the purposes and the purposes only of—

(a) an application for the restoration of the ICAV to the register of ICAVs under *section 137*** or *138****, or

(b) in so far as is necessary for the making of such an application (or the doing of anything required by or under *Chapter 2***** to be done consequent on the making of it),

an ICAV shall be deemed not to have been dissolved under *section 133**.

(4) *Subsection (3)* shall not be read as authorising the dealing with, or the exercising of control over, any property that has become the property of the State pursuant to Part III of the State Property Act 1954.”.

—An tAire Airgeadais.

[*This is a reference to the section proposed to be inserted by amendment 57.]

[**This is a reference to the section proposed to be inserted by amendment 61.]

[***This is a reference to the section proposed to be inserted by amendment 62.]

[****This is a reference to the Chapter proposed to be inserted by amendment 60.]

59. In page 75, between lines 20 and 21, to insert the following:

“Power of Bank to obtain information

135. (1) Where an ICAV has been struck off the register of ICAVs under *section 133** on any of the grounds set out in *section 126(a)*** or *(b)***, the Bank may, by notice to the directors of the ICAV, require those persons to produce to the Bank a statement of affairs of the ICAV in accordance with this section.

(2) The persons to whom a notice is sent under *subsection (1)* shall, within the period specified in the notice in that behalf, produce to the Bank a statement of affairs of the ICAV that complies with *subsection (3)*.

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- (3) The statement of affairs shall—
- (a) be in such form as may be specified by the Bank,
 - (b) be verified by an affidavit,
 - (c) contain the following information in respect of the ICAV as at the date of dissolution:
 - (i) particulars of its assets, debts and liabilities;
 - (ii) the names and addresses of its creditors;
 - (iii) particulars of securities given by the ICAV, including the name of the secured creditor in each case and the date on which the security was given;
 - (iv) such further or other information as may be specified by the Bank or that the Bank may reasonably require.
- (4) On the application of the Bank, the High Court may require a person who has made a statement under *subsection (2)* to appear before it and answer on oath any question relating to the content of the statement.
- (5) A person who fails to comply with *subsection (2)* commits a category 3 offence.”.

—An tAire Airgeadais.

[*This is a reference to the section proposed to be inserted by amendment 57.]

[**This is a reference to the section proposed to be inserted by amendment 50.]

60. In page 75, between lines 20 and 21, to insert the following:

“CHAPTER 2

Restoration of ICAV to register

Application of Chapter

136. This Chapter applies to an ICAV that has been struck off the register of ICAVs under *Chapter 1**.”.

—An tAire Airgeadais.

[*This is a reference to the Chapter proposed to be inserted by amendment 49.]

61. In page 75, between lines 20 and 21, to insert the following:

“Restoration on application to Bank

137. (1) On an application by a person specified in *subsection (3)*, the Bank may restore an ICAV to the register of ICAVs if—
- (a) the Bank has reasonable cause to believe that the strike off of the ICAV has disadvantaged the applicant,
 - (b) the application is made in the form specified by the Bank,

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- (c) the application is received by the Bank within the period of 12 months after the date of dissolution of the ICAV, and
 - (d) the requirements of *subsection (2)* have been satisfied within the period of 15 months after the date of dissolution of the ICAV.
- (2) The requirements referred to in *subsection (1)(d)* are the following:
- (a) the Bank has received written confirmation from the Minister and the Revenue Commissioners that they have no objection to the ICAV being restored to the register of ICAVs under this section;
 - (b) the Bank is satisfied that no notification required by *section 65(6)* remains outstanding in relation to the ICAV.
- (3) The Bank may restore an ICAV to the register of ICAVs on the application of a person who was a member or an officer of the ICAV at the date of its dissolution.
- (4) On the registration of an application under this section and on payment of such fee as may be prescribed under section 32E of the Central Bank Act 1942, the Bank shall restore the ICAV to the register of ICAVs and the ICAV shall be deemed to have continued in existence as if it had not been struck off.
- (5) Subject to any order made by the High Court in the matter, the restoration of an ICAV to the register of ICAVs under this section shall not affect the rights and liabilities of the ICAV in respect of any debt or obligation incurred, or any contract entered into, by, to, with or on behalf of the ICAV between the date of its dissolution and the date of restoration.”.

—An tAire Airgeadais.

62. In page 75, between lines 20 and 21, to insert the following:

“Restoration on application to High Court

138. (1) On an application in accordance with *section 139** by a person specified in *subsection (2)*, the High Court may order that an ICAV that has been struck off the register of ICAVs be restored to the register of ICAVs if—
- (a) the striking off of the ICAV has disadvantaged the applicant,
 - (b) the application is made within the period of 2 years after the date of dissolution of the ICAV, and
 - (c) it is just and equitable to do so.
- (2) The High Court may make the order on the application of—
- (a) the ICAV,
 - (b) a creditor of the ICAV,
 - (c) a person who was a member or an officer of the ICAV at its date of dissolution, or
 - (d) a person who, at the date of its dissolution, had an entitlement (disregarding any right of the directors to decline to register the person as such) to be registered as a

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member of the ICAV by virtue of—

- (i) the execution, in the person’s favour, of an instrument of transfer of a share, or
 - (ii) the transmission, by operation of law, to the person of a right to a share.
- (3) Subject to a supplementary order made under *section 142(c)***, the ICAV shall be deemed to have continued in existence as if it had not been struck off the register of ICAVs upon the Bank receiving a certified copy of the order under *subsection (1)* within 28 days after the date of its perfection.”.

—An tAire Airgeadais.

[*This is a reference to the section proposed to be inserted by amendment 63.]

**This is a reference to the section proposed to be inserted by amendment 66.]

63. In page 75, between lines 20 and 21, to insert the following:

“Requirements for application to High Court under *section 138**

139. (1) An application under *section 138** shall be made on notice to the Bank, and the Revenue Commissioners.

(2) In the case of an application under *section 138** by a creditor, the application shall in addition be made on notice to—

- (a) the Bank,
- (b) such officers of the ICAV at the date of dissolution whose names are known, or ought reasonably to be known, by the creditor, and
- (c) such other members or officers of the ICAV at the date of dissolution as the Bank, the Revenue Commissioners, upon being notified of the application, indicate in writing should be joined as notice parties to the application.”.

—An tAire Airgeadais.

[*This is a reference to the section proposed to be inserted by amendment 62.]

64. In page 75, between lines 20 and 21, to insert the following:

“Terms of High Court order on application under *section 139**

140. (1) In making an order under *section 138*** on the application of a member or an officer of the ICAV, the High Court shall, unless reason to the contrary is shown to the satisfaction of the High Court, make it a term of the order that the order shall not have effect unless, within a specified period, the ICAV appoints 2 directors and delivers to the Bank the notification and consent required by *section 65(6)* and *(8)*.

(2) For the avoidance of doubt, *subsection (1)* requires, unless reason to the contrary there mentioned is shown, the order of the High Court to specify that a thing set out in *subsection (1)* is to be done (save where it has already been done) notwithstanding that the ground on which the ICAV had been struck off the register of ICAVs did not relate to that thing.

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- (3) In making an order under *section 138*** on the application of a creditor of the ICAV, the High Court shall direct that, within a specified period (save where it has already been done) such specified members or officers take all reasonable steps to ensure that the ICAV appoints a director and delivers to the Bank the notification and consent required by *section 65(6)* and *(8)*.
- (4) For the avoidance of doubt, *subsection (3)* requires the order of the High Court to specify that a thing set out in that subsection is to be done (save where it has already been done) notwithstanding that the ground on which the ICAV had been struck off the register of ICAVs did not relate to that thing.
- (5) In making an order under *section 138*** on the application of a creditor of the ICAV, the High Court may award the applicant the costs of the application against the ICAV.”.

—An tAire Airgeadais.

[*This is a reference to the section proposed to be inserted by amendment 63.]

[**This is a reference to the section proposed to be inserted by amendment 62.]

65. In page 75, between lines 20 and 21, to insert the following:

“High Court order for restoration on application of Bank

141. (1) On an application by the Bank in accordance with *subsection (2)*, the High Court may order that an ICAV that has been struck off the register of ICAVs be restored to the register of ICAVs if—
- (a) the application is made within the period of 2 years after the date of dissolution of the ICAV, and
 - (b) it is just and equitable to do so.
- (2) An application under this section shall be made on notice to each person who, to the knowledge of the Bank, was an officer of the ICAV at the date of its dissolution.
- (3) On the making of the order, the ICAV shall be deemed to have continued in existence as if it had not been struck off.
- (4) In making an order under this section, the High Court may award the Bank the costs of the application against the ICAV restored to the register of ICAVs.”.

—An tAire Airgeadais.

66. In page 75, between lines 20 and 21, to insert the following:

“Supplementary High Court orders

142. In ordering that an ICAV be restored to the register of ICAVs under *section 138** or *141***, the High Court may do any of the following:
- (a) except to the extent that the High Court makes an order under *paragraph (c)*, give such directions as it thinks fit for placing the ICAV and all other persons as nearly as possible in the same position as if the ICAV had not been struck off the register

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of ICAVs;

- (b) direct the ICAV to change its name if the name of the ICAV is too similar to the name of another ICAV already on the register of ICAVs;
- (c) if and to the extent that it thinks fit, order that the officers of the ICAV, or any one or more of them as specified in the order, shall be liable for a debt or liability incurred by or on behalf of the ICAV during the period when it stood struck off the register of ICAVs;
- (d) make any other order that it thinks fit.”.

—An tAire Airgeadais.

[*This is a reference to the section proposed to be inserted by amendment 62.]

[**This is a reference to the section proposed to be inserted by amendment 65.]

SECTION 127

Section proposed to be deleted.

—An tAire Airgeadais.

SECTION 128

Section proposed to be deleted.

—An tAire Airgeadais.

SECTION 130

67. In page 76, between lines 32 and 33, to insert the following:

“Fees

130. Fees shall be payable in accordance with section 32E of the Central Bank Act 1942 in respect of the performance by the Bank of its functions under this Act.”.

—An tAire Airgeadais.

SCHEDULE

68. In page 79, to delete lines 4 to 14 and substitute the following:

“

Statement of Net Assets	1	Statement of Net Assets		
		<i>Assets</i>	<i>Fair Value</i>	
		Investments in securities (cost)	X	
		Financial derivatives	X	
		Cash	X	
		Deposits with brokers	X	
		Receivables	X	
		Total Assets	—————	————— X
				=====

”.

—An tAire Airgeadais.

[SCHEDULE]

69. In page 79, to delete lines 15 to 27 and substitute the following:

“

	Liabilities		
	Securities sold (proceeds)		X
	Financial derivatives		X
	Due to broker		X
	Payables		X
	Total Liabilities	—————	————— X
			=====
	Net Assets or Liabilities		—————
	Equivalent to € per share based on Y shares outstanding		————— X
			=====
	The accompanying notes are an integral part of these annual accounts.		

”

—An tAire Airgeadais.

70. In page 80, to delete lines 1 to 6 and substitute the following:

“

	Realised and unrealised gains/losses from investments and foreign currency		X
	Realised and unrealised gains/losses from financial derivatives		X
	The accompanying notes are an integral part of these annual accounts.		

”

—An tAire Airgeadais.