



DÁIL ÉIREANN

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

LEASUITHE TUARASCÁLA REPORT AMENDMENTS

DÁIL ÉIREANN

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

IRISH COLLECTIVE ASSET-MANAGEMENT VEHICLES BILL 2014 —REPORT

Leasuithe Amendments

1. In page 11, between lines 19 and 20, to insert the following:

“(3) In relation to times before the coming into operation of the Companies Act 2014 references in this Act to any provision of that Act have effect as references to the corresponding provisions of any enactment to be repealed by that Act.”.

—An tAire Airgeadais.

2. In page 12, line 11, to delete “within the meaning of the Companies Act 1963;” and substitute the following:

“formed and registered under the Companies Act 2014 or an existing company within the meaning of that Act;”.

—An tAire Airgeadais.

3. In page 12, to delete lines 26 and 27 and substitute the following:

“ “investment company” has the same meaning as in Part 24 of the Companies Act 2014;”.

—An tAire Airgeadais.

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

“ “special resolution”, in relation to an ICAV, means a resolution passed by not less than 75 per cent of the votes cast by the members of the ICAV as, being entitled to do so, vote in person or by proxy at a general meeting of the ICAV;”.

—An tAire Airgeadais.

5. In page 15, line 7, after “office” to insert “or head office”.

—An tAire Airgeadais.

6. In page 24, line 32, after “*subsection (1)*” to insert “or (4)”.

—An tAire Airgeadais.

7. In page 25, to delete lines 16 to 26 and substitute the following:

“Alteration in instrument of incorporation

31. (1) No alteration in the instrument of incorporation of an ICAV shall be made unless—
- (a) the alteration has been approved—
 - (i) by ordinary resolution, or
 - (ii) if the instrument of incorporation so requires, by a resolution passed by such majority as is specified in the instrument of incorporation of the votes cast by the members of the ICAV who, being entitled to do so, vote in person or by proxy at a general meeting of the ICAV,
 - or
 - (b) the depositary of the ICAV has certified in writing that the alteration—
 - (i) does not prejudice the interests of the members of the ICAV, and
 - (ii) does not relate to any such matter as may be specified by the Bank as one in the case of which an alteration may be made only if approved by members of an ICAV.
- (2) No alteration in the instrument of incorporation of an ICAV shall be made without the approval of the Bank.
- (3) Any person who makes an alteration in the instrument of incorporation of an ICAV otherwise than in accordance with *subsections (1) and (2)* commits a category 3 offence.
- (4) Within 21 days after the date of the making of an alteration in the instrument of incorporation of an ICAV, the ICAV shall deposit with the Bank a copy of the instrument of incorporation as so altered or containing the alterations.
- (5) If an ICAV fails to comply with *subsection (4)*, it commits a category 2 offence.
- (6) In this section “alteration in the instrument of incorporation” does not include a change in the name of the ICAV.”.

—An tAire Airgeadais.

8. In page 51, between lines 6 and 7, to insert the following:

“Fiduciary duties of directors of ICAVs

78. (1) Without prejudice to the provisions of any enactment (including this Act), a director of an ICAV shall owe the duties set out in *section 79** (“the relevant duties”) to the ICAV (and the ICAV alone).
- (2) The breach by a director of the relevant duties shall not of itself affect—
- (a) the validity of any contract or other transaction, or
 - (b) the enforceability, otherwise than by the director in breach of that duty, of any

contract or other transaction by any person,

but nothing in this subsection affects the principles of liability of a third party where he or she has been an accessory to a breach of duty or has knowingly received a benefit from it.

- (3) The relevant duties (other than those set out in *section 79(1)(b)* and *(h)**) are based on certain common law rules and equitable principles as they apply in relation to the directors of bodies corporate and shall have effect in place of those rules and principles as regards the duties owed to an ICAV by a director.
- (4) The relevant duties (other than those set out in *section 79(1)(b)* and *(h)**) shall be interpreted, and the provisions concerned of *section 79** shall be applied, in the same way as common law rules or equitable principles and regard shall be had to the corresponding common law rules and equitable principles in interpreting those duties and applying those provisions.”.

—An tAire Airgeadais.

[*This is a reference to the section proposed to be inserted by amendment No. 9.]

9. In page 51, between lines 6 and 7, to insert the following:

“Statement of principal fiduciary duties of directors of ICAVs

79. (1) A director of an ICAV shall—

- (a) act in good faith in what the director considers to be the interests of the ICAV,
- (b) act honestly and responsibly in relation to the conduct of the affairs of the ICAV,
- (c) act in accordance with the instrument of incorporation of the ICAV and exercise his or her powers only for the purposes allowed by law,
- (d) not use the ICAV’s property, information or opportunities for his or her own or anyone else’s benefit unless—
 - (i) that is expressly permitted by the ICAV’s instrument of incorporation, or
 - (ii) the use has been approved by a resolution of the ICAV in general meeting,
- (e) not agree to restrict the director’s power to exercise an independent judgement unless—
 - (i) that is expressly permitted by the ICAV’s instrument of incorporation,
 - (ii) the case concerned falls within *subsection (2)*, or
 - (iii) the director’s agreeing to such has been approved by a resolution of the ICAV in general meeting,
- (f) avoid any conflict between the director’s duties to the ICAV and the director’s other (including personal) interests unless the director is released from his or her duty to the ICAV in relation to the matter concerned, whether in accordance with provisions of the ICAV’s instrument of incorporation in that behalf or by a resolution of it in general meeting,

- (g) exercise the care, skill and diligence which would be exercised in the same circumstances by a reasonable person having both—
 - (i) the knowledge and experience that may reasonably be expected of a person in the same position as the director, and
 - (ii) the knowledge and experience which the director has,
 and
 - (h) in addition to the duty under *section 78**, have regard to the interests of its members.
- (2) If a director of an ICAV considers in good faith that it is in the interests of the ICAV for a transaction or engagement to be entered into and carried into effect, a director may restrict the director’s power to exercise an independent judgement in the future by agreeing to act in a particular way to achieve this.”.

—An tAire Airgeadais.

[*This is a reference to the section proposed to be inserted by amendment No. 8.]

10. In page 54, to delete lines 36 to 40, and in page 55, to delete lines 1 and 2 and substitute the following:

“Restrictions on directors of insolvent ICAVs

82. (1) The provisions of Chapter 3 of Part 14 of the Companies Act 2014, and the other provisions of that Act relating to restrictions on directors of an insolvent company (within the meaning of section 818), have effect in accordance with *subsection (2)*.
- (2) Those provisions have effect as if—
- (a) the following references:
 - (i) the reference to a company referred to in section 819(6) in the definition of “company” in section 818(1);
 - (ii) the references to a company in section 818(3);
 - (iii) the final 3 references to a company in section 819(1);
 - (iv) the references to an investment company in section 819(5);
 - (v) the references to a company in sections 821(1)(a) and (b), 825(1) and (2) and 836;
 - (vi) the references to a company in the definition of “restriction” in section 849;
 - (vii) the references to a company in sections 853(5), 855(1), 858 and 859, included an ICAV, and
 - (b) the reference in section 828(2) to the constitution of a company included the instrument of incorporation of an ICAV.
- (3) The provisions of the Companies Act 2014 mentioned in *subsection (1)* apply, subject

to necessary modifications and to the specific modifications specified in *subsection (4)*, in relation to directors of an insolvent ICAV as if they were directors of an insolvent investment company.

- (4) The modifications are that—
- (a) references to a company in the definitions of “director of an insolvent company” and “insolvent company” in subsection (1) of section 818 and subsection (2) of that section are to an ICAV,
 - (b) references to the Registrar are to the Bank,
 - (c) the reference to prescribed particulars in sections 819(7) and 823(2), and to the prescribed form and manner in section 819(7), are to particulars, and to the form and manner, specified by the Bank, and
 - (d) the reference in section 823(5) to section 894 is to *section 14* of this Act.”.

—An tAire Airgeadais.

11. In page 55, between lines 2 and 3, to insert the following:

“Disqualification of directors etc

83. (1) The provisions of Chapter 4 of Part 14 of the Companies Act 2014, and the other provisions of that Act relating to the disqualification of a person from being appointed or acting as a director or other officer, statutory auditor, receiver or liquidator, or being in any way (whether directly or indirectly) concerned or taking part in the promotion, formation or management of a company, have effect in accordance with *subsection (2)*.
- (2) Those provisions have effect as if—
- (a) in the definition of “company” in section 837 after “Act” there were inserted “(including an Irish Collective Asset-management Vehicle)”,
 - (b) in the definition of “relevant requirement” in that section the reference to that Act included this Act and the reference to the Registrar included the Bank,
 - (c) the references to a company within the meaning of section 819(6) in sections 838, 848, 849 and 851 included an ICAV,
 - (d) the reference to that Act in section 839(1)(a) included this Act,
 - (e) in section 840—
 - (i) the references to section 149(8) included *section 65(6)* of this Act,
 - (ii) the references to section 150(1) included *section 66(1)* of this Act,
 - (iii) the reference to section 150(3) included *section 66(3)* of this Act, and
 - (iv) the references to the Registrar included the Bank,
 - (f) in section 841—
 - (i) the references to section 150(2) included *section 66(2)* of this Act, and

- (ii) the reference to section 149(8) included *section 65(6)* of this Act,
- (g) in section 842—
 - (i) the reference to section 286 included *section 109* of this Act,
 - (ii) the reference to section 727 included *section 152* of this Act,
 - (iii) the reference to Chapter 1 of Part 12 included *Chapter 1 of Part 11* of this Act, and
 - (iv) the reference to section 733 included *section 158* of this Act,
- (h) in section 844(3) the reference to the Registrar included the Bank,
- (i) in section 846 the reference to the Director of Corporate Enforcement included the Bank,
- (j) in section 851(3) the references to the Registrar included the Bank,
- (k) the references in sections 855(1), 858, 859 and 862 to a company included an ICAV,
- (l) in section 863(2), the reference to the Registrar were, in a case of an offence in relation to an ICAV, a reference to the Bank, and
- (m) in section 864 the references to the Registrar included the Bank.”.

—An tAire Airgeadais.

- 12.** In page 55, to delete lines 37 and 38, and in page 56, to delete lines 1 to 3 and substitute the following:

“(6) But where an election under *subsection (4)* has effect for a year—

- (a) one or more members of the ICAV holding, or together holding, not less than 10 per cent of the voting rights in the ICAV, or
- (b) the auditor of the ICAV,

may require the ICAV to hold an annual general meeting in that year by giving notice in writing to the ICAV in the previous year or at least one month before the end of that year and the ICAV shall hold the required meeting.”.

—An tAire Airgeadais.

- 13.** In page 59, to delete lines 34 to 40, and in page 60, to delete lines 1 to 33 and substitute the following:

“**91.** (1) For the purposes of this section—

- (a) “relevant rule of law” means any applicable rule of law that governs the priority of charges created by a body corporate, and for the avoidance of doubt, any enactment governing the priority of such charges is not encompassed by that expression;
- (b) the reference in *subsection (2)* to any priority that one charge, by virtue of a person’s not having notice of a matter, enjoys over another charge or charges

shall be deemed to include a reference to any priority that an advance made on foot of a charge, by virtue of a person's not having notice of a matter, enjoys over a subsequent charge or charges.

- (2) Any relevant rule of law shall stand modified in the manner specified in *subsection (3)*, but not so as to displace any priority that one charge, by virtue of a person's not having notice of a matter, enjoys over another charge or charges.
- (3) That modification is that, for the part of the rule that operates by reference to the time of creation of the 2 or more charges concerned, there shall be substituted a part that operates by reference to—
 - (a) the dates of receipt by the Bank of the specified particulars of the 2 or more charges concerned, or
 - (b) if the date of receipt by the Bank of the specified particulars of the 2 or more charges is the same, the respective times, on the date concerned, of receipt by the Bank of those particulars.
- (4) References in *subsection (3)* to the date, or time, of receipt of particulars are references to—
 - (a) if the procedure under *subsection (3)* of *section 88* is complied with in relation to a particular charge, the date, or time, of receipt by the Bank of the specified particulars, in the specified form, of the charge, or
 - (b) if the procedure under *subsection (4)* of *section 88* is complied with in relation to a particular charge, the date, or time, of receipt by the Bank of the notice, in the specified form and containing the specified particulars, in relation to the charge under *paragraph (a)* of that *subsection (4)*.
- (5) *Subsections (2)* and *(3)* shall not affect any agreement between persons in whose favour charges have been created in relation to the priority that those charges shall, as between them, have.
- (6) 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, any events that crystallise a floating charge or any restrictions on the use of any charged asset (and particulars of any such matter are referred to subsequently in this subsection as “extraneous material”):
 - (a) the Bank shall not enter in the register under *section 88* particulars of the extraneous material pursuant to that section;
 - (b) the fact that the Bank has received the particulars of the extraneous material 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.
- (7) In this section “negative pledge” means any agreement entered into by the ICAV concerned and any other person or persons that—
 - (a) provides that the ICAV shall not, or shall not otherwise than in specified

circumstances—

- (i) borrow moneys or otherwise obtain credit from any person other than that person or those persons,
- (ii) 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, or
- (iii) alienate or otherwise dispose of in any manner any of the property of the ICAV,

or

- (b) contains a prohibition, either generally or in specified circumstances, on the doing by the ICAV of one or more things referred to in one, or more than one, provision of *paragraph (a)*.
- (8) The registration of an investment company as an ICAV by continuation under *Part 8* does not affect the priority of charges created by the investment company.”.

—An tAire Airgeadais.

14. In page 66, line 2, to delete “*section 173*” and substitute “*section 168**”.

—An tAire Airgeadais.

[**This is a reference to the section proposed to be inserted by amendment No. 28.*]

15. In page 69, line 30, to delete “*subsection (5)*” and substitute “*subsection (5)*”.

—An tAire Airgeadais.

16. In page 70, between lines 19 and 20, to insert the following:

“(11) In this section “international financial reporting standards” means the international financial reporting standards, within the meaning of Regulation (EC) No. 1606/2002 of the European Parliament and of the Council of 19 July 2002¹ adopted from time to time by the Commission of the European Union in accordance with that Regulation.”.

—An tAire Airgeadais.

1. OJ No. L 243, 11.09.2002, p.1

17. In page 76, line 4, to delete “*section 172*” and substitute “*section 171**”.

—An tAire Airgeadais.

[**This is a reference to the section proposed to be inserted by amendment No. 31.*]

18. In page 77, line 9, to delete “*subsection (4)*” and substitute “this section”.

—An tAire Airgeadais.

19. In page 83, line 5, to delete “a UCITS” and substitute “an UCITS”.

—An tAire Airgeadais.

20. In page 85, to delete lines 11 to 14 and substitute the following:

“(2) The company shall then make an application to the Registrar in the form prescribed

by the Minister for Jobs, Enterprise and Innovation to be de-registered as a company.

- (3) On receipt of an application under *subsection (2)* the Registrar shall issue a certificate of de-registration of the company, shall enter in the register of companies that the company is de-registered and shall forthwith publish notice in the Companies Registration Office Gazette of the following matters:
- (a) the date of the registration of the company as an ICAV under this section;
 - (b) the previous name of the company if different from the name under which it is registered as an ICAV.
- (4) From the date of the registration of the company as an ICAV, the company shall become an ICAV, and shall cease to be a company, for all purposes but this section”.

—An tAire Airgeadais.

21. In page 85, to delete lines 34 and 35 and substitute the following:

- “(5) On the registration of an investment company as an ICAV, the Bank shall immediately authorise it to carry on business.
- (6) On the registration of an UCITS as an ICAV, the UCITS shall continue to be authorised under the UCITS Regulations.
- (7) Section 889 of the Companies Act 2014 has effect as if this section were a provision of that Act.”.

—An tAire Airgeadais.

22. In page 86, line 6, to delete “letter” and substitute “giving of notice”.

—An tAire Airgeadais.

23. In page 90, line 7, to delete “letter” and substitute “giving of notice”.

—An tAire Airgeadais.

24. In page 95, to delete lines 13 to 18 and substitute the following:

- “**148.** (1) The provisions of Part 8 of the Companies Act 2014, and the other provisions of that Act relating to receivers, apply, subject to the necessary modifications and to the specific modifications specified in *subsection (2)*, in relation to an ICAV as if it were an investment company.
- (2) The modifications are the following:
- (a) references to the Registrar are to the Bank;
 - (b) references to the prescribed form are to such form as may be specified by the Bank;
 - (c) references in section 431(1)(e) to such further or other information as may be prescribed are to such further or other information as may be specified by the Bank;
 - (d) in section 439(4) the reference to section 220 is to *section 77* of this Act and

paragraphs (b) and (c) are omitted;

- (e) the references in section 447 to the Director of Corporate Enforcement include the Bank.”.

—An tAire Airgeadais.

25. In page 95, to delete lines 22 to 27 and substitute the following:

“149. (1) The provisions of Part 11 of the Companies Act 2014, and the other provisions of that Act relating to the winding up of companies (including, in particular, provisions about summary approval procedure) apply, subject to the necessary modifications and the specific modifications specified in *subsection (2)*, in relation to an ICAV as if it were an investment company.

(2) The modifications are the following:

- (a) references to the Registrar are to the Bank;
- (b) references to the constitution of a company are to the instrument of incorporation of an ICAV;
- (c) in the definition of “connected person” in section 559(1) and in 629(5) the reference to section 220 is to *section 77* of this Act and paragraph (b) is omitted;
- (d) in the table to section 567—
 - (i) the reference to section 286(3) is to *section 109(1)* of this Act;
 - (ii) the reference to section 609 is to *section 110* of this Act;
- (e) the references in sections 569(2) and 571(3) to section 212 are to *section 55* of this Act;
- (f) the reference in section 595(5) to that Act is to this Act;
- (g) the words “into his or her custody or” in section 596 and paragraph 9 of the Table to section 627 are omitted;
- (h) section 609 is omitted;
- (i) section 636 has effect as if—
 - (i) the reference in subsection (3) to Part 4 were to *section 86* of this Act,
 - (ii) for subsection (5) there is substituted a requirement that notice of a meeting given by a member, liquidator or contributory under subsection (3) comply with any requirements specified in the ICAV’s instrument of incorporation, and
 - (iii) the reference in subsection (6) to the Companies Act 2014 is omitted;
- (j) the reference in section 656(2) to section 173 is to *section 52* of this Act;
- (k) in section 673—
 - (i) in subsection (1), for “hands of the liquidator” there is substituted “hands of the depository or trustee within the meaning of the UCITS Regulations, to be

under the control of the liquidator,” and

- (ii) in subsection (3), for “to the liquidator” there is substituted “to the depository or trustee within the meaning of the UCITS Regulations, to be under the control of the liquidator,”.”

—An tAire Airgeadais.

26. In page 97, line 35, to delete “a director” and substitute “at least 2 directors”.

—An tAire Airgeadais.

27. In page 103, line 28, to delete “a director” and substitute “at least 2 directors”.

—An tAire Airgeadais.

28. In page 104, between lines 23 and 24, to insert the following:

“PART 12

INVESTIGATIONS, COMPLIANCE AND ENFORCEMENT

Investigations

168. (1) The provisions of Part 13 of the Companies Act 2014, and the other provisions of that Act relating to investigations of companies, apply, subject to necessary modifications and the specific modifications specified in *subsection (2)*, in relation to an ICAV as if it were an investment company.

- (2) The modifications are the following:

- (a) references to a body corporate include a company;
- (b) the references in sections 752 to 757 to agents include depositories and trustees within the meaning of the UCITS Regulations;
- (c) in section 755(2)(a) for the words after agreement there is substituted a reference to a transaction within *section 75(1)* of this Act and in section 755(4) for the reference to section 220 there is substituted a reference to *section 77* of this Act;
- (d) the duty in section 759(1) to provide a copy of a directors’ report to the Director of Corporate Enforcement includes a duty to forward a copy to the Bank (so that section 759(2)(b)(vi) does not apply);
- (e) the reference in section 763(1) to Chapter 5 of Part 5 is to *section 80* of this Act;
- (f) the references to the Registrar in sections 765(4) and 770 are to the Bank;
- (g) the reference to section 785(4) to section 286 is to *section 109* of this Act.”.

—An tAire Airgeadais.

29. In page 104, between lines 23 and 24, to insert the following:

“Compliance orders

169. (1) This section applies if an ICAV or an officer of an ICAV—
- (a) has failed to comply with a provision of this Act, and
 - (b) the ICAV or officer has failed to remedy the default within 14 days (or such longer period as may be specified in the notice) after the date of service by any person referred to in *subsection (3)* on the ICAV or officer of a notice requiring the ICAV or officer to remedy the default.
- (2) In any case to which this section applies, the High Court, on the application of a person specified in *subsection (3)*, may order the ICAV or officer in default to remedy the default within such time as the High Court specifies.
- (3) The High Court may make the order only on the application of one of the following:
- (a) any member of the ICAV;
 - (b) any creditor of the ICAV;
 - (c) the Director of Corporate Enforcement.
- (4) In making an order under *subsection (2)*, the High Court may order that the ICAV or the officer responsible for the default pay all costs of and incidental to the application.
- (5) Subject to *subsection (6)*, no order may be made under this section in relation to a default that, in the opinion of the High Court, constitutes a wrong done to the ICAV an action in respect of which, under the general law, is maintainable by the ICAV alone, as distinct from another by derivative proceedings.
- (6) *Subsection (5)* does not apply if the facts constituting the default in question amount, in the opinion of the High Court, to the commission of an offence.
- (7) Nothing in this section shall be taken to prejudice the operation of any enactment imposing penalties (including restriction or disqualification) on an ICAV or its officers in respect of the default in question.
- (8) In this section “officer” means director, shadow director, promoter, receiver, liquidator, auditor or secretary.”.

—An tAire Airgeadais.

30. In page 104, between lines 23 and 24, to insert the following:

“Restraining directors and others from removing assets

170. (1) The High Court may make an order restraining a director or other officer of an ICAV, or an ICAV, from—
- (a) removing his or her or the ICAV’s assets from the State, or
 - (b) reducing his or her or the ICAV’s assets within or outside the State below an

amount specified in the order.

- (2) The High Court may make the order if it is satisfied that—
 - (a) the applicant has a qualifying claim, and
 - (b) there are grounds for believing that the director or officer, or the ICAV, may remove or dispose of his or her assets or the assets of the ICAV with a view to evading his or her obligations or those of the ICAV and frustrating an order of the High Court.
- (3) The High Court may make the order only on the application of—
 - (a) the ICAV,
 - (b) a director, member, liquidator, receiver or creditor of the ICAV, or
 - (c) the Director of Corporate Enforcement.
- (4) In *subsection (2)(a)* “qualifying claim” means a claim that—
 - (a) is a substantive civil cause of action or right to seek a declaration of personal liability or to claim damages against the director, officer or ICAV, and
 - (b) arises—
 - (i) under this Act,
 - (ii) under the instrument of incorporation of the ICAV, or
 - (iii) from the holding of an office of the ICAV.”.

—An tAire Airgeadais.

31. In page 104, between lines 23 and 24, to insert the following:

“Agency with responsibility for enforcement of offences

- 171.** (1) The Bank may instigate summary proceedings for offences under *sections 6(5), 7(3) and (4), 8(3), 10(6), 18(6), 21(5), 22(4), 28(3), 30(2), 31(3) and (5)*, 33(3), 36(2), 39(4), 42(3), 43(4), 46(4), 49(4), 50(5), 55(7), 66(4) and (5), 75(4), 90(3), 95(5), 97(4), 109(1) and (2), 111(10), 112(9), 113(7), 115(4), 123(2), 130(5), 133(9), 136(5), 147(5) and 160(5).*
- (2) The Director of Corporate Enforcement may instigate summary proceedings for offences under *sections 63(1), 64(4), 68(3), 70(3), 71(3), 79(11) and (12), 80(3), 81(10) and (11), 83(5) and 84(8).*
- (3) Either the Bank or the Director of Corporate Enforcement may instigate summary proceedings for offences under *sections 117(6) and 119(2).*”.

—An tAire Airgeadais.

[*This is a reference to the section proposed to be inserted by amendment No. 7.]

32. In page 104, between lines 23 and 24, to insert the following:

“District court district within which summary proceedings may be brought

172. (1) Summary proceedings against an ICAV or an officer of an ICAV acting in his or her capacity as such (or a person purporting to so act) for an offence under this Act may be brought, heard and determined—
- (a) before and by a judge of the District Court as provided for under section 79 or 79A of the Courts of Justice Act 1924, or
 - (b) before and by a judge of the District Court for the time being assigned to the district court district in which the registered office of the ICAV is situated immediately prior to the commencement of the proceedings.
- (2) In this section “officer of an ICAV” includes a director, shadow director, promoter, auditor, receiver, liquidator or secretary of an ICAV.
- (3) For the purposes of this section, the place for the time being recorded by the Bank as the situation of the registered office of the ICAV shall be deemed to be the registered office of the ICAV notwithstanding that the situation of its registered office may have changed.”.

—An tAire Airgeadais.

33. In page 104, between lines 23 and 24, to insert the following:

“Application of other provisions relating to offences

173. (1) Sections 867 and 870 of the Companies Act 2014 shall apply in relation to offences under this Act as in relation to offences under that Act.
- (2) Section 868 of that Act shall apply in relation to an ICAV as in relation to a company.
 - (3) Section 872 of that Act shall apply as if references to that Act included this Act.
 - (4) Section 873 of that Act shall apply as if the reference to a category 3 or 4 offence within the meaning of that Act included a category 3 offence under this Act.”.

—An tAire Airgeadais.

34. In page 104, between lines 23 and 24, to insert the following:

“Special provisions applying where default in delivery of documents to Bank

174. (1) The Bank may deliver a notice that complies with *subsection (2)* to a person if the Bank has reasonable grounds for believing that the person is in default in the production or delivery to, or filing with, the Bank of a document required under this Act (being a default that constitutes a category 3 offence).
- (2) The notice referred to in *subsection (1)* is a notice that—
 - (a) is in the form specified by the Bank,
 - (b) states that the person has failed to produce or deliver to, or file with, the Bank a

document required under a specified provision of this Act,

- (c) states that the person to whom the notice is delivered may during a period of 21 days beginning after the date of the notice, or such greater period as may be specified in the notice—
 - (i) remedy the default, and
 - (ii) pay to the Bank an amount specified by the Bank which shall be accompanied by the notice,and
 - (d) states that a prosecution of the person to whom the notice is delivered—
 - (i) will not be instituted during the period referred to in *paragraph (c)*, and
 - (ii) will not be instituted in any event if, within the period referred to in *paragraph (c)*, the default is remedied and payment is made in accordance with the notice.
- (3) Where a notice is delivered under *subsection (1)*—
- (a) a person to whom it is delivered may, during the period specified in the notice, make to the Bank payment of the amount specified in the notice, accompanied by the notice,
 - (b) the Bank may receive the payment and issue a receipt for it and no payment so received shall in any circumstances be recoverable by the person who made it, and
 - (c) a prosecution in respect of the alleged offence shall not be instituted in the period specified in the notice and if the default is remedied to the satisfaction of the Bank and payment of the amount specified in the notice is made during that period, no prosecution in respect of the alleged offence shall be instituted in any event.
- (4) In a prosecution for an offence to which this section applies, the defendant shall bear the onus of showing that a payment pursuant to a notice under this section has been made.
- (5) All payments made to the Bank in pursuance of this section shall be paid into or disposed of for the benefit of the Exchequer in such manner as the Minister for Public Expenditure and Reform may direct.
- (6) If the person mentioned in *subsection (1)* is an ICAV, then that subsection authorises the delivery of the notice mentioned in it to an officer of the ICAV but, where the notice is delivered to that officer, the second reference in that subsection to person, and each reference in *subsections (2) and (3)* to the person to whom the notice is delivered or otherwise to person, is to be read as a reference to the ICAV.”.

—An tAire Airgeadais.

35. In page 104, between lines 23 and 24, to insert the following:

“General offences

175. Sections 876(1) and (3), 877 and 878 of the Companies Act 2014 have effect as if the references to a company included an ICAV and the references to that Act included this Act.”.

—An tAire Airgeadais.

36. In page 104, between lines 23 and 24, to insert the following:

“Evidential matters

176. (1) Sections 879 to 886 of the Companies Act 2014 have effect as if references to that Act (or Parts 1 to 15 of that Act) included this Act.

(2) In the application of section 886(6) in relation to a declaration that purports to be made in pursuance of or for the purposes of—

(a) this Act, or

(b) a provision of that Act in its application by virtue of this Act,

the references to the Registrar are to the Bank.”.

—An tAire Airgeadais.

37. In page 104, to delete lines 26 to 29 and substitute the following:

“Mergers involving ICAV

168. (1) An ICAV authorised under the UCITS Regulations may, in accordance with the provisions of the UCITS Regulations, merge with any other UCITS.

(2) An ICAV authorised under UCITS Regulations which is the merging UCITS in relation to a merger for the purposes of the UCITS Regulations which involves the transfer of all its assets and liabilities to another UCITS (or a sub-fund of another UCITS) in the course of the merger shall, in accordance with the provisions of the UCITS Regulations, be dissolved without winding up on the coming into effect of the merger.

(3) An ICAV authorised under *section 19* may merge with any other form of collective investment vehicle in accordance with any conditions imposed by the Bank.

(4) An ICAV authorised under *section 19* which transfers all of its assets and liabilities to another collective investment vehicle (or a sub-fund of another collective investment vehicle) in accordance with conditions imposed by the Bank shall be dissolved without winding up on the coming into effect of the merger.”.

—An tAire Airgeadais.

38. In page 105, to delete lines 22 to 31.

—An tAire Airgeadais.

39. In page 105, to delete lines 32 to 34.

—An tAire Airgeadais.

40. In page 106, after line 38, to insert the following:

“Director of Corporate Enforcement

178. Sections 953, 956 and 957 of the Companies Act 2014 have effect as if references to that Act included this Act.”.

—An tAire Airgeadais.