



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

EXPLANATORY MEMORANDUM

PART 1

PRELIMINARY AND GENERAL

CHAPTER 1

Preliminary

Section 1 — Short title and commencement

This is a standard provision giving the title of the Bill and when it will come into effect.

Section 2 — Definitions

This section contains a number of definitions of terms used throughout the Bill.

In particular it defines the term “ICAV” as meaning an Irish Collective Asset — management Vehicle as the new body corporate type which the Act is designed to allow to be formed and operated.

Section 3 — Power to make regulations

This sections provides that the Minister for Finance may make Regulations in respect of certain specified matters, and contains the parameters within which such powers can be exercised.

Section 4 — Expenses

This is a standard provision relating to expenses incurred by the Minister for Finance in the administration of the Act.

CHAPTER 2

Creation of ICAVs and carrying on of business

Section 5 — Creation of ICAV with limited liability

This section sets out the basic purpose of the Act — to enable the formation of a new body corporate, what it can do, the objects for which it can be established, and the fact that the liability of its members will be limited.

Section 6 — Instrument of incorporation

This section makes provision for the basic constitutional document

needed to form an ICAV and identifies particular matters that must be included in the document.

Section 7 — Registered office

In accordance with this section every ICAV will be required to have a registered office in the State. Moreover, any changes in the location of the office will have to be notified to the Central Bank.

Section 8 — Carrying on a business

This section provides that an ICAV will require authorisation from the Central Bank to carry on the business of an ICAV, and also limits the business to that permitted to be carried on under either this Act and where applicable, the Alternative Investment Funds Regulations (AIFM Regulations) or under the Undertaking for Collective Investment in Transferrable Securities Regulations (UCITS) which govern the activities on investment funds. In essence, every ICAV will need an authorisation to carry on business either as an Alternative Investment Fund (AIF) under this Act, or as a UCITS under the UCITS Regulations.

PART 2

REGISTRATION AND AUTHORISATION OF ICAVs ETC.

CHAPTER 1

Registration

Section 9 — Registration order

This section enables the Central Bank, who will deal with all registration functions relating to ICAVs, having processed an application duly made, to make a registration order under this Chapter, the outcome of which will be to effect the incorporation of an ICAV under section 15.

Section 10 — Application for registration order

This section details the manner in which and the matters which must be provided in an application to be made to the Central Bank to have an ICAV incorporated. As with similar applications for other bodies, provision is included which allows the Central Bank to specify any additional information or requirements that must be provided or complied with as part of the application process.

Section 11 — Contents of statement required by section 10(2)(b)(ii)

This section sets out a specific number of conditions as regards the information required pursuant to the previous section and manner of submission of same to the Central Bank, and specifies certain consequences.

Section 12 — Making of registration order

Once the Central Bank is satisfied with the matters detailed in this and the next section, it shall make a registration order, notice of which must be given to the applicant, including an indication of the date on which it comes into effect.

Section 13 — Requirements referred to in section 12(1)(a)(ii)

This section sets out particular conditions that must be met by applicants to comply with under subsection (1)(a)(ii) of the previous section.

Section 14 — Registration of certain matters following making of registration order

The Central Bank is required under this section to enter certain details in relation to each new ICAV in a register to be maintained by the Central Bank — the register being open to inspection by the public.

Section 15 — Commencement of registration order

Section 15 provides that on the coming into effect of a registration order made by the Central Bank, the ICAV subject of the order is constituted as a body corporate, having perpetual succession and with the liability of its members limited to the amount, if any, unpaid on their shares registered in their name at that time.

Section 16 — Decision to refuse registration order

This section requires the Central Bank to give notice to an applicant where it decides to refuse an application under section 10 for a registration order. The applicant can appeal the decision.

CHAPTER 2

Authorisation and approval

Section 17 — Authorisation

As mentioned in the context of section 8, every ICAV will need an authorisation either as an AIF or a UCITS.

The UCITS Regulations (S.I. 352 of 2011) already make provision for such authorisations. A proposed amendment to the UCITS Regulations, contained in section 132 will enable an ICAV to apply to be authorised as a UCITS.

However, in respect of an AIF, it is necessary to provide for the authorisation of an ICAV as an AIF, and this Chapter provides accordingly.

Section 18 — Application for authorisation

This section sets out in specific details the information that will have to be submitted by applicants to obtain authorisation as an AIF. Where considered necessary, additional information can be sought by the Central Bank, which can also require certain matters be attested as to authenticity and correctness.

These requirements mirror the details applicable to UCITS authorisations.

Section 19 — Grant of authorisation

This section enables the Central Bank to grant an authorisation if it is satisfied in relation to certain specified requirements being met, as set out in the section.

The section also contains requirements as regards notifications of decisions taken by the Central Bank, and in particular the date from which the authorisation takes effect.

Section 20 — Decision to refuse authorisation

This section sets out the basis on which the Central Bank may refuse an application for authorisation; it requires written notice of such a decision to be given to the applicant and also provides that such a decision is appealable.

Section 21 — Appointment and approval of depositary

This section requires an ICAV to appoint a depositary, which itself must be approved by the Central Bank. Procedural matters in relation to this application process are set out in the section, which can include the refusal to grant approval, in which event an appeal can be made.

Section 22 — Application for approval of management company

This is the first of three sections dealing with the process for approval of a management company by the Central Bank, and sets out the basic requirement for such approval to be obtained, and the manner in which additional information can be required.

Section 23 — Approval of management company

Following from the previous section, this section provides for the Central Bank to approve a management company where it is satisfied as regards the matters specified therein.

Section 24 — Refusal to approve management company

Under this section the Central Bank may refuse to approve an application under section 22, the Central Bank has to give notice of such a decision and such a refusal is appealable in the manner described.

Section 25 — Authorisation or approval not a warranty

This section highlights the fact that the Central Bank shall not be liable for performance or default following authorisation or approval of an ICAV, management company or depositary.

Section 26 — Revocation of authorisation

This section contains provisions, including the procedures to be followed, where the Central Bank proposes to revoke the authorisation of an ICAV. The proposed regime mirrors that applicable to other investment funds vehicles. The objective is that ICAVs and all funds will be subject to a near uniform regime.

Section 27 — Imposition of conditions by Bank

Section 27 mirrors in respect of ICAVs, the powers available to the Central Bank to impose conditions on ICAVs, their management companies or depositories.

Section 28 — Prohibition on carrying on business as an ICAV unless authorised etc.

This section prohibits any body or person to carry on any business under a name which includes “Irish Collective Asset Management Vehicle” or “ICAV” as its last part, or make any representation in that regard.

CHAPTER 3

Names and Changes in Instrument of Incorporation

Section 29 — Name of ICAV

This section requires that the name of an ICAV shall end with the long title “Irish Collective Asset-management Vehicle” or the acronym “ICAV”. The Central Bank can refuse to authorise an ICAV with a name that it considers to be undesirable or misleading.

Section 30 — Approval for change of name

This section prohibits an ICAV from changing its name unless the change is approved by the Central Bank

Section 31 — Bank's approval for certain changes in respect of ICAV

This section prohibits an ICAV making an alteration to its instrument of incorporation without the approval of the Central Bank. Where such changes are made, the ICAV has to file a copy of the instrument of incorporation containing the changes made.

CHAPTER 4

Execution of documents, seals etc.

Section 32 — Execution of documents

This section provides that an ICAV can execute documents either by affixing its common seal, or by specified signatories signing the document in question.

Section 33 — Common seal

This section allows, but does not require, an ICAV to have a common seal, and where it has one, requires the seal to have the ICAV's name engraved on the seal.

Section 34 — Official seal for share certificates

Where an ICAV has a common seal pursuant to the previous section, this section allows it to have a separate seal especially for sealing shares.

CHAPTER 5

Sub-funds of umbrella funds

Section 35 — Segregated liability of ICAV sub-funds

For efficiency purposes, investment funds frequently organise their portfolios through sub-funds — this section allows such arrangements, and in particular provides segregated liability for each sub-fund, so that the assets of any such sub-fund cannot be applied to meet the liability of another sub-fund with the same umbrella fund.

This section and the two following sections mirror provisions contained in Part XIII of the Companies Act 1990 relating specifically to investment companies.

Section 36 — Requirements to be complied with by, and other matters respecting, an umbrella fund

Following from the previous section, this section sets out in greater detail particular requirements that must be complied with in respect of segregated funds.

The section also sets out implied terms that operate in respect of every contract, agreement, arrangement or transaction entered into by an umbrella fund, and what happens if particular situations occur.

Section 37 — Further matters about umbrella funds

This section contains more specific provisions relating to the manner in which sub-funds, while not separate legal entities, can nevertheless operate as if they were in the circumstances specified in this section. On the basis that each of these is cross applied to provisions of the Companies Acts *relating to Winding-ups* that are proposed to be cross applied by the present Bill, they will have the

same effect for ICAVs as they have in respect of Part XIII companies.

PART 3

SHARES AND DEBENTURES ETC.

Section 38 — Power to issue shares and debentures

This section sets out the basic entitlement of an ICAV to issue shares and debentures, and contains parameters within which such issues can be made.

Section 39 — Share certificates

This section deals with the issue of share certificates but having regard to the particular nature of investment bodies, also allows for the instrument of incorporation to provide that certificates will not be issued, in which event written confirmation will be made in the register of members.

Section 40 — Evidence of share certificate

This section provides that a certificate under the seal of an ICAV is prima facie evidence of title of the member named therein to the share.

Section 41 — Nature of shareholding

This section provides that the interest of a member of an ICAV is personal estate rather than real estate.

Section 42 — Transfer of registered shares

This section lays down the basic requirement that any transfer of shares or debentures requires a proper instrument of transfer.

Section 43 — Refusal to register transfer of shares

This section specifies circumstances where an ICAV will be entitled to refuse to register a transfer of shares, sets out the timeframe within which it can so act, and sets out what notifications must be given.

Section 44 — Certification of transfer of shares

This sections deals with the certification by an ICAV of any instrument of transfer of shares and the consequences which flow from such an action, including potential liability arising from a negligently made certification.

Section 45 — Transfer: supplementary

This section contains supplementary provisions in relation to transfer of shares, including those which are transmitted through the operation of law, and the rights that pass on the death of any one of persons holding shares jointly.

Section 46 — Power to purchase own shares

This section gives the right to every ICAV to purchase its own shares, subject to certain requirements, including those as provided for in the ICAV's instrument of incorporation and in accordance with Regulations made by the Central Bank in this regard.

Section 47 — Treatment of purchased shares

This section requires that any shares bought back by an ICAV must be cancelled and an appropriate reduction must be made to the issued share capital for the ICAV in question. However, special

provisions are set out in respect of the operation of umbrella funds, again subject to conditions imposed by the Central Bank.

Section 48 — Membership

This section provides that once a person agrees to become a member, and his or her name is included on the ICAV's register of members, then that person is a member of the ICAV.

Section 49 — Register of members

This section requires every ICAV to keep a register of its members and specifies the information that must be entered in the register and the time within which entries must be made.

Section 50 — Inspection of register of members

This section requires that each ICAV must keep available for inspection the register of members in the State either at its registered office or at an alternative location which has been notified to the Central Bank.

Section 51 — Consequence of failure to comply with requirements as to register owing to agent's default

Where the register of members is maintained by an agent on behalf of an ICAV, failure by the agent to comply with the requirements regarding notifications and such like will render the agent liable to the same penalties as would apply to the ICAV itself.

Section 52 — Rectification of register

This section sets out the manner in which errors in the register may be rectified, and includes recourse to the High Court.

Section 53 — Trusts not to be entered on the register

This section prevents the entry of any trust on the register of members of an ICAV.

Section 54 — Register as evidence

Section 54 simply provides that the register of members is prima facie evidence of matters required to be entered in the register.

Section 55 — Power of members to complain of oppressive conduct

Where a member of an ICAV considers that the affairs of the ICAV are being conducted in an oppressive manner, this section provides a means for them to apply to the High Court for an Order to have the matter addressed in such manner as the Court considers appropriate. The section includes a number of matters that may be addressed and the manner in which they may be given effect.

PART 4

DIRECTORS AND OTHER OFFICERS

CHAPTER 1

Appointment, removal etc.

Section 56 — Number of directors

This contains the basic requirement that every ICAV shall have two directors.

Section 57 — Secretary

This section requires every ICAV to have a secretary, or joint secretaries.

A director may also be the secretary.

This section also permits another person duly authorised to discharge the functions of a secretary.

Other requirements in relation to the secretary are set out in this section.

Section 58 — Prohibition on body corporate being a director

Under this section, a body corporate cannot act as a director of an ICAV.

Section 59 — Avoidance of acts done by person in dual capacity as director and secretary

Under this section, any matter to be done under the Act, regulations made thereunder, or in an ICAV's instrument of incorporation, by or to a director and secretary, cannot be satisfied by the same person acting as both director and secretary.

Section 60 — Validity of acts of directors

This section provides that the acts of a director of an ICAV are valid, even where some defect in the director's appointment or qualification come to light.

Section 61 — Appointment of directors to be voted on individually

This section provides that appointments of directors at a general meeting must be voted on individually, unless a resolution has been unanimously agreed that this need not be so.

Section 62 — Removal of directors

This section provides for the manner in which a director may be removed from office before his or her term of office ends, and a replacement appointed.

It deals in particular with notices which must be given, timelines that must be observed and the opportunity of the person involved to make their position known through written representations, in dealing with such matters.

Section 63 — Prohibition of undischarged Bankrupt acting as officer etc. of ICAV

This section provides that an undischarged Bankrupt cannot act as a director of an ICAV except with the leave of the court.

Section 64 — Examination as to solvency status of director etc.

This section enables the Director of Corporate Enforcement (ODCE) to seek information regarding their financial position from any person whom it believes to be acting as a director of an ICAV while being an undischarged Bankrupt.

The ODCE can also request the High Court to require such a person to appear before the court and answer any questions relating to the statement so provided.

In the final analysis, the High Court can make a disqualification order in respect of such a person.

Section 65 — Register of directors and secretaries

This section requires every ICAV to maintain a register of its directors and secretaries and, if any, its deputy and assistant secretaries.

The sections sets out in precise manner, the matters that must appear on the register for each person concerned.

The manner in which notification must be made are also set out.

All changes which occur must be notified to the Central Bank within 14 days.

Each person appointed to one of the positions must sign a consent to act in the capacity concerned.

Section 66 — Provision supplementary to section 65

This section contains supplementary requirements to those in the previous section dealing specifically with the situation where a director becomes disqualified in a country or territory outside of Ireland. This involves the obligation on the person concerned to make the information known to the ICAV and places an obligation on the ICAV to forward relevant information to the Central Bank.

Section 67 — Entitlement to notify Bank of changes if section 65(6) contravened

Where a director or secretary of an ICAV resigns, the ICAV itself is obliged to notify this fact to the Central Bank. Where an ICAV fails to make such a notification, this sections sets out the process which the director or secretary can follow to ensure the Central Bank is informed of the resignation.

Section 68 — Particulars relating to directors to be shown on all business letters

This section contains requirements regarding particular of directors which must be contained on all business letters. The section also allows the Central Bank to grant an exemption from this requirement in exceptional circumstances.

CHAPTER 2

Controls on directors

Section 69 — Prohibition of tax-free payments to directors

This sections prohibits tax-free payments to directors, and specifically requires any net payments of such amounts to be grossed-up and made liable to the appropriate level of income tax.

Section 70 — Payment of compensation

This section is designed to ensure that any payments by way of compensation to directors retiring or losing office must be approved by resolution of the ICAV in general meeting. Where such a payment is made in contravention of this requirement, it is deemed to be received in trust by the director, and section 73, post, provides how such funds are returned to the ICAV.

Section 71 — Duty of director to disclose payments made in connection with transfer of shares

Like the previous section, this section requires disclosures to be made by directors where they are likely to receive compensation as part of an offer made to the general body of shareholders involving a transfer of shares as detailed in the section.

The obligation on the director is to take all reasonable steps to ensure that particulars of the proposed payment, including the amount, is disclosed.

Where there is a failure to make the necessary disclosures, any amounts received are deemed to be held in trust. The next section provides for how such funds are to be returned to the ICAV.

Section 72 — Sections 70 and 71: supplementary

Expressed as being supplementary to the previous two sections, this section sets out precisely how calculations are to be made to determine the amounts that are to be regarded as the compensation paid to the director in question in the instances provided for in those two sections.

Section 73 — Contracts of employment of directors

The operative part of this section is contained in subsection (3), which requires approval of a term of employment for a director of greater than 5 years, which cannot be terminated by the ICAV by notice, or can be terminated only in specified circumstances, as requiring the prior approval by resolution of the ICAV in general meeting.

Section 74 — Section 73: anti-avoidance

This is an anti-avoidance provision, linked to the previous section, and relates to circumstances where it is proposed to extend an agreement of employment of a director of an ICAV which still has more than six months to run — essentially, the computation of the length of the new agreement is to be determined by adding the unexpired period the original agreement to the proposed time period of the new agreement for the purposes of calculating whether the five year period arises.

Section 75 — Prohibition on loans etc. to directors and connected persons

This section is designed to prohibit an ICAV from making any loan or quasi-loan to a director or a person connected with such a director, or from entering into a credit transaction or guarantees or providing any securities for such loans, or otherwise taking part in arrangements under which the ICAV assumes obligation or liabilities on behalf of directors or persons connected with them. The section provides that where contravention take place, the transactions are voidable at the instance of the ICAV, and also contains restitution provisions, as well as defences available to accused parties.

Section 76 — Section 75: supplementary

This section sets out definitions of the various terms that are used in the previous section.

Section 77 — Section 75: connected persons

This section is also linked to section 75, and contains a specific definition of “connected persons” for the purposes of that section.

Other matters

Section 78 — Directors to have regard to interests of employees

This sections imposes a general obligation of the directors of an ICAV to have regard to the interests of its employees in general, as well as the interests of its members.

Section 79 — Register of shareholdings of directors etc.

This section requires every ICAV to maintain in a register, in relation to each director and secretary, details of all interests held by them in shares or debentures of the ICAV in question, or in any of its subsidiary or holding companies.

Details of what information must be entered, and when and where the register is available for inspection are also set out *in extensio* in the section.

Section 80 — Disclosure for the purposes of section 79

This section requires a director to provide the information necessary to enable the ICAV to maintain the register mentioned in the previous provision.

Section 81 — Declaration of interests in contracts

To avoid potential conflicts of interest, this section requires disclosures to be made by directors of an ICAV where a director is interested in a contract with the ICAV. A general notification that a director is a member of an entity is regarded as sufficient notice in respect of any contract that the ICAV may subsequently make with that entity.

Section 82 — Restriction and disqualification

The purpose of this section is to cross apply the provisions of the Companies Acts relating to the restriction or disqualifications of directors of companies to the directors of ICAVs.

Where a director is restricted, he or she can be a director of another body corporate, but any such body is subject to specific restriction, whether as regards minimum capital, that shares have to be fully paid-up, and some restrictions are placed on the entities freedom to avail of provisions in the Companies Acts.

The disqualification provisions set out the circumstances in which actions to have directors disqualified can be taken as well as the procedures to be followed.

PART 5

MEETINGS

Section 83 — Minutes of meetings

This section requires minutes of all general meetings and meeting of directors of ICAVs to be prepared. Such minutes when signed are evidence of the proceedings unless and until the contrary is proved. Access to such records is also provided for.

Section 84 — Annual general meetings

This section requires every ICAV to hold an annual general meeting every year, and sets out timelines that must be observed. The section permits the directors to elect to dispense with the

holding of AGM, but as a counter balance, any member or members holding not less than 10% of the voting rights can require the directors to hold an AGM.

Section 85 — Extraordinary general meetings

This section makes provision for directors to convene an extraordinary general meeting.

Section 86 — Convening of extraordinary general meetings by members

This section sets out the manner in which members of ICAVs can request the holding of an extraordinary general meeting, and the procedural matters associated with making such a request.

PART 6

ACCOUNTS, REPORTS AND AUDITING

CHAPTER 1

Accounting records

Section 87 — Obligation to keep adequate accounting records

This section obliges every ICAV to keep adequate accounting records.

Section 88 — Basic requirement for accounting records

This section sets out the basic requirements in relation to what accounting records must be kept, such as will enable the financial position of an ICAV to be determined with reasonable accuracy, contain details on an ongoing basis, and that adequate precautions against falsification are taken.

Section 89 — Where accounting records are to be kept

This section requires that the accounting records should be kept at the registered office of the ICAV, or such other place as the directors may decide.

Section 90 — Access to accounting records

ICAVs are required under this section to keep the accounting records available for inspection by its officers and other parties entitled to inspect the records under the present Act.

Section 91 — Retention of accounting records

This section requires accounting records to be preserved for six years.

Section 92 — Accounting records: offences

The offences for failure to maintain the necessary accounting records are set out in this section, which also contains a defence for those charged with a breach to show that other competent and reliable persons were charged with responsibility for maintaining the accounting records.

Section 93 — Personal liability of officers where adequate accounting records not kept

This section empowers the High Court to declare that, where failure to keep proper accounting records etc. required under the preceding sections is considered to have contributed to an ICAV's inability to pay its debts or has otherwise substantially impeded the

orderly winding up of the ICAV, one or more of the officers in default can be made personally liable, without any limitation of liability, for the debts or other liabilities of the ICAV. Detailed procedural provisions are contained in the section.

CHAPTER 2

Annual accounts

Section 94 — Annual accounts

This section requires every ICAV to prepare annual accounts/financial statements.

As with other investment funds, in addition to being permitted to prepare the accounts/financial statements in accordance with Irish or International financial standards adopted by the EU, it is proposed to permit ICAVs prepare their accounts in accordance with a specific number of other standards.

Section 95 — Accounts to include information about directors

This section requires details regarding directors' emoluments, pensions and compensation to be shown in the annual accounts.

CHAPTER 3

Directors' report

Section 96 — Directors' report

This section requires, for each financial year, the preparation of a directors' report on the activities of the ICAV — the section contains the matters that must be covered in the report.

Section 97 — Revised directors' reports

This section allows the directors of an ICAV to prepare a revised directors' report where they discover that the original report did not comply with the requirements of this Act. However, the permission confines the revisions permitted where the report has already been laid before the AGM of the ICAV in question.

CHAPTER 4

Audit

Section 98 — Auditor report on accounts

This section require that the annual accounts/financial statements of every ICAV must be audited.

Section 99 — Consideration by auditor of consistency of directors' report with ICAV's accounts

Under this section, the auditor is required to report on whether the directors' report is consistent with the annual accounts/financial statements for the ICAV in respect of the same year.

Section 100 — Duty of auditor in relation to suspected commission of indictable offence

This section requires an auditor of an ICAV who comes across instances where there are reasonable grounds for believing that an officer or agent of an ICAV has committed an indictable offence under this Act, to notify that opinion to either the ODCE or the Central Bank, as appropriate. The section also sets out the manner in which auditor, if requested, is required to co-operate with the enforcement agencies.

Section 101 — Eligibility to be an auditor

The sections deals with the eligibility of persons for appointment as auditor of an ICAV.

Section 102 — Actor acting where ineligible

This section creates an offence where an ineligible person acts as an auditor.

Section 103 — Appointment of auditors

This section contains specific provisions governing the appointment of auditors by ICAVs at each AGM. The ultimate default position is that the Central Bank can appoint an auditor where the ICAV fails to do so.

Section 104 — Casual vacancy

Under this section, a casual vacancy in the office of auditor of an ICAV may be filled by the directors of the ICAV or by the members in general meeting.

Section 105 — Partnership

Where a partnership is appointed as auditor of an ICAV, this section sets out how the appointment is to be treated and in particular whether it is the partnership practice or individual members are the auditor. The section also deals with what happens to appointments where a partnership ceases.

Section 106 — Auditor's access to records

This section is designed to ensure that an auditor has full access to the accounting records of the ICAV being audited.

Section 107 — Rights of auditors

This section is designed to ensure that the auditor of every ICAV receives notices of all general meetings of the ICAV, and furthermore is entitled to attend and be heard at any such meeting.

Section 108 — Remuneration of auditors

This section provides that the remuneration of an auditor of an ICAV appointed at an AGM is to be fixed by the ICAV in general meeting. Where the appointment of the auditor is made by the directors of by the Central Bank, the remuneration shall be fixed by them, respectively.

Section 109 — Power to competent authority

This section provides that the powers of the competent authority under Regulation 75 of the Audits Regulations will be applicable to ICAVs.

Section 110 — Removal of auditor

This section makes provision for the removal of an auditor by the passing of an appropriate resolution to that effect at an AGM of the ICAV. The Central Bank must be notified of any such action. An auditor's rights to seek compensation or damages arising from such termination are not removed.

Section 111 — Resolution for removal of auditor

This section sets out in some detail the procedures to be followed in relation to resolutions proposing the removal of an auditor. It also specifically entitles the auditor to make representations and seek to have these circulated to the members of the ICAV. The ICAV can

apply to court not to have to circulate these where they are considered to be for the purposes of securing needless publicity.

Section 112 — Auditor who has been removed

This section preserves the rights of an auditor who has been removed from office to receive notices, to attend and be heard at the meeting at which his term of office would otherwise have expired.

Section 113 — Resignation of auditor

This section makes provision for the resignation of an auditor of an ICAV. In particular any notice of resignation must be accompanied by the statement required by section 116, as to whether or not there are matters that, in the view of the resigning auditor, ought to be brought to the attention of the shareholders. An effective notice brings an auditor's term of office to an end either on the date it is deposited with the ICAV or as specified in the notice.

Section 114 — Statement of circumstances

This section enables a resigning auditor to request that a general meeting be held forthwith to consider all matters associated with the auditor's resignation. Procedures are provided for the ICAV to call the meeting, for the circulation of documentation and also for an application to be made to court where the ICAV or other aggrieved party consider that the process is being abused to secure needless publicity.

Section 115 — Auditor who has resigned

This section ensures that an auditor who has resigned maintains the same rights as regards a meeting to consider matters associated with his resignation as obtained in respect of general meetings of the ICAV in question.

Section 116 — Requirements consequent on ceasing to hold office

This section requires a resigning auditor to deposit a statement at the head office of an ICAV of circumstances associated with the resignation that he or she considers ought to be brought to the attention of the shareholders or creditors of the ICAV, or a statement of the fact that there are no such circumstances. Detailed provisions are set out to cover different scenarios, and time frames within which stated actions must be taken. An appeal may be made to the court where the ICAV considers the application is being used to secure needless publicity for defamatory matters. Any further actions to be taken are dependent on the outcome of the court proceedings.

Section 117 — Withdrawal of approval

This section cross applies matters relating to the withdrawal of approval of auditors contained in the Audit Regulations applicable to auditors of companies.

PART 7

CONVERSIONS OF INVESTMENT COMPANIES TO ICAVS

Section 118 — Conversion of investment

This is the first of five sections in this Part, the combined effect of which is designed to enable an existing investment company to convert to an ICAV by following the detailed procedures contained in the sections.

Section 118 sets out a number of explicit matters that must be provided, factors that must be certified by statutory declaration, and makes provision for publication of the making of the application for conversion.

Section 119 — Declaration of solvency

This section requires a specific declaration of solvency to be made by a director of the investment company which proposes to convert to an ICAV, and all matters pertaining to the manner in which this is made and certified.

Section 120 — Registration pursuant to application for conversion

This section makes provision for the issue by the Central Bank of a registration order in respect of the converting investment company as an ICAV, and for its consequential de-registration as an investment company in the Companies Registration Office. The section also spells out the legal consequences which flow from the conversion.

Section 121 — Further statutory declarations

Where any material change occurs between the date of the original statutory declaration made at the initiation of the conversion process and before the issue of the registration order, a supplementary statutory declaration is required under this section.

Section 122 — Failure to comply

Where there is a failure to comply with the procedures and process for conversion set out in this Part, this section enables the Central Bank to have the failure rectified, holding the ultimate sanction of striking from the register an IVCAV that fails to so rectify the default.

PART 8

RECEIVERS, WINDING UP, STRIKING OFF ETC.

CHAPTER 1

Receivers

Section 123 — Receiver

This section cross-applies the provisions of the Companies Acts relating to receivership to ICAVs, subject to any necessary modifications. The intention is that parties are familiar with such procedures and all interests will understand how matters are dealt with under the company law in question.

CHAPTER 2

Winding up

Section 124 — Winding up

This section cross-applies the provisions of the Companies Acts relating to winding up to ICAVs, subject to any necessary modifications. The intention is that parties are familiar with such procedures and all interests will understand how matters are dealt with under the company law in question.

*Striking off and restorations**Section 125 — Striking off and restoration*

This section cross-applies the provisions of the Companies Acts relating to the striking off and restoration of companies to ICAVs, subject to any necessary modifications. The intention is that parties are familiar with such procedures and all interests will understand how matters are dealt with under the company law in question.

PART 9

MISCELLANEOUS

Section 126 — Mergers involving ICAVs authorised under Act

This section cross applies Part 7 of the UCITS Regulations relating to mergers to AIF ICAVs authorised under the present Bill when enacted.

Section 127 — Migration

This section cross applies the provisions in the Companies Acts that facilitate the inward migration of investment funds from designated jurisdictions and provides for their continuation as investment companies, to ICAVs, subject to appropriate modifications.

Section 128 — ICAVs continued under foreign law

This section cross applies the provisions in the Companies Acts that facilitate the outward migration of investment funds to designated jurisdictions and provides for their continuation as investment funds, to ICAVs, subject to appropriate modifications.

Section 129 — Taxation

The amendment to the Tax Consolidation Act provided for in this section will ensure that ICAVs formed under the present Bill will qualify for treatment for tax purposes in a manner similar to other investment funds authorised as UCITS and AIFs.

Section 130 — Categories of offences

This section enumerates three categories of offences which will apply to breaches of the various provisions in the Bill that contain relevant penalties for failure to comply with requirements of particular sections. Categories 1 and 2 offences are the most serious and provide both summary and indictable penalties, while category 3 only contains summary penalties.

Section 131 — Agency with responsibility for enforcement of offences

This section details the specific sections that the two enforcement bodies — the Central Bank and the Office of Director of Corporate Enforcement- will be responsible for enforcing.

Section 132 — Investigations

The provisions of the Companies Acts relating to investigations are cross-applied to the ICAV.

Section 133 — Amendment of UCITS Regulations

This section makes an amendment to the UCITS Regulations to permit the authorisation of an ICAV as a UCIT.

Section 134 — Amendment of Central Bank Act 1942

This section adds this Bill (when enacted) to schedule 2 of the Central Bank Act 1942 as a designated enactment. Inclusion in schedule 2 of the Central Bank Act 1942 has the effect, inter alia, of allowing the Central Bank to take administrative enforcement actions against the ICAV and its officers, etc.

Section 135 — Exemption of liability void

While this section prohibits an ICAV from exempting any officers or auditors from liability as a result of any negligence, default, breach of duty or breach of trust in for which he or she may be guilty in relation to the ICAV, it is not prevented from indemnifying such officer or auditor where judgment is given in his or her favour or in which he or she is acquitted. The ICAV can also purchase and maintain insurance cover in respect of such liabilities.

Section 136 — Notice

This section enables the Central Bank to serve various notices provided for in the Bill electronically.

SCHEDULE

The schedule sets out specific information that must be contained in the annual accounts required under Part 6 of the Bill.

*An Roinn Airgeadais,
Iúil, 2014.*