



SEANAD ÉIREANN

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

**LEASUITHE COISTE
COMMITTEE AMENDMENTS**

SEANAD ÉIREANN

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

IRISH COLLECTIVE ASSET-MANAGEMENT VEHICLES BILL 2014 —COMMITTEE STAGE

*Leasuithe
Amendments*

**Government amendments are denoted by an asterisk*

SECTION 2

- *1. In page 12, lines 19 and 20, to delete “*section 85*” and substitute “*section 85*”.

SECTION 5

2. In page 14, line 15, after “property” to insert “, other than residential or commercial real estate,”.

—*Senator Sean D. Barrett.*

3. In page 14, between lines 20 and 21, to insert the following:

“(5) No guarantee of the Government of Ireland or the Central Bank of Ireland shall apply to any ICAV.”.

—*Senator Sean D. Barrett.*

4. In page 14, between lines 20 and 21, to insert the following:

“(5) The standard corporate tax rate of 12.5 per cent shall apply to ICAVs.”.

—*Senator Sean D. Barrett.*

SECTION 6

5. In page 15, to delete lines 3 and 4 and substitute the following:

“(4) The Bank shall specify that the ICAV is compliant with the Capital Requirement Directive CRD IV/CRR published in the Official Journal of the European Commission on June 27, 2013.”.

—*Senator Sean D. Barrett.*

SECTION 11

- *6. In page 17, to delete lines 1 to 3 and substitute the following:

“(a) in relation to a person named as a director of the ICAV—

- (i) all particulars which are, in relation to a director, required pursuant to *subsection (2) of section 65* to be contained in the register kept under that section, and
- (ii) if the person is disqualified under the law of a country or territory other than

[SECTION 11]

the State (whether pursuant to an order of a judge or a tribunal or otherwise) from being appointed or acting as a director or secretary of a body corporate or an undertaking, the particulars which are required by *section 66(1)* to be stated in a notification under *section 65(6)*,

and”.

SECTION 18

*7. In page 19, to delete lines 12 and 13 and substitute the following:

“(ii) if the ICAV is not authorised under the AIFM Regulations, the full name and address of the proposed external AIFM within the meaning of the AIFM Regulations, and”.

SECTION 23

*8. In page 22, line 8, after “satisfied” to insert “that”.

*9. In page 22, line 9, to delete “that”.

SECTION 27

*10. In page 24, to delete lines 21 to 25 and substitute the following:

“(f) borrowing policies of an ICAV, or

(g) the timing and contents of reports issued by an ICAV,

and such other supervisory and reporting conditions relating to the business of an ICAV as the Bank considers appropriate and prudent to impose on the ICAV, depositary or management company.”.

SECTION 32

*11. In page 26, between lines 8 and 9, to insert the following:

“Execution of documents

32. (1) Contracts on behalf of an ICAV may be made as follows:

(a) a contract which, if made between natural persons, would be by law required to be in writing and to be under seal, may be made on behalf of the ICAV in writing under the common seal of the ICAV in accordance with this section;

(b) a contract which, if made between natural persons, would be by law required to be in writing, signed by the parties, may be made on behalf of the ICAV in writing, signed by any person acting under its authority, express or implied;

(c) a contract which, if made between natural persons, would by law be valid although made by parol only, and not reduced into writing, may be made by parol on behalf of the ICAV by any person acting under its authority, express or implied.

(2) A contract made according to this section shall bind the ICAV and its successors and all other parties to it.

(3) A contract made according to this section may be varied or discharged in the same manner in which it is authorised by this section to be made.

[SECTION 32]

- (4) The following provisions of this section shall apply whether it is the case that—
 - (a) as permitted by *section 33*, the ICAV does not have a common seal, or
 - (b) the ICAV does have such a seal.
- (5) A document has the same effect as if executed under the common seal of the ICAV if it is expressed (in whatever form of words) to be executed by the ICAV and it is signed on behalf of the ICAV—
 - (a) by 2 authorised signatories, or
 - (b) by a director of the ICAV in the presence of a witness who attests the signature.
- (6) Each of the following is an authorised signatory for the purposes of *subsection (5)*:
 - (a) a director of the ICAV;
 - (b) the secretary (or any joint secretary) of the ICAV; or
 - (c) any person authorised by the directors of the ICAV in accordance with the ICAV’s instrument of incorporation.
- (7) Where a document is to be signed by a person on behalf of more than one ICAV, it is not duly signed by that person for the purposes of this section unless he or she signs it separately in each capacity.
- (8) References in this section to a document being (or purporting to be) signed by a secretary are to be read, in a case where that office is held by a firm, as references to its being (or purporting to be) signed by an individual authorised by the firm to sign on its behalf.”.

[Acceptance of this amendment involves the deletion of section 32 of the Bill.]

SECTION 68

- 12.** In page 43, to delete lines 17 to 19.

—*Senator Sean D. Barrett.*

SECTION 84

- *13.** In page 56, between lines 18 and 19, to insert the following:

“Breaches of certain duties: liability to account and indemnify

- 84.** (1) Subject to *section 85**, where a director of an ICAV acts in breach of his or her duty under *section 79(1)(a), (c), (d), (e), (f) or (g)*, he or she shall be liable to do either or both (as the corresponding common law rule or equitable principle relating to bodies corporate with respect to the matter would have required) of the following things:
- (a) account to the ICAV for any gain which he or she makes directly or indirectly from the breach of duty;
 - (b) indemnify the ICAV for any loss or damage resulting from that breach.
- (2) *Subsection (1)* is without prejudice to—
- (a) the ICAV’s right at common law to claim damages for breach of duty, or

[SECTION 84]

(b) the ICAV’s right to make an application seeking the grant of equitable relief,

but *subsection (1)* and this subsection shall not be read as having the combined effect of enabling the ICAV to be afforded more compensation for any damage or injury, or more protection of any proprietary right, than is just and equitable in all the circumstances.”.

[*This is a reference to the section proposed to be inserted by amendment No.14*]

SECTION 85

*14. In page 56, between lines 18 and 19, to insert the following:

“Power of court to grant relief to officers of ICAV

85. (1) This section applies to any action for negligence, default, breach of duty or breach of trust against an officer of an ICAV.

(2) In proceedings to which this section applies the court hearing the proceedings has the power of granting relief provided under *subsection (3)* if it appears to the court that the officer is or may be liable in respect of the negligence, default, breach of duty or breach of trust (the “wrong concerned”) but that he or she has acted honestly and reasonably and that, having regard to all the circumstances of the case (including those connected with his or her appointment), he or she ought fairly to be excused for the wrong concerned.

(3) The power referred to in *subsection (2)* is to relieve the officer, either wholly or partly, from his or her liability in respect of the wrong concerned, on such terms as the court may think fit.”.

*15. In page 57, between lines 32 and 33, to insert the following:

“(i) the references to section 23 included *section 11(3)(a)(ii)** of this Act,”.

[**This is a reference to the subparagraph proposed to be inserted by amendment No.6*]

*16. In page 58, to delete lines 10 and 11 and substitute the following:

“(1) in section 863(2), in the case of an offence in relation to an ICAV—

(i) the reference to the Registrar were a reference to the Bank, and

(ii) the reference to prescribed particulars being given at such time and in such form and manner as may be prescribed were to particulars specified by the Bank being given at such time and in such form and manner as may be so specified,

and”.

SECTION 87

*17. In page 58, line 34, to delete “Part” and substitute “Act”.

18. In page 59, to delete lines 5 and 6.

—*Senator Sean D. Barrett.*

[SECTION 94]

SECTION 94

*19. In page 64, between lines 25 and 26, to insert the following:

“(9) The registration of a body corporate as an ICAV by continuation under *Part 9* does not affect the priority of charges created by the body corporate before its registration as an ICAV.”.

SECTION 112

*20. In page 71, to delete lines 29 to 39.

—*Senator Sean D. Barrett.*

SECTION 114

*21. In page 74, between lines 17 and 18, to insert the following:

“(12) In this section “generally accepted accounting practices in the State” means professional standards in the accountancy profession as determined by the Irish Auditing and Accounting Supervisory Authority.”.

—*Senator Sean D. Barrett.*

SECTION 144

*22. In page 92, line 14, to delete “authorisation” and substitute “approval”.

SECTION 152

*23. In page 100, line 23, to delete “section 609 is” and substitute “sections 600 and 609 are”.

SECTION 171

*24. In page 110, line 3, to delete “agreement” and substitute ““agreement””.

*25. In page 110, line 6, to delete “a directors’ ” and substitute “an inspector’s”.

SECTION 178

*26. In page 113, between lines 28 and 29, to insert the following:

“General Offences

178. (1) Section 876(1) and (3), 877 and 878 of the Companies Act 2014, and other provisions of that Act relating to those provisions, have effect as if—

- (a) the references to a company included an ICAV, and
- (b) the references to that Act included this Act.

(2) In its application in relation to the provisions mentioned in *subsection (1)* as they have effect in accordance with that subsection, section 865 of the Companies Act 2014 has effect as if the reference to the Director of Corporate Enforcement included the Bank.”.

[Acceptance of this amendment involves the deletion of section 178 of the Bill.]

SECTION 180

[SECTION 180]

*27. In page 114, between lines 3 and 4, to insert the following:

“Registration and inspection of documents

180. (1) Every document relating to an ICAV that is required to be deposited with, or sent or furnished or otherwise provided to, the Bank under this Act or the Companies Act 2014 as it applies in relation to the ICAV—

- (a) shall be recorded on a register relating to the ICAV maintained by the Bank, and
- (b) shall be open to inspection free of charge on a web-site maintained or used by the Bank.

(2) The register maintained in compliance with *subsection (1)* is in addition to the registers maintained under *section 14* or *96* or by virtue of *section 84* or *85*.

(3) Documents provided—

- (a) under *Chapter 2 of Part 2* (or pursuant to a condition imposed under *section 27*),
- (b) under *section 145(2)(d)*,
- (c) by virtue of *section 171(2)(d)*,
- (d) by virtue of *section 180*, or
- (e) by virtue of *section 185*,

shall not be recorded on the register maintained in compliance with *subsection (1)* or be open to inspection under that subsection.”.

SECTION 184

*28. In page 115, between lines 11 and 12, to insert the following:

“Amendment of UCITS Regulations

184. The UCITS Regulations are amended—

(a) in Regulation 3(1)—

(i) by inserting the following definitions:

“ ‘Act of 2015’ means the Irish Collective Asset-management Vehicles Act 2015;”, and

“ICAV” means an ICAV within the meaning of the Act of 2015;”,

(ii) in the definition of “articles”, by inserting “and, in relation to an ICAV, means its instrument of incorporation within the meaning of the Act of 2015” at the end,

(iii) in the definition of “directors”, by inserting “and includes directors and shadow directors of an ICAV” at the end, and

(iv) by substituting for the definition of “investment company” the following:

“investment company” means—

[SECTION 184]

- (a) an investment company with fixed capital,
- (b) an investment company with variable capital, or
- (c) except in Regulations 45, 89(4)(a) and 107, an ICAV;”

and

- (b) in Regulation 4(6) by—
 - (i) deleting “or” after subparagraph (c), and
 - (ii) substituting the following for subparagraph (d):

“(d) common contractual funds, or

(e) Irish collective asset-management vehicles.”.”.

[Acceptance of this amendment involves the deletion of section 184 of the Bill.]

SECTION 185

***29.** In page 115, between lines 17 and 18, to insert the following:

“Adaptation of certain provisions of UCITS Regulations

185. (1) Regulations 17(11), 42(4)(d), 104(2), 125 to 127, 131, 134(1) to (9) and 135(1) and (2) of the UCITS Regulations apply to an ICAV authorised under section 19 as they apply to the bodies to which those Regulations relate but subject to the modifications in subsection (2).

(2) The modifications are that—

- (a) references to repurchase are to purchase,
- (b) references to the UCITS Regulations are to this Act,
- (c) references to an UCITS are to an ICAV,
- (d) references to a unit are to a share,
- (e) references to a unit-holder are to a shareholder, and
- (f) references to the Companies Acts include this Act.

(3) References to cognate terms or expressions in those Regulations shall be read accordingly.”.

***30.** In page 115, between lines 17 and 18, to insert the following:

Amendment of Central Bank Act 1942

“185. The Central Bank Act 1942 is amended—

- (a) in section 33AK(3) by inserting the following after paragraph (a)(vi)(II):

“or

(III) the Irish Collective Asset-management Vehicles Act 2015,”

and

[SECTION 185]

(b) in Part 1 of Schedule 2 by inserting the following:

“

43	<i>No. of 2015</i>	<i>Irish Collective Asset-management Vehicles Act 2015</i>	The whole Act, apart from Parts 5, 10 and 12
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”.

[*Acceptance of this amendment involves the deletion of section 185 of the Bill.*]

SECTION 188

*31. In page 116, between lines 13 and 14, to insert the following:

“Director of Corporate Enforcement

188. (1) Sections 953, 956 and 957 of the Companies Act 2014 have effect as if references to that Act included this Act.

(2) Without prejudice to the generality of *subsection (1)*, and in addition to the functions under section 949 of the Companies Act 2014, the Director of Corporate Enforcement may perform the functions conferred on the Director of Corporate Enforcement by this Act and do such acts or things as are necessary or expedient in the performance of those functions.”.

[*Acceptance of this amendment involves the deletion of section 188 of the Bill.*]