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**An Bille um Chomhpháirtíochtaí Teoranta Infheistíochta (Leasú), 2020**  
**Investment Limited Partnerships (Amendment) Bill 2020**

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*Mar a tionscnaíodh*

*As initiated*

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**AN BILLE UM CHOMHPHÁIRTÍOCHTAÍ TEORANTA INFHEISTÍOCHTA (LEASÚ),  
2020  
INVESTMENT LIMITED PARTNERSHIPS (AMENDMENT) BILL 2020**

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Criminal Justice (Money Laundering and Terrorist Financing) Act 2010 (No. 6)  
Data Protection Act 2018 (No. 07)  
Electronic Commerce Act 2000 (No. 27)  
Investment Funds, Companies and Miscellaneous Provisions Act 2005 (No. 12)  
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Investment Limited Partnerships Act 1994 (No. 24)  
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Irish Collective Asset-management Vehicles Act 2015 (No. 2)  
Irish Collective Asset-management Vehicles Acts 2015 and 2020  
Social Welfare and Pensions (Miscellaneous Provisions) Act 2013 (No. 20)  
Social Welfare Consolidation Act 2005 (No. 26)



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AN BILLE UM CHOMHPHÁIRTÍOCHTAÍ TEORANTA INFHEISTÍOCHTA (LEASÚ),  
2020  
INVESTMENT LIMITED PARTNERSHIPS (AMENDMENT) BILL 2020

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# Bill

*entitled*

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An Act to amend and extend the Investment Limited Partnerships Act 1994, the Irish Collective Asset-management Vehicles Act 2015 and the Investment Funds, Companies and Miscellaneous Provisions Act 2005; to amend Schedule 5 to the Social Welfare Consolidation Act 2005; and to provide for related matters.

**Be it enacted by the Oireachtas as follows:**

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## PART 1

### PRELIMINARY AND GENERAL

#### Short title and commencement

1. (1) This Act may be cited as the *Investment Limited Partnerships (Amendment) Act 2020*.

(2) This Act shall come into operation on such day or days as the Minister for Finance may by order or orders appoint either generally or with reference to any particular purpose or provision and different days may be so appointed for different purposes or different provisions.

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#### Collective citation

2. (1) The Investment Limited Partnerships Act 1994 and *Part 2* may be cited together as the Investment Limited Partnerships Acts 1994 and 2020.

(2) The Irish Collective Asset-management Vehicles Act 2015 and *Part 3* may be cited together as the Irish Collective Asset-management Vehicles Acts 2015 and 2020.

(3) The Investment Funds, Companies and Miscellaneous Provisions Act 2005 and *Part 4* may be cited together as the Investment Funds, Companies and Miscellaneous Provisions Acts 2005 and 2020.

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#### Definitions

3. In this Act—

“Act of 1994” means the Investment Limited Partnerships Act 1994;

“Act of 2005” means the Investment Funds, Companies and Miscellaneous Provisions Act 2005;

“Act of 2015” means the Irish Collective Asset-management Vehicles Act 2015.

## PART 2

### AMENDMENT OF ACT OF 1994

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#### **Amendment of section 3 of Act of 1994**

##### **4. Section 3 of the Act of 1994 is amended—**

(a) by the insertion of the following definitions after the definition of “the Act of 1890”:

“ ‘Act of 2010’ means the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010; 10

‘alternative foreign name’ shall be construed in accordance with section 8(4B);”,

(b) by the insertion of the following definitions after the definition of “the Bank”:

“ ‘beneficial owner’, in relation to an investment limited partnership, means any individual who— 15

(a) ultimately is entitled to or controls, whether the entitlement or control is direct or indirect, more than a 25 per cent share of the capital or profits of the partnership or more than 25 per cent of the voting rights in the partnership, or 20

(b) otherwise controls the partnership;

‘beneficial ownership register’ shall be construed in accordance with section 46(1);

‘central register’ shall be construed in accordance with section 50(1);

‘competent authority’ means a competent authority as that expression, by virtue of sections 60 and 61 of the Act of 2010, is to be construed for the purposes of Part 4 of that Act; 25

‘designated person’ has the meaning assigned to it by section 25 of the Act of 2010;”,

(c) by the substitution of the following definition for the definition of “custodian”: 30

“ ‘depository’ means a person maintaining a place of business in the State, appointed pursuant to the partnership agreement, eligible to act as depository in accordance with section 8 and discharging its functions in accordance with section 5(1)(c);”,

(d) by the insertion of the following definition after the definition of “general partner”: 35



- “ ‘Higher Executive Officer’ means the position of Higher Executive Officer, or a position equivalent to it, in the public body concerned;”,
- (e) by the substitution of the following definition for the definition of “limited partner”:
- “ ‘limited partner’ means a person who has been admitted to an investment limited partnership as a limited partner (or as a category of such a partner) in accordance with the partnership agreement and who shall, as provided for in that agreement and at such time or times as are specified therein, contribute or undertake to contribute a stated amount to the capital of the partnership and as provided for in section 20(1)(c), but subject to the exceptions in sections 6, 12 and 38(4), shall not be liable for the debts or obligations of the investment limited partnership beyond the amount so contributed or undertaken;”,
- (f) by the insertion of the following definition after the definition of “limited partner” (inserted by paragraph (e)):
- “ ‘Member State’ means a Member State of the European Union and, where relevant, includes a contracting party to the Agreement on the European Economic Area signed at Oporto on 2 May 1992 (as adjusted by the Protocol signed at Brussels on 17 March 1993);”,
- (g) in the definition of “partnership agreement”, by the deletion of “exclusive”,
- (h) by the insertion of the following definitions after the definition of “partnership agreement”:
- “ ‘PPS number’, in relation to an individual, means the individual’s Personal Public Service Number within the meaning of section 262 of the Social Welfare Consolidation Act 2005;
- ‘presenter’ shall be construed in accordance with section 53(1);
- ‘Principal Officer’ means the position of Principal Officer, or a position equivalent to it, in the public body concerned;
- ‘senior managing official’ includes a director and a chief executive officer;”,
- and
- (i) by the substitution of the following definition for the definition of “the Minister”:
- “ ‘the Minister’ means the Minister for Finance.”.

**Replacement of “custodian” with “depository”: miscellaneous amendments of Act of 1994**

5. (1) The following provisions of the Act of 1994, namely:
- (a) each provision of it specified in column (2) of the Table, opposite the mention in column (1) of the Table of the section of that Act which contains that provision;
- (b) section 36,

are amended by the substitution of “depository” for “custodian” in each place where that expression occurs in that provision.

- (2) The foregoing reference to the expression “custodian” includes a reference to that expression where it occurs in the plural form and where it occurs in the latter form, “depositories”, is, by virtue of *subsection (1)*, substituted for it.

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Table

Section of Act of 1994 (1)	Provision of Section Mentioned in Column Opposite (2)	
Section 5	Subsection (1)(c) and (d)	
Section 6	Subsection (4)(e)(v)	10
Section 7	Subsection (2)(b); subsection (4)(c) and (d) and subsections (5) and (7)	
Section 8	Subsection (1)(c); subsection (2) and subsection (4A)(f)	
Section 11	Subsection (3)	
Section 16	Subsection (11)	15
Section 24	Subsection (1)(a), (b) and (c) and subsections (2), (3) and (5)	
Section 25	Subsection (1) and paragraphs (i), (ii), (iii), (iv) and (v) of the definition of “associated undertaking” in subsection (4) (a)	20
Section 26	Subsection (2)(d); subsection (4) and paragraphs (a), (b), (c), (d) and (e) of subsection (7)	
Section 27	Subsection (1)	
Section 29	Subsection (1)(c) and subsection (2)	
Section 30	Subsections (1), (2) and (3)	25
Section 31	Subsections (1), (3) and (4)	
Section 32	Subsection (1); subsection (2)(c) and subsection (4)	
Section 33	Subsection (1); subsections (2) and (5) and paragraphs (a), (c) and (e) of subsection (10)	
Section 34	Subsections (1) and (4)	30

**Amendment of section 5 of Act of 1994**

6. Section 5 of the Act of 1994 is amended—

- (a) in subsection (3), by the substitution of “fair and appropriate value of the property” for “fair market value of the property”, and
- (b) by the insertion of the following subsections after subsection (4):

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“(5) An investment limited partnership may be established as an umbrella fund, that is to say as an investment limited partnership which is divided into a number of sub-funds (within the meaning of the Schedule).

(6) The provisions of the Schedule shall have effect for the purposes of subsection (5).” 5

**Amendment of section 6 of Act of 1994**

7. Section 6 of the Act of 1994 is amended—

(a) in subsection (4)—

(i) in paragraph (e)— 10

(I) in subparagraph (vi), by the substitution of “limited partners;” for “limited partners.”, and

(II) by the insertion of the following subparagraph after subparagraph (vi):

“(vii) a decision to approve an alteration in the partnership agreement;”, 15

and

(ii) by the insertion of the following paragraph after paragraph (e):

“(f) any of the following:

(i) serving on any board or committee (such as an advisory committee) of the investment limited partnership, or established by, or as provided for in the partnership agreement in respect of, a general partner, the limited partners or the partners generally; 20

(ii) appointing, electing or otherwise participating in the choice of a representative or any other person to serve on any such board or committee; 25

(iii) acting as a member of any such board or committee either directly or by or through any representative or other person, including giving advice in respect of, or consenting or refusing to consent to, any action proposed by the general partner on behalf of the investment limited partnership and exercising any powers or authorities or performing any obligations as a member of any such board or committee in the manner contemplated by the partnership agreement.”, 30

and

(b) by the insertion of the following subsection after subsection (4): 35

“(5) Without prejudice to the generality of the provision made by subsection (4) in relation to acts, on the part of a limited partner, that do not constitute the limited partner taking part in the conduct of the business of an investment limited partnership, neither—

- (a) the reference in section 38(4) to any limited partner holding himself or herself out as conducting or purporting to conduct the business of an investment limited partnership, nor
- (b) the reference in section 39 to a limited partner purporting to take part in the conduct of the business of an investment limited partnership,

shall be construed as including a reference to the limited partner, in and of itself, holding himself or herself as doing, or purporting to do, one or more of the acts specified in subsection (4) (irrespective of the frequency with which that holding out, or that purported doing of the act or acts concerned, occurs).”.

**Amendment of section 8(4) of Act of 1994**

8. Section 8(4) of the Act of 1994 is amended by the substitution of the following paragraph for paragraph (a):

“(a) the fee prescribed under section 32E of the Central Bank Act 1942 for the purposes of this subsection, and”.

**Amendment of section 8(4A) of Act of 1994**

9. Subsection (4A) (inserted by the Central Bank and Financial Services Authority of Ireland Act 2003) of section 8 of the Act of 1994 is amended—

- (a) by the substitution of “for the purposes of subsection (4)(c)” for “for the purposes of subsection (4)(b)”,

- (b) by the substitution of the following paragraph for paragraph (a):

“(a) the name and, if any, the alternative foreign name (and, in the case of the latter, a translation of it into the English language) of the investment limited partnership;”.

- (c) in paragraph (e), by the substitution of “a statement, if applicable, that the proposed general partner has complied with the requirements of section 1302 of the Companies Act 2014, and its registration number” for “a statement that proposed general partner has complied with the requirements of section 352 of the Companies Act 1963, and its registration number”, and

- (d) in paragraph (f), by the deletion of “and address”.

**Provision for alternative foreign name – amendment of section 8 of Act of 1994**

10. Section 8 of the Act of 1994 is amended by the insertion of the following subsection after subsection (4A):

“(4B) The reference in subsection (4A)(a) to an alternative foreign name is a reference to a particular name that is specified in the application to be such a name in respect of the investment limited partnership and this subsection confers power on an investment limited partnership to have such a name and the following apply to the name so specified:

(a) the name, as regards any territory, district or place not situate in the State, may be used, instead of the first-mentioned name in subsection (4A)(a), in relation to any act (by or in respect of the partnership), whether that act is performed within or outside the State;

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(b) the name may consist of any letters, characters, script, accents or other diacritical marks that do not utilise the Roman alphabet, and does not need to be a translation or transliteration of the first mentioned name in subsection (4A)(a).”.

**Supplemental amendment of section 8 of Act of 1994**

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11. Section 8 of the Act of 1994 is amended by the insertion of the following subsection after subsection (8):

“(8A) In addition to the power to refuse to authorise an investment limited partnership under the preceding, or any other provision, of this section, the Bank may refuse to authorise an investment limited partnership if, in the opinion of the Bank, the name that is specified in the application to be an alternative foreign name in respect of the partnership is undesirable, but an appeal against a refusal so to authorise shall lie to the Court.”.

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**Amendment of section 10 of Act of 1994**

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12. The Act of 1994 is amended by the substitution of the following section for section 10:

**“Records of investment limited partnership and statements filed**

10. The Bank shall maintain a record of each investment limited partnership authorised under this Act and of all statements, the subject of a filing, return or other submission made in accordance with this Act with or to the Bank, in relation to such investment limited partnership.”.

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**Cases in which partnership agreement may be altered – amendment of section 11(1) of Act of 1994**

13. Section 11 of the Act of 1994 is amended by the substitution of the following subsection for subsection (1):

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“(1) No alteration in a partnership agreement shall be made unless the alteration has been approved by means of an instrument in writing signed by or on behalf of every partner to the partnership agreement, but this is subject to subsections (1A) and (1B).

(1A) Notwithstanding subsection (1), where the partnership agreement so stipulates, an alteration in a partnership agreement may be made if—

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(a) every partner to the partnership agreement has been given notice, in accordance with the provisions of the partnership agreement in that behalf, of the proposed alteration, and

- (b) the alteration is approved by means of an instrument in writing signed by or on behalf of a majority of the partners to the partnership agreement.
- (1B) Notwithstanding subsection (1), an alteration in a partnership agreement may be made if the depositary of the partnership has certified in writing that the alteration does not prejudice the interests of the limited partners, but only where the following conditions are satisfied:
  - (a) the matter to which the alteration relates is not a matter as respects which the Bank specifies that an alteration may be made only if the alteration is approved by the means referred to in subsection (1) (which specification the Bank is empowered by this paragraph to make);
  - (b) the partnership agreement confers a power on the depositary of the investment limited partnership to so certify that the alteration does not prejudice the foregoing interests, and if the partnership agreement contains a stipulation, as referred to in subsection (1A), that fact does not preclude the application of this subsection and if the partnership agreement confers a power on the depositary, as referred to in paragraph (b), that fact does not preclude the application of subsection (1A).
- (1C) For the purpose of subsection (1A)(b), a majority of the partners to the partnership agreement shall be regarded as comprising the sum of—
  - (a) the number of general partners that constitute the majority of general partners who have approved the alteration by the means there referred to, and
  - (b) the number of limited partners that constitute the majority of limited partners who have approved the alteration by the means there referred to, and subsection (2) of section 19A applies for the purpose of this paragraph as it applies, in the circumstances and to the extent provided in subsection (1) of that section, for the purpose of the matters referred to in that subsection (2).”.

**Amendment of section 11 of Act of 1994 – insertion of additional subsections**

14. Section 11 of the Act of 1994 is amended by the insertion of the following subsections after subsection (4):
- “(5) On—
    - (a) the admission of any general partner or general partners (who or each of whom is referred to in this subsection as an ‘incoming general partner’), or
    - (b) the replacement, for a general partner or general partners, by another general partner or general partners (who or each of whom

is also referred to in this subsection as an ‘incoming general partner’),

in accordance, in either case, with the terms of the partnership agreement and this Act, all rights or property of every description of the investment limited partnership, including all choses in action and any right to make capital calls and receive the proceeds thereof, held or deemed to be held by the general partner or general partners (who or each of whom is referred to in this subsection as an ‘existing general partner’) and all obligations, claims, debts and liabilities of the investment limited partnership to which the existing general partner or partners is or are subject shall vest without the requirement for further formalities in the incoming general partner and any continuing existing general partner and shall be held or owed, as appropriate, by that partner or those partners in accordance with the partnership agreement and this Act.

- (6) On the withdrawal of a general partner in accordance with the terms of the partnership agreement and this Act—
- (a) all rights or property of every description of the investment limited partnership, including all choses in action and any right to make capital calls and receive the proceeds thereof, held or deemed to be held by the general partner or general partners shall vest without the requirement for further formalities in the remaining general partner or general partners and shall be held by that partner or those partners in accordance with the partnership agreement and this Act, and
  - (b) the remaining general partner or general partners shall be liable for, and the property of the investment limited partnership held by that partner or those partners in accordance with the partnership agreement and this Act shall be subject to, all mortgages, charges or security interests and all contracts, obligations, claims, debts and liabilities of the investment limited partnership.”.

#### **Amendment of section 12 of Act of 1994**

**15.** Section 12 of the Act of 1994 is amended—

- (a) by the substitution of the following subsections for subsection (2):

“(2) Subject to subsection (2A), every investment limited partnership shall use, at the end of its name, the words—

(a) ‘investment limited partnership’ or the abbreviation ‘ILP’, or

(b) in the Irish language, ‘Comhpháirtíocht Theoranta Infheistíochta’ or the abbreviation ‘CTI’,

and the words and the abbreviation set out in paragraph (a) may be used interchangeably (and, likewise, the words and the abbreviation set out in paragraph (b) may be so used).

(2A) In the circumstances, as provided for in section 8(4B)(a), in which an investment limited partnership is permitted to use its alternative foreign name, the investment limited partnership shall use, at the end of that name, the words ‘investment limited partnership’, being those words as expressed in the same language as the alternative foreign name is expressed in.” 5

and

(b) by the deletion of subsections (3) and (4).

**Amendment of section 13(1) and (2) of Act of 1994**

16. Section 13 of the Act of 1994 is amended by the substitution of the following subsections for subsections (1) and (2): 10

“(1) The general partner shall maintain or cause to be maintained at the registered office of the investment limited partnership the following:

(a) a register of the name and address of each partner of the investment limited partnership, the date on which a person became a limited partner and the date on which a person ceased to be a limited partner; 15

(b) a register of—

(i) the amounts and dates of the one or more contributions of each partner, and the dates on which those amounts were undertaken, and 20

(ii) the one or more amounts undertaken to be contributed by each partner, and the dates on which those amounts were undertaken to be contributed, and the amounts and dates of any payments representing a return of any part of the contribution of any partner. 25

(2) Except where otherwise provided for in the partnership agreement—

(a) the register referred to in subsection (1)(a), shall be open to the inspection of any partner or depositary of the investment limited partnership, or any other person with the consent of the general partner, during business hours, and 30

(b) the register referred to in subsection (1)(b) shall be open to the inspection of any person during business hours with the consent of the general partner.

(2A) Each of the registers referred to in subsection (1)(a) and (b) shall also be open to the inspection of— 35

(a) the Bank, or

(b) any other statutory body the performance by which of its functions in a proper and effective manner reasonably requires that the general partner of the partnership concerned permit the inspection by it of that register. 40



(2B) In subsection (2A) ‘statutory body’ means a body established by or under an enactment (other than the Companies Act 2014 or a former enactment relating to companies within the meaning of section 5 of that Act).”.

**Further amendments of section 13 of Act of 1994**

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**17. Section 13 of the Act of 1994 is amended—**

(a) in subsection (3), by the substitution of “Each of the registers referred to in subsection (1)(a) and (b)” for “The register described in subsection (1)”,

(b) by the substitution of the following subsections for subsection (4):

“(4) If default is made in compliance with any of the requirements of this section, each general partner of the investment limited partnership concerned shall be guilty of an offence and shall be liable, on summary conviction, to a class A fine and shall indemnify any person who thereby suffers any loss. 10

(5) If the contravention in respect of which a person is convicted of an offence under subsection (4) is continued after the conviction, the person shall be guilty of a further offence on every day on which the contravention continues and for each such offence the person shall be liable, on summary conviction, to a class D fine. 15

(6) If— 20

(a) the name of any person is, without sufficient cause, entered in, or omitted from, the register referred to in paragraph (a) of subsection (1) in contravention of that subsection, or

(b) default is made as to the specification of the correct particulars made in any entry on the register referred to in paragraph (a) or (b) of subsection (1) in contravention of that subsection, 25

the person aggrieved, or any partner of the investment limited partnership concerned or the investment limited partnership itself, may apply to the High Court for rectification of the register referred to in paragraph (a) or, as the case may be, paragraph (b) of subsection (1) (the ‘register concerned’). 30

(7) Where an application is made under subsection (6), the High Court may either refuse the application or may order rectification of the register concerned and, unless an application under section 42A(2) has been made or is pending in respect of the contravention concerned, may order payment by the investment limited partnership concerned of compensation for any loss sustained by any party aggrieved. 35

(8) The High Court when making an order for the rectification of the register concerned shall by its order direct, if appropriate, notice of the rectification to be given to the Bank.”. 40

**Amendment of section 14(3) of Act of 1994**

18. Section 14 of the Act of 1994 is amended by the deletion of subsection (3).

**Amendment of Act of 1994 – new section 19A concerning construction of certain references in partnership agreements**

19. The Act of 1994 is amended by the insertion of the following section after section 19: 5

**“References in partnership agreements to ‘majority of limited partners’: construction of such references for certain purposes**

19A. (1) Subsection (2) shall apply with respect to—

(a) any matter that a partnership agreement provides must be decided upon by a majority of the limited partners (whether the agreement provides that the decision thereon be obtained by means of votes cast by the limited partners, the giving of their consent or howsoever otherwise), or 10

(b) any provision of a partnership agreement that is expressed to operate (whatever the words used) by reference to the rights or interests (or incidents attaching to such rights or interests) of a majority of the limited partners, 15

if the partnership agreement, with respect to the foregoing matter or the foregoing provision, does not define or otherwise make provision for the construction of the expression ‘majority of limited partners’. 20

(2) For the purposes of the matter referred to in subsection (1)(a) or, as the case may be, the provision referred to in subsection (1)(b), a majority of the limited partners shall be taken to be constituted of a simple majority of the limited partners calculated by reference to the value of the contributions of the limited partners at the time the determination of that majority falls to be made. 25

(3) Where the terms concerned of the partnership agreement relate to a class or category of limited partners or to limited partners holding assets in a sub-fund (within the meaning of the Schedule), references in the preceding subsections to limited partners include references to— 30

(a) such a class or category of limited partners, or

(b) the limited partners holding such assets.”.

**Amendment of section 20 of Act of 1994**

20. The Act of 1994 is amended by the substitution of the following section for section 20: 35

**“Capital contributions by limited partners and liability of limited partners for partnership debts**

20. (1) A limited partner—

- (a) shall be not liable to contribute any capital or property to the investment limited partnership except in the circumstances provided for in the partnership agreement,
  - (b) may receive out of the capital of the investment limited partnership a payment representing the return of any part of his contribution to the partnership in the circumstances provided for in the partnership agreement, but only if—
    - (i) the following duty of the general partner, under the 2013 Regulations, has been discharged, namely, the duty—
      - (I) to ensure that net asset value of the investment limited partnership is calculated in the manner provided for by those Regulations, and
      - (II) being that duty as of the most recent occasion (prior to the payment to the limited partner), on which it fell, in accordance with those Regulations, to be discharged,
    - and
    - (ii) the net asset value of the investment limited partnership, as calculated on that foregoing most recent occasion, was greater than zero,
    - and
  - (c) shall not be liable for the debts or obligations of the investment limited partnership beyond the amount of the partnership property contributed by the limited partner which is available to the general partner to meet such debts or obligations.
- (2) In this section ‘2013 Regulations’ means the European Union (Alternative Investment Fund Managers) Regulations 2013.”.

**Amendment of section 22(2) of Act of 1994**

21. Section 22(2) of the Act of 1994 is amended by the substitution of “, including in a case where such liability arises pursuant to section 6” for “pursuant to section 6 or 20 or to enforce the repayment of a return of contribution required by section 20”.

**Amendment of section 23 of Act of 1994**

22. Section 23 of the Act of 1994 is amended by the renumbering of that section as subsection (1) thereof and by the insertion of the following subsection:
- “(2) For the purposes of its application to investment limited partnerships, section 30 of the Bankruptcy Act 1988 shall only apply where the general partner adjudicated bankrupt is the sole general partner.”.

**Amendment of section 24(4) of Act of 1994, and addition of certain provisions, concerning liability of general partner, etc.**

23. Section 24 of the Act of 1994 is amended—

- (a) in subsection (4)—
  - (i) by the insertion, after “investment limited partnership”, where it firstly occurs, of “or otherwise”, and
  - (ii) by the deletion of “custodian,” in both places where it occurs,
 and 5
- (b) by the insertion of the following subsections after subsection (4):
  - “(4A) An investment limited partnership may purchase and maintain for any general partner or auditor of the partnership insurance in respect of any liability referred to in subsection (4).
  - (4B) In subsections (4) and (4A) a reference to a general partner or auditor 10 includes a reference to any former or current general partner or auditor of an investment limited partnership.”.

**Amendment of section 24 of Act of 1994 – insertion of additional subsections concerning penal clauses**

- 24.** Section 24 of the Act of 1994 is amended by the insertion of the following subsections after subsection (5): 15
- “(6) If a partnership agreement contains a provision to the effect that a partner who fails to perform any of his obligations under, or otherwise breaches any provision of, the partnership agreement may be subject to, or suffer remedies for, or consequences of, the failure or breach that are specified in the partnership agreement or otherwise applicable under any law then those remedies or consequences shall not be unenforceable or rendered inapplicable solely on the basis that they are penal in nature. 20
  - (7) Without prejudice to the generality of subsection (6), the remedies or consequences to which that subsection applies include: 25
    - (a) reducing, eliminating or forfeiting—
      - (i) the partnership interest in the investment limited partnership of the partner who has failed to perform, or has breached, the obligation or provision concerned (in this subsection referred to as the ‘defaulting partner’ (and the partners who have neither failed to perform, nor breached, the obligation or provision concerned are referred to in this subsection as the ‘non-defaulting partners’)), or 30
      - (ii) any rights of the defaulting partner under the partnership agreement; 35
    - (b) subordinating the partnership interest in the investment limited partnership (in this subsection referred to as a ‘partnership interest’) of the defaulting partner to the interests of non-defaulting partners; 40

- (c) effecting a sale or forfeiture of the defaulting partner’s partnership interest;
  - (d) arranging for the lending by other partners or other persons to the defaulting partner of the amount necessary to meet the relevant commitment of the defaulting partner; 5
  - (e) providing for the fixing of the value of the defaulting partner’s partnership interest by means of appraisal or by the application of a formula and the redemption or sale of the defaulting partner’s partnership interest at that value.
- (8) A general partner who, on the basis of a provision contained in the partnership agreement, and a failure or breach, referred in subsection (6), purports in good faith— 10
- (a) to make a decision that a partner be subject to, or suffer remedies for, or consequences of, the failure or breach that are specified in the partnership agreement or otherwise applicable under any law, 15
  - (b) to make a decision that a partner shall not be subject to, and shall not suffer remedies for, or consequences of, the foregoing failure or breach, or shall only be subject to, or suffer, certain remedies or consequences in that behalf (in this subsection referred to as a ‘partial decision’), or 20
  - (c) to give effect to a decision referred to in paragraph (a) or to a partial decision and, in either case, to take the appropriate steps (if any) required to be taken for that purpose,
- shall not be liable for having made any such decision nor, as the case may be, for having given effect to a decision referred to in paragraph (a) or to a partial decision or, in either case, for having taken any aforementioned steps. 25
- (9) References in the preceding subsections to a partnership interest shall be construed as including references to any part of a partnership interest.”. 30

**Amendment of section 25(1) and (4) of Act of 1994**

25. Section 25 of the Act of 1994 is amended—

- (a) in subsection (1), by the substitution of “A general partner” for “Every general partner”, and
- (b) in subsection (4), by the substitution of “ ‘subsidiary’ ” for “ ‘associated undertaking’ ”, where it secondly occurs. 35

**Amendment of section 27 of Act of 1994**

26. Section 27 of the Act of 1994 is amended—

- (a) in subsection (1), by the substitution, in paragraph (b), of “paragraph (a)” for “paragraph (a) of this section”, and 40

- (b) in subsection (3), by the substitution of “in relation to which the foregoing undertaking is an associated undertaking” for “or the associated undertaking”.

**Amendment of Act of 1994 – new sections 27A to 27C relating to beneficial ownership disclosure**

27. The Act of 1994 is amended by the insertion of the following sections after section 27: 5

**“Requirement to hold information on beneficial ownership of partnership**

27A. (1) A general partner of an investment limited partnership shall take all reasonable steps to obtain and hold adequate, accurate and current information in respect of the investment limited partnership’s beneficial owners, that is to say— 10

- (a) the name, date of birth, nationality, and residential address of each beneficial owner of it,
- (b) a statement of the nature and extent of the interest held, or the nature and extent of control exercised, by each such beneficial owner, and 15
- (c) the PPS number of each such beneficial owner to whom such a number has been issued,

and any PPS number so obtained shall not be disclosed by the investment limited partnership for any purpose of this section or of any of section 27B, 27C, 28, 28A, 28B, 28C or 46. 20

(2) The general partner shall enter the information referred to in subsection (1)(a) and (b) in the investment limited partnership’s beneficial ownership register, and the following information shall also be entered by the general partner in that register:

- (a) the date on which the name of each individual was entered into the register as a beneficial owner of the investment limited partnership; 25
- (b) the date on which each individual who has ceased to be a beneficial owner of the investment limited partnership ceased to be such an owner.

(3) If, either— 30

- (a) after exhausting all possible means, and provided there are no grounds for suspicion by the general partner, no individual is identified as a beneficial owner of the investment limited partnership, or
- (b) there is any doubt that any individual so identified is a beneficial owner of the investment limited partnership, 35

there shall be entered, in the investment limited partnership’s beneficial ownership register as its beneficial owners (stating the nature and extent of the control exercised by them), the names of the one or more individuals who hold the position of general partner or partners of the investment limited partnership or, in the case of a 40

general partner that is a body corporate, the one or more individuals who are the senior managing officials of the general partner (including, in any of the foregoing cases, their date of birth, nationality and residential addresses) and—

- (i) the requirement of subsection (1) with regard to not disclosing a PPS number shall apply in the case of this subsection as that requirement applies in the case of subsection (1), 5
  - (ii) subsection (2) shall apply in the case of this subsection as it applies in the case of subsection (1), and
  - (iii) references in any subsequent section of this Act to the particulars referred to in subsection (1)(a) and (b) of this section shall be deemed to include, where the context admits, references to the particulars referred to in this subsection. 10
- (4) In a case falling within subsection (3)(a) or (b), the general partner shall keep records of the actions taken in order to identify the beneficial ownership of the investment limited partnership. 15
- (5) A general partner of an investment limited partnership shall provide any member of the Garda Síochána, the Revenue Commissioners, a competent authority or the Criminal Assets Bureau with timely access, on request, to the investment limited partnership's beneficial ownership register. 20
- (6) Each of the following:
- (a) the Garda Síochána;
  - (b) the Revenue Commissioners;
  - (c) a competent authority; 25
  - (d) the Criminal Assets Bureau,
- may disclose the information in a beneficial ownership register to any corresponding competent authority of another Member State (a 'corresponding authority'); in the event of there being a request made of a body or other person referred to in any of paragraphs (a) to (d) by a corresponding authority for disclosure of such information, the request shall be complied with in a timely manner. 30
- (7) Where a general partner of an investment limited partnership enters into an occasional transaction with a designated person or forms a business relationship with a designated person, the general partner shall— 35
- (a) inform the designated person in writing that it is acting as a general partner of an investment limited partnership,
  - (b) provide information on the investment limited partnership's beneficial ownership to the designated person when the designated person is taking customer due diligence measures in accordance with Part 4 of the Act of 2010, 40

- (c) on request from the designated person, provide the designated person without delay with information identifying all the beneficial owners of the investment limited partnership, and
  - (d) notify the designated person of any change to the investment limited partnership's beneficial ownership register that occurs which is relevant to the occasional transaction or that occurs during the course of the business relationship formed, and the date on which it occurred within 14 days from the date on which the general partner or, if more than one, any one of the general partners of the investment limited partnership, became aware of the change.
- (8) For the purposes of subsection (7) 'occasional transaction' means a transaction in relation to which the designated person is required to apply customer due diligence measures under Part 4 of the Act of 2010.
- (9) A general partner that fails to comply with subsection (1), (2), (3), (4), (5) or (7) shall be guilty of an offence.

**Duty to give particular notice to individuals believed to be beneficial owners of investment limited partnership**

- 27B. (1) Without prejudice to the generality of section 27A(1), a general partner of an investment limited partnership shall give to any individual whom it has reasonable cause to believe to be a beneficial owner of the investment limited partnership the notice specified in subsection (2), but this is subject to subsection (5).
- (2) The notice referred to in subsection (1) is a notice, addressed to the individual concerned, that requires the addressee—
- (a) to state whether or not he or she is a beneficial owner of the investment limited partnership, and
  - (b) if so, to confirm or correct any particulars of his or hers that are included in the notice, and supply any that are missing,
- and such a notice is referred to subsequently in this section as a notice under this section.
- (3) A notice under this section shall—
- (a) state that it is given under 'section 27B of the Investment Limited Partnerships Act 1994', and
  - (b) as respects each of the particulars referred to in section 27A(1)(a), (b) and (c)—
    - (i) set out that which—
      - (I) to the knowledge of the general partner is, or
      - (II) with reasonable cause is believed by it to be,
- the relevant particular, or



- (ii) in the absence of such knowledge or belief (on its part as respects a relevant particular) indicate, by leaving a space in the appropriate place, that that particular is not given in the notice.
- (4) A notice under this section shall also state that the addressee is to comply with the notice by no later than the end of the period of one month beginning with the date of the notice. 5
- (5) A general partner is not required to give a notice under this section if—
  - (a) the general partner has already been informed of the status of the individual referred to in subsection (1) as a beneficial owner of the investment limited partnership, and been supplied with all the particulars referred to in section 27A(1)(a), (b) and (c), and 10
  - (b) the information and particulars were provided either by that individual or with his or her knowledge.
- (6) A general partner that fails to comply with subsection (1) or any other provision of this section shall be guilty of an offence. 15

**Other particular steps that may be taken to establish identity of beneficial owners**

**27C.** (1) This section—

- (a) is without prejudice to the generality of section 27A(1), and 20
- (b) does not derogate from the duty, where it arises, under section 27B.
- (2) A general partner of an investment limited partnership may give to any person (whether an individual or not) the notice specified in subsection (3) if it has reasonable cause to believe that the person has the knowledge referred to in paragraph (a) or (b) of that subsection. 25
- (3) The notice referred to in subsection (2) is a notice, addressed to the person referred to in that subsection, that requires the addressee—
  - (a) to state whether or not the addressee knows the identity of—
    - (i) any individual who is a beneficial owner of the investment limited partnership, or 30
    - (ii) any person (whether an individual or not) likely to have that knowledge,
  - and
  - (b) if so, to supply any particulars of any such person that are within the addressee’s knowledge, and state whether or not the particulars are being supplied with the knowledge of each of the persons concerned, 35

and such a notice is referred to subsequently in this section as a notice under this section.
- (4) For the purposes of subsection (3)— 40

- (a) a reference to knowing the identity of a person includes a reference to knowing information from which that person can be identified, and
- (b) a reference in paragraph (b) of it to particulars is a reference—
  - (i) in the case of the individual referred to in paragraph (a)(i) of it — to the particulars referred to in section 27A(1)(a) and (b), and 5
  - (ii) in the case of the person referred to in paragraph (a)(ii) of it — to any particulars that will allow the person to be contacted by the general partner. 10
- (5) A notice under this section shall state—
  - (a) that it is given under ‘section 27C of the Investment Limited Partnerships Act 1994’, and
  - (b) that the addressee is to comply with the notice by no later than the end of the period of one month beginning with the date of the notice. 15
- (6) Nothing in this section shall be construed as requiring a person to whom a notice under it is given to disclose any information in respect of which a claim to legal professional privilege could be maintained in legal proceedings.”. 20

**Amendment of section 28 of Act of 1994**

**28.** Section 28 of the Act of 1994 is amended—

- (a) by the substitution, in subsections (1) and (2), of “section 8(4A)(a) to (f)” for “section 8(4)(a) to (f)”, and
- (b) by the insertion of the following subsections after subsection (2): 25
  - “(3) Subsection (5) applies where particulars of an individual, as being a beneficial owner of an investment limited partnership, are entered in the investment limited partnership’s beneficial ownership register.
  - (4) For the purpose of subsections (5) to (10), a relevant change occurs if— 30
    - (a) the individual referred to in subsection (3) ceases to be a beneficial owner of the investment limited partnership, or
    - (b) any other change occurs as a result of which the particulars (stated in the foregoing register) in relation to the individual are incorrect or incomplete. 35
  - (5) Where this subsection applies, the general partner shall, in accordance with subsection (6), give the notice specified in subsection (7) to the individual if it knows or has reasonable cause to believe that a relevant change has occurred, but this is subject to subsection (10).

- (6) The foregoing notice shall be given by the general partner as soon as reasonably practicable after the general partner learns of the change concerned or first has reasonable cause to believe that the change concerned has occurred.
- (7) The notice referred to in subsection (5) is a notice, addressed to the individual concerned, that requires the addressee— 5
- (a) to confirm whether or not the change concerned has occurred, and
  - (b) if so—
    - (i) to state the date of the change, and
    - (ii) to confirm or correct the particulars included in the notice, and supply any that are missing from the notice, 10
- and such a notice is referred to subsequently in this section as a notice under this section.
- (8) A notice under this section shall—
- (a) state that it is given under ‘section 28 of the Investment Limited Partnerships Act 1994’, and 15
  - (b) as respects such of the particulars referred to in section 27A(1)(a) and (b) as are known by the general partner (or with reasonable cause believed by it) to have been the subject of the change concerned— 20
    - (i) set out that which—
      - (I) to the knowledge of the general partner are, or
      - (II) with reasonable cause are believed by it to be, 25
    - (ii) in the absence of such knowledge or belief (on its part as respects a relevant particular) indicate - by leaving a space in the appropriate place - that that particular is not given in the notice.
- (9) A notice under this section shall also state that the addressee is to comply with the notice by no later than the end of the period of one month beginning with the date of the notice. 30
- (10) A general partner is not required to give a notice under this section if—
- (a) the general partner has already been informed of the change concerned, and 35
  - (b) that information (including, as the case may be, the relevant particulars referred to in subsection (4)(b)) were provided either by the individual concerned or with his or her knowledge.

- (11) A general partner that fails to comply with subsection (5) or any other provision of this section shall be guilty of an offence.”.

**Amendment of Act of 1994 – new sections 28A to 28C relating to beneficial ownership disclosure**

29. The Act of 1994 is amended by the insertion of the following sections after section 28: 5

**“Duty of beneficial owner (in certain circumstances) to notify status as such**

**28A.** (1) This section applies to an individual if—

- (a) the individual is a beneficial owner of an investment limited partnership,
  - (b) the individual knows that to be the case or ought reasonably to do so, 10
  - (c) in relation to the individual, the particulars referred to in section 27A(1)(a) and (b) are not stated in the investment limited partnership’s beneficial ownership register,
  - (d) the individual has not been given a notice by the general partner under section 27B, and 15
  - (e) the circumstances specified in paragraphs (a) to (d) have continued for a period of at least one month.
- (2) An individual to whom this section applies shall notify, in writing, the general partner of the investment limited partnership referred to in subsection (1) of the individual’s status (as a beneficial owner) of the investment limited partnership, and that notification shall state— 20
- (a) the date, to the best of the person’s knowledge, on which the person acquired that status, and
  - (b) the particulars referred to in section 27A(1)(a), (b) and (c). 25
- (3) Subsection (2) shall be complied with by the individual not later than the end of the period of one month beginning with the day on which all the conditions specified in subsection (1)(a) to (e) were first met with respect to the person.
- (4) An individual who— 30
- (a) fails to comply with this section, or
  - (b) in purported compliance with this section, makes a statement that is false in a material particular, knowing it to be so false or being reckless as to whether it is so false,
- shall be guilty of an offence. 35

**Duty of individual (in certain circumstances) to notify relevant change**

**28B.** (1) This section applies to an individual if—

- (a) in relation to the individual (as a beneficial owner of the investment limited partnership), the particulars referred to in section 27A(1)(a)

- and (b) are stated in an investment limited partnership's beneficial ownership register,
- (b) a relevant change occurs,
  - (c) the individual knows of the change or ought reasonably to do so,
  - (d) the investment limited partnership's beneficial ownership register has not been altered to reflect the change, and
  - (e) the individual has not been given a notice by the general partner under section 28 by the end of the period of one month beginning with the day on which the change occurred.
- (2) For the purposes of this section, a relevant change occurs if—
- (a) the individual referred to in subsection (1) ceases to be a beneficial owner of the investment limited partnership referred to in that subsection, or
  - (b) any other change occurs as a result of which the particulars (stated in the investment limited partnership's beneficial ownership register) in relation to the individual are incorrect or incomplete.
- (3) An individual to whom this section applies shall notify, in writing, the general partner referred to in subsection (1)(a) of the relevant change, and that notification shall—
- (a) state the date on which the change occurred, and
  - (b) give to the general partner any necessary information so that it can alter the investment limited partnership's beneficial ownership register to reflect that change.
- (4) Subsection (3) shall be complied with by the individual not later than whichever of the following periods is the last to expire—
- (a) the period of 2 months beginning with the day on which the relevant change occurred, or
  - (b) the period of one month beginning with the day on which facts have come to the notice of the individual from which he or she could reasonably conclude that the relevant change has occurred.
- (5) An individual who—
- (a) fails to comply with this section, or
  - (b) in purported compliance with this section, makes a statement that is false in a material particular, knowing it to be so false or being reckless as to whether it is so false,
- shall be guilty of an offence.

**Offence for failure to comply with notice under section 27B, 27C or 28**

**28C.** (1) A person to whom a notice under section 27B, 27C or 28 is given shall be guilty of an offence if the person—

- (a) fails to comply with the notice, or
  - (b) in purported compliance with the notice, makes a statement that is false in a material particular, knowing it to be so false or being reckless as to whether it is so false.
- (2) In proceedings for an offence under this section it shall be a defence to prove that the requirement (in the notice concerned) to give information was frivolous or vexatious.”. 5

**Amendment of section 29 of Act of 1994**

30. Section 29 of the Act of 1994 is amended by the deletion of subsection (3).

**Amendment of section 31(1) of Act of 1994**

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31. In addition to the amendments effected by *section 5* (substituting “depository” for “custodian” in, amongst other sections, the following section), section 31(1) of the Act of 1994 is amended by the insertion, after “proposed new general partner”, of “or depository”.

**Amendment of section 33(3) of Act of 1994**

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32. Section 33(3) of the Act of 1994 is amended by the substitution of “On the receipt of such a direction, the general partner shall thereupon (or immediately after)” for “Upon receipt of such a direction, the general partner shall within ten days of the date thereof,”.

**Amendment of section 35 of Act of 1994**

33. Section 35 of the Act of 1994 is amended—

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- (a) in subsection (7), by the substitution of “every general partner of the investment limited partnership, and every officer of such a general partner,” for “every officer of the investment limited partnership”, and
- (b) in subsection (8), by the substitution of “An investment limited partnership, a general partner of an investment limited partnership or an officer of such a general partner that” for “An investment limited partnership and a person who, being a director or member of an investment limited partnership”.

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**Amendment of section 37 of Act of 1994**

34. Section 37 of the Act of 1994 is amended—

- (a) in subsection (1), by the substitution of the following paragraph for paragraph

30

(iii):

“(iii) the death, incapacity, bankruptcy, removal, resignation, dissolution or winding-up of—

- (I) a limited partner, or

- (II) a general partner, where there is more than one general partner (and at least one general partner (that has not died and to which none of the other cases mentioned in this paragraph applies) remains);”,
- (b) in subsection (2), by the substitution of “shall cause, at such time and in accordance with such process as stands specified by the Bank for the purpose of this subsection, the dissolution of the investment limited partnership” for “shall cause the immediate dissolution of the investment limited partnership”, and 5
- (c) in subsection (3), by the substitution of “such period as stands specified by the Bank for the purpose of this subsection following the date of dissolution of an investment limited partnership, being a dissolution due to the circumstances specified in subsection (2)(a),” for “thirty-five days of the date of dissolution of an investment limited partnership due to the circumstances specified in subsection (2)(a)”. 10

**Amendment of section 38 of Act of 1994**

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35. Section 38 of the Act of 1994 is amended—

- (a) in subsection (1), by the substitution of “and delivered to the Bank.” for “, delivered to the Bank and published in *Iris Oifigiúil*.”, and
- (b) in subsection (4)—
  - (i) by the deletion of “and the general partner shall cause a notice to be placed in *Iris Oifigiúil* to that effect”, and 20
  - (ii) by substitution of “such of the one or more general partners, and such of the one or more limited partners, as hold themselves out as conducting or purporting to conduct the business of the investment limited partnership shall be liable for the debts and obligations purportedly incurred on behalf of the investment limited partnership thereafter” for “the limited partners shall be liable for the debts and obligations purportedly incurred on behalf of the investment limited partnership thereafter”. 25

**Amendment of section 39 of Act of 1994**

36. Section 39 of the Act of 1994 is amended by the substitution, for “any partner who is in default shall be guilty of an offence.” of the following: 30

“each of the following who is in default, namely—

- (i) a general partner, and
- (ii) any limited partner who, at the time of the contravention, purported to take part in the conduct of the business of the investment limited partnership, 35

shall be guilty of an offence (but this section does not apply in respect of a contravention to which section 13 applies).”.

**Amendment of Act of 1994 – new section 42A relating to relief by way of indemnification**

37. The Act of 1994 is amended by the insertion of the following section after section 42:

**“Power of court to grant relief by way of indemnification**

- 42A.** (1) This section applies to any case in which a provision (the ‘relevant provision’) of section 13, 16, 24 or 31 requires a person specified in the provision (the ‘specified person’) to indemnify a person in respect of any loss referred to in the relevant provision suffered by the latter. 5
- (2) In a case to which this section applies, where, on application by any person to the appropriate court, that court is satisfied that the applicant has suffered loss referred to in the relevant provision, the court may make an order requiring the specified person to pay to the applicant such amount as the court determines will indemnify the applicant in respect of that loss. 10
- (3) In subsection (2), ‘appropriate court’ means— 15
- (a) in a case where the following apply— 15
- (i) the specified person has been convicted of an offence under the relevant provision in respect of the default to which the application relates, and
- (ii) the total of the following amounts, namely, the amount of the estimated cost of complying with the order to which the application relates and the amount of the fine that has been imposed on the specified person in respect of that offence, does not exceed €5,000, 20
- the District Court before which the specified person has been convicted of that offence, 25
- (b) in a case where no prosecution has been brought, and none is pending, against the specified person under the relevant provision (in respect of the default to which the application relates) and the estimated cost of complying with the order to which that application relates does not exceed €15,000, the District Court, or 30
- (c) in a case where either—
- (i) the circumstance specified in subparagraph (i) of paragraph (a) applies but the total of the amounts referred to in subparagraph (ii) of that paragraph exceeds €5,000, or
- (ii) the circumstance specified in paragraph (b) applies but the estimated cost of complying with the order to which the application relates exceeds €15,000, 35
- the Circuit Court.
- (4) If, in relation to an application under subsection (2) to the District Court (being an application to which subparagraphs (i) and (ii) of subsection (3)(a) apply), that court during the hearing of the application becomes of opinion that the total of the amounts referred 40



to in subsection (3)(a)(ii) will exceed €5,000, it may, if it so thinks fit, transfer the application to the Circuit Court.

- (5) If, in relation to an application under subsection (2) to the District Court (being an application to which subsection (3)(b) applies), that court during the hearing of the application becomes of opinion that the estimated cost of complying with the order to which the application relates will exceed €15,000, it may, if it so thinks fit, transfer the application to the Circuit Court. 5
- (6) An application under subsection (2) to—
- (a) the District Court shall be made to the judge of the District Court for the District Court district in which the principal place of business of the specified person is situate, but this paragraph shall not apply where subsection (3)(a) applies in the matter, and 10
- (b) the Circuit Court shall be made to the judge of the Circuit Court for the circuit in which the principal place of business of the specified person is situate.”. 15

#### **Amendment of section 45 of Act of 1994**

**38.** Section 45 of the Act of 1994 is amended by the renumbering of the existing section as subsection (1) thereof and the insertion of the following subsections:

- “(2) The Bank shall not provide any funds from its own resources, other than from those resources provided to it under subsection (3), to defray expenses of the Bank incurred by it in the performance of the functions under sections 49 to 59 (in subsection (3) referred to as ‘expenses of the Bank associated with its functions under sections 49 to 59’). 20 25
- (3) The Central Bank Commission shall make regulations under section 32D of the Central Bank Act 1942 prescribing levies (in subsection (4) referred to as the ‘dedicated levies’) to be paid by investment limited partnerships, and the moneys received by the Bank by way of such levies shall be used by it to defray expenses of the Bank associated with its functions under sections 49 to 59. 30
- (4) Where—
- (a) in any year, the Bank reasonably apprehends that it will be unable to defray all of the expenses of the Bank, arising in that year, associated with its functions under sections 49 to 59 from moneys received by it by way of the dedicated levies, or 35
- (b) notwithstanding the existence of the dedicated levies and, apart from the circumstance referred to in paragraph (a), for any reason there is an insufficiency in any year of moneys available to the Bank to defray all of its expenses, arising in that year, associated with the foregoing functions, 40

the Minister shall, on the written request of the Bank, advance to the Bank such sums as he or she thinks proper to enable the Bank to defray all of its expenses, arising in that year, associated with the foregoing functions.

- (5) The payments of sums referred to in subsection (4) shall be made on such terms as to repayment, interest and other matters as may be determined by the Minister after consulting the Bank. 5
- (6) All moneys from time to time required by the Minister to meet sums which may become payable by him or her under subsection (4) shall be advanced out of the Central Fund or the growing produce thereof.”. 10

**Amendment of Act of 1994 – new sections 46 to 59 relating to beneficial ownership registers (including central register) and associated procedures, obligations, etc.**

39. The Act of 1994 is amended by the insertion of the following sections after section 45:

**“Duty to keep and maintain a beneficial ownership register**

46. (1) The general partner of an investment limited partnership shall keep and maintain a register (which shall be known, and is in this Act referred to, as a ‘beneficial ownership register’) in which there shall be entered by it the information referred to in section 27A(1)(a) and (b) and (2). 15
- (2) A general partner that fails to comply with subsection (1) shall be guilty of an offence. 20
- (3) If—
- (a) the name of any individual is, without sufficient cause, entered in or omitted from an investment limited partnership’s beneficial ownership register, or 25
- (b) default is made or unnecessary delay takes place in entering in an investment limited partnership’s beneficial ownership register the fact that an individual has ceased to be a beneficial owner of it, the individual aggrieved or any other interested party may apply to the court for rectification of the register. 30
- (4) Where an application is made under subsection (3), the court may either refuse the application or may order rectification of the beneficial ownership register and payment by the investment limited partnership of compensation for any loss sustained by any party aggrieved.
- (5) On such an application, the court may— 35
- (a) decide any question as to whether the name of any person who is a party to the application should or should not be entered in or omitted from the beneficial ownership register, and
- (b) more generally, decide any question necessary or expedient to be decided for rectification of the beneficial ownership register. 40

- (6) The reference in this section to ‘any other interested party’ is a reference to any other individual who is a beneficial owner of the investment limited partnership.

**Discharge of initial central filing obligation – construction of references to that expression in sections 48 to 59** 5

47. A reference in sections 48 to 59 to the discharge by a general partner of its initial central filing obligation is a reference to the delivery by the general partner of information to the Registrar in compliance with section 51(1) or (2).

**Delivery of information under sections 49 to 52: delivery may be effected by persons external to general partner (as well as by officers or employees of it)** 10

48. (1) This section applies in a case in which a general partner of an investment limited partnership is a body corporate.
- (2) The provision made by subsection (3) is in addition to the general law whereby a general partner acting through an officer or employee of the general partner may discharge an obligation referred to in this section. 15
- (3) An obligation imposed on a general partner of an investment limited partnership by any of sections 49 to 52 to deliver information to the Registrar may be discharged by a person, who is not an officer or employee of the general partner, acting on the general partner’s behalf. 20
- (4) Section 53 makes provision as respects certain information to be delivered to the Registrar where the obligation concerned is discharged on behalf of the general partner by a person acting as mentioned in subsection (3). 25
- (5) Section 51(6) applies to the delivery by a general partner of an investment limited partnership of information irrespective of whether the person who delivers the information is an officer or employee of the general partner or a person acting as mentioned in subsection (3).

**Registrar of Beneficial Ownership of Investment Limited Partnerships** 30

49. (1) There shall, for the purposes of this Act, be a registrar to be known as the ‘Registrar of Beneficial Ownership of Investment Limited Partnerships’, and in this Act referred to as the ‘Registrar’.
- (2) The Bank shall be the Registrar.

**Establishment and maintenance of central register** 35

50. (1) There is, by virtue of this section, established a register which shall be known as the ‘Central Register of Beneficial Ownership of Investment Limited Partnerships’ and is in this Act referred to as the ‘central register’.
- (2) The central register shall be maintained by the Registrar; the information required by sections 51 to 59 to be delivered or submitted to the Registrar shall be entered in that register by the Registrar and 40

that register shall be kept in such form as the Registrar considers appropriate.

- (3) The provision made by subsection (2) as respects entry of information in the central register is subject to subsection (5) of section 52 (which prohibits disclosure of a PPS number). 5

**Obligation of general partner to deliver beneficial ownership information to Registrar and related obligations of designated person where certain discrepancies discovered**

51. (1) A general partner of an investment limited partnership, being a partnership that has been formed before the commencement of *section 39* of the *Investment Limited Partnerships (Amendment) Act 2020*, shall deliver the information specified in section 52 to the Registrar within 6 months from such commencement. 10

(2) A general partner of an investment limited partnership, being a partnership that has been formed on or after the commencement of *section 39* of the *Investment Limited Partnerships (Amendment) Act 2020*, shall, within 6 months from the date of its formation, deliver the information specified in section 52 to the Registrar in such manner as the Registrar determines. 15

(3) Where the following conditions are satisfied (and whether in the circumstances of the designated person taking the measures referred to in section 27A(7) or otherwise)— 20

(a) any of the particulars, as referred to in section 27A(1)(a) and (b), contained in the beneficial ownership register of an investment limited partnership come to the knowledge of a designated person, and 25

(b) the designated person forms the opinion that there is a discrepancy between the particulars referred to in paragraph (a) and the information in the central register (on referring himself or herself to the information in the central register as it relates to that investment limited partnership), 30

then the designated person shall deliver, in a timely manner, to the Registrar, in such manner as the Registrar determines, notice of that opinion, specifying the particulars as respects which the foregoing discrepancy exists. 35

(4) On receipt of a foregoing notice, the Registrar shall—

(a) if the Registrar considers it appropriate to do so, make an entry in the relevant place in the central register which states that the notice has been received and specifies the particulars as respects which the foregoing discrepancy exists, and 40

(b) serve a notice on the general partner of the investment limited partnership concerned which—

(i) states that the foregoing notice has been received, and

- (ii) specifies the particulars as respects which the foregoing discrepancy exists, and requests the general partner of the investment limited partnership to deliver to the Registrar, within a period specified in the notice and in such manner as the Registrar determines— 5
- (I) a submission as to why the general partner of the investment limited partnership considers the opinion of the designated person concerned not to be well founded, or
- (II) if the general partner of the investment limited partnership considers the opinion of the designated person concerned to be well founded, such amended particulars (for entry in the central register) as are required where the general partner is satisfied that the delivery of such is the appropriate means by which the discrepancy can be resolved, 10
- and such a request shall be complied with by the general partner of the investment limited partnership accordingly. 15
- (5) None of the following—
- (a) an opinion stated in a notice delivered under subsection (3) by a designated person to the Registrar (nor the specification in such a notice of the particulars as respects which the discrepancy concerned exists), 20
- (b) any act done by the Registrar, as mentioned in subsection (4), on foot of the receipt by the Registrar of a notice delivered under subsection (3) and, in particular, any entry made in the central register by the Registrar on foot of such receipt, 25
- (c) a submission delivered under subsection (4)(b)(ii)(I) to the Registrar by a general partner,
- shall, of itself, be regarded as constituting defamatory matter.
- (6) The means specified in subsection (7), and no other means, shall be used by a general partner of an investment limited partnership to deliver, under this section or any of sections 52 to 59, information to the Registrar. If such means are not used to deliver the information concerned, the fact of the receipt by the Registrar of the particular information shall not constitute compliance with the requirement concerned of the section in question. 30 35
- (7) The means referred to in subsection (6) are those that are provided for under the Electronic Commerce Act 2000.
- (8) The reference in this section to the use of the means provided for under the Electronic Commerce Act 2000 is a reference to their use in a manner that complies with any requirements of the Registrar of the kind referred to in sections 12(2)(b) and 13(2)(a) of that Act. 40

### Information which shall be delivered to Registrar

52. (1) The following is the information referred to in section 51(1) or (2) that shall be delivered by a general partner of an investment limited partnership to the Registrar:
- (a) the name, date of birth, nationality and residential address of each beneficial owner of the investment limited partnership; 5
  - (b) a statement of the nature and extent of the interest held, or the nature and extent of control exercised by, each such beneficial owner,  
and section 54 makes provision for occasions, subsequent to the discharge by the general partner of its initial central filing obligation, on which information shall be delivered by it to the Registrar. 10
- (2) In addition to what is provided in subsection (1), there shall be delivered to the Registrar by the general partner of the investment limited partnership— 15
- (a) for the purpose of verification of the information delivered under section 51(1) or (2) and without prejudice to paragraph (b), the PPS number of each beneficial owner to whom such a number has been assigned, or
  - (b) such information as stands determined by the Registrar for the purposes of this section. 20
- (3) In addition to what is provided in subsections (1) and (2), where the obligation imposed on a general partner of an investment limited partnership by section 51(1) or (2) is discharged by its acting through an officer or employee of the general partner, there shall be delivered to the Registrar— 25
- (a) the name, address, phone number and e-mail address of the officer or employee for correspondence purposes, and
  - (b) particulars as to the capacity in which the officer or employee is acting. 30
- (4) The Registrar shall delete from the central register information entered in it in relation to an investment limited partnership if 10 years have elapsed from the date on which the final distribution is made under the investment limited partnership (should such occur) and, as soon as may be after that deletion, the Registrar shall destroy that information. 35
- (5) As respects a PPS number of a beneficial owner that has been delivered under subsection (2) to the Registrar—
- (a) the Registrar shall not disclose that number, and
  - (b) that number shall be stored securely by the Registrar.
- (6) The Registrar shall, as respects any information that has been received under subsection (3) and recorded by the Registrar, destroy the information as soon as may be after 10 years have elapsed from the 40

date on which the final distribution is made (should such occur) under the investment limited partnership to which it relates.

- (7) Subsections (2) to (6) shall, with any necessary modifications, apply to amended particulars that are to be, or have been delivered, under section 51(4)(b)(ii)(II) as they apply to information that is to be, or has been, delivered under section 51(1) or (2). 5

**Information to be provided by presenter**

53. (1) This section applies where the information specified in section 51(1) or (2) is delivered to the Registrar by a person (in this section referred to as the ‘presenter’) acting on behalf of the general partner concerned as mentioned in section 48(3). 10
- (2) Where this section applies, the following information shall also be delivered by the presenter to the Registrar:
- (a) the presenter’s name, address, phone number and e-mail address;
  - (b) particulars as to the capacity in which the presenter is acting; 15
  - (c) if the presenter is not an individual, the name, address, phone number and e-mail address of an individual for correspondence purposes.
- (3) The Registrar shall, as respects any information that has been received under subsection (2) and recorded by the Registrar, destroy the information as soon as may be after 10 years have elapsed from the date on which the final distribution is made (should such occur) under the investment limited partnership to which it relates. 20

**Duty to keep information in beneficial ownership register and central register aligned and up to date** 25

54. (1) The purpose of this section is to require that any changes that occur in the information contained in an investment limited partnership’s beneficial ownership register be reflected by a corresponding change being made in the central register; accordingly there is imposed on the general partner of an investment limited partnership by this section an obligation – referred to in this section as the ‘follow up obligation’ – to deliver information to the Registrar so as to allow any such change to be reflected in the central register. 30
- (2) The provisions of this section shall have effect in relation to an investment limited partnership following the discharge by the general partner of the investment limited partnership of its initial central filing obligation (and in subsection (3) the time on which that obligation is so discharged is referred to as the ‘relevant time’). 35
- (3) Where at any time, subsequent to the relevant time, the obligation referred to in subsection (4) falls to be discharged by a general partner of the investment limited partnership, then there is also imposed on the general partner, by this section, the follow up obligation specified in subsection (5). 40

- (4) The first-mentioned obligation in subsection (3) of the general partner is the obligation to—
- (a) enter any information in the investment limited partnership’s beneficial ownership register, or
  - (b) amend or delete any information in that register, 5  
whether by virtue of its duty under section 27A(1) to hold accurate and current information regarding the investment limited partnership’s beneficial ownership or any provision of section 27B, 27C, 28, 28A or 28B.
- (5) The general partner’s follow up obligation is to deliver to the Registrar, as appropriate— 10
- (a) the same information as that which (as mentioned in subsection (4) (a)) the general partner is required to enter in the investment limited partnership’s beneficial ownership register, or
  - (b) the appropriate information that will enable the Registrar to make 15  
the same amendment or deletion of information in the central register as that which (as mentioned in subsection (4)(b)) the general partner is required to make in the investment limited partnership’s beneficial ownership register,
- and the follow up obligation shall be discharged within 14 days from 20  
the date on which the first-mentioned obligation in subsection (3) falls to be discharged by the general partner.
- (6) Section 52(2) to (7) and, as the case may be, section 53 shall apply in a case where information is delivered to the Registrar under subsection (5) as they apply in a case where information is delivered to the 25  
Registrar under section 51(1), (2) or (3).

**Unrestricted access to beneficial ownership information in central register**

55. (1) Subject to subsection (2), the following shall have the right to inspect the central register—
- (a) a member of the Garda Síochána, not below the rank of inspector, 30  
who is engaged in the prevention, detection, investigation or analysis of possible money laundering or terrorist financing,
  - (b) a member of FIU Ireland within the meaning of Part 4 of the Act of 2010,
  - (c) an officer of the Revenue Commissioners, holding a position not 35  
below that of Higher Executive Officer,
  - (d) an officer of the Criminal Assets Bureau, holding a rank not below the rank of inspector in the Garda Síochána, or holding a position not below that of Higher Executive Officer.
- (2) The right referred to in subsection (1) shall not be exercised— 40



- (a) by a member of the Garda Síochána referred to in paragraph (a) of that subsection, unless he or she has been authorised to exercise the right by a member of the Garda Síochána, not below the rank of superintendent,
  - (b) by a member of FIU Ireland, unless he or she has been authorised to exercise the right by a member of the Garda Síochána, not below the rank of superintendent, 5
  - (c) by an officer of the Revenue Commissioners referred to in paragraph (c) of that subsection, unless he or she has been authorised to exercise the right by an officer of the Revenue Commissioners, holding a position not below that of Principal Officer, or 10
  - (d) by an officer of the Criminal Assets Bureau referred to in paragraph (d) of that subsection, unless he or she has been authorised to exercise the right by a member of the Garda Síochána, not below the rank of superintendent. 15
- (3) Subject to subsection (4), a member, a member of staff or an officer of a competent authority who is engaged in the prevention, detection or investigation of possible money laundering or terrorist financing shall have the right to inspect the central register. 20
- (4) The right referred to in subsection (3) shall not be exercised—
- (a) by—
    - (i) a member of staff of the Bank,
    - (ii) an officer of the Minister for Justice and Equality,
    - (iii) a member or member of staff of the Property Services Regulatory Authority, or 25
    - (iv) a member or member of staff of the Legal Services Regulatory Authority,

(each of which or whom is referred to in this paragraph as a ‘relevant competent authority’) unless he or she holds a position not below that of Higher Executive Officer and has been authorised to exercise the right by a member or member of staff or, as the case may be, an officer of the relevant competent authority concerned, holding a position not below that of Principal Officer, or 30
  - (b) by a member or member of staff of— 35
    - (i) the Law Society of Ireland,
    - (ii) the General Council of the Bar of Ireland, or
    - (iii) a designated accountancy body (within the meaning of Part 4 of the Act of 2010),

unless he or she is a person designated by the President of the Law Society of Ireland, the chairperson of the General Council of the Bar 40

of Ireland or the chief executive of (or a person holding an equivalent position in) the designated accountancy body, as the case may be, to be a person authorised for the purposes of subparagraph (i), (ii) or (iii), as appropriate, to exercise the right.

- (5) On there being made of the Registrar a request for inspection, under any of subsections (1) to (4), of the central register, the Registrar shall afford the maker of the request access, in a timely manner, to the register. 5
- (6) The Registrar shall, neither during the taking of the steps to afford the maker the access referred to in subsection (5), nor afterwards, alert the beneficial owners of any investment limited partnership concerned to the fact of such access having been afforded. 10
- (7) In subsection (6), ‘any investment limited partnership concerned’ means any investment limited partnership to which the information in the central register, the subject of the inspection concerned, relates. 15
- (8) Each of the following:
- (a) the Garda Síochána;
  - (b) the Revenue Commissioners;
  - (c) a competent authority;
  - (d) the Criminal Assets Bureau, 20
- may disclose the information in the central register to any corresponding competent authority of another Member State (a ‘corresponding authority’); in the event of there being a request made of a body or other person referred to in any of paragraphs (a) to (d) by a corresponding authority for disclosure of such information, the request shall be complied with in a timely manner. 25
- (9) No fee shall be charged to a corresponding authority for the disclosure of the information in the central register.

#### **Restricted access to beneficial ownership information in central register**

- 56.** (1) When— 30
- (a) a general partner of an investment limited partnership enters into an occasional transaction with a designated person, or forms a business relationship with a designated person, or
  - (b) a designated person is taking customer due diligence measures in accordance with Part 4 of the Act of 2010 in relation to an investment limited partnership, 35
- the designated person shall, subject to subsection (6), have a right of access to the following information in the central register that relates to the investment limited partnership:
- (i) the name, the month and year of birth and the country of residence and nationality of each beneficial owner of it; 40

- (ii) a statement of the nature and extent of the interest held, or the nature and extent of control exercised, by each such beneficial owner,
- and that access shall be afforded in a timely manner.
- (2) The information obtained by a designated person by means of the access to the central register afforded under subsection (1) shall not be relied upon exclusively by the designated person to fulfil the designated person's duty to apply customer due diligence measures under Part 4 of the Act of 2010 (which duty shall be fulfilled by using a risk-based approach).
- (3) Any person may, subject to subsection (6), request in writing access to the following information in the central register that relates to any investment limited partnership:
- (a) the name, the month and year of birth and the country of residence and nationality of each beneficial owner of it;
- (b) a statement of the nature and extent of the interest held, or the nature and extent of control exercised, by each such beneficial owner.
- (4) Any person may, subject to subsection (6), request in writing access to the following information in the central register that relates to any investment limited partnership which holds or owns a controlling interest in any corporate or other legal entity incorporated outside the European Union, through direct or indirect ownership, including through bearer shareholdings, or through control via other means:
- (a) the name, the month and year of birth and the country of residence and nationality of each beneficial owner of the investment limited partnership;
- (b) a statement of the nature and extent of the interest held, or the nature and extent of control exercised, by each such beneficial owner of the investment limited partnership,
- and that access shall be afforded in a timely manner.
- (5) The Data Protection Act 2018 shall apply to the access that the Registrar affords to a designated person and any member of the public in respect of the information in the central register that relates to an investment limited partnership.
- (6) Where a designated person or a member of the public seeks to have access to, or to inspect, any information in the central register so far as such information relates to a minor who is a beneficial owner of an investment limited partnership, the Registrar shall request the designated person or member of the public to provide, in writing, to the Registrar a summary of the grounds on which he or she considers it is in the public interest that that information be disclosed to him or her and—

- (a) if the designated person or the member of the public refuses or fails to comply with that request, or
  - (b) unless the Registrar, having considered such a written summary provided to the Registrar, is of the opinion that there are substantial grounds for the contention of the foregoing person that it is in the public interest that the information be disclosed to him or her,
- the designated person or member of the public shall not be permitted by the Registrar to have access to, or to inspect, any information in the central register so far as such information relates to the minor concerned.
- (7) In subsection (1), ‘occasional transaction’ has the same meaning as it has in section 27A(7).

**Obligations of competent authorities to report certain discrepancies to Registrar**

57. (1) If—
- (a) any of the following:
    - (i) the Garda Síochána;
    - (ii) the Revenue Commissioners;
    - (iii) a competent authority;
    - (iv) the Criminal Assets Bureau,

forms the opinion that there is a discrepancy between the information in the central register and the beneficial ownership information, as it relates to any investment limited partnership, available to, as the case may be, the Garda Síochána, the Revenue Commissioners or other foregoing authority or bureau (each of which is referred to in this section as a ‘relevant person’), and
  - (b) to the extent that the doing of the following does not interfere unnecessarily with the performance of the relevant person’s functions,
- then the relevant person shall deliver, in a timely manner, to the Registrar, in such manner as the Registrar determines, notice of that opinion, specifying the particulars as respects which the foregoing discrepancy exists.
- (2) On receipt of a foregoing notice, the Registrar shall—
- (a) if the Registrar considers it appropriate to do so, make an entry in the relevant place in the central register which states that the notice has been received and specifies the particulars as respects which the foregoing discrepancy exists, and
  - (b) serve a notice on the general partner of the investment limited partnership concerned which—
    - (i) states that the foregoing notice has been received, and

(ii) specifies the particulars as respects which the foregoing discrepancy exists, and requests the general partner to deliver to the Registrar, within a period specified in the notice and in such manner as the Registrar determines—

(I) a submission as to why the general partner considers the opinion of the relevant person concerned not to be well founded, or 5

(II) if the general partner considers the opinion of the relevant person concerned to be well founded, such amended particulars (for entry in the central register) as are required where the general partner is satisfied that the delivery of such is the appropriate means by which the discrepancy can be resolved, 10

and such a request shall be complied with by the general partner accordingly. 15

(3) None of the following—

(a) an opinion stated in a notice delivered under subsection (1) by a relevant person to the Registrar (nor the specification in such a notice of the particulars as respects which the discrepancy concerned exists), 20

(b) any act done by the Registrar, as mentioned in subsection (2), on foot of the receipt by the Registrar of a notice delivered under subsection (1) and, in particular, any entry made in the central register by the Registrar on foot of such receipt,

(c) a submission delivered under subsection (2)(b)(ii)(I) to the Registrar by a general partner, 25

shall, of itself, be regarded as constituting defamatory matter.

(4) Subsections (2) to (7) of section 52 shall, with any necessary modifications, apply to amended particulars that are to be, or have been delivered, under subsection (2)(b)(ii)(II) as they apply to information that is to be, or has been, delivered under section 51(1) or (2). 30

#### **Fees may be charged for access to central register**

58. (1) The Registrar may require any of the persons referred to in section 56(1), (3) or (4) to pay to the Registrar a fee of such an amount as the Registrar may determine in respect of the access afforded to the central register under section 56(1), (3) or (4). 35

(2) The amount of a fee required to be paid under subsection (1) shall not exceed the administrative cost incurred in affording access to the information concerned. 40

**Offence for failure to comply with section 51, 52, 53 or 54 and supplemental provisions**

59. (1) A general partner that fails to comply with section 51, 52 or 54 shall be guilty of an offence.
- (2) A general partner that fails, without reasonable excuse, to comply with a request, as referred to in subparagraph (ii) of subsection (4)(b) of section 51, or subparagraph (ii) of subsection (2)(b) of section 57, contained in a notice served on it under that subsection (4)(b) or (2)(b), as the case may be, shall be guilty of an offence. 5
- (3) A presenter that fails to comply with section 53 shall be guilty of an offence. 10
- (4) A person who, in purported compliance with section 51, 52, 53 or 54, makes a statement that is false in a material particular, knowing it to be so false or being reckless as to whether it is so false, shall be guilty of an offence. 15
- (5) A designated person who fails to comply with section 51(3) shall be guilty of an offence.

**Amendment of Act of 1994 – insertion of new Part VIII relating to migration-in and migration-out of investment limited partnerships**

40. The Act of 1994 is amended by the insertion of the following Part after section 59 (inserted by section 39): 20

“PART VIII

MIGRATION-IN AND MIGRATION-OUT OF INVESTMENT LIMITED PARTNERSHIPS

CHAPTER 1

*Migration-in to become an investment limited partnership* 25

**Definitions and supplemental (Chapter 1)**

60. (1) In this Chapter—
- ‘general partner’, in relation to a migrating partnership, means the entity which acts as a general partner of the migrating partnership or performs an equivalent role to that of general partner in respect of it; 30
- ‘investment limited partnership’ means an investment limited partnership authorised under this Act;
- ‘migrating partnership’ means a partnership which is formed and where relevant registered under the laws of a relevant jurisdiction and which is an alternative investment fund within the meaning of Regulation 5(1) of the European Union (Alternative Investment Fund Managers) Regulations 2013; 35
- ‘registration documents’ has the meaning given by section 61;

‘relevant jurisdiction’, in relation to a migrating partnership, means the place, outside the State, prescribed under subsection (2) where the migrating partnership is formed and where relevant registered at the time of its application under section 62.

- (2) The Minister may make regulations prescribing places, outside the State, for the purposes of the definition of ‘relevant jurisdiction’ in subsection (1) where he or she is satisfied that the law of the place concerned makes provision for migrating partnerships to continue under the laws of the State or for investment limited partnerships to continue under the laws of that place in a substantially similar manner to continuations under section 62.

### **Registration documents**

- 61.** (1) In this Chapter ‘registration documents’, in relation to a migrating partnership, means the following documents:
- (a) a copy, certified and authenticated in such manner as may be specified by the Bank, of the certificate of formation or registration or equivalent certificate or document issued with respect to the migrating partnership under the laws of the relevant jurisdiction;
  - (b) a copy, certified and authenticated in such manner as may be specified by the Bank, of the partnership agreement of the migrating partnership;
  - (c) a list setting out particulars in relation to each of the one or more general partners of the migrating partnership;
  - (d) a statutory declaration of a general partner of the migrating partnership made in such manner and form as may be specified by the Bank, not more than 28 days before the date on which an application is made to the Bank under section 62, to the effect that—
    - (i) the migrating partnership is, as of the date of the declaration, formed and where relevant registered under the laws of the relevant jurisdiction and that no petition or other similar proceeding to wind up or liquidate the migrating partnership has been notified to any general partner of it and remains outstanding in any place, and no order has been notified to any general partner of it or resolution adopted by it to wind up or liquidate the migrating partnership in any place,
    - (ii) the appointment of a liquidator or other similar person to the migrating partnership has not been notified to any general partner of it and, at the date of the declaration, no such person is acting in that capacity in any place with respect to the migrating partnership or its property or any part of its property,
    - (iii) the migrating partnership is not, at the date of the declaration, operating or carrying on business under any scheme, order, compromise or other similar arrangement entered into or made

- by any general partner of it in respect of the migrating partnership with creditors in any place,
- (iv) at the date of the declaration a general partner of the migrating partnership has served notice of the proposed authorisation on the creditors of the migrating partnership, 5
- (v) any consent or approval to the proposed authorisation in the State required by any contract entered into or undertaking given by a general partner in respect of the migrating partnership has been obtained or waived, and
- (vi) the authorisation is permitted by and has been approved in accordance with the partnership agreement of the migrating partnership; 10
- (e) a declaration of solvency prepared in accordance with Chapter 3;
- (f) if a general partner of the migrating partnership is a body corporate, a schedule of the charges or security interests granted or created on behalf of the migrating partnership by the general partner that would, if such charges or security interests had been created or granted by a company incorporated under the Companies Act 2014, have been registrable under Chapter 2 of Part 7 of that Act and the particulars of such charges and interests as are specified in relation to charges by section 414 of that Act; 15 20
- (g) notification of the proposed name of the migrating partnership if different from its existing name;
- (h) a copy of the partnership agreement which the partners of the migrating partnership have resolved to adopt, which shall be in the Irish language or the English language, which shall take effect on authorisation under section 62 and which the general partner or, as the case may be, each general partner of the migrating partnership undertakes not to amend before authorisation without the prior approval of the Bank. 25 30
- (2) If the original of any of the documents referred to in subsection (1) is not written in the Irish language or the English language, then 'registration documents' in so far as that expression relates to such a document, means a translation of the document into the Irish language or the English language certified as being a correct translation of it by a person who is competent to so certify. 35

### **Continuation of migrating partnership**

- 62.** (1) A general partner of a migrating partnership may apply to the Bank for the migrating partnership to be authorised under this Act as an investment limited partnership in the State by way of continuation; subject to the subsequent subsections of this section— 40
- (a) such an application shall be regarded as an application under this Act for authorisation of the migrating partnership as an investment limited partnership, and



- (b) the provisions of this Act in relation to—
  - (i) an application for such authorisation,
  - (ii) the conditions for such authorisation,
  - (iii) the grant of such authorisation,
  - (iv) all of the other requirements of this Act in respect of the authorisation of an investment limited partnership and of matters precedent and incidental to such authorisation and all of the provisions of this Act concerning an investment limited partnership that have effect on and from the grant of an authorisation in relation to it,
    - 5
    - 10

shall apply in respect of, as appropriate—

  - (I) the application referred to in this subsection or, as appropriate, the granting of the authorisation, on foot thereof, and
  - (II) every other matter concerning the investment limited partnership, as provided by or under this Act, on and from the grant of the authorisation.
    - 15
- (2) For the purposes of an application referred to in subsection (1)—
  - (a) the general partner concerned shall notify, in writing, the Bank of its intention to make such an application,
  - (b) the Bank, on receipt of that notification, shall request the general partner to make an application for an authorisation under section 8 in respect of the migrating partnership,
    - 20

and

  - (i) the consideration by the Bank of the documentation specified in subsection (3) shall be postponed until such time as the Bank has notified the general partner, as provided under paragraph (ii), of the decision referred to in that paragraph (but this paragraph does not apply if the decision of the Bank, with regard to the relevant application, is otherwise than as stated in paragraph (ii) and, in the latter case, the foregoing documentation shall not be considered by it), and
    - 25
    - 30
  - (ii) the Bank, following the relevant application made to it under section 8, shall (where such is the decision that it has made) notify the general partner that it proposes to grant the relevant authorisation under that section.
    - 35
- (3) The notification under subsection (2) in respect of the application concerned shall be accompanied by—
  - (a) a statement, in such form as may be specified by the Bank, and signed by a general partner of the migrating partnership,
  - (b) the registration documents, and
    - 40

- (c) a statutory declaration, in such form as may be specified by the Bank, made by a solicitor engaged for this purpose by the migrating partnership, or by the general partner, and stating that the list and schedule specified in paragraphs (c) and (f), respectively, of the definition of ‘registration documents’ in section 61(1) are accurate in all material respects, 5
- and the Bank may accept the declaration referred to in paragraph (c) as sufficient evidence as to the accuracy, as referred to in that paragraph, of the list and schedule concerned.
- (4) Subsection (5) applies unless, on foot of its consideration of the documentation specified in subsection (3), the Bank has grounds to doubt, as appropriate— 10
- (a) the authenticity of, or
- (b) the accuracy in any material respect of any fact stated in, that documentation. 15
- (5) Where this subsection applies, the Bank shall issue under section 8(6) a certificate of authorisation in respect of the migrating partnership following the notification to the general partner of its decision as referred to in subsection (2)(ii); that certificate shall include an indication that the authorisation granted under this Act in respect of the migrating partnership is an authorisation as an investment limited partnership in the State by way of continuation. 20
- (6) A general partner of the migrating partnership shall, as soon as may be after the certificate referred to in subsection (5) has been issued in respect of the migrating partnership, apply for the migrating partnership to be de-registered (if applicable or required) in the relevant jurisdiction. 25
- (7) From the date of the issue of the certificate referred to in subsection (5) in respect of it, the migrating partnership shall be deemed to be an investment limited partnership authorised under this Act and shall continue for all purposes under this Act, and the provisions of this Act shall apply to the migrating partnership, but this section does not operate— 30
- (a) to create a new legal entity,
- (b) to prejudice or affect the identity or continuity of the migrating partnership as previously formed and where relevant registered under the laws of the relevant jurisdiction for the period that the migrating partnership was formed and where relevant registered under the laws of the relevant jurisdiction, 35
- (c) to affect any contract made, resolution passed or any other act or thing done in relation to the migrating partnership during the period that the migrating partnership was so formed and where relevant registered, 40

- (d) to affect the rights, authorities, functions and liabilities or obligations of the migrating partnership or any other person, or
  - (e) to render defective any legal proceedings by or against the migrating partnership.
- (8) Without prejudice to the generality of subsection (7)— 5
- (a) the failure of a general partner of a migrating partnership to send to the Bank the particulars of a charge or security interest created before the date of issue of the certificate referred to in subsection (5) shall not prejudice any rights which any person in whose favour the charge was made or security interest created may have under it, 10  
and
  - (b) any legal proceedings that could have been continued or commenced by or against the migrating partnership or any general partner of it in respect of that migrating partnership before the date of issue of that certificate may, notwithstanding the issue of that certificate, be continued or commenced by or against the migrating partnership or a general partner of it in respect of that migrating partnership after the date of issue of that certificate. 15

**Supplementary provision in relation to section 62**

63. (1) A general partner of the migrating partnership shall notify the Bank, 20  
within 3 days after the date of de-registration in the relevant jurisdiction, of that de-registration in such manner and, where relevant, form as may be specified by the Bank.
- (2) If there is any material change in any of the information contained in the statutory declaration specified in paragraph (d) of the definition of 'registration documents' in section 61(1) after the date of the declaration and before the date of the issue of the certificate referred to in section 62(5), the general partner who made that statutory declaration, and any other general partner who becomes aware of that material change, shall forthwith deliver a new statutory declaration to the Bank relating to the change. 25 30
- (3) If a general partner of the migrating partnership fails to comply with any provision of section 62 or this section, the Bank may give notice to the general partner that, unless it rectifies the failure within 30 days after the date of the giving of notice and confirms that it has rectified the failure, the Bank may, with view to exercising its powers under section 29(1)(c) to revoke the authorisation of the migrating partnership, publish a notice, as referred to in subsection (4), that states its intention to so revoke the migrating partnership's authorisation and indicates, in brief terms, the grounds on which it will rely for such revocation. 35 40
- (4) If the failure mentioned in subsection (3) is not rectified within 30 days after the date of the giving of the notice referred to in that subsection, the Bank may publish a notice stating that, at the expiration of 1 month after the date of that notice, the Bank, unless the 45

matter is resolved, may exercise its powers under section 29(1)(c) to revoke the authorisation of the migrating partnership and indicating, in brief terms, the grounds on which it will rely for such revocation.

- (5) At the expiration of the time mentioned in the notice the Bank may, unless cause to the contrary is previously shown by the migrating partnership, revoke the authorisation of the migrating partnership under section 29(1)(c). 5
- (6) The provision made by this section imposing requirements—
- (a) in relation to a proposed revocation under section 29(3) of an authorisation, as concerns the giving of a particular notice to a general partner of a migrating partnership, or 10
- (b) in relation to such a proposal, as concerns publishing a particular notice as respects the proposal,
- shall not be construed as imposing like requirements in cases generally of the proposed exercise of the power of revocation under section 29(3) (which cases shall, instead, be governed by the general law regarding procedural fairness). 15

## CHAPTER 2

### *Revocation of authorisation following migration-out*

#### **Definitions and supplemental (Chapter 2)** 20

**64.** (1) In this Chapter—

‘exiting partnership’ means an investment limited partnership that is the subject of the application under section 65 to have its authorisation revoked;

‘relevant jurisdiction’, in relation to an exiting partnership, means the place, outside the State, prescribed under subsection (2) in which the partnership proposes to be registered; 25

‘transfer documents’, in relation to an exiting partnership, means the following documents:

- (a) a statutory declaration, in such form as may be specified by the Bank, of a general partner of the partnership made not more than 28 days before the date on which the application is made to the Bank to the effect that— 30
- (i) the partnership will, upon registration, continue as a partnership under the laws of the relevant jurisdiction, 35
- (ii) no petition or other similar proceeding to wind up or liquidate the partnership has been notified to any general partner of it and remains outstanding in any place, and no order has been notified to any general partner of it or resolution adopted to wind up or liquidate the applicant in any place, 40

- (iii) the appointment of a liquidator or other similar person to the partnership has not been notified to any general partner of it and, at the date of the declaration, no such person is acting in that capacity in any place with respect to the partnership or its property or any part of its property, 5
- (iv) the partnership is not, at the date of the declaration, operating or carrying on business under any scheme, order, compromise or other similar arrangement entered into or made by any general partner of it in respect of the partnership with creditors in any place, 10
- (v) the application for revocation of the authorisation of the partnership is not intended to defraud persons who are, at the date of the declaration, creditors of the partnership,
- (vi) any consent or approval to the proposed revocation required by any contract entered into or undertaking given by any general partner of it in respect of the partnership has been obtained or waived, and 15
- (vii) the revocation is permitted by the partnership agreement of the partnership;
- (b) a declaration of solvency by a general partner in respect of the exiting partnership prepared in accordance with the provisions of Chapter 3; 20
- (c) a copy of a resolution of the partners of the exiting partnership passed in accordance with the terms of the partnership agreement that approves the proposed revocation of the partnership's authorisation and the migration of the partnership to the relevant jurisdiction. 25
- (2) The Minister may make regulations prescribing places, outside the State, for the purposes of the definition of 'relevant jurisdiction' in subsection (1), where he or she is satisfied that the law of the place concerned makes provision for partnerships that are substantially similar to exiting partnerships to continue under the laws of the State in a substantially similar manner to continuations under section 62 or for investment limited partnerships to continue under the laws of that place. 30  
35

**Revocation of authorisation of investment limited partnerships when continued under law of place outside the State**

65. (1) A general partner which proposes its investment limited partnership to be registered in a relevant jurisdiction by way of continuation as a partnership may apply to the Bank for the authorisation of that investment limited partnership to be revoked under section 29(2). 40
- (2) Where an application is made under subsection (1), the Bank shall not revoke the authorisation of the investment limited partnership, the subject of the application, unless it is satisfied that all of the

requirements of this Act in respect of that revocation and of matters precedent and incidental to that revocation have been complied with and, in particular, but without prejudice to the generality of the foregoing, it is satisfied that—

- (a) the general partner of the partnership has delivered to the Bank an application for the purpose, in such form as may be specified by the Bank and signed by the general partner, together with the transfer documents, 5
  - (b) the general partner has paid in respect of the partnership any levies or fees prescribed under section 32D or 32E of the Central Bank Act 1942 which are due, 10
  - (c) the partnership complies with any conditions that the Bank may impose on the partnership, and
  - (d) the general partner of the partnership has delivered to the Bank notice of any proposed change in the name and of proposed registered office or agent for service of process of the partnership in the relevant jurisdiction. 15
- (3) An application under this section shall be accompanied by a statutory declaration, in such form as may be specified by the Bank, made by a solicitor engaged for this purpose by the general partner of the partnership and stating that the requirements mentioned in subsection (2) have been complied with, and the Bank may accept such a declaration as sufficient evidence of compliance. 20
- (4) Any partner of an investment limited partnership who complains that— 25
- (a) the procuring, by a general partner, any other partner or any person connected with the management of the partnership, of the passing of the resolution referred to in paragraph (c) of the definition of ‘transfer documents’ in section 64(1), or
  - (b) the taking of any steps on foot thereof for the migration of the partnership to the relevant jurisdiction, 30
- constitutes conduct that—
- (i) is oppressive to him or her or any of the persons who are partners of the investment limited partnership (including himself or herself), or 35
  - (ii) is in disregard of his or her or their interests as partners,
- may apply to the court for an order under subsection (5).
- (5) If, on an application under subsection (4), the court is of opinion that the either of the matters referred to in paragraphs (a) and (b) of that subsection has resulted in conduct that falls within paragraph (i) or (ii) of that subsection the court may, with a view to bringing to an end the matters complained of, make such order or orders as it thinks fit. 40

- (6) The orders which the court may so make include an order—
  - (a) directing or prohibiting any act or cancelling or varying any transaction (including cancellation of the revocation by the Bank of the partnership’s authorisation),
  - (b) for the purchase of the partnership interest of the partner who has made the application under subsection (4) by other partners of the partnership, and
  - (c) for the payment by the partnership of compensation to the partner who has made the application under subsection (4).

CHAPTER 3 10

*Declaration of solvency*

**Definitions (Chapter 3)**

**66.** In this Chapter ‘migrating partnership’ and ‘exiting partnership’ have the meaning given, respectively, to them by Chapters 1 and 2.

**Statutory declaration as to solvency** 15

- 67.** (1) Where an application is made under Chapter 1 or 2, the general partner of the migrating partnership or the exiting partnership, as the case may be, who makes the application shall make a statutory declaration, in such form as may be specified by the Bank, stating that he or she has made a full inquiry into that partnership’s affairs and has formed the opinion that the migrating partnership or exiting partnership, as appropriate, is able to pay its debts as they fall due. 20
- (2) A declaration under subsection (1) shall have no effect for the purposes of this Chapter unless—
- (a) it is made not more than 28 days before the date on which the application is made to the Bank, 25
  - (b) it contains a statement of the migrating partnership’s or exiting partnership’s assets and liabilities as at the latest practicable date before the date of the making of the declaration and in any event at a date not more than 3 months before the date of that making, and 30
  - (c) a report made by an independent person under subsection (3) is attached to the declaration, along with a statement by the independent person that he or she has given and has not withdrawn consent to the making of the declaration with the report attached to it. 35
- (3) The report mentioned in subsection (2)(c) shall state whether, in the independent person’s opinion, based on the information and explanations given to him or her, the opinion of the general partner mentioned in subsection (1) and the statement of the migrating partnership’s or exiting partnership’s assets and liabilities referred to in subsection (2)(b), are reasonable. 40

- (4) For the purposes of subsection (3), the independent person shall be a person who, at the time the report is made, is—
- (a) in the case of an application under Chapter 1, qualified to be the auditor of the migrating partnership under the laws of the relevant jurisdiction, and 5
  - (b) in the case of an application under Chapter 2, qualified to be the auditor of the exiting partnership.
- (5) A general partner who makes a declaration under this section without having reasonable grounds for the opinion that the migrating partnership or exiting partnership, as appropriate, is able to pay its debts as they fall due shall be guilty of an offence. 10
- (6) Where the migrating partnership or exiting partnership is wound up within 1 year after the date on which the application is made to the Bank under Chapter 1 or 2 and its debts are not paid or provided for in full within that year, it shall be presumed, unless the contrary is shown, that the general partner referred to in subsection (1) did not have reasonable grounds for his or her opinion.”. 15

### **Umbrella investment limited partnerships**

41. The Act of 1994 is amended by the insertion of the following Schedule after section 67:

#### “SCHEDULE

20

#### *UMBRELLA INVESTMENT LIMITED PARTNERSHIPS*

#### **Definitions**

1. In this Schedule—

‘sub-fund’ means a separate portfolio of assets maintained by a general partner of an investment limited partnership for and on behalf of a limited partners in accordance with the partnership agreement; 25

‘umbrella fund’ means an investment limited partnership which is divided into a number of sub-funds.

#### **General**

2. Where an investment limited partnership is established as an umbrella fund, the assets shall belong exclusively to the partners holding interests in a relevant sub-fund and shall not be used to discharge directly or indirectly the liabilities of, or claims against, any other sub-fund and shall not be available for any such purpose. The general partner may in its absolute discretion operate, establish or designate classes of interest with differing rights and obligations for accounting purposes or otherwise within the investment limited partnership. 30  
35

#### **Segregated liability of investment limited partnership sub-funds**

3. (1) Notwithstanding any statutory provision or rule of law to the



contrary—

- (a) any liability incurred on behalf of or attributable to any sub-fund of an umbrella fund shall be discharged solely out of the assets of that sub-fund, and
  - (b) no umbrella fund nor any general partner, limited partner, receiver, liquidator, provisional liquidator or other person shall apply, nor be obliged to apply, the assets of any such sub-fund in satisfaction of any liability incurred on behalf of or attributable to any other sub-fund of the same umbrella fund. 5 10
- (2) The general partner of an umbrella fund to which this Schedule applies shall—
- (a) ensure that the words ‘An umbrella fund with segregated liability between sub-funds’ are included in all its letterheads and in any agreement entered into on its behalf in writing with a third party, and 15
  - (b) disclose to a third party that it is a segregated liability umbrella fund before the general partner enters into an oral contract with the third party.
- (3) If the general partner of an umbrella fund fails to comply with subparagraph (2)(a) or (b), the general partner and any officer of it who is in default shall be guilty of an offence. 20
- (4) There shall be implied in every contract, agreement, arrangement or transaction entered into on behalf of an umbrella fund to which this Schedule applies the following terms, that: 25
- (a) the party or parties contracting with respect to the umbrella fund shall not seek, whether in any proceedings or by any other means whatsoever or wheresoever, to have recourse to any assets of any sub-fund of the umbrella fund in the discharge of all or any part of a liability which was not incurred on behalf of that sub-fund; 30
  - (b) if any party contracting with respect to the umbrella fund shall succeed by any means whatsoever or wheresoever in having recourse to any assets of any sub-fund of the umbrella fund in the discharge of all or any part of a liability which was not incurred on behalf of that sub-fund, that party shall be liable to the umbrella fund to pay a sum equal to the value of the benefit thereby obtained by it; and 35
  - (c) if any party contracting with respect to the umbrella fund shall succeed in seizing or attaching by any means, or otherwise levying execution against, any assets of a sub-fund of an umbrella fund in respect of a liability which was not incurred on behalf of that sub-fund, that party shall hold those assets or the direct or indirect proceeds of the sale of such 40

assets on trust for the umbrella fund and shall keep those assets or proceeds separate and identifiable as such trust property.

- (5) All sums recovered by an umbrella fund as a result of any such trust as is described in subparagraph (4)(c) shall be credited against any concurrent liability pursuant to the implied term set out in subparagraph (4)(b). 5
- (6) Any asset or sum recovered by an umbrella fund pursuant to the implied term set out in clause (b) or (c) of subparagraph (4) or by any other means whatsoever or wheresoever in the events referred to in those clauses shall, after the deduction or payment of any costs of recovery, be applied so as to compensate the sub-fund affected. 10
- (7) In the event that assets attributable to a sub-fund to which this Schedule applies are taken in execution of a liability not attributable to that sub-fund, and in so far as such assets or compensation in respect thereof cannot otherwise be restored to that sub-fund affected, the general partner of the umbrella fund, with the consent of the depositary, shall certify or cause to be certified, the value of the assets lost to the sub-fund affected and transfer or pay from the assets of the sub-fund or sub-funds to which the liability was attributable, in priority to all other claims against such sub-fund or sub-funds, assets or sums sufficient to restore to the sub-fund affected, the value of the assets or sums lost to it. 15  
20  
25

#### **Further matters respecting an umbrella fund**

4. (1) Without prejudice to the other provisions of this Schedule, a sub-fund of an umbrella fund is not a legal person separate from that umbrella fund, but the general partner of an umbrella fund may sue and be sued in respect of a particular sub-fund and may exercise the same rights of set-off, if any, as between its sub-funds as apply at law in respect of companies and the property of a sub-fund is subject to orders of the court as it would have been if the sub-fund were a separate legal person. 30
- (2) Nothing in this paragraph or any other provision of this Schedule shall prevent the application of any enactment or rule of law which would require the application of the assets of any sub-fund in discharge of some or all of the liabilities of any other sub-fund on the grounds of fraud or misrepresentation.”. 35

## PART 3

### AMENDMENT OF ACT OF 2015

#### **Amendment of section 2 of Act of 2015 – insertion of definition of “category 4 offence”**

42. Section 2 of the Act of 2015 is amended by the insertion of the following definition after the definition of “category 3 offence”: 5

“ ‘category 4 offence’ means an offence the penalties for which are specified in section 186(4);”.

#### **Amendment of Act of 2015 – new section 2A relating to ordinary and special resolutions**

43. The Act of 2015 is amended by the insertion of the following section after section 2:

##### **“Supplemental interpretation provisions regarding ordinary and special resolutions 10**

2A. (1) With respect to any question that may arise, during, or for the purposes of, any proceedings of a sub-fund or a class of members, as to whether any applicable requirement, whether arising under the instrument of incorporation of the ICAV concerned or otherwise, for— 15

(a) a resolution to be passed as an ‘ordinary resolution’ by that sub-fund or class, or

(b) a resolution to be passed as a ‘special resolution’ by that sub-fund or class,

has been satisfied, subsection (2) or, as appropriate, subsection (3) shall have effect. 20

(2) For the purposes of subsection (1)(a), a resolution passed by a simple majority of the votes cast by the members of the sub-fund or, as appropriate, of the class as, being entitled to do so, vote in person or by proxy at the general meeting concerned of the sub-fund or the meeting concerned of the class of members shall be regarded as an ordinary resolution. 25

(3) For the purposes of subsection (1)(b), a resolution passed by not less than 75 per cent of the votes cast by the members of the sub-fund or, as appropriate, of the class as, being entitled to do so, vote in person or by proxy at the general meeting concerned of the sub-fund or the meeting concerned of the class of members shall be regarded as a special resolution.”. 30

#### **Amendment of sections 5 and 6 of Act of 2015**

44. (1) Section 5 of the Act of 2015 is amended by the substitution of the following subsections for subsection (2): 35

“(2) The sole object of an ICAV shall be the collective investment of its funds in property and giving members the benefit of the results of the management of its funds, but this is subject to subsection (2A).

- (2A) Where an ICAV is authorised under the UCITS Regulations, the sole object of the ICAV shall be as set out in Regulation 4(3)(a) of those Regulations.
- (2B) Section 6(6) makes provision, consequent on the enactment of subsection (2A), in relation to an ICAV formed before the commencement of *section 44* of the *Investment Limited Partnerships (Amendment) Act 2020* and which is authorised under the UCITS Regulations.”. 5
- (2) Section 6 of the Act of 2015 is amended—
- (a) in subsection (3), by the substitution of the following paragraph for paragraph (a): 10
- “(a) the sole object of the ICAV—
- (i) shall, subject to subparagraph (ii), be the collective investment of its funds in property and giving members the benefit of the results of the management of its funds, or 15
- (ii) shall, in the case of an ICAV authorised under the UCITS Regulations, be as set out in Regulation 4(3)(a) of those Regulations,”
- and
- (b) by the insertion of the following subsection after subsection (5): 20
- “(6) As respects an ICAV formed before the commencement of *section 44* of the *Investment Limited Partnerships (Amendment) Act 2020* and authorised under the UCITS Regulations—
- (a) for a period of 12 months following the commencement of *section 44* of the *Investment Limited Partnerships (Amendment) Act 2020*, the provisions of section 5 and this section, as they stood enacted before the commencement of that section, shall apply to the ICAV, and 25
- (b) only on and from the expiry of that period of 12 months shall the provisions of section 5 and this section, as they stand amended by that *section 44* of the *Investment Limited Partnerships (Amendment) Act 2020*, apply to the ICAV.”. 30

#### **Amendment of Act of 2015 – new section 8A relating to capacity of ICAVs**

45. The Act of 2015 is amended by the insertion of the following section after section 8:

##### **“Capacity not limited by an ICAV’s instrument of incorporation**

- 8A.** (1) The validity of an act done by an ICAV shall not be called into question on the ground of lack of capacity by reason of anything contained in the ICAV’s instrument of incorporation. 35
- (2) Nothing in subsection (1) affects the duty of the directors of an ICAV to observe any limitation on their powers.”. 40

**Amendment of Act of 2015 – new section 8B relating to effect of instrument of incorporation**

46. The Act of 2015 is amended by the insertion of the following section after section 8A (inserted by section 45):

**“Effect of instrument of incorporation** 5

8B. (1) Subject to the provisions of this Act, the instrument of incorporation shall, when registered, bind the ICAV and the members of it to the same extent as if it had been signed and sealed by each member, and contained covenants by the ICAV and each member to observe all the provisions of the instrument of incorporation and each provision of this Act, relating to Irish collective asset-management vehicles, that is applicable to the ICAV. 10

(2) All money payable by any member to the ICAV under the instrument of incorporation shall be a debt due from him or her to the ICAV.

(3) An action to recover a debt created by this section shall not be brought after the expiration of 12 years after the date on which the cause of action accrued.”. 15

**Amendment of section 14(2) of Act of 2015**

47. Section 14(2) of the Act of 2015 is amended by the insertion, after “instrument of incorporation”, of “change in the name of an ICAV,”. 20

**Amendment of section 30 of Act of 2015**

48. Section 30 of the Act of 2015 is amended by the insertion of the following subsection after subsection (2):

“(3) If an ICAV changes its name in accordance with this section, then, in addition to fulfilling the requirement under section 14(2) to update the register of ICAVs so as to reflect that change, the Bank shall— 25

(a) alter the copy of the registration order, relating to the ICAV, entered in that register so that it contains the new name, and

(b) give written notice of that alteration to the ICAV.”.

**Amendment of section 32 of Act of 2015** 30

49. Section 32 of the Act of 2015 is amended—

(a) in subsection (5), by the insertion, after “common seal of the ICAV”, of “(that is to say, executed under the ICAV’s common seal in compliance with section 33(4))”, and

(b) by the deletion of subsection (7). 35

**Amendment of section 33 of Act of 2015**

50. Section 33 of the Act of 2015 is amended by the insertion of the following subsection

after subsection (3):

“(4) Save as otherwise provided by this Act or by the instrument of incorporation of the ICAV—

(a) an ICAV’s common seal shall be used only by the authority of its directors, or of a committee of its directors authorised by its directors in that behalf, and 5

(b) any instrument to which an ICAV’s common seal shall be affixed shall be—

(i) signed by a director of it or by some other person appointed for the purpose by its directors or by a foregoing committee of them, and 10

(ii) be countersigned by the secretary or by a second director of it or by some other person appointed for the purpose by its directors or by a foregoing committee of them.”.

**Amendment of Act of 2015 – new section 34A relating to powers of attorney**

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51. The Act of 2015 is amended by the insertion of the following section after section 34:

**“Powers of attorney**

34A. (1) Notwithstanding anything in its instrument of incorporation, an ICAV may empower any person, either generally or in respect of any specified matters, as its attorney, to execute deeds or do any other matter on its behalf in any place whether inside or outside the State. 20

(2) A deed signed by such attorney on behalf of the ICAV shall bind the ICAV and have the same effect as if it were under its common seal.”.

**Amendment of Act of 2015 – new section 77A relating to intra-group transactions**

52. The Act of 2015 is amended by the insertion of the following section after section 77:

25

**“Intra-group transactions**

77A. (1) Section 77 does not prohibit an ICAV from—

(a) making a loan or quasi-loan to any body corporate which is its holding company, subsidiary or a subsidiary of its holding company, or 30

(b) entering into a guarantee or providing any security in connection with a loan or quasi-loan made by any person to any body corporate which is its holding company, subsidiary or a subsidiary of its holding company.

(2) Section 77 does not prohibit an ICAV from— 35

(a) entering into a credit transaction as creditor for any body corporate which is its holding company, subsidiary or a subsidiary of its holding company, or

- (b) entering into a guarantee or providing any security in connection with any credit transaction made by any other person for any body corporate which is its holding company, subsidiary or a subsidiary of its holding company.”.

**Amendment of Act of 2015 – new section 85A enabling application to be made in anticipation of apprehended proceedings** 5

53. The Act of 2015 is amended by the insertion of the following section after section 85:

**“Anticipated claim: similar power of relief as under section 85**

- 85A.** (1) If an officer of an ICAV has reason to apprehend that any claim will or might be made against him or her in respect of any negligence, default, breach of duty or breach of trust (the ‘wrong concerned’) he or she may make the following application to the court. 10
- (2) That application is an application to be relieved of liability in respect of the wrong concerned; on the making of such an application the court shall have the same power to relieve the applicant as it would have had (by virtue of section 85) if it had been a court before which proceedings against that person for the wrong concerned had been brought.”. 15

**Amendment of Act of 2015 – new Part 5A relating to written resolutions**

54. The Act of 2015 is amended by the insertion of the following Part after Part 5: 20

**“PART 5A**

**WRITTEN RESOLUTIONS**

**Unanimous written resolutions**

- 91A.** (1) Notwithstanding any provision to the contrary in this Act, a resolution in writing— 25
- (a) signed by all the members of an ICAV for the time being entitled to attend and vote on such resolution at a general meeting (or being bodies corporate by their duly appointed representatives) shall be as valid and effective for all purposes as if the resolution had been passed at a general meeting of the ICAV duly convened and held, and 30
- (b) if described as a special resolution shall be deemed to be a special resolution within the meaning of this Act.
- (2) For the avoidance of doubt, the reference in subsection (1) to a provision to the contrary includes a reference to a provision that stipulates that the ICAV in general meeting, or the members of the ICAV in general meeting, must have passed the resolution concerned. 35
- (3) A resolution passed in accordance with subsection (1) may consist of several documents in like form each signed by one or more members.

- (4) A resolution passed in accordance with subsection (1) shall be deemed to have been passed at a meeting held on the date on which it was signed by the last member to sign, and, where the resolution states a date as being the date of his or her signature thereof by any member, the statement shall be *prima facie* evidence that it was signed by him or her on that date. 5
- (5) If a resolution passed in accordance with subsection (1) is not contemporaneously signed, the ICAV shall notify the members, within 21 days after the date of delivery to it of the documents referred to in subsection (6), of the fact that the resolution has been passed. 10
- (6) The signatories of a resolution passed in accordance with subsection (1) shall, within 14 days after the date of its passing, procure delivery to the ICAV of the documents constituting the written resolution; without prejudice to the use of the other means of delivery generally permitted by this Act, such delivery may be effected by electronic mail or the use of a facsimile machine. 15
- (7) The ICAV shall retain those documents as if they constituted the minutes of the proceedings of a general meeting of the ICAV; without prejudice to the requirement (by virtue of section 88(1)) that the terms of the resolution concerned be entered in books kept for the purpose, the requirement under this subsection that the foregoing documents be retained shall be read as requiring those documents to be kept with the foregoing books. 20
- (8) It is immaterial, as regards the resolution's validity, whether subsection (5), (6) or (7) is complied with. 25
- (9) If an ICAV fails to comply with subsection (5), the ICAV and any officer of it who is in default commits a category 4 offence.
- (10) If a signatory fails to take all reasonable steps to procure the delivery to the ICAV, in accordance with subsection (6), of the documents referred to in that subsection, the signatory commits a category 4 offence. 30
- (11) This section does not apply to—
- (a) a resolution to remove a director, or
  - (b) a resolution to effect the removal of an auditor from office, or so as not to continue him or her in office, as mentioned in section 132(1) or 133(1)(b). 35
- (12) Nothing in this section affects any rule of law as to—
- (a) things done otherwise than by passing a resolution,
  - (b) circumstances in which a resolution is or is not treated as having been passed, or 40
  - (c) cases in which a person is precluded from alleging that a resolution has not been duly passed.



## Majority written resolutions

- 91B.** (1) Notwithstanding any provision to the contrary in this Act, a resolution in writing—
- (a) that is—
    - (i) described as being an ordinary resolution, and 5
    - (ii) signed by the requisite majority of members of the ICAV concerned,
  - and
  - (b) in respect of which the condition specified in subsection (7) is satisfied, 10
- shall be as valid and effective for all purposes as if the resolution had been passed at a general meeting of the ICAV duly convened and held.
- (2) For the avoidance of doubt, the reference in subsection (1) to a provision to the contrary includes a reference to a provision that stipulates that the ICAV in general meeting, or the members of the ICAV in general meeting, must have passed the resolution concerned. 15
- (3) In subsection (1) ‘requisite majority of members’ means a member or members who alone or together, at the time of the signing of the resolution concerned, represent more than 50 per cent of the total voting rights of all the members who, at that time, would have the right to attend and vote at a general meeting of the ICAV (or being bodies corporate by their duly appointed representatives). 20
- (4) Notwithstanding any provision to the contrary in this Act, a resolution in writing—
- (a) that is— 25
    - (i) described as being a special resolution, and
    - (ii) signed by the requisite majority of members,
  - and
  - (b) in respect of which the condition specified in subsection (7) is satisfied, 30
- shall be as valid and effective for all purposes as if the resolution had been passed at a general meeting of the ICAV duly convened and held.
- (5) For the avoidance of doubt, the reference in subsection (4) to a provision to the contrary includes a reference to a provision that stipulates that the ICAV in general meeting, or the members of the ICAV in general meeting, must have passed the resolution concerned. 35
- (6) In subsection (4) ‘requisite majority of members’ means a member or members who alone or together, at the time of the signing of the resolution concerned, represent at least 75 per cent of the total voting rights of all the members who, at that time, would have the right to 40

attend and vote at a general meeting of the ICAV (or being bodies corporate by their duly appointed representatives).

- (7) The condition referred to in subsections (1)(b) and (4)(b) is that all members of the ICAV concerned entitled to attend and vote on the resolution referred to in subsection (1) or (4), as the case may be, have been circulated, by the directors or the other person proposing it, with the proposed text of the resolution and an explanation of its main purpose. 5
- (8) A resolution passed in accordance with subsection (1) or (4) may consist of several documents in like form each signed by one or more members. 10
- (9) Without prejudice to section 91C(5), a resolution passed—
- (a) in accordance with subsection (1), shall be deemed to have been passed, subject to subsection (10), at a meeting held 7 days after the date on which it was signed by the last member to sign, or 15
  - (b) in accordance with subsection (4), shall be deemed to have been passed, subject to subsection (10), at a meeting held 21 days after the date on which it was signed by the last member to sign,
- and where the resolution states a date as being the date of his or her signature thereof by any member the statement shall be *prima facie* evidence that it was signed by him or her on that date. 20
- (10) Without prejudice to section 91C(5), if—
- (a) a date earlier than that referred to in subsection (9)(a) or (b) (not being earlier than the date on which the resolution was signed by the last member to sign) is specified in the resolution referred to in subsection (1) or (4) as the date on which it shall have been deemed to have been passed, 25
  - (b) all members of the ICAV concerned entitled to attend and vote on that resolution state, in a written waiver signed by each of them, that the application of subsection (9) is waived, and 30
  - (c) there accompanies the delivery to the ICAV under subsection (3) of section 91C of the documents referred to in that subsection that written waiver (which may be so delivered to the ICAV by any of the means referred to in that subsection),
- then the resolution shall be deemed to have been passed on the date specified in it. 35
- (11) A written waiver under subsection (10) may consist of several documents in like form each signed by one or more members.

**Supplemental provisions in relation to section 91B**

- 91C.** (1) Section 91B does not apply to— 40
- (a) a resolution to remove a director, or

- (b) a resolution to effect the removal of an auditor from office, or so as not to continue him or her in office, as mentioned in section 132(1) or 133(1)(b).
- (2) Within 3 days after the date of the delivery to it of the documents referred to in subsection (3), the ICAV shall notify every member of— 5
  - (a) the fact of the resolution concerned having been signed by the requisite majority of members (within the meaning of section 91B (3) or (6), as the case may be), and
  - (b) the date that the resolution will, by virtue of section 91B, be deemed to have been passed. 10
- (3) The signatories of a resolution passed in accordance with section 91B (1) or (4) shall procure delivery to the ICAV of the documents constituting the written resolution; without prejudice to the use of the other means of delivery generally permitted by this Act, such delivery may be effected by electronic mail or the use of a facsimile machine. 15
- (4) The ICAV shall retain those documents as if they constituted the minutes of the proceedings of a general meeting of the ICAV; without prejudice to the requirement (by virtue of section 88(1)) that the terms of the resolution concerned be entered in books kept for the purpose, the requirement under this subsection that the foregoing documents be retained shall be read as requiring those documents to be kept with the foregoing books. 20
- (5) Unless and until subsection (3) is complied with, a resolution passed in accordance with section 91B(1) or (4) shall not have effect; however it is immaterial, as regards the resolution’s validity, whether subsection (2) or (4) is complied with. 25
- (6) Where subsection (10) of section 91B applies, the reference in subsection (5) to subsection (3) shall be read as including a reference to paragraph (c) of that subsection (10).
- (7) If an ICAV fails to comply with subsection (2), the ICAV and any officer of it who is in default commits a category 4 offence.” 30

**Amendment of section 96 of Act of 2015**

55. Section 96 of the Act of 2015 is amended by the substitution of the following subsection for subsection (8):

- “(8) The registration of an investment company or an UCITS as an ICAV by continuation under Part 8 does not affect the priority of charges created by the investment company or the UCITS, as the case may be.”. 35

**Amendment of section 140(3) of Act of 2015**

56. Section 140(3) of the Act of 2015 is amended by the substitution of the following subparagraph for subparagraph (v) of paragraph (d): 40

“(v) any consent or approval to the proposed conversion required by any contract entered into or undertaking given by the company has been obtained or waived.”.

**Amendment of section 141(1) of Act of 2015**

57. Section 141(1) of the Act of 2015 is amended by the insertion, after “debts”, of “(being the debts identified for the purposes of subsection (2)(b))”. 5

**Amendment of section 152(1) of Act of 2015**

58. Section 152(1) of the Act of 2015 is amended by the insertion, after “debts”, of “(being the debts identified for the purposes of subsection (2)(b))”.

**Amendment of section 154(2) of Act of 2015**

59. Section 154(2) of the Act of 2015 is amended by the substitution, in paragraph (h), of “sections 599 and 609” for “sections 600 and 609”. 10

**Amendment of section 186 of Act of 2015**

60. Section 186 of the Act of 2015 is amended by the insertion of the following subsection after subsection (3): 15

“(4) A person guilty of an offence under this Act that is stated to be a category 4 offence is liable, on summary conviction, to a class A fine.”.

**PART 4**

**AMENDMENT OF ACT OF 2005**

**Amendment of section 5 of Act of 2005**

61. Section 5 of the Act of 2005 is amended by the renumbering of the existing section as subsection (1) thereof and the insertion of the following subsections:

“(2) The Bank shall not provide any funds from its own resources, other than from those resources provided to it under subsection (3), to defray expenses of the Bank incurred by it in the performance of the functions under sections 18O to 18T (in subsections (3) and (4) referred to as ‘expenses of the Bank associated with its functions under sections 18O to 18T’). 25

(3) The Central Bank Commission shall make regulations under section 32D of the Central Bank Act 1942 prescribing levies (in subsection (4) referred to as the ‘dedicated levies’) to be paid by common contractual funds, and the moneys received by the Bank by way of such levies shall be used by it to defray expenses of the Bank associated with its functions under sections 18O to 18T. 30 35

- (4) Where—
- (a) in any year, the Bank reasonably apprehends that it will be unable to defray all of the expenses of the Bank, arising in that year, associated with its functions under sections 18O to 18T from moneys received by it by way of the dedicated levies, or 5
  - (b) notwithstanding the existence of the dedicated levies and, apart from the circumstance referred to in paragraph (a), for any reason there is an insufficiency in any year of moneys available to the Bank to defray all of its expenses, arising in that year, associated with the foregoing functions, 10
- the Minister shall, on the written request of the Bank, advance to the Bank such sums as he or she thinks proper to enable the Bank to defray all of its expenses, arising in that year, associated with the foregoing functions.
- (5) The payments of sums referred to in subsection (4) shall be made on such terms as to repayment, interest and other matters as may be determined by the Minister after consulting the Bank. 15
  - (6) All moneys from time to time required by the Minister to meet sums which may become payable by him or her under subsection (4) shall be advanced out of the Central Fund or the growing produce thereof.”. 20

**Amendment of section 6 of Act of 2005**

**62.** Section 6(1) of the Act of 2005 is amended—

- (a) by the insertion of the following definition before the definition of “Bank”:  
 “ ‘Act of 2010’ means the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010;”, 25
- (b) by the insertion of the following definitions after the definition of “Bank”:  
 “ ‘beneficial owner’, in relation to a common contractual fund, means any individual who—  
 (a) ultimately is entitled to or controls, whether the entitlement or control is direct or indirect, more than a 25 per cent share of the capital or profits of the common contractual fund or more than 25 per cent of the voting rights in the common contractual fund, or 30  
 (b) otherwise controls the common contractual fund;  
 ‘beneficial ownership register’ shall be construed in accordance with section 21B;”, 35
- (c) by the insertion of the following definition after the definition of “common contractual fund”:  
 “ ‘competent authority’ means a competent authority as that expression, by virtue of sections 60 and 61 of the Act of 2010, is to be construed for the purposes of Part 4 of that Act;”, 40

(d) by the insertion of the following definitions after the definition of “deed of constitution” or “deed”:

“ ‘designated person’ has the meaning assigned to it by section 25 of the Act of 2010;

‘Higher Executive Officer’ means the position of Higher Executive Officer, or a position equivalent to it, in the public body concerned;” 5

and

(e) by the insertion of the following definitions after the definition of “holding company”:

“ ‘Member State’, in addition to the meaning assigned to it by section 3(1), includes, where relevant, a contracting party to the Agreement on the European Economic Area signed at Oporto on 2 May 1992 (as adjusted by the Protocol signed at Brussels on 17 March 1993); 10

‘PPS number’, in relation to an individual, means the person’s Personal Public Service Number within the meaning of section 262 of the Social Welfare Consolidation Act 2005; 15

‘presenter’ shall be construed in accordance with section 18O(1);

‘Principal Officer’ means the position of Principal Officer, or a position equivalent to it, in the public body concerned;

‘senior managing official’ includes a director and a chief executive officer;” 20

### **Amendment of Act of 2005 – new sections 18A to 18U relating to beneficial ownership disclosure**

**63.** The Act of 2005 is amended by the insertion of the following sections after section 18:

#### **“Requirement to hold information on beneficial ownership of common contractual fund 25**

**18A.** (1) A management company of a common contractual fund shall take all reasonable steps to obtain and hold adequate, accurate and current information in respect of the common contractual fund’s beneficial owners, that is to say— 30

(a) the name, date of birth, nationality, and residential address of each beneficial owner of it,

(b) a statement of the nature and extent of the interest held, or the nature and extent of control exercised, by each such beneficial owner, and 35

(c) the PPS number of each such beneficial owner to whom such a number has been issued,

and any PPS number so obtained shall not be disclosed by the management company for any purpose of this section or of any of sections 18B to 18H. 40

- (2) The management company shall enter the information referred to in subsection (1)(a) and (b) in the common contractual fund's beneficial ownership register, and the following information shall also be entered by it in that register:
- (a) the date on which the name of each individual was entered into the register as a beneficial owner of the common contractual fund; 5
  - (b) the date on which each individual who has ceased to be a beneficial owner of the common contractual fund ceased to be such an owner.
- (3) If, either—
- (a) after exhausting all possible means, and provided there are no grounds for suspicion by the management company, no individual is identified as a beneficial owner of the common contractual fund, or 10
  - (b) there is any doubt that individual so identified is a beneficial owner of the common contractual fund, 15
- there shall be entered, in the common contractual fund's beneficial ownership register as its beneficial owners (stating the nature and extent of the control exercised by them), the names of the one or more individuals who are the senior managing officials of the management company of the common contractual fund (including their date of birth, nationality and residential addresses) and— 20
- (i) the requirement of subsection (1) with regard to not disclosing a PPS number shall apply in the case of this subsection as that requirement applies in the case of that subsection,
  - (ii) subsection (2) shall apply in the case of this subsection as it applies in the case of subsection (1), and 25
  - (iii) references in any subsequent section of this Part to the particulars referred to in subsection (1)(a) and (b) of this section shall be deemed to include, where the context admits, references to the particulars referred to in this subsection. 30
- (4) In a case falling within subsection (3)(a) or (b), the management company of the common contractual fund shall keep records of the actions taken in order to identify the beneficial ownership of the common contractual fund.
- (5) A management company of a common contractual fund shall provide any member of the Garda Síochána, the Revenue Commissioners, a competent authority or the Criminal Assets Bureau with timely access, on request, to the common contractual fund's beneficial ownership register. 35
- (6) Each of the following: 40
- (a) the Garda Síochána;
  - (b) the Revenue Commissioners;

(c) a competent authority;

(d) the Criminal Assets Bureau,

may disclose the information in a beneficial ownership register to any corresponding competent authority of another Member State (a ‘corresponding authority’); in the event of there being a request made of a body or other person referred to in any of paragraphs (a) to (d) by a corresponding authority for disclosure of such information, the request shall be complied with in a timely manner. 5

(7) Where a management company of a common contractual fund, acting as a management company, enters into an occasional transaction with a designated person within the meaning of section 25 of the Act of 2010, or forms a business relationship with such a designated person, the management company shall— 10

(a) inform the designated person in writing that it is acting as a management company of a common contractual fund; 15

(b) provide information on the common contractual fund’s beneficial ownership to the designated person when the designated person is taking customer due diligence measures in accordance with Part 4 of the Act of 2010;

(c) on request from the designated person, provide the designated person without delay with information identifying all the beneficial owners of the common contractual fund; 20

(d) notify the designated person of any change to the common contractual fund’s beneficial ownership register that occurs which is relevant to the occasional transaction or that occurs during the course of the business relationship formed, and the date on which it occurred within 14 days from the date on which the management company became aware of the change. 25

(8) For the purposes of subsection (7), ‘occasional transaction’ means a transaction in relation to which the designated person is required to apply customer due diligence measures under Part 4 of the Act of 2010. 30

(9) A management company that fails to comply with subsection (1), (2), (3), (4), (5) or (7) shall be guilty of an offence.

**Duty to give particular notice to individuals believed to be beneficial owners of common contractual fund** 35

**18B.** (1) Without prejudice to the generality of section 18A(1), a management company of a common contractual fund shall give to any individual whom it has reasonable cause to believe to be a beneficial owner of the common contractual fund the notice referred to in subsection (2), but this is subject to subsection (5). 40

(2) The notice referred to in subsection (1) is a notice, addressed to the individual concerned, that requires the addressee—



- (a) to state whether or not he or she is a beneficial owner of the common contractual fund, and
  - (b) if so, to confirm or correct any particulars of his or hers that are included in the notice, and supply any that are missing, and such a notice is referred to subsequently in this section as a notice under this section. 5
- (3) A notice under this section shall—
- (a) state that it is given under ‘section 18B of the Investment Funds, Companies and Miscellaneous Provisions Act 2005’, and
  - (b) as respects each of the particulars referred to in section 18A (1)(a), (b) and (c)— 10
    - (i) set out that which—
      - (I) to the knowledge of the management company is, or
      - (II) with reasonable cause is believed by it to be, the relevant particular, or 15
    - (ii) in the absence of such knowledge or belief (on its part as respects a relevant particular) indicate, by leaving a space in the appropriate place, that that particular is not given in the notice.
- (4) A notice under this section shall also state that the addressee is to comply with the notice by no later than the end of the period of one month beginning with the date of the notice. 20
- (5) A management company is not required to give a notice under this section if—
- (a) the management company has already been informed of the status of the individual referred to in subsection (1) as a beneficial owner of the common contractual fund, and been supplied with all the particulars referred to in section 18A(1)(a), (b) and (c), and 25
  - (b) the information and particulars were provided either by that individual or with his or her knowledge.
- (6) A management company that fails to comply with subsection (1) or any other provision of this section shall be guilty of an offence. 30

**Other particular steps that may be taken to establish identity of beneficial owners**

**18C.** (1) This section—

- (a) is without prejudice to the generality of section 18A(1), and 35
  - (b) does not derogate from the duty, where it arises, under section 18B.
- (2) A management company of a common contractual fund may give to any person (whether an individual or not) the notice referred to in

- subsection (3) if it has reasonable cause to believe that the person has the knowledge referred to in paragraph (a) or (b) of that subsection.
- (3) The notice referred to in subsection (2) is a notice, addressed to the person referred to in that subsection, that requires the addressee—
- (a) to state whether or not the addressee knows the identity of— 5
    - (i) any individual who is a beneficial owner of the common contractual fund, or
    - (ii) any person (whether an individual or not) likely to have that knowledge,
  - and 10
  - (b) if so, to supply any particulars of any such person that are within the addressee’s knowledge, and state whether or not the particulars are being supplied with the knowledge of each of the persons concerned,
- and such a notice is referred to subsequently in this section as a notice under this section. 15
- (4) For the purposes of subsection (3)—
- (a) a reference to knowing the identity of a person includes a reference to knowing information from which that person can be identified, and 20
  - (b) a reference in paragraph (b) of it to particulars is a reference—
    - (i) in the case of the individual referred to in paragraph (a)(i) of it - to the particulars referred to in section 18A(1)(a) and (b), and
    - (ii) in the case of the person referred to in paragraph (a)(ii) of it - to any particulars that will allow the person to be contacted by the management company. 25
- (5) A notice under this section shall state—
- (a) that it is given under ‘section 18C of the Investment Funds, Companies and Miscellaneous Provisions Act 2005’, and
  - (b) that the addressee is to comply with the notice by no later than the end of the period of one month beginning with the date of the notice. 30
- (6) Nothing in this section shall be construed as requiring a person to whom a notice under it is given to disclose any information in respect of which a claim to legal professional privilege could be maintained in legal proceedings. 35

**Duty to keep information in register up-to-date**

- 18D.** (1) This section applies where particulars of an individual, as being a beneficial owner of a common contractual fund, are entered in the common contractual fund’s beneficial ownership register. 40

- (2) For the purposes of this section, a relevant change occurs if—
- (a) the individual referred to in subsection (1) ceases to be a beneficial owner of the common contractual fund, or
  - (b) any other change occurs as a result of which the particulars (stated in the foregoing register) in relation to the natural person are incorrect or incomplete. 5
- (3) Where this section applies, the management company shall, in accordance with subsection (4), give the notice referred to in subsection (5) to the individual if it knows or has reasonable cause to believe that a relevant change has occurred, but this is subject to subsection (8). 10
- (4) The foregoing notice shall be given by the management company as soon as reasonably practicable after it learns of the change concerned or first has reasonable cause to believe that the change concerned has occurred. 15
- (5) The notice referred to in subsection (3) is a notice, addressed to the individual concerned, that requires the addressee—
- (a) to confirm whether or not the change concerned has occurred, and
  - (b) if so—
    - (i) to state the date of the change, and 20
    - (ii) to confirm or correct the particulars included in the notice, and supply any that are missing from the notice,
- and such a notice is referred to subsequently in this section as a notice under this section.
- (6) A notice under this section shall— 25
- (a) state that it is given under ‘section 18D of the Investment Funds, Companies and Miscellaneous Provisions Act 2005’, and
  - (b) as respects such of the particulars referred to in section 18A(1)(a) and (b) as are known by the management company (or with reasonable cause believed by it) to have been the subject of the change concerned— 30
    - (i) set out that which—
      - (I) to the knowledge of the management company are, or
      - (II) with reasonable cause are believed by it to be,
 the relevant particulars as they now stand in consequence of that change, or 35
    - (ii) in the absence of such knowledge or belief (on its part as respects a relevant particular) indicate, by leaving a space in the appropriate place, that that particular is not given in the notice.

- (7) A notice under this section shall also state that the addressee is to comply with the notice by no later than the end of the period of one month beginning with the date of the notice.
- (8) A management company is not required to give a notice under this section if— 5
  - (a) the management company has already been informed of the change concerned, and
  - (b) that information (including, as the case may be, the relevant particulars referred to in subsection (2)(b)) were provided either by the individual concerned or with his or her knowledge. 10
- (9) A management company that fails to comply with subsection (3) or any other provision of this section shall be guilty of an offence.

**Duty of beneficial owner (in certain circumstances) to notify his or her status as such**

- 18E.** (1) This section applies to an individual if— 15
- (a) the individual is a beneficial owner of a common contractual fund,
  - (b) the individual knows that to be the case or ought reasonably to do so,
  - (c) in relation to the individual, the particulars referred to in section 18A(1)(a) and (b) are not stated in the common contractual fund's beneficial ownership register, 20
  - (d) the individual has not been given a notice by the management company under section 18B, and
  - (e) the circumstances specified in paragraphs (a) to (d) have continued for a period of at least one month. 25
- (2) An individual to whom this section applies shall notify, in writing, the management company of the common contractual fund referred to in subsection (1) of the individual's status (as a beneficial owner) of the common contractual fund, and that notification shall state—
- (a) the date, to the best of the person's knowledge, on which the person acquired that status, and 30
  - (b) the particulars referred to in section 18A(1)(a), (b) and (c).
- (3) Subsection (2) shall be complied with by the individual not later than the end of the period of one month beginning with the day on which all the conditions specified in subsection (1)(a) to (e) were first met with respect to the person. 35
- (4) An individual who—
- (a) fails to comply with this section, or

- (b) in purported compliance with this section, makes a statement that is false in a material particular, knowing it to be so false or being reckless as to whether it is so false,  
shall be guilty of an offence.

**Duty of individual (in certain circumstances) to notify relevant change** 5

**18F.** (1) This section applies to an individual if—

- (a) in relation to the individual (as a beneficial owner of the common contractual fund), the particulars referred to in section 18A(1)(a) and (b) are stated in a common contractual fund’s beneficial ownership register, 10
- (b) a relevant change occurs,
- (c) the individual knows of the change or ought reasonably to do so,
- (d) the common contractual fund’s beneficial ownership register has not been altered to reflect the change, and
- (e) the individual has not been given a notice by the management company under section 18D by the end of the period of one month beginning with the day on which the change occurred. 15

(2) For the purposes of this section, a relevant change occurs if—

- (a) the individual referred to in subsection (1) ceases to be a beneficial owner of the common contractual fund referred to in that subsection, or 20
- (b) any other change occurs as a result of which the particulars (stated in the common contractual fund’s beneficial ownership register) in relation to the individual are incorrect or incomplete.

(3) An individual to whom this section applies shall notify, in writing, the management company referred to in subsection (1)(a) of the relevant change, and that notification shall— 25

- (a) state the date on which the change occurred, and
- (b) give to the management company any necessary information so that it can alter the common contractual fund’s beneficial ownership register to reflect that change. 30

(4) Subsection (3) shall be complied with by the individual not later than whichever of the following periods is the last to expire—

- (a) the period of 2 months beginning with the day on which the relevant change occurred, 35
- (b) the period of one month beginning with the day on which facts have come to the notice of the individual from which he or she could reasonably conclude that the relevant change has occurred.

(5) An individual who—

- (a) fails to comply with this section, or 40

- (b) in purported compliance with this section, makes a statement that is false in a material particular, knowing it to be so false or being reckless as to whether it is so false,  
shall be guilty of an offence.

**Offence for failure to comply with notice under section 18B, 18C or 18D** 5

**18G.** (1) A person to whom a notice under section 18B, 18C or 18D is given shall be guilty of an offence if the person—

- (a) fails to comply with the notice, or
- (b) in purported compliance with the notice, makes a statement that is false in a material particular, knowing it to be so false or being reckless as to whether it is so false. 10

(2) In proceedings for an offence under this section it shall be a defence to prove that the requirement (in the notice concerned) to give information was frivolous or vexatious.

**Duty to keep and maintain a beneficial ownership register** 15

**18H.** (1) The management company of a common contractual fund shall keep and maintain a register (which shall be known, and is in this Part referred to, as a ‘beneficial ownership register’) in which there shall be entered by it the information referred to in section 18A(1)(a) and (b) and (2). 20

(2) A management company that fails to comply with subsection (1) shall be guilty of an offence.

(3) If—

- (a) the name of any individual is, without sufficient cause, entered in or omitted from a common contractual fund’s beneficial ownership register, or 25
- (b) default is made or unnecessary delay takes place in entering in a common contractual fund’s beneficial ownership register the fact that an individual has ceased to be a beneficial owner of it,

the individual aggrieved or any other interested party may apply to the High Court for rectification of the register. 30

(4) Where an application is made under subsection (3), the High Court may either refuse the application or may order rectification of the beneficial ownership register and payment by the common contractual fund of compensation for any loss sustained by any party aggrieved. 35

(5) On such an application, the High Court may—

- (a) decide any question as to whether the name of any person who is a party to the application should or should not be entered in or omitted from the beneficial ownership register, and
- (b) more generally, decide any question necessary or expedient to be decided for rectification of the beneficial ownership register. 40

- (6) The reference in this section to ‘any other interested party’ is a reference to any other person who is a beneficial owner of the common contractual fund.

**Discharge of initial central filing obligation – construction of references to that expression in sections 18J to 18P** 5

**18I.** A reference in sections 18J to 18P to the discharge by a management company of its initial central filing obligation is a reference to the delivery by the management company of information to the Registrar in compliance with section 18M(1) or (2).

**Delivery of information under sections 18M to 18P: delivery may be effected by persons external to management company (as well as by officers or employees of it)** 10

**18J.** (1) The provision made by subsection (2) is in addition to the general law whereby a management company acting through an officer or employee of the management company may discharge an obligation referred to in this section. 15

(2) An obligation imposed on a management company of a common contractual fund by any of sections 18M to 18P to deliver information to the Registrar may be discharged by a person, who is not an officer or employee of the management company, acting on the management company’s behalf. 20

(3) Section 18O makes provision as respects certain information to be delivered to the Registrar where the obligation concerned is discharged on behalf of the management company by a person acting as mentioned in subsection (2). 25

(4) Section 18M(6) applies to the delivery by a management company of a common contractual fund of information irrespective of whether the person who delivers the information is an officer or employee of the management company or a person acting as mentioned in subsection (2). 30

**Registrar of Beneficial Ownership of Common Contractual Funds**

**18K.** (1) There shall, for the purposes of this Part, be a registrar to be known as the ‘Registrar of Beneficial Ownership of Common Contractual Funds’, and in this Part referred to as the ‘Registrar’.

(2) The Bank shall be the Registrar. 35

**Establishment and maintenance of central register**

**18L.** (1) There is, by virtue of this section, established a register which shall be known as the ‘Central Register of Beneficial Ownership of Common Contractual Funds’ and is in this Part referred to as the ‘central register’. 40

(2) The central register shall be maintained by the Registrar; the information required by sections 18M to 18P to be delivered or submitted to the Registrar shall be entered in that register by the

Registrar and that register shall be kept in such form as the Registrar considers appropriate.

- (3) The provision made by subsection (2) as respects entry of information in the central register is subject to subsection (5) of section 18N (which prohibits disclosure of a PPS number). 5

**Obligation of management company to deliver beneficial ownership information to Registrar and related obligations of designated person where certain discrepancies discovered**

**18M.** (1) A management company of a common contractual fund, being a fund that is in existence before the commencement of *section 63* of the *Investment Limited Partnerships (Amendment) Act 2020*, shall deliver the information specified in section 18N to the Registrar within 6 months from such commencement. 10

(2) A management company of a common contractual fund, being a fund that comes into existence on or after the commencement of *section 63* of the *Investment Limited Partnerships (Amendment) Act 2020*, shall, within 6 months from the date of its coming into existence, deliver the information specified in section 18N to the Registrar in such manner as the Registrar determines. 15

(3) Where the following conditions are satisfied (and whether in the circumstances of the designated person taking the measures referred to in section 18A(7) or otherwise)— 20

(a) any of the particulars, as referred to in section 18A(1)(a) and (b), contained in the beneficial ownership register of a common contractual fund come to the knowledge of a designated person, and 25

(b) the designated person forms the opinion that there is a discrepancy between the particulars referred to in paragraph (a) and the information in the central register (on referring himself or herself to the information in the central register as it relates to that common contractual fund), 30

then the designated person shall deliver, in a timely manner, to the Registrar, in such manner as the Registrar determines, notice of that opinion, specifying the particulars as respects which the foregoing discrepancy exists. 35

(4) On receipt of a foregoing notice, the Registrar shall—

(a) if the Registrar considers it appropriate to do so, make an entry in the relevant place in the central register which states that the notice has been received and specifies the particulars as respects which the foregoing discrepancy exists, and 40

(b) serve a notice on the management company of the common contractual fund concerned which—

(i) states that the foregoing notice has been received, and



- (ii) specifies the particulars as respects which the foregoing discrepancy exists, and requests the management company of the common contractual fund to deliver to the Registrar, within a period specified in the notice and in such manner as the Registrar determines— 5
- (I) a submission as to why the management company of the common contractual fund considers the opinion of the designated person concerned not to be well founded, or
- (II) if the management company of the common contractual fund considers the opinion of the designated person concerned to be well founded, such amended particulars (for entry in the central register) as are required where the management company is satisfied that the delivery of such is the appropriate means by which the discrepancy can be resolved, 10 15
- and such a request shall be complied with by the management company of the common contractual fund accordingly.
- (5) None of the following—
- (a) an opinion stated in a notice delivered under subsection (3) by a designated person to the Registrar (nor the specification in such a notice of the particulars as respects which the discrepancy concerned exists), 20
- (b) any act done by the Registrar, as mentioned in subsection (4), on foot of the receipt by the Registrar of a notice delivered under subsection (3) and, in particular, any entry made in the central register by the Registrar on foot of such receipt, 25
- (c) a submission delivered under subsection (4)(b)(ii)(I) to the Registrar by a management company,
- shall, of itself, be regarded as constituting defamatory matter.
- (6) The means specified in subsection (7), and no other means, shall be used by a management company of a common contractual fund to deliver, under this section or any of sections 18N to 18P, information to the Registrar. If such means are not used to deliver the information concerned, the fact of the receipt by the Registrar of the particular information shall not constitute compliance with the requirement concerned of the section in question. 30 35
- (7) The means referred to in subsection (6) are those that are provided for under the Electronic Commerce Act 2000.
- (8) The reference in this section to the use of the means provided for under the Electronic Commerce Act 2000 is a reference to their use in a manner that complies with any requirements of the Registrar of the kind referred to in sections 12(2)(b) and 13(2)(a) of that Act. 40

### Information which shall be delivered to Registrar

- 18N. (1) The following is the information referred to in section 18M(1) or (2) that shall be delivered by a management company of a common contractual fund to the Registrar:
- (a) the name, date of birth, nationality and residential address of each beneficial owner of the common contractual fund; 5
  - (b) a statement of the nature and extent of the interest held, or the nature and extent of control exercised by, each such beneficial owner,  
and section 18P makes provision for occasions, subsequent to the discharge by the management company of its initial central filing obligation, on which information shall be delivered by it to the Registrar. 10
- (2) In addition to what is provided in subsection (1), there shall be delivered to the Registrar by the management company of the common contractual fund— 15
- (a) for the purpose of verification of the information delivered under section 18M(1) or (2) and without prejudice to paragraph (b), the PPS number of each beneficial owner to whom such a number has been assigned, or 20
  - (b) such information as stands determined by the Registrar for the purposes of this section.
- (3) In addition to what is provided in subsections (1) and (2), where the obligation imposed on a management company of a common contractual fund by section 18M(1) or (2) is discharged by its acting through an officer or employee of the management company, there shall be delivered to the Registrar— 25
- (a) the name, address, phone number and e-mail address of the officer or employee for correspondence purposes, and
  - (b) particulars as to the capacity in which the officer or employee is acting. 30
- (4) The Registrar shall delete from the central register information entered in it in relation to a common contractual fund if 10 years have elapsed from the date on which the final distribution is made under the common contractual fund (should such occur) and, as soon as may be after that deletion, the Registrar shall destroy that information. 35
- (5) As respects a PPS number of a beneficial owner that has been delivered under subsection (2) to the Registrar—
- (a) the Registrar shall not disclose that number, and
  - (b) that number shall be stored securely by the Registrar. 40
- (6) The Registrar shall, as respects any information that has been received under subsection (3) and recorded by the Registrar, destroy the

information as soon as may be after 10 years have elapsed from the date on which the final distribution is made (should such occur) under the common contractual fund to which it relates.

- (7) Subsections (2) to (6) shall, with any necessary modifications, apply to amended particulars that are to be, or have been delivered, under section 18M(4)(b)(ii)(II) as they apply to information that is to be, or has been, delivered under section 18M(1) or (2). 5

**Information to be provided by presenter**

**18O.** (1) This section applies where the information specified in section 18M(1) or (2) is delivered to the Registrar by a person (in this section referred to as the ‘presenter’) acting on behalf of the management company concerned as mentioned in section 18J(2). 10

- (2) Where this section applies, the following information shall also be delivered by the presenter to the Registrar:

- (a) the presenter’s name, address, phone number and e-mail address; 15  
(b) particulars as to the capacity in which the presenter is acting;  
(c) if the presenter is not an individual, the name, address, phone number and e-mail address of an individual for correspondence purposes.

- (3) The Registrar shall, as respects any information that has been received under subsection (2) and recorded by the Registrar, destroy the information as soon as may be after 10 years have elapsed from the date on which the final distribution is made (should such occur) under the common contractual fund to which it relates. 20

**Duty to keep information in beneficial ownership register and central register aligned and up-to-date 25**

**18P.** (1) The purpose of this section is to require that any changes that occur in the information contained in a common contractual fund’s beneficial ownership register be reflected by a corresponding change being made in the central register; accordingly there is imposed on the management company of a common contractual fund by this section an obligation, referred to in this section as the ‘follow up obligation’, to deliver information to the Registrar so as to allow any such change to be reflected in the central register. 30

- (2) The provisions of this section shall have effect in relation to a common contractual fund following the discharge by the management company of the common contractual fund of its initial central filing obligation (and in subsection (3) the time on which that obligation is so discharged is referred to as the ‘relevant time’). 35

- (3) Where at any time, subsequent to the relevant time, the obligation referred to in subsection (4) falls to be discharged by a management company of the common contractual fund, then there is also imposed on the management company, by this section, the follow up obligation specified in subsection (5). 40

- (4) The first-mentioned obligation in subsection (3) of the management company is the obligation to—
- (a) enter any information in the common contractual fund’s beneficial ownership register, or
  - (b) amend or delete any information in that register, 5  
whether by virtue of its duty under section 18A(1) to hold accurate and current information regarding the common contractual fund’s beneficial ownership or any provision of section 18B, 18C, 18D, 18E or 18F.
- (5) The management company’s follow up obligation is to deliver to the Registrar, as appropriate— 10
- (a) the same information as that which (as mentioned in subsection (4) (a)) the management company is required to enter in the common contractual fund’s beneficial ownership register, or
  - (b) the appropriate information that will enable the Registrar to make 15  
the same amendment or deletion of information in the central register as that which (as mentioned in subsection (4)(b)) the management company is required to make in the common contractual fund’s beneficial ownership register,  
and the follow-up obligation shall be discharged within 14 days from 20  
the date on which the first-mentioned obligation in subsection (3) falls to be discharged by the management company.
- (6) Section 18N(2) to (7) and, as the case may be, section 18O shall apply in a case where information is delivered to the Registrar under subsection (5) as they apply in a case where information is delivered to 25  
the Registrar under section 18M(1), (2) or (3).

**Unrestricted access to beneficial ownership information in central register**

- 18Q.** (1) Subject to subsection (2), the following shall have the right to inspect the central register—
- (a) a member of the Garda Síochána, not below the rank of inspector, 30  
who is engaged in the prevention, detection, investigation or analysis of possible money laundering or terrorist financing,
  - (b) a member of FIU Ireland within the meaning of Part 4 of the Act of 2010,
  - (c) an officer of the Revenue Commissioners, holding a position not 35  
below that of Higher Executive Officer,
  - (d) an officer of the Criminal Assets Bureau, holding a rank not below the rank of inspector in the Garda Síochána, or holding a position not below that of Higher Executive Officer.
- (2) The right referred to in subsection (1) shall not be exercised— 40

- (a) by a member of the Garda Síochána referred to in paragraph (a) of that subsection, unless he or she has been authorised to exercise the right by a member of the Garda Síochána, not below the rank of superintendent,
  - (b) by a member of FIU Ireland, unless he or she has been authorised to exercise the right by a member of the Garda Síochána, not below the rank of superintendent, 5
  - (c) by an officer of the Revenue Commissioners referred to in paragraph (c) of that subsection, unless he or she has been authorised to exercise the right by an officer of the Revenue Commissioners, holding a position not below that of Principal Officer, or 10
  - (d) by an officer of the Criminal Assets Bureau referred to in paragraph (d) of that subsection, unless he or she has been authorised to exercise the right by a member of the Garda Síochána, not below the rank of superintendent. 15
- (3) Subject to subsection (4), a member, a member of staff or an officer of a competent authority who is engaged in the prevention, detection or investigation of possible money laundering or terrorist financing shall have the right to inspect the central register. 20
- (4) The right referred to in subsection (3) shall not be exercised—
- (a) by—
    - (i) a member of staff of the Bank,
    - (ii) an officer of the Minister for Justice and Equality,
    - (iii) a member or member of staff of the Property Services Regulatory Authority, or 25
    - (iv) a member or member of staff of the Legal Services Regulatory Authority,

(each of which or whom is referred to in this subparagraph as a ‘relevant competent authority’) unless he or she holds a position not below that of Higher Executive Officer and has been authorised to exercise the right by a member or member of staff or, as the case may be, an officer of the relevant competent authority concerned, holding a position not below that of Principal Officer, or 30
  - (b) by a member or member of staff of— 35
    - (i) the Law Society of Ireland,
    - (ii) the General Council of the Bar of Ireland, or
    - (iii) a designated accountancy body (within the meaning of Part 4 of the Act of 2010),

unless he or she is a person designated by the President of the Law Society of Ireland, the chairperson of the General Council of the 40

Bar of Ireland or the chief executive of (or a person holding an equivalent position in) the designated accountancy body, as the case may be, to be a person authorised for the purposes of subparagraph (i), (ii) or (iii), as appropriate, to exercise the right.

- (5) On there being made of the Registrar a request for inspection, under any of subsections (1) to (4), of the central register, the Registrar shall afford the maker of the request access, in a timely manner, to the register. 5
- (6) The Registrar shall, neither during the taking of the steps to afford the maker the access referred to in subsection (5), nor afterwards, alert the beneficial owners of any common contractual fund concerned to the fact of such access having been afforded. 10
- (7) In subsection (6), ‘any common contractual fund concerned’ means any common contractual fund to which the information in the central register, the subject of the inspection concerned, relates. 15
- (8) Each of the following:
- (a) the Garda Síochána;
  - (b) the Revenue Commissioners;
  - (c) a competent authority;
  - (d) the Criminal Assets Bureau, 20
- may disclose the information in the central register to any corresponding competent authority of another Member State (a ‘corresponding authority’); in the event of there being a request made of a body or other person referred to in any of paragraphs (a) to (d) by a corresponding authority for disclosure of such information, the request shall be complied with in a timely manner. 25
- (9) No fee shall be charged to a corresponding authority for the disclosure of the information in the central register.

**Restricted access to beneficial ownership information in central register**

- 18R.** (1) When— 30
- (a) a management company of a common contractual fund enters into an occasional transaction with a designated person, or forms a business relationship with a designated person, or
  - (b) a designated person is taking customer due diligence measures in accordance with Part 4 of the Act of 2010 in relation to a common contractual fund, 35
- the designated person shall, subject to subsection (6), have a right of access to the following information in the central register that relates to the common contractual fund:
- (i) the name, the month and year of birth and the country of residence and nationality of each beneficial owner of it; 40

- (ii) a statement of the nature and extent of the interest held, or the nature and extent of control exercised, by each such beneficial owner,  
and that access shall be afforded in a timely manner.
- (2) The information obtained by a designated person by means of the access to the central register afforded under subsection (1) shall not be relied upon exclusively by the designated person to fulfil the designated person's duty to apply customer due diligence measures under Part 4 of the Act of 2010 (which duty shall be fulfilled by using a risk-based approach).
- (3) Any person may, subject to subsection (6), request in writing access to the following information in the central register that relates to any common contractual fund:
- (a) the name, the month and year of birth and the country of residence and nationality of each beneficial owner of it; and
- (b) a statement of the nature and extent of the interest held, or the nature and extent of control exercised, by each such beneficial owner.
- (4) Any person may, subject to subsection (6), request in writing access to the following information in the central register that relates to any common contractual fund which holds or owns a controlling interest in any corporate or other legal entity incorporated outside the European Union, through direct or indirect ownership, including through bearer shareholdings, or through control via other means:
- (a) the name, the month and year of birth and the country of residence and nationality of each beneficial owner of the common contractual fund;
- (b) a statement of the nature and extent of the interest held, or the nature and extent of control exercised, by each such beneficial owner of the common contractual fund,  
and that access shall be afforded in a timely manner.
- (5) The Data Protection Act 2018 shall apply to the access that the Registrar affords to a designated person and any member of the public in respect of the information in the central register that relates to a common contractual fund.
- (6) Where a designated person or a member of the public seeks to have access to, or to inspect, any information in the central register so far as such information relates to a minor who is a beneficial owner of a common contractual fund, the Registrar shall request the designated person or member of the public to provide, in writing, to the Registrar a summary of the grounds on which he or she considers it is in the public interest that that information be disclosed to him or her and—

- (a) if the designated person or the member of the public refuses or fails to comply with that request, or
  - (b) unless the Registrar, having considered such a written summary provided to the Registrar, is of the opinion that there are substantial grounds for the contention of the foregoing person that it is in the public interest that the information be disclosed to him or her,
- the designated person or member of the public shall not be permitted by the Registrar to have access to, or to inspect, any information in the central register so far as such information relates to the minor concerned.
- (7) In subsection (1), ‘occasional transaction’ has the same meaning as it has in section 18A(7).

**Obligations of competent authorities to report certain discrepancies to Registrar**

- 18S. (1) If—**
- (a) any of the following:
    - (i) the Garda Síochána;
    - (ii) the Revenue Commissioners;
    - (iii) a competent authority;
    - (iv) the Criminal Assets Bureau,

forms the opinion that there is a discrepancy between the information in the central register and the beneficial ownership information, as it relates to any common contractual fund, available to, as the case may be, the Garda Síochána, the Revenue Commissioners or other foregoing authority or bureau (each of which is referred to in this section as a ‘relevant person’), and
  - (b) to the extent that the doing of the following does not interfere unnecessarily with the performance of the relevant person’s functions,
- then the relevant person shall deliver, in a timely manner, to the Registrar, in such manner as the Registrar determines, notice of that opinion, specifying the particulars as respects which the foregoing discrepancy exists.
- (2) On receipt of a foregoing notice, the Registrar shall—
- (a) if the Registrar considers it appropriate to do so, make an entry in the relevant place in the central register which states that the notice has been received and specifies the particulars as respects which the foregoing discrepancy exists, and
  - (b) serve a notice on the management company of the common contractual fund concerned which—
    - (i) states that the foregoing notice has been received, and



(ii) specifies the particulars as respects which the foregoing discrepancy exists, and requests the management company to deliver to the Registrar, within a period specified in the notice and in such manner as the Registrar determines—

(I) a submission as to why the management company considers the opinion of the relevant person concerned not to be well founded, or 5

(II) if the management company considers the opinion of the relevant person concerned to be well founded, such amended particulars (for entry in the central register) as are required where the management company is satisfied that the delivery of such is the appropriate means by which the discrepancy can be resolved, 10

and such a request shall be complied with by the management company accordingly. 15

(3) None of the following—

(a) an opinion stated in a notice delivered under subsection (1) by a relevant person to the Registrar (nor the specification in such a notice of the particulars as respects which the discrepancy concerned exists), 20

(b) any act done by the Registrar, as mentioned in subsection (2), on foot of the receipt by the Registrar of a notice delivered under subsection (1) and, in particular, any entry made in the central register by the Registrar on foot of such receipt,

(c) a submission delivered under subsection (2)(b)(ii)(I) to the Registrar by a management company, 25

shall, of itself, be regarded as constituting defamatory matter.

(4) Subsections (2) to (7) of section 18N shall, with any necessary modifications, apply to amended particulars that are to be, or have been delivered, under subsection (2)(b)(ii)(II) as they apply to information that is to be, or has been, delivered under section 18M(1) or (2). 30

#### **Fees may be charged for access to central register**

**18T.** (1) The Registrar may require any of the persons referred to in section 18R(1), (3) or (4) to pay to the Registrar a fee of such an amount as the Registrar may determine in respect of the access afforded to the central register under section 18R(1), (3) or (4). 35

(2) The amount of a fee required to be paid under subsection (1) shall not exceed the administrative cost incurred in affording access to the information concerned. 40

**Offence for failure to comply with section 18M, 18N, 18O or 18P and supplemental provisions**

- 18U.** (1) A management company that fails to comply with section 18M, 18N or 18O shall be guilty of an offence.
- (2) A management company that fails, without reasonable excuse, to comply with a request, as referred to in subparagraph (ii) of subsection (4)(b) of section 18M, or subparagraph (ii) of subsection (2)(b) of section 18S, contained in a notice served on it under that subsection (4)(b) or (2)(b), as the case may be, shall be guilty of an offence. 5
- (3) A presenter that fails to comply with section 18O shall be guilty of an offence. 10
- (4) A person who, in purported compliance with section 18M, 18N, 18O or 18P, makes a statement that is false in a material particular, knowing it to be so false or being reckless as to whether it is so false, shall be guilty of an offence. 15
- (5) A designated person who fails to comply with section 18M(3) shall be guilty of an offence.”.

PART 5

AMENDMENT OF SOCIAL WELFARE CONSOLIDATION ACT 2005

**Amendment of Schedule 5 to Social Welfare Consolidation Act 2005** 20

- 64.** Schedule 5 to the Social Welfare Consolidation Act 2005 is amended, in paragraph 1(4), by the insertion, after “Quality and Qualifications Ireland,” (inserted by section 18 of the Social Welfare and Pensions (Miscellaneous Provisions) Act 2013), of the following:

“Registrar of Beneficial Ownership of Investment Limited Partnerships, 25

Registrar of Beneficial Ownership of Irish Collective Asset-management Vehicles, Credit Unions and Unit Trusts,

Registrar of Beneficial Ownership of Common Contractual Funds,”.



An Bille um Chomhpháirtíochtaí Teoranta  
Infheistíochta (Leasú), 2020

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# BILLE

*(mar a tionscnaíodh)*

*dá ngairtear*

Acht do leasú agus do leathnú an Achta um Chomhpháirtíochtaí Teoranta Infheistíochta, 1994, an Achta fá Ghléasanna Éireannacha um Chomhbhainistiú Sócmhainní, 2015 agus an Achta um Chistí Infheistíochta, Cuideachtaí agus Forálacha Ilghnéitheacha, 2005; do leasú Sceideal 5 a ghabhann leis an Acht Comhdhlúite Leasa Shóisialaigh, 2005; agus do dhéanamh socrú i dtaobh nithe gaolmhara.

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*An Seanadóir Riona Uí Dhochartaigh a thíolaic  
thar ceann an Aire Airgeadais,*

*17 Meán Fómhair, 2020*

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Investment Limited Partnerships  
(Amendment) Bill 2020

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# BILL

*(as initiated)*

*entitled*

An Act to amend and extend the Investment Limited Partnerships Act 1994, the Irish Collective Asset-management Vehicles Act 2015 and the Investment Funds, Companies and Miscellaneous Provisions Act 2005; to amend Schedule 5 to the Social Welfare Consolidation Act 2005; and to provide for related matters.

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*Presented by Senator Regina Doherty on behalf of  
the Minister for Finance,*

*17th September, 2020*

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BAILE ÁTHA CLIATH  
ARNA FHOILSIÚ AG OIFIG AN tSOLÁTHAIR  
Le ceannach díreach ó  
FOILSEACHÁIN RIALTAIS,  
52 FAICHE STIABHNA, BAILE ÁTHA CLIATH 2.  
(Teil: 01 - 6476834 nó 1890 213434; Fax: 01 - 6476843)  
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