DÁIL ÉIREANN

AN ROGHCHOISTE UM POIST, FIONTAIR AGUS NUÁLAÍOCHT

SELECT COMMITTEE ON JOBS, ENTERPRISE AND INNOVATION

Dé Máirt, 22 Samhain 2016

Tuesday, 22 November 2016

The Select Committee met at 4 p.m.

MEMBERS PRESENT:

Deputy Niall Collins,	Deputy Tom Neville,
Deputy Mary Mitchell O'Connor (Minister for Jobs, Enterprise and Innovation),	Deputy Bríd Smith.

DEPUTY MARY BUTLER IN THE CHAIR

Companies (Accounting) Bill 2016: Committee Stage

Chairman: This meeting has been convened to consider the Companies (Accounting) Bill 2016, which was referred to the select committee by order of the Dáil on 15 November 2016. Apologies have been received from Deputies Maurice Quinlivan and Stephen Donnelly. I welcome the Minister for Jobs, Enterprise and Innovation, Deputy Mary Mitchell O'Connor, and her officials to the meeting. Before we begin, I ask members to ensure their mobile phones are switched off or are in aeroplane mode for the duration of this meeting as they interfere with the broadcasting equipment even when in silent mode.

There are 44 amendments tabled. It is intended that we will consider this Bill until we conclude Committee Stage today. Is that agreed? Agreed. I refer members to the list of amendments grouped for the purpose of debate that has been circulated. We will now proceed to the consideration of the Bill.

SECTION 1

Chairman: Amendments Nos. 1, 2 and 12 are related and may be discussed together.

Minister for Jobs, Enterprise and Innovation (Deputy Mary Mitchell O'Connor): I move amendment No. 1:

In page 7, to delete lines 17 and 18.

Amendments Nos. 1, 2 and 12 should be read together with the proposal to delete section 4 of the Bill. The amendments are technical. Deputies will remember that the Companies Act 2014 was a major project to reform Irish company law. One of the aims of that project was to have an Act that could be updated easily without changing its name each time. Experience shows that company law needs to be updated regularly. By keeping the name of the 2014 Act, references to the Companies Act 2014 in forms and contracts do not have to be changed each time there is a new companies Act. This is the approach that has been taken in the Taxes Consolidation Act 1997.

Section 4 of the Bill is the only section that does not amend an existing section or insert a new section into the Companies Act 2014 and, as a result, section 1 provides that the name of the Companies Act will change. Amendment No. 1 deletes the references to the Companies Acts 2014 and 2016 and as it is proposed to delete section 4 of the Bill, amendment No. 2 deletes references to section 4 from section 1. However, the content of section 4 is important. It provides for some early application of the Bill so that companies can benefit from the savings in time and effort as soon as possible. Accordingly, amendment No. 12 moves the content of section 4 from its current place and inserts it into a new section 15. In this way we can keep the advantages of the provision in section 4 and maintain the benefits of not changing the name of the Companies Act 2014.

Amendment agreed to.

Deputy Mary Mitchell O'Connor: I move amendment No. 2:

In page 7, line 19, to delete "This Act, other than *section 4*," and substitute "This Act".

Amendment agreed to.

Section 1, as amended, agreed to.

Section 2 agreed to.

SECTION 3

Question proposed: "That section 3 stand part of the Bill."

Deputy Mary Mitchell O'Connor: I ask the committee to note that I am considering making an amendment to this section. The purpose of the amendment is to delete section 1237(5) of the Companies Act 2014.

Question put and agreed to.

SECTION 4

Question proposed: "That section 4 be deleted."

Deputy Mary Mitchell O'Connor: I propose to delete section 4 for technical reasons.

Question put and agreed to.

SECTION 5

Chairman: Amendments Nos. 3, 4 and 21 to 24, inclusive, are related and may be discussed together.

Deputy Mary Mitchell O'Connor: I move amendment No. 3:

In page 10, line 2, to delete "his or her" and substitute "that person's".

Amendments Nos. 3, 4 and 21 to 24, inclusive, to sections 5 and 36 are proposed for clarity. Both sections refer to companies as well as to natural people. Clearly, companies are neither male nor female. These amendments delete references to "his or her" and changes them to "that person's" to reflect that fact. They are technical in nature.

Amendment agreed to.

Deputy Mary Mitchell O'Connor: I move amendment No. 4:

In page 10, line 6, to delete "his or her" and substitute "that person's".

Amendment agreed to.

Section 5, as amended, agreed to.

Sections 6 to 11, inclusive, agreed to.

SECTION 12

Deputy Mary Mitchell O'Connor: I move amendment No. 5:

In page 12, lines 6 and 7, to delete "means an income statement" and substitute "means a statement of profit or loss and other comprehensive income or equivalent term".

This is a technical amendment. Section 12 amends the definition of a "profit and loss account" that is currently in the Companies Act 2014. The change in section 12 is needed to take account of the fact that some companies such as charities do not make profits. Therefore, they do not prepare a profit and loss account. Section 12 reflects that fact and refers to an "income and expenditure account" instead.

Amendment No. 5 also addresses a further issue with the definition. The phrase "income statement" is used in both the Companies Act and in section 12 of this Bill. However, the relevant international accounting standard, IAS, does not use this term. Instead it uses a statement of profit and loss and other comprehensive income or equivalent term. Amendment No. 5 replaces the current text with the language from the relevant IAS, for clarity and consistency.

Amendment agreed to.

Section 12, as amended, agreed to.

SECTION 13

Chairman: Amendments Nos. 6 to 10, inclusive, are related and may be discussed together.

Deputy Mary Mitchell O'Connor: I move amendment No. 6:

In page 12, line 16, to delete "is amended, in subsection (1)" and substitute "is amended".

Amendments Nos. 6 to 10, inclusive, are proposed to clarify that a credit institution captures a company that lends money to the public and that it is a company that is colloquially understood as a bank. The definition used in this section has wide applicability across the entire Act. The purpose of these amendments is to clarify the policy decision that underlines certain prohibitions and-or requirements that are associated with companies that undertake regulated activities. For example, if a company is engaged in lending money to the public, it cannot be registered as a simplified private limited company provided for in Volume 1 of the Companies Act.

Amendment agreed to.

Deputy Mary Mitchell O'Connor: I move amendment No. 7.

In page 12, to delete lines 17 and 18 and substitute the following:

"(a) in subsection (1)—

(i) by the insertion of "and Part 26" after "In this Part",

(ii) by the insertion of the following definitions:".

Amendment agreed to.

Deputy Mary Mitchell O'Connor: I move amendment No. 8:

In page 13, line 7, to delete "read accordingly;", and substitute "read accordingly;".

Amendment agreed to.

Deputy Mary Mitchell O'Connor: I move amendment No. 9:

In page 13, to delete line 19 and substitute "280C;", and".

Amendment agreed to.

Deputy Mary Mitchell O'Connor: I move amendment No. 10:

In page 13, between lines 19 and 20, to insert the following:

"(iii) in the definition of "credit institution"—

(I) in paragraph (b), by the substitution of "(within the meaning of the Consumer Credit Act 1995)" for "(within the meaning of the Hire Purchase Act 1946)", and

(II) in paragraph (c), by the substitution of "or other repayable funds from the public and" for "or other repayable funds or",".

Amendment agreed to.

Deputy Mary Mitchell O'Connor: I move amendment No. 11:

In page 13, lines 21 and 22, to delete "the Schedules" and substitute "Schedules 3, 3A, 3B, 4 or 4A".

This is a technical amendment. It proposes to clarify the specific Schedules that are intended in the cross-reference. In the Bill, as drafted, the text just refers to Schedules generally.

Amendment agreed to.

Section 13, as amended, agreed to.

Section 14 agreed to.

NEW SECTION

Deputy Mary Mitchell O'Connor: I move amendment No. 12:

In page 14, between lines 9 and 10, to insert the following:

"Certain companies may apply provisions of Act to certain earlier financial years

15. The Principal Act is amended by the insertion of the following section after section 280:

"**280A.** (1) Subject to this section, the directors of a company may opt to prepare (and approve) statutory financial statements for the company in accordance with the provisions of the *Act of 2016* specified in subsection (4) (the 'specified provisions of the *Act of 2016*') before the operative date of those provisions for any financial year which commences on or after 1 January 2015 and ends on or before 24 December 2016.

(2) All obligations and rights that arise under this Act consequent on or in respect of financial statements having been approved by directors of a company shall likewise arise in relation to financial statements approved by directors in a case falling within subsection (1).

(3) In determining whether a company or group qualifies as—

(a) a medium company under section 280F or 280G, as the case may be,

(b) a small company under section 280A or 280B, as the case may be,

or

(c) a micro company under section 280D,

in relation to a financial year to which the specified provisions of the *Act of 2016* have effect, the company or group, as may be appropriate shall be treated as having qualified as a medium company, small company or micro company, as the case may be, in any previous year in which it would have so qualified if the qualifying conditions applicable to that company or group, as the case may be, had had effect in relation to that previous year.

(4) Each of the following is a specified provision of the *Act of 2016*:

(a) section 3;

(b) section 5;

(c) sections 11 to 13;

(d) sections 15 to 25;

(e) paragraphs (a), (b) and (d) of section 26;

(f) sections 29 to 57;

(g) section 59;

(h) sections 62 to 64;

(i) sections 79 and 80;

(j) section 82;

(k) section 85;

(l) section 87;

(m) paragraphs (a)(v), (b) and (c) of section 90.

(5) In this section—

'*Act of 2016*' means the *Companies (Accounting) Act 2016*;

'operative date' means the date on which the specified provision comes into operation pursuant to an order under *section 1(3)* of the *Act of 2016*;

'qualifying conditions' has the same meaning as it has—

(a) in relation to a medium company, in section 280F(7) or 280G(10), as the case may be,

(b) in relation to a small company, in section 280A(7) or 280B(10), as the case may be, and

(c) in relation to a micro company, in section 280D(7).”.”.

Amendment agreed to.

Section 15 agreed to.

SECTION 16

Chairman: Amendments Nos. 13 to 17, inclusive, are related and may be discussed together.

Deputy Mary Mitchell O’Connor: I move amendment No. 13:

In page 20, line 35, to delete “holding”.

Amendments Nos. 13 to 17, inclusive, correct typographical errors in section 16. Section 16 amends section 290 of the Companies Act 2014. Section 290 provides for the obligation to prepare financial statements for entities and not for groups. Therefore, references to “holding companies” and to “groups” are not appropriate. These amendments remove those references and replace them with “entity” where necessary.

Amendment agreed to.

Deputy Mary Mitchell O’Connor: I move amendment No. 14:

In page 20, line 36, to delete “group” and substitute “entity”.

Amendment agreed to.

Deputy Mary Mitchell O’Connor: I move amendment No. 15:

In page 21, line 2, to delete “group” and substitute “entity”.

Amendment agreed to.

Deputy Mary Mitchell O’Connor: I move amendment No: 16:

In page 21, line 3, to delete “group” and substitute “entity”.

Amendment agreed to.

Deputy Mary Mitchell O’Connor: I move amendment No. 17:

In page 21, line 7, to delete “group” and substitute “entity”.

Amendment agreed to.

Section 16, as amended, agreed to.

Sections 17 to 21, inclusive, agreed to.

SECTION 22

Chairman: Amendments Nos. 18 and 19 are related and may be discussed together.

Deputy Mary Mitchell O’Connor: I move amendment No. 18:

In page 24, to delete lines 32 to 36 and substitute the following:

"(a) in subsection (2)—

(i) by the insertion of the following paragraph after paragraph (a):

"(aa) that other holding undertaking holds more than 90 per cent of the shares in the lower holding company and the remaining shareholders in, or members of, the lower holding company have approved the exemption,",

and

(ii) in paragraph (b), by the substitution of "more than 50 per cent but not more than 90 per cent" for "more than 50 per cent".".

Sections 22 and 23 relate to the exemption of certain holding companies from the obligations to consolidate financial statements. This section is concerned with companies registered within the EEA while section 23 is concerned with companies registered outside the EEA. Both sections make a distinction between the two scenarios. The first is where the holding company owns more than 90% of the shares in the lower company. The second is where the holding company owns more than 50% of the shares of the lower company. However, when these provisions are inserted into the Companies Act 2014, there is an overlap because a company that owns more than 90% of the shares also owns more than 50% of the shares. The amendments clarify that the second scenario refers to a holding company owning more than 50% but not more than 90% of the shares.

Amendment agreed to.

Section 22, as amended, agreed to.

SECTION 23

Deputy Mary Mitchell O'Connor: I move amendment No. 19:

In page 25, to delete lines 23 to 27 and substitute the following:

"(a) in subsection (2)—

(i) by the insertion of the following paragraph after paragraph (a):

"(aa) that other holding undertaking holds more than 90 per cent of the shares in the lower holding company and the remaining shareholders in, or members of, the lower holding company have approved the exemption,",

and

(ii) in paragraph (b), by the substitution of "more than 50 per cent but not more than 90 per cent" for "more than 50 per cent".".

Amendment agreed to.

Section 23, as amended, agreed to.

Sections 24 and 25 agreed to.

SECTION 26

Question proposed: "That section 26 stand part of the Bill".

Deputy Bríd Smith: I have concerns about this section but I am unclear on the procedure.

Chairman: The Deputy can indicate that she will table amendments on Report Stage. She can raise it now and bring them up on Report Stage.

Deputy Bríd Smith: I will table amendments on Report Stage.

Question put and agreed to.

Section 27 agreed to.

SECTION 28

Deputy Mary Mitchell O'Connor: I move amendment No. 20:

In page 28, line 23, to delete "for any reason".

The section largely re-enacts the existing provisions of section 306 of the Companies Act 2014. Section 306 relates to the provisions on disclosure of directors' pay. The Bill replaces that section in its entirely rather than just amending it for two reasons. First, it allows us to update the title of the section in order that it refers to the new section 305A. This is a useful clarification for people using the Companies Acts. Second, it inserts references to the new section throughout the section. The new section will be inserted by section 27. The intention was not to change the substance of the existing section 306 in any way. However, the words "for any reason" were added to the text. This could introduce a lack of clarity regarding what companies have to disclose. It would also be too sweeping. For example, a son or daughter of a director of a large chain of shops might have a summer job in one of the branches. If these words were not deleted, companies would be required to disclose the salaries paid to the son or daughter. This would be a burden on companies and is not justified in such circumstances.

Amendment agreed to.

Section 28, as amended, agreed to.

Sections 29 to 35, inclusive, agreed to.

SECTION 36

Deputy Mary Mitchell O'Connor: I move amendment No. 21:

In page 31, line 25, to delete "his or her" and substitute "that person's".

Amendment agreed to.

Deputy Mary Mitchell O'Connor: I move amendment No. 22:

In page 31, line 28, to delete "his or her" and substitute "that person's".

Amendment agreed to.

Deputy Mary Mitchell O'Connor: I move amendment No. 23:

In page 31, line 31, to delete "his or her" and substitute "that person's".

Amendment agreed to.

Deputy Mary Mitchell O'Connor: I move amendment No. 24:

In page 31, lines 32 and 33, to delete "his or her" and substitute "that person's".

Amendment agreed to.

Section 36, as amended, agreed to.

SECTION 37

Deputy Mary Mitchell O'Connor: I move amendment No. 25:

In page 32, to delete lines 21 to 23 and substitute the following:

"(b) to the extent practicable, the impact of the change in accounting policy on the financial statements for the current financial year and on the financial statements of preceding years.".".

The section amends section 321 of the Companies Act 2014. Section 321 relates to the disclosure by companies of the accounting policies they have adopted. The section inserts a new obligation on companies that change their accounting policy to disclose the reason for that change. They are also required to disclose the impact of that change on the financial statements for the current year and, to the extent practicable, for preceding years. The purpose of the amendment is to align the extent of the obligations relating to the current year with those relating to preceding years. In other words, companies will be obliged to disclose the impact on the financial statements to the extent practicable for the current year, as well as for previous years. This is fair. It would be costly for companies such as large financial institutions to go beyond what is practicable.

Amendment agreed to.

Section 37, as amended, agreed to.

Sections 38 and 39 agreed to.

SECTION 40

Chairman: Amendments Nos. 26 and 27 are related and may be discussed together.

Deputy Mary Mitchell O'Connor: I move amendment No. 26:

In page 33, line 20, to delete ", until the contrary is proved,".

The amendments propose to align in sections 40 and 45 the requirements of the directive.

As Deputies will be aware, the Bill transposes the EU accounting directive. That directive provides that the financial statements of micro entities shall be regarded as giving a true and fair view. As a result, the obligations on directors with respect to the true and fair view do not apply to directors of micro entities. That is a useful saving for very small businesses in time and effort. The directive does not permit member states to go beyond that and the other rules that apply to micro entities. However, section 40 provides that the financial statements of a micro company are deemed a true and fair view until the contrary is proved.

Section 45 makes a similar provision with respect to the report of the statutory auditor.

This condition appears to introduce a burden on directors that is beyond the requirement of the directive. It also introduces uncertainty and that would undermine the benefit of this provision for micro companies. Therefore, I propose to delete the words "until the contrary is proved".

Amendment agreed to.

Section 40, as amended, agreed to.

Sections 41 to 44, inclusive, agreed to.

SECTION 45

Deputy Mary Mitchell O'Connor: I move amendment No. 27:

In page 35, lines 24 and 25, to delete ", until the contrary is proved,".

Amendment agreed to.

Section 45, as amended, agreed to.

Sections 46 to 75, inclusive, agreed to.

SECTION 76

Question proposed: "That section 76 stand part of the Bill."

Deputy Niall Collins: I wish to indicate that we will table an amendment to the section on Report Stage, as we feel the current wording of the Bill may have significant implications for private companies, in particular in the context of Brexit and trying to create and retain sustainable jobs, especially in respect of those companies trying to trade into the UK. We will table an amendment on Report Stage to delete paragraph (3) of section 1242A.

Question put and agreed to.

Section 77 agreed to.

SECTION 78

Question proposed: "That section 78 stand part of the Bill."

Deputy Niall Collins: We also propose to table an amendment to delete section 78.

Deputy Mary Mitchell O'Connor: I am considering tabling amendments to section 78 on Report Stage. Since the publication of the Bill, it has come to my attention that the wording of sections 78A and 78B are not in line with each other. There may also be a need for more clarity in the wording to ensure that the policy intention is given effect. I am seeking the advice of the Parliamentary Counsel on these points and as a result of those consultations I may propose amendments to address those issues.

Deputy Niall Collins: We will table our amendment, as indicated.

Question put and agreed to.

SECTION 79

Question proposed: "That section 79 stand part of the Bill."

Deputy Bríd Smith: I have some concerns about this section and I intend to table amendments on Report Stage.

Chairman: That is noted.

Question put and agreed to.

Sections 80 to 83, inclusive, agreed to.

SECTION 84

Chairman: Amendment No. 28 is in the name of the Minister. Amendments Nos. 29 and 30 are related to amendment No. 28 and they will be discussed together.

Deputy Mary Mitchell O'Connor: I move amendment No. 28:

In page 53, line 19, to delete "subsidiary company" and substitute "subsidiary".

Section 84 uses the phrase "subsidiary company" in three places. However, the rest of the Companies Act refers to the subsidiary companies as just subsidiary so I am proposing these amendments to delete the word "company" for consistency.

Deputy Bríd Smith: I have no problem with those amendments but I want to indicate that I have concerns about the section.

Chairman: We are dealing with amendments, Nos. 28, 29 and 30.

Deputy Bríd Smith: No. My concern is about the section. Can I indicate my concern for Report Stage?

Chairman: Yes, of course.

Amendment agreed to.

Deputy Mary Mitchell O'Connor: I move amendment No. 29:

In page 53, line 24, to delete "subsidiary company" and substitute "subsidiary".

Amendment agreed to.

Deputy Mary Mitchell O'Connor: I move amendment No. 30:

In page 54, line 3, to delete "subsidiary company" and substitute "subsidiary".

Amendment agreed to.

Deputy Mary Mitchell O'Connor: I move amendment No. 31:

In page 55, lines 26 and 27, to delete "11 months of the end" and substitute "11 months after the end".

I am proposing this amendment to clarify the time period companies have to file their country by country reports in the Companies Registration Office. They will have to file within 11 months after the end of their financial year.

Amendment agreed to.

Section 84, as amended, agreed to.

Section 85 agreed to.

SECTION 86

Question proposed: "That section 86 be deleted."

Deputy Mary Mitchell O'Connor: I am proposing to delete section 86. For drafting reasons the content of section 86 is being moved into a new section 96. Amendment No. 40 gives effect to this move and there is no change of substance.

Question put and agreed to.

Section 87 agreed to.

SECTION 88

Chairman: Amendment No. 32 is in the name of the Minister. Amendments Nos. 32 and 33 are related and will be discussed together.

Deputy Mary Mitchell O'Connor: I move amendment No. 32:

In page 57, to delete lines 24 and 25.

The Bill inserts new Schedules into the Companies Act 2014. They replace the current Schedules in the Companies Act and separate the principles, form and content of financial statements for companies, small companies, micro-companies, groups and small groups. This approach is intended to make it easier for a business to identify the relevant provisions for its financial statements based on the size of that business.

These new Schedules refer to value adjustments as well as to provisions. However, section 117 of the Companies Act, which provides for profits available for distribution, only mentions provisions. Amendment No. 33, therefore, inserts references to value adjustments for clarity. Section 88 already makes an amendment to section 117 updating the cross-references to take account of the new Schedule. Amendment No. 32 deletes that new cross-reference and amendment No. 33 reinserts it, together with the new reference to value adjustment.

Amendment agreed to.

Section 88, as amended, agreed to.

NEW SECTIONS

Chairman: Amendment No. 33 in the name of the Minister is a new section and was already discussed with amendment No. 32.

Deputy Mary Mitchell O'Connor: I move amendment No. 33:

In page 58, between lines 17 and 18, to insert the following:

"PART 3

Amendment of section 117 of Principal Act

89. Section 117 of the Principal Act is amended, by the substitution of the following subsection for subsection (4):

"(4) For the purposes of subsections (2) and (3)—

(a) where the company prepares Companies Act entity financial statements, any provision or value adjustment (within the meaning of Schedule 3, 3A or 3B, as the case may be) shall be treated as a realised loss other than a value adjustment in respect of any diminution in value of a fixed asset appearing on a revaluation of all the fixed assets or of all the fixed assets other than goodwill (and this qualification is referred to in subsections (5) and (6) as 'the exception to subsection (4)(a)'), and

(b) where the company prepares IFRS financial statements, a provision or value adjustment of any kind shall be treated as a realised loss.".".

Amendment agreed to.

Deputy Mary Mitchell O'Connor: I move amendment No. 34:

In page 58, between lines 17 and 18, to insert the following:

"Amendment of section 621 of Principal Act

90. Section 621 of the Principal Act is amended—

(a) in subsection (2)(e), by the substitution of "to the extent that the company" for "save to the extent that the company", and

(b) in subsection (7)(b), by the substitution of "any charge created as a floating charge by the company" for "any floating charge created by the company".".

Amendment No. 34 amends section 621 of the Companies Act for two separate reasons. Section 621 provides for preferential payments in the winding up of a company. It sets the order of priority in which debts owed by that company are to be paid. Subsection (2)(e) of section 621 provides for the priority of damages and costs owed to the employees for an accident. It was intended to carry over the wording from the previous provision that was in the Companies Act 1963, as amended. However, the word "save" made its way into the text. Amendment No. 34 deletes that word for consistency with the previous law and for clarity.

Amendment No. 34 also deals with an issue of more substance. It addresses an issue that has arisen from a recent judgment of the Supreme Court. In that judgment, the court confirmed a decision of the High Court to the effect that crystallising a floating charge before a liquidator is appointed can improve the priority of the charge holder. The result is that the holder of the floating charge can effectively leapfrog preferential creditors such as the Revenue Commissioners and employees. That is clearly contrary to the intention of the Legislature in giving priority to particular types of creditors ahead of others, including holders of floating charges. Amendment No. 34 is intended to restore the standing of the various creditors and to ensure that the operation of a floating charge returns to its previous standing behind employees and Revenue.

Amendment agreed to.

Deputy Mary Mitchell O'Connor: I move amendment No. 35:

In page 58, between lines 17 and 18, to insert the following:

"Amendment of section 633 of Principal Act

91. Section 633 of the Principal Act is amended by the substitution of the following subsection for subsection (4):

"(4) In this section—

'liquidator' includes provisional liquidator;

'prescribed fee' means a fee prescribed by regulations made by the Supervisory Authority with the consent of the Minister;

'prescribed form' means a form prescribed by regulations made by the Supervisory Authority.".".

Amendment No. 35 addresses a technical issue with section 633 of the Companies Act 2014. Section 633 introduced requirements for qualification to act as a liquidator. As a result, members of certain professional bodies such as accountants and solicitors who meet other criteria can be appointed as liquidators. It is also possible for people with practical experience of wind-ups and knowledge of the relevant law to apply to the Irish Auditing and Accounting Supervisory Authority, IAASA, for authorisation to act as liquidators.

Section 633 also provides that anyone in this category who wants to apply to the IAASA must do so on a prescribed form and pay a prescribed fee. However, the word "prescribed" has a specific definition for Part 2 of the Act and section 633 is in the Part. As a result, the forms and fees in section 633 should be prescribed by the rules of court. That is not appropriate for an administrative scheme of this nature and was not intended. Amendment No. 35, therefore, clarifies that the forms will be presented by the IAASA and the accompanying fees that will be set with the consent of the Minister.

Amendment agreed to.

Chairman: Amendments Nos. 36 and 37 are related and will be discussed together.

Deputy Mary Mitchell O'Connor: I move amendment No. 36:

In page 58, between lines 17 and 18, to insert the following:

"Amendment of section 842 of Principal Act

92. Section 842 of the Principal Act is amended—

(a) in paragraph (h), by the deletion of "or",

(b) in paragraph (i), by the substitution in subparagraph (ii) of "in the State, or" for "in the State.", and

(c) by the insertion of the following paragraph after paragraph (i):

"(j) that the person has contravened section 4 or 5 of the Competition Act 2002 or Article 101 or 102 of the Treaty on the functioning of the European Union.".".

This amendment addresses an oversight in the Companies Act 2014. The amendments are technical in nature. Section 842 of that Act gives the courts a discretion to disqualify a person from acting as a director of a company in certain circumstances. Before the enactment of the Companies Act 2014, those circumstances included where a person had committed civil or criminal breaches of competition law. Section 842 sets out the people who may apply to the

court for such a disqualification order. Again, the law used to provide that the Competition and Consumer Protection Commission and, in some cases, the Commission for Energy Regulation, ComReg, could apply to the court for a disqualification order. Due to an oversight, these provisions were not carried over into the Companies Act 2014. These amendments rectify that error.

Amendment agreed to.

Deputy Mary Mitchell O'Connor: I move amendment No. 37:

In page 58, between lines 17 and 18, to insert the following:

"Amendment of section 844 of Principal Act

93. Section 844 of the Principal Act is amended by the insertion of the following subsection after subsection (4):

"(4A) An application under section 842(j) may be made by the competent authority (within the meaning of the Competition Act 2002).".".

Amendment agreed to.

Deputy Mary Mitchell O'Connor: I move amendment No. 38:

In page 58, between lines 17 and 18, to insert the following:

"Investigation by disciplinary committees of prescribed accountancy bodies

94. The Principal Act is amended by the insertion of the following section after section 931:

"931A. (1) In this section—

'client' has the same meaning as it has in section 934;

'relevant person' in relation to an investigation of a member of a prescribed accountancy body, means—

(a) a member of the prescribed accountancy body,

(b) a client or former client of such member,

(c) if the client or former client is a body corporate, a person who is or was an officer, employee or agent of the client or former client,

(d) the prescribed accountancy body or a person who is or was an officer, employee or agent of that body, or

(e) any person whom the prescribed accountancy body reasonably believes has information or documents relating to the investigation other than information or documents the disclosure of which is prohibited or restricted by law.

(2) For the purposes of an investigation of a possible breach of a prescribed accountancy body's standards by a member, a disciplinary committee may require a relevant person to do one or more of the following:

(a) produce to the committee all books or documents relating to the investigation that are in the relevant person's possession or control;

(b) attend before the committee;

(c) give the committee any other assistance in connection with the investigation that the relevant person is reasonably able to give.

(3) For the purposes of an investigation referred to in subsection (2), the disciplinary committee may—

(a) examine on oath, either by word of mouth or on written interrogatories, a relevant person,

(b) administer oaths, for the purpose of that examination, and

(c) record, in writing, answers of a person so examined and require that person to sign them.

(4) The disciplinary committee may certify the refusal or failure to the Court if a relevant person refuses or fails to do one or more of the following:

(a) produce to the committee any book or document that it is the person's duty under this section to produce;

(b) attend before the committee when required to do so under this section;

(c) answer a question put to the person by the committee with respect to the matter under investigation.

(5) On receiving a certificate of refusal or failure concerning a relevant person, the Court may enquire into the case and, after hearing any evidence that may be adduced, may do one or more of the following:

(a) direct that the relevant person attend or re-attend before the disciplinary committee or produce particular books or documents or answer particular questions put to him or her by the committee;

(b) direct that the relevant person need not produce a particular book or document or answer a particular question put to him or her by that committee;

(c) make any other ancillary or consequential order or give any other direction that the Court thinks fit.

(6) The production of any books or documents under this section by a person who claims a lien on them does not prejudice the lien.

(7) Any information produced or answer given by a member of a prescribed accountancy body in compliance with a requirement under this section may be used in evidence against the member in any proceedings whatsoever, save proceedings for an offence (other than perjury in respect of such an answer).".".

This is a technical amendment. Amendment No. 38 reinstates a provision that was inadvertently left out during the consolidation of the Companies Act 2014. Section 192A of the

Companies Act 1990 provided the statutory backing for the disciplinary procedures of the nine prescribed accountancy bodies in Ireland. This section provides for the establishment, procedures and powers of disciplinary committees that look into alleged breaches of standards. Through an oversight, section 192A was not carried over into the Companies Act 2014. Amendment No. 38 rectifies that omission and reinstates the section in its entirety in Part 15 of the Companies Act.

Amendment agreed to.

Deputy Mary Mitchell O'Connor: I move amendment No. 39:

In page 58, between lines 17 and 18, to insert the following:

"Liability of prescribed body for acts, omissions etc.

95. The Principal Act is amended by the insertion of the following section after section 942:

"942A. (1) Neither a prescribed body nor any person who is or was—

(a) a member or director, or

(b) other officer or employee,

of the prescribed body shall be liable for damages for anything done, anything purported to be done or anything omitted to be done by the prescribed body or that person in performing the functions specified in subsection (2) unless the act or omission is shown to have been in bad faith.

(2) Subsection (1) applies to the issuing of accounting standards.

(3) In this section, 'prescribed body' means a body prescribed under section 943(1)(h).".".

This amendment introduces an exemption for bodies that set accounting standards. Under company law, before 2014 it was not necessary to prescribe a body as the setter of accounting standards. However, Part 6 of the Companies Act 2014 now requires that financial statements be prepared in accordance with accounting standards that are issued by a body that is prescribed by the Minister. It is my intention to prescribe the Financial Reporting Council, FRC, in the UK as the standard setter for accounting standards in Ireland. There is a long history of co-operation with the FRC and of using its standards. The FRC consults Irish stakeholders whenever it develops new standards and it has formally established connections with some of the professional accountancy bodies here. Their accountancy advisory council includes an Irish member nominated by the Minister here. The Irish auditing and accounting supervisory authority is an observer. The current standards issued by the FRC have been developed in line with the EU accounting directive and they provide for the new category of micro-entity. The requirement of the Companies Act to prescribe a body will have the effect of placing this long-standing informal situation on a statutory footing. As a result, the FRC will have a role that is recognised in our law. Therefore, I consider that it is appropriate to provide an exemption from certain liability. This exemption is modelled on the existing exemption for the Irish Auditing and Accounting Supervisory Authority. In section 942 of the Companies Act it is limited to their activities of setting standards and issuing guidance on those standards and to cases where it has acted in good faith.

Amendment agreed to.

Deputy Mary Mitchell O'Connor: I move amendment No. 40:

In page 58, between lines 17 and 18, to insert the following:

"Further miscellaneous amendments of Principal Act

96. The Principal Act is amended—

(a) in section 2(1), in the definition of "Director", by the substitution of "952" for "954",

(b) in section 408(1), by the substitution of the following paragraph for paragraph (c):

"(c) shares, including shares in a body corporate, bonds or debt instruments,".

(c) in section 440(1)(a), by the substitution of "any charge created as a floating charge by the company" for "any floating charge created by the company",

(d) in section 497(3), by the substitution of "draft terms of division" for "draft terms of merger",

(e) in section 580(4), by the substitution of "in the form prescribed by the Minister" for "in the prescribed form",

(f) in section 604(2), by the substitution of "subsection (1)(c)(i)" for "subsection (1)(i),",

(g) in section 682(2), by the substitution of "in the form prescribed by the Minister" for "in the prescribed form",

(h) in section 823(5), by the substitution of "section 895" for "section 894",

(i) in section 1178(5), by the substitution of "section 1190" for "section 1189",

(j) in section 1205, by the substitution—

(i) in paragraph (b), of "subsection (9)" for "subsection (8)", and

(ii) in paragraph (c), of "subsection (10)" for "subsection (9)",

(k) in section 1312(5), by the substitution of "section 1002" for "section 1004", and

(l) in section 1317(1)(a)(iv), by the substitution of "section 1319" for "section 1318".".

The amendment addresses several issues. Paragraphs (a), (f) and (k) are technical and correct cross-references in the Companies Act 2014. Similarly, paragraph (d) corrects a typographical error.

Paragraph (b) addresses a gap in Part 7 of the Companies Act. That part includes provision for the registration of charges with the Companies Registration Office. Section 408 defines "charge" for the purposes of Part 7 and provides that these types of charge do not include charges on shares. That is because shares are registered in another way. However, due to the

combination of the definitions of a company and of a share in section 2 of the Act, shares in section 408 do not include shares in companies that are formed and registered outside Ireland. Paragraph (b) of amendment No. 40 is intended to clarify that shares in foreign companies are also excluded from the definition of charge for the purposes of Part 7.

Paragraph (c) is related to amendment No. 34. That amendment addressed the priority of a floating charge in the winding up. Here the intention is to do the same for receivership. This will restore the priority of preferential creditors, such as employees, and the revenue ahead of the holders of a floating charge.

Paragraphs (e) and (g) are related to amendment No. 35. As things stand, section 580 of the Companies Act provides that a report by a statutory auditor in a voluntary winding up by members of the company should be in a form that is prescribed by the rules of the court. It is the same in section 682 with respect to a liquidator to the Director of Corporate Enforcement. That is not what was intended. This amendment will clarify that the forms of the two reports should be prescribed by the director.

Amendment agreed to.

SECTION 89

Question proposed: "That section 89 be deleted."

Deputy Mary Mitchell O'Connor: I propose to delete section 89. I am considering tabling amendments to the section on Report Stage. It is proposed to remove the terms "unsound mind" and "insanity" from the Companies Act 2014 and replace these with new terms. At the time of the making of the 2014 Act, a policy decision was made to remove language that was considered unnecessarily discriminatory. The phrase "of unsound mind" was so considered. While it was removed elsewhere, this section was missed. These amendments are informed by the requirements of the UN Convention on the Rights of Persons with Disabilities.

Question put and agreed to.

Section 90 agreed to.

SECTION 91

Deputy Mary Mitchell O'Connor: I move amendment No. 41:

In page 61, to delete lines 12 to 14 and substitute the following:

"(a) in accordance with Directive 2006/43/EC of the European Parliament and of the Council of 17 May 2006 as amended by Directive 2014/56/EU of the European Parliament and of the Council of 16 April 2014 on statutory audits of annual accounts and consolidated accounts, and".

This is a technical amendment to update the references to the audit directive. That directive was amended in 2014 and its title has changed as a result.

Amendment agreed to.

Section 91, as amended, agreed to.

Section 92 agreed to.

Schedules 1 to 6, inclusive, agreed to.

Title agreed to.

Bill reported with amendments.

Chairman: I thank the Minister and her officials for attending today's meeting. The select committee will adjourn until 2 p.m. on Thursday, 1 December 2016, when we will consider the Supplementary Estimates for jobs, enterprise and innovation.

Deputy Niall Collins: When is it proposed to take Report Stage?

Deputy Mary Mitchell O'Connor: I am not sure. I will come back to the Deputy when I know.

Message to Dáil

Chairman: In accordance with Standing Order 90, the following message will be sent to the Dáil:

> The Select Committee on Jobs, Enterprise and Innovation has completed its consideration of the Companies (Accounting) Bill 2016, and has made amendments thereto.

The select committee adjourned at 5 p.m. until 2 p.m. on Thursday, 1 December 2016.