



Number 12 of 2005

INVESTMENT FUNDS, COMPANIES AND MISCELLANEOUS PROVISIONS ACT 2005

REVISED

Updated to 13 October 2016

This Revised Act is an administrative consolidation of *Investment Funds, Companies and Miscellaneous Provisions Act 2005*. It is prepared by the Law Reform Commission in accordance with its function under *Law Reform Commission Act 1975 (3/1975)* to keep the law under review and to undertake revision and consolidation of statute law.

All Acts up to and including *Energy Act 2016 (12/2016)*, enacted 30 July 2016, and all statutory instruments up to and including *Medical Scientists Registration Board (Establishment Day) Order 2016 (S.I. No. 531 of 2016)*, made 13 October 2016, were considered in the preparation of this Revised Act.

Disclaimer: While every care has been taken in the preparation of this Revised Act, the Law Reform Commission can assume no responsibility for and give no guarantees, undertakings or warranties concerning the accuracy, completeness or up to date nature of the information provided and does not accept any liability whatsoever arising from any errors or omissions. Please notify any errors, omissions and comments by email to revisedacts@lawreform.ie.



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Introduction

This Revised Act presents the text of the Act as it has been amended since enactment, and preserves the format in which it was passed.

Related legislation

Companies Acts: this Act is one of a group of Acts previously included within this generally applicable defined term (*Interpretation Act 2005* (23/2005), s. 21 and sch. part 1). The provisions of this Act included in the collectively defined term (Parts 3-6) were repealed (1.06.2015) by *Companies Act 2014* (38/2014), s. 4(1) and sch. 2 part 1, S.I. No. 169 of 2015, subject to transitional provisions in s. 5 and sch. 6.

Companies Acts 1963 to 2005: this Act is one of a group of Acts previously included in this collective citation, to be construed together as one (*Investment Funds, Companies and Miscellaneous Provisions Act 2005* (12/2005), s. 1(2)). The provisions of this Act included in the collective citation (Parts 3-6) were repealed (1.06.2015) by *Companies Act 2014* (38/2014), s. 4(1) and sch. 2 part 1, S.I. No. 169 of 2015, subject to transitional provisions in s. 5 and sch. 6.

Annotations

This Revised Act is not annotated and only shows textual amendments. An annotated version of this revision is also available which shows textual and non-textual amendments and their sources. It also shows editorial notes including statutory instruments made pursuant to the Act and previous affecting provisions.

Material not updated in this revision

Where other legislation is amended by this Act, those amendments may have been superseded by other amendments in other legislation, or the amended legislation may have been repealed or revoked. This information is not represented in this revision but will be reflected in a revision of the amended legislation if one is available. A list of legislative changes to any Act, and to statutory instruments from 1998, may be found linked from the page of the Act or statutory instrument at www.irishstatutebook.ie.



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ACTS REFERRED TO

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Central Bank Act 1942	1942, No. 22
Central Bank and Financial Services Authority of Ireland Act 2003	2003, No. 12
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Companies Act 1963	1963, No. 33
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Companies (Amendment) Act 1999	1999, No. 8
Companies (Amendment) (No. 2) Act 1999	1999, No. 30
Companies (Auditing and Accounting) Act 2003	2003, No. 44
Companies Acts 1963 to 2003	
Company Law Enforcement Act 2001	2001, No. 28
Competition Act 2002	2002, No. 14
Consumer Credit Act 1995	1995, No. 24
Consumer Information Act 1978	1978, No. 1

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Credit Union Act 1966	1966, No. 19
Credit Union Act 1997	1997, No. 15
Dormant Accounts Act 2001	2001, No. 32
Electronic Commerce Act 2000	2000, No. 27
European Communities Act 1972	1972, No. 27
Industrial and Provident Societies Act 1893	56 & 57 Vict., c. 39
Industrial and Provident Societies (Amendment) Act 1913	3 & 4 Geo. 5. c. 31
Investment Intermediaries Act 1995	1995, No. 11
Investment Limited Partnerships Act 1994	1994, No. 24
Irish Takeover Panel Act 1997	1997, No. 5
Limited Partnerships Act 1907	7 Edw. 7 c. 24
National Standards Authority of Ireland Act 1996	1996, No. 28
Package Holidays and Travel Trade Act 1995	1995, No. 17
Partnership Act 1890	53 & 54 Vict., c. 93
Petty Sessions (Ireland) Act 1851	14 & 15 Vict., c. 93
Postal and Telecommunications Services Act 1983	1983, No. 24
Prices Act 1958	1958, No. 4
Prices (Amendment) Act 1972	1972, No. 20
Restrictive Practices Act 1972	1972, No. 11
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Sale of Goods and Supply of Services Act 1980	1980, No. 16
Taxes Consolidation Act 1997	1997, No. 39
Unclaimed Life Assurance Policies Act 2003	2003 No. 2
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AN ACT TO MAKE PROVISION IN RELATION TO COLLECTIVE INVESTMENT UNDERTAKINGS OF THE KIND KNOWN AS “COMMON CONTRACTUAL FUNDS”; TO AMEND PART XIII OF THE COMPANIES ACT 1990 AND THE EUROPEAN COMMUNITIES (UNDERTAKINGS FOR COLLECTIVE INVESTMENT IN TRANSFERABLE SECURITIES) REGULATIONS 2003 (S.I. NO. 211 OF 2003); TO MAKE PROVISION IN RELATION TO CERTAIN OF THE MATTERS DEALT WITH BY ACTS ADOPTED BY INSTITUTIONS OF THE EUROPEAN COMMUNITIES IN THE FIELDS OF INSIDER TRADING AND MANIPULATION AND OTHER ABUSES OF FINANCIAL MARKETS AND IN THE FIELD OF OFFERS TO THE PUBLIC OF SECURITIES OR THE ADMITTANCE OF SECURITIES TO TRADING; TO EFFECT CERTAIN MISCELLANEOUS AMENDMENTS TO THE COMPANIES ACTS 1963 TO 2003; TO AMEND THE IRISH TAKEOVER PANEL ACT 1997 AND THE COMPETITION ACT 2002; TO INCREASE THE PENALTIES FOR OFFENCES UNDER THE PRICES ACT 1958, THE RESTRICTIVE PRACTICES ACT 1972 AND CERTAIN ENACTMENTS THAT RELATE TO PROTECTION OF THE CONSUMER; TO AMEND THE INDUSTRIAL AND PROVIDENT SOCIETIES ACT 1893 AND TO PROVIDE FOR RELATED MATTERS.

[29th June, 2005]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

PART 1

PRELIMINARY AND GENERAL

Short title,
collective citation
and construction.

1.—(1) This Act may be cited as the Investment Funds, Companies and Miscellaneous Provisions Act 2005.

(2) *Parts 3 to 6* and the Companies Acts 1963 to 2003 may be cited together as the Companies Acts 1963 to 2005 and shall be construed together as one.

Commencement.

2.—(1) This Act (other than *sections 85* and *86*) shall come into operation on such day or days as the Minister may appoint by order or orders either generally or with reference to any particular purpose or provision and different days may be so appointed for different purposes or different provisions.

(2) Without prejudice to the generality of *subsection (1)*, an order or orders under that subsection may appoint different days for the coming into operation of *section*

31 so as to effect the repeal provided by that section of an enactment specified in it on different days for different purposes.

Interpretation generally.

3.—(1) In this Act—

“Act of 1963” means the Companies Act 1963;

“Act of 1990” means the Companies Act 1990;

“contravention” includes, in relation to any provision, a failure to comply with that provision and “contravene” shall be construed accordingly;

“enactment” includes an instrument made under an enactment;

“Member State”, where used without qualification, means Member State of the European Union;

“Minister” means the Minister for Enterprise, Trade and Employment.

(2) In this Act—

(a) a reference to a section or Part is a reference to a section or Part of this Act unless it is indicated that reference to some other enactment is intended,

(b) a reference to a subsection, paragraph or subparagraph is a reference to the subsection, paragraph or subparagraph of the provision in which the reference occurs, unless it is indicated that reference to some other provision is intended, and

(c) a reference to any other enactment shall, unless the context otherwise requires, be construed as a reference to that enactment as amended or adapted by or under any other enactment.

Orders and regulations.

4.—(1) Every order or regulation made under this Act (other than an order made under *section 2* or *37*) shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the order or regulation is passed by either such House within the next 21 days on which that House has sat after the order or regulation is laid before it, the order or regulation shall be annulled accordingly but without prejudice to the validity of anything previously done thereunder.

(2) The Minister may by order amend or revoke an order made under this Act (other than an order made under *section 2* or *37* but including an order made under this subsection).

Expenses.

5.—The expenses incurred by the Minister in the administration of this Act shall, to such extent as may be sanctioned by the Minister for Finance, be paid out of moneys provided by the Oireachtas.

PART 2

COMMON CONTRACTUAL FUNDS

Interpretation (*Part 2*).

6.—(1) In this Part, unless the context otherwise requires—

“Bank” means the [Central Bank of Ireland];

“common contractual fund” means a collective investment undertaking, being an unincorporated body established by a management company, under which the participants by contractual arrangement participate and share in the property of the collective investment undertaking as co-owners, provided—

- (a) it is expressly stated in its deed of constitution to be established pursuant to this Act,
- (b) it holds an authorisation issued in accordance with this Act, and
- (c) it is not established pursuant to Council Directive No. 85/611/EEC of 20 December 1985¹, as amended from time to time.

“debentures” means any debentures, debenture stock or bonds of any body corporate, incorporated in or outside the State, whether constituting a charge on the assets of the body or not;

“deed of constitution” or “deed” means the deed under which the common contractual fund is constituted, and references to the deed of constitution of a common contractual fund shall be construed accordingly;

“holding company” has the same meaning as in the Act of 1963;

“sub-fund” means a separate portfolio of assets maintained by a common contractual fund in accordance with its deed of constitution;

“subsidiary” has the same meaning as in the Act of 1963;

“UCITS Regulations” means the European Communities (Undertakings for Collective Investment in Transferable Securities) Regulations 2003 (S.I. No. 211 of 2003) as amended;

“unit-holder” means the holder of one or more units of a common contractual fund and references to a unit-holder in such a common contractual fund shall be construed accordingly;

“units” means instruments granting an entitlement to share in the investments and relevant income of a common contractual fund;

“umbrella fund” means a common contractual fund which is divided into a number of sub-funds.

(2) Any reference in this Part to a management company of a common contractual fund or to a custodian of such a common contractual fund shall be construed as a reference to the person in whom are vested the powers of management relating to property of the fund for the time being or, as the case may be, to the person in whom such property is entrusted for safe-keeping.

(3) Any reference in this Part to an authorisation, in relation to a common contractual fund, standing revoked under this Act shall be construed as a reference to an authorisation standing revoked under Regulation 102 of the UCITS Regulations as applied by *section 18*.

(4) For the purposes of the application by *section 18* of certain provisions of the UCITS Regulations to common contractual funds, the said provisions shall be construed as one with this Part.

Non-application of this Part to certain undertakings.

7.—(1) The provisions of this Part shall not apply to an undertaking for collective investment in transferable securities (within the meaning of the UCITS Regulations) that is authorised—

- (a) under the UCITS Regulations, or
- (b) by a competent authority in another Member State of the European Communities in accordance with Council Directive No. 85/611/EEC of 20 December 1985, as amended from time to time.

(2) A common contractual fund shall not be subject to the provisions respecting—

¹ OJ L375, 31.12.1985, p. 3

- (a) a partnership under the Partnership Act 1890, the Limited Partnerships Act 1907 or the Investment Limited Partnerships Act 1994, or
- (b) a unit trust scheme under the Unit Trusts Act 1990.

Authorisation of non-UCITS common contractual funds.

8.—(1) The Bank shall authorise a common contractual fund if, but only if—

[(a) either—

- (i) the management company is authorised by the Bank under Part 2 of the European Union (Alternative Investment Fund Managers) Regulations 2013 or by the competent authority in its home Member State in accordance with Chapter II of Directive 2011/61/EC of the European Parliament and of the Council of 8 June 2011 or in its Member State of reference in accordance with that Chapter II, or
 - (ii) the Bank is satisfied that the competence of the management company in respect of matters of the kind with which it would be concerned in relation to a common contractual fund and its probity are such as to render it suitable to act as management company under the common contractual fund,
- (b) save where it is authorised as mentioned in paragraph (a)(i), the management company of the common contractual fund is a body corporate that has its registered office and head office in the State, and has, in the opinion of the Bank, sufficient financial resources at its disposal to enable it to conduct its business effectively and meet its liabilities,
 - (c) the custodian of the common contractual fund is a depositary as specified in Regulation 22(3) of the European Union (Alternative Investment Fund Managers) Regulations 2013,
 - (d) the Bank is satisfied that the common contractual fund is organised such that the effective control over the affairs of the management company and of the custodian of the common contractual fund will be exercised independently of one another,]
 - (e) the Bank has approved the deed of constitution and the deed of constitution contains a covenant providing that the common contractual fund will be carried on in compliance with the provisions of this Act,
 - (f) a copy of the deed of constitution is deposited with the Bank, and
 - (g) the name of the common contractual fund is not, in the opinion of the Bank, undesirable.

(2) An application for authorisation of a common contractual fund shall be made in writing jointly by the proposed management company and custodian of the proposed common contractual fund and shall contain such information as the Bank may specify for the purpose of determining the application (including such additional information as the Bank may specify in the course of determining the application).

(3) The authorisation of a common contractual fund by the Bank shall not constitute a warranty by the Bank as to the performance of the common contractual fund and the Bank shall not be liable for the performance or default of the common contractual fund.

Public information and reporting on authorisation of common contractual funds.

9.—(1) The Bank shall establish and maintain a register of common contractual funds.

(2) The Bank shall ensure that the register is kept at a specified office of the Bank and is made available for inspection by members of the public during the ordinary business hours of that office.

(3) If the register is kept in a form that is not immediately legible, the Bank shall make available a version of it that is in legible form.

(4) A person who, during the ordinary business hours of the Bank, attends the office at which the Bank keeps the register is entitled—

(a) to inspect the register without charge, and

(b) on payment of a fee (if any) prescribed under section 33K (inserted by the Central Bank and Financial Services Authority of Ireland Act 2003) of the Central Bank Act 1942, for the purposes of this subsection, to obtain a copy of any entry in the register.

(5) The Bank shall, within 21 days after the date of the authorisation by it under *section 8* of a common contractual fund, publish a notice to that effect in *Iris Oifigiúil*.

(6) The Bank shall publish from time to time, but not less frequently than once a year, in such manner as it thinks fit, the names of all common contractual funds which have been authorised by it under *section 8* and whose authorisation has not been revoked under this Part.

(7) The Bank shall include in its annual report to the Minister for Finance a report on the performance of its functions under this Part.

(8) The Bank shall give to the Minister a copy of the report on the performance of its functions under this Part referred to in *subsection (7)*.

Powers of Bank.

10.—(1) Notwithstanding any other powers which may be available to the Bank under any other enactment, the Bank may impose such conditions for the authorisation of a common contractual fund under *section 8* as it considers appropriate and prudent for the purposes of the orderly and proper regulation of the business of common contractual funds.

(2) The power to impose conditions referred to in *subsection (1)* shall include power to impose such conditions from time to time in respect of the manner in which the business of a common contractual fund authorised under *section 8* shall be operated as the Bank considers appropriate and prudent for the purposes referred to in *subsection (1)*.

(3) Conditions imposed under this section may be imposed generally or on a particular common contractual fund, or by reference to a particular class or classes of common contractual fund, or by reference to any other matter the Bank considers appropriate and prudent for the purposes referred to in *subsection (1)*.

(4) Without prejudice to the generality of *subsections (1), (2) and (3)*, conditions imposed by the Bank on a common contractual fund may make provision for any or all of the following matters—

(a) the prudential requirements of the investment policies of the common contractual fund,

(b) borrowing policies of the common contractual fund,

(c) prospectuses and other information disseminated in relation to the common contractual fund,

(d) the safe-keeping of the assets of the common contractual fund,

(e) such other supervisory and reporting requirements and conditions relating to its business as the Bank considers appropriate and prudent.

(5) The Bank may amend or revoke a condition imposed by it under this section.

(6) The management company and custodian of a common contractual fund shall comply with any conditions imposed by the Bank in relation to that common contractual fund.

Refusal of authorisation.

11.—(1) Where the Bank decides to refuse authorisation of a common contractual fund, it shall notify the management company and the custodian of the common contractual fund of its decision and of the reasons therefor.

(2) The management company may apply to the High Court for a review of the decision in accordance with Regulation 105 of the UCITS Regulations (as applied by *section 18*).

(3) The management company shall have the same right to apply to the High Court as in *subsection (2)* if a decision on authorisation under *section 8* has not been taken by the Bank within 6 months of the submission of an application for authorisation which includes the information (other than any additional information sought by the Bank) specified by the Bank under *section 8(2)*.

Alteration in deed of constitution of, or change in name of, common contractual fund.

12.—(1) No alteration in the deed of constitution of a common contractual fund or change in the name of such a common contractual fund shall be made without the approval of the Bank and—

(a) any person who makes such an alteration or change without such approval shall be guilty of an offence, and

(b) any such alteration made without the approval of the Bank is void.

(2) Within 21 days after the making of an alteration in the deed of constitution of a common contractual fund or a change in the name of a common contractual fund, the management company of the common contractual fund shall deposit with the Bank a copy of the deed of constitution as so altered or containing the alterations or (as the case may be) particulars of the change in name.

(3) Where the management company of a common contractual fund fails to comply with *subsection (2)*, it shall be guilty of an offence.

Replacement of management company or custodian.

13.—(1) The deed of constitution shall specify the conditions for the replacement of the management company or custodian of the common contractual fund with another management company or custodian and shall contain provisions to ensure the protection of unit-holders in the event of any such replacement.

(2) Neither the management company nor the custodian may be replaced without the approval of the Bank.

Obligation on management companies under common contractual funds to purchase units.

14.—(1) Subject to Regulation 63 of the UCITS Regulations, as applied by *section 18*, whenever the unit-holder in a common contractual fund, or the unit-holder in a common contractual fund the authorisation of which stands revoked under this Part, so requests, the management company of the common contractual fund shall, in accordance with the provisions of the deed of constitution of the fund and any relevant conditions imposed by the Bank, redeem out of the assets of the common contractual fund such number of the units of the common contractual fund held by the unit-holder as that person may specify at the price for the time being at which the management company redeems units of the common contractual fund.

(2) *Subsection (1)* shall not apply to the extent the Bank may specify in a condition imposed by it under *section 10*.

(3) A management company which contravenes *subsection (1)* shall be guilty of an offence.

Prohibition of certain transactions and making of certain profits by management companies, etc.

15.—(1) Neither a management company of a common contractual fund (the “corporate body”) nor a subsidiary or a holding company of that corporate body or a subsidiary of the holding company of that corporate body or a director or person engaged in the management of such corporate body or company shall carry out transactions for it, him or herself, or make a profit for it, him or herself from transactions, in any assets held under the scheme save in accordance with the deed of constitution and any conditions imposed by the Bank.

(2) A person who contravenes this section shall be guilty of an offence.

Assets of common contractual funds.

16.—(1) The assets of a common contractual fund shall belong exclusively to the common contractual fund and the assets shall be entrusted to a custodian for safe-keeping in accordance with conditions imposed by the Bank under *section 10* [and, subject to such transitional arrangements as may be specified by the Bank, in accordance with the provisions of Regulation 22(8) of the European Union (Alternative Investment Fund Managers) Regulations 2013].

(2) Where a common contractual fund is established as an umbrella fund, the assets shall belong exclusively to the 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.

(3) The liabilities of a unit-holder, as such a holder, shall be limited to the amount agreed to be contributed by him or her for the subscription of units.

(4) The provisions of the deed of constitution shall be binding on the unit-holder and all persons claiming through the unit-holder as if such persons had been party to the deed.

Liability of custodians of common contractual funds.

17.—(1) [Where a common contractual fund does not have an alternative investment fund manager which is authorised in accordance with Chapter II of Directive 2011/61/EC of the European Parliament and of the Council of 8 June 2011 or is not otherwise subject to Articles 21(12) to (15) of that Directive, the custodian shall exercise due care and diligence] in the discharge of its duties and shall be liable to the unit-holders and management company for any loss arising from the negligence, fraud, bad faith, wilful default or recklessness in the performance of those duties.

(2) Unit-holders may enforce this liability either directly or indirectly through the management company.

Application of certain provisions of UCITS Regulations.

18.—(1) Regulations 63, 77 to 85 and 98 to 105 of the UCITS Regulations shall apply to a common contractual fund as they apply to the bodies to which those Regulations relate subject to the following modifications and any other necessary modifications—

- (a) a reference in those Regulations to a term or expression specified in the second column of the Table to this section at any reference number shall be construed, where the context admits, as a reference to the term or expression specified in the third column of the said Table at that reference number, and
- (b) references to cognate terms or expressions in those Regulations shall be construed accordingly,
- (c) references to “the articles” and “the Directive” in those Regulations shall be disregarded,
- (d) the words “and the other information provided for in Schedule 2 to these Regulations” in Regulation 79 and the first sentence of Regulation 80 of those

Regulations shall be disregarded and Regulation 80 shall have effect as if there were inserted the words “in the half-yearly report” after the words “the figures”,

(e) paragraph (4)(d) of Regulation 102 shall be disregarded,

(f) references to “simplified prospectus” in Regulations 82 and 83 shall be disregarded.

(2) In *subsection (1)* “common contractual fund” includes a common contractual fund the authorisation of which stands revoked under Regulation 102 of the UCITS Regulations as applied and adapted by this section.

TABLE

Ref. No.	Term or expression referred to in UCITS Regulations	Construction of term or expression for purposes of this section
(1)	(2)	(3)
1.	“Regulation 14”	“section 11 of the <i>Investment Funds, Companies and Miscellaneous Provisions Act 2005</i> ”
2.	“Regulation 59”	“section 14 of the <i>Investment Funds, Companies and Miscellaneous Provisions Act 2005</i> ”
3.	“these Regulations”	“Part 2 of the <i>Investment Funds, Companies and Miscellaneous Provisions Act 2005</i> ”
4.	“repurchase”	“purchase”
5.	“UCITS”	“common contractual fund”
6.	“section 8 of the Unit Trusts Act 1990”	“section 13 of the <i>Investment Funds, Companies and Miscellaneous Provisions Act 2005</i> ”

Offences in relation to certain bodies.

19.—Where an offence under this Part is committed by a body corporate and is proved to have been so committed with the consent or approval of, or to have been facilitated by any wilful neglect on the part of any person being a director, manager, secretary, member of any committee of management or other controlling authority of such body or official of such body, that person shall also be guilty of an offence.

Offences under provisions of this Part.

20.—A person who contravenes any provision of this Part and for which contravention no offence is created by any other provision of this Part shall be guilty of an offence.

Penalties.

21.—(1) A person guilty of an offence under this Part shall be liable—

(a) on summary conviction to a fine not exceeding €5,000 or imprisonment for a term not exceeding 12 months or both, or

(b) on conviction on indictment to a fine not exceeding €15,000 or imprisonment for a term not exceeding 5 years or both,

and, if the contravention in respect of which he or she is convicted of an offence under this Part 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 fine not exceeding €400 or, on conviction on indictment, to a fine not exceeding €1,900.

(2) *Subsection (1)(b)* shall not apply to a person guilty of an offence under *section 20*.

(3) Summary proceedings in relation to an offence under this Part may be brought and prosecuted by the Bank.

(4) [...]

PART 3

AMENDMENTS TO PART XIII OF ACT OF 1990

Amendment of section 252 of Act of 1990. **22.—[...]**

Amendment of section 254 of Act of 1990. **23.—[...]**

Amendment of section 255 of Act of 1990. **24.—[...]**

Segregated liability of sub-funds — insertion of new sections in Part XIII of Act of 1990. **25.—[...]**

Amendment of section 257 of Act of 1990. **26.—[...]**

Amendment of section 260 of Act of 1990. **27.—[...]**

Insertion of new section 260A in Act of 1990. **28.—[...]**

PART 4

MARKET ABUSE

Interpretation (*Part 4*). **29.—[...]**

Regulations (*Part 4*). **30.—[...]**

Repeal of Part V of Act of 1990 and Companies (Amendment) Act 1999. **31.—[...]**

Conviction on indictment of offences under Irish market abuse law: penalties. **32.—[...]**

Civil liability for certain breaches of Irish market abuse law.	33.—[...]
Supplementary rules, etc., by competent authority.	34.—[...]
Amendment of section 33AJ of Central Bank Act 1942.	35.—[...]
Amendment of section 33AK of Central Bank Act 1942.	36.—[...]
Application of Irish market abuse law to certain markets.	37.—[...]

PART 5

PUBLIC OFFERS OF SECURITIES

Interpretation (<i>Part 5</i>).	38.—[...]
Construction of certain terms in Act of 1963.	39.—[...]
Repeal of certain provisions of Act of 1963 and revocation.	40.—[...]
Civil liability for misstatements in prospectus.	41.—[...]
<i>Section 41:</i> exceptions and exemptions.	42.—[...]
Restriction of liability where non-equity securities solely involved.	43.—[...]
Indemnification of certain persons.	44.—[...]
Expert's consent to issue of prospectus containing statement by him or her.	45.—[...]
Regulations (<i>Part 5</i>).	46.—[...]

Penalties on conviction on indictment and defences in respect of certain offences.	47.—[...]
Untrue statements and omissions in prospectus: criminal liability.	48.—[...]
Local offers.	49.—[...]
Exclusion of Investment Intermediaries Act 1995.	50.—[...]
Power to make certain rules and issue guidelines.	51.—[...]
Avoidance of certain agreements.	52.—[...]
Amendment of section 53 of Act of 1963.	53.—[...]
Amendment of section 55 of Act of 1963.	54.—[...]
Amendment of section 57 of Act of 1963.	55.—[...]

PART 6

MISCELLANEOUS COMPANY LAW AMENDMENTS

Amendment of section 60 of Act of 1963.	56.—[...]
Electronic filing agents.	57.—[...]
<i>Section 57:</i> supplemental provisions.	58.—[...]
Reservation of company name.	59.—[...]
<i>Section 59:</i> supplemental provisions.	60.—[...]
Amendment of section 128 of Act of 1963.	61.—[...]
Amendment of section 195 of Act of 1963.	62.—[...]

Amendment of section 302(1) of Act of 1963. **63.—[...]**

Amendment of section 371(1) of Act of 1963. **64.—[...]**

Amendment of section 12B of Companies (Amendment) Act 1982. **65.—[...]**

Amendment of section 22 of Companies (Amendment) Act 1986. **66.—[...]**

Amendment of section 19 of Act of 1990. **67.—[...]**

Amendment of section 20 of Act of 1990. **68.—[...]**

Amendment of section 21 of Act of 1990. **69.—[...]**

Amendment of section 166 of Act of 1990. **70.—[...]**

Amendment of section 242 of Act of 1990. **71.—[...]**

Replacement of references to Companies Registration Office Gazette for references to *Iris Oifigiúil*. **72.—[...]**

Miscellaneous amendments of Companies Acts related to penalties. **73.—[...]**

Amendment of section 110A of Company Law Enforcement Act 2001. **74.—[...]**

PART 7

MISCELLANEOUS AMENDMENTS

Amendment of Irish Takeover Panel Act 1997. **75.—The Irish Takeover Panel Act 1997 is amended—**
(a) in section 2—

(i) in paragraph (ii), by substituting “Act of 1990,” for “Act of 1990.”, and

(ii) by adding the following paragraph after paragraph (ii):

“(iii) a public limited company or other body corporate incorporated in the State—

(I) the only securities of which for the time being are authorised (or during the period of 5 years referred to in paragraph (b) were authorised) to be traded by a recognised stock exchange on a market regulated by that exchange are those specified in section 2A,

and

(II) which is not a company prescribed for the purposes of paragraph (c).”

and

(b) by inserting the following section after section 2:

“Securities for the purposes of section 2(iii) and application of that provision. 2A.—(1) The securities referred to in paragraph (iii) of section 2 are debentures or bonds or other securities in the nature of debentures or bonds, by whatever name called, that do not confer voting rights in the company or body corporate referred to in that paragraph or in any other body corporate.

(2) The cases to which paragraph (iii) of section 2 applies include the case where the authorisation for the trading of the securities concerned was given by the recognised stock exchange before the commencement of *section 75* of the *Investment Funds, Companies and Miscellaneous Provisions Act 2005*.”

Amendment of section 45 of Competition Act 2002.

76.—(1) Subsection (6) of section 45 of the Competition Act 2002 is repealed.

(2) Subsection (7) of that section 45 is amended by substituting “this section” for “subsection (6)”.

(3) Notwithstanding the repeal by this section of subsection (6) of that section 45, that subsection (6) shall continue to apply to any books, documents or records seized or obtained under that section before the commencement of this section.

Amendment of UCITS Regulations.

77.—(1) The UCITS Regulations are amended in the manner provided for in the *Schedule* to this Act.

(2) In this section “UCITS Regulations” means the European Communities (Undertakings for Collective Investment in Transferable Securities) Regulations 2003 (S.I. No. 211 of 2003) as amended.

Amendment of section 26 of Prices Act 1958.

78.—The Prices Act 1958 (as amended by section 8 of the Prices (Amendment) Act 1972) is amended by substituting the following section for section 26:

“26.—(1) A person who commits or is deemed to have committed an offence under this Act shall be liable—

(a) on summary conviction, to a fine not exceeding €3,000 or imprisonment for a term not exceeding 6 months or both, or

(b) on conviction on indictment, to a fine not exceeding €50,000 or imprisonment for a term not exceeding 2 years or both.

(2) Where a person is convicted of an offence under this Act and there is a continuation of the offence by the person after his conviction, the person shall

be guilty of a further offence on every day on which the contravention continues and for each such offence shall be liable—

- (a) on summary conviction, to a fine not exceeding €300 or imprisonment for a term not exceeding 6 months or both, or
- (b) on conviction on indictment, to a fine not exceeding €500 or imprisonment for a term not exceeding 2 years or both.”.

Amendment of section 23 of Restrictive Practices Act 1972.

79.—The Restrictive Practices Act 1972 (as amended by section 21 of the Restrictive Practices (Amendment) Act 1987) is amended by substituting the following section for section 23:

“23.—(1) A person who is guilty of an offence under this Act for which no special penalty is provided shall be liable—

- (a) on summary conviction, to a fine not exceeding €3,000 or imprisonment for a term not exceeding 6 months or both, or
- (b) on conviction on indictment, to a fine not exceeding €60,000 or imprisonment for a term not exceeding 2 years or both.

(2) Where a person is convicted of an offence under this Act and there is a continuation of the offence by the person after his or her conviction, the person shall be guilty of a further offence on every day on which the contravention continues and for each such offence shall be liable—

- (a) on summary conviction, to a fine not exceeding €300 for each day on which the offence is so continued or imprisonment for a term not exceeding 6 months or both, or
- (b) on conviction on indictment, to a fine not exceeding €6,000 for each day on which the offence is so continued or imprisonment for a term not exceeding 2 years or both.

(3) Where—

- (a) a person is convicted of an offence under this Act by reason of the person's failure, neglect or refusal to comply with a provision of an order requiring him or her to perform a specified act within a specified period or before a specified date, and
- (b) the specified act remains unperformed by the person after the specified period or date,

the person shall be guilty of a further offence on every day on which the act continues to be unperformed after the specified period or date, and for each such offence shall be liable on summary conviction to a fine not exceeding €500 or imprisonment for a term not exceeding 6 months.”.

Amendment of section 17 of Consumer Information Act 1978.

80.—Section 17(1) of the Consumer Information Act 1978 is amended—

- (a) in paragraph (a) by substituting “€3,000” for “£500”, and
- (b) in paragraph (b) by substituting “€60,000” for “£10,000”.

Amendment of section 6 of Sale of Goods and Supply of Services Act 1980.

81.—Section 6(1) of the Sale of Goods and Supply of Services Act 1980 is amended—

- (a) in paragraph (a) by substituting “€3,000” for “£500”, and
- (b) in paragraph (b) by substituting “€60,000” for “£10,000”.

Amendment of section 13 of Consumer Credit Act 1995.

82.—The Consumer Credit Act 1995 is amended by substituting the following section for section 13:

“13.—(1) A person who is guilty of an offence under this Act shall be liable—

(a) on summary conviction, to a fine not exceeding €3,000 or imprisonment for a term not exceeding 12 months or both, or

(b) on conviction on indictment, to a fine not exceeding €100,000 or imprisonment for a term not exceeding 5 years or both.

(2) Where a person is convicted of an offence under this Act and there is a continuation of the offence by the person after his or her conviction, the person shall be guilty of a further offence on every day on which the contravention continues and for each such offence shall be liable—

(a) on summary conviction, to a fine not exceeding €1,000, or

(b) on conviction on indictment, to a fine not exceeding €10,000.”.

Amendment of sections 6 and 7 of Package Holidays and Travel Trade Act 1995.

83.—The Package Holidays and Travel Trade Act 1995 is amended—

(a) in section 6—

(i) in subsection (1) by substituting “€3,000” for “£1,500”, and

(ii) in subsection (2) by substituting “€3,000” for “£1,500” and “€100,000” for “£50,000”,

and

(b) in section 7(3) by substituting “2 years” for “12 months”.

Amendment of section 31 of National Standards Authority of Ireland Act 1996.

84.—Section 31 of the National Standards Authority of Ireland Act 1996 is amended by substituting “€3,000” for “£1,500”.

Amendment of Industrial and Provident Societies Act 1893.

85.—The Industrial and Provident Societies Act 1893 is amended—

(a) in section 4(a), by substituting “€150,000 or an amount equal to 1 per cent of the total assets of the society, whichever is the greater” for the amount standing specified in that section,

(b) in section 25 (as substituted by section 5(1) of the Industrial and Provident Societies (Amendment) Act 1913)—

(i) in subsection (1), by substituting “€15,000” for the amount standing specified in each place where that amount occurs in that subsection, and

(ii) in subsection (3), by substituting “€15,000” for the amount standing specified in that subsection,

(c) in section 26(1) (as substituted by section 5(2) of the Industrial and Provident Societies (Amendment) Act 1913), by substituting “the limit specified in section 4(a) of this Act” for the amount standing specified in that subsection,

(d) in section 27(1), by substituting “€10,000” for the amount standing specified in that subsection, and

(e) in Schedule II, in paragraph 5, by substituting “the limit specified in section 4(a) of this Act” for the amount standing specified in that paragraph.

Validation.

86.—(1) Notwithstanding the repeal of section 35(1)(i) of the Credit Union Act 1966 by the Credit Union Act 1997, the specified regulations made under that section continue, and shall be deemed always to have continued, to have full force and effect from the coming into operation of the specified regulations until the passing of this Act.

(2) Nothing in this section shall affect any proceedings commenced in any court concerning the validity of the specified regulations where those proceedings were commenced before the passing of this Act.

(3) In this section “specified regulations” means—

- (a) the Industrial and Provident Societies (Financial Limits) Regulations 1985 (S.I. No. 392 of 1985), and
- (b) the Industrial and Provident Societies (Financial Limits) (Amendment) Regulations 1990 (S.I. No. 246 of 1990).

Amendment of section 33AN of, and Schedule 2 to, Central Bank Act 1942.

87.—(1) Section 33AN of the Central Bank Act 1942 (inserted by the Central Bank and Financial Services Authority of Ireland Act 2004) is amended by inserting the following definitions after the definition of “contravene”:

“ ‘designated enactment’ does not include *Part 4 or 5 of the Investment Funds, Companies and Miscellaneous Provisions Act 2005*;

‘designated statutory instrument’ does not include the Market Abuse (Directive 2003/6/EC) Regulations 2005 (S.I. No. - of 2005) or the Prospectus (Directive 2003/71/EC) Regulations 2005 (S.I. No. - of 2005);”.

(2) Schedule 2 to the Central Bank Act 1942 (inserted by the Central Bank and Financial Services Authority of Ireland Act 2003) is amended—

- (a) in the item relating to the Postal and Telecommunications Services Act 1983, in column 3 of Part 1, by substituting “Sections 67 and 104” for “Section 104”,
- (b) in the item relating to the Dormant Accounts Act 2001, in column 3 of Part 1, by substituting “The whole Act” for “Part 3 and section 17”,
- (c) by inserting in Part 1 the following item after the item relating to the Assets Covered Securities Act 2001:

“

No. 28 of 2001	Company Law Enforcement Act 2001	Section 110A
No. 2 of 2003	Unclaimed Life Assurance Policies Act 2003	The whole Act
No.- of 2005	<i>Investment Funds, Companies and Miscellaneous Provisions Act 2005</i>	The whole Act

”,

and

- (d) by inserting in Part 2 the following items after the item relating to the European Communities (Cross Border Payments in Euro) Regulations 2002 (S.I. No. 335 of 2002):

“

S.I. No. 211 of 2003	European Communities (Undertakings for Collective Investments in Transferable Securities) Regulations 2003	The whole instrument
S.I. No. 198 of 2004	European Communities (Reorganisation and Winding-Up of Credit Institutions) Regulations 2004	The whole instrument
S.I. No. 727 of 2004	European Communities (Financial Conglomerates) Regulations 2004	The whole instrument
S.I. No. 853 of 2004	European Communities (Distance Marketing of Consumer Financial Services) Regulations 2004	The whole instrument
S.I. No. 13 of 2005	European Communities (Insurance Mediation) Regulations 2005	The whole instrument
S.I. No. - of 2005	Market Abuse (Directive 2003/6/EC) Regulations 2005	The whole instrument
S.I. No. - of 2005	Prospectus (Directive 2003/71/EC) Regulations 2005	The whole instrument

”

Section 77.

SCHEDULE

AMENDMENT OF EUROPEAN COMMUNITIES (UNDERTAKINGS FOR COLLECTIVE INVESTMENT
IN TRANSFERABLE SECURITIES) REGULATIONS 2003 (S.I. NO. 211 OF 2003) AS
AMENDED

Amendment of Regulation 2(1)

1. Regulation 2(1) is amended—

(a) by inserting the following before “transferable securities”:

“ ‘sub-fund’ means a separate portfolio of assets maintained by a UCITS in accordance with its trust deed, deed of constitution or articles;”, and

(b) by substituting the following for the definition of “umbrella fund”:

“ ‘umbrella fund’ means a UCITS which is divided into a number of sub-funds, and each sub-fund shall be treated as a separate UCITS for the purposes of the application of Part VII of these Regulations;”.

Addition of new Regulation 32A

2. The following is inserted after Regulation 32:

“Cross investment by sub-funds of an umbrella fund. 32A.—(1) A company to which this chapter applies and which is established as an umbrella fund may acquire by way of subscription or transfer for consideration shares in one sub-fund of the company for the account of another sub-fund of the company in accordance with Regulation 51.

(2) Shares acquired under this Regulation may be held for the account of the sub-fund for which they were acquired and need not be cancelled.”.

Amendment of Regulation 35

3. Regulation 35(1)(b) is amended by inserting the following after “section 41 (restriction on company acquiring its own shares);”:

“section 43 (treatment of shares held by or on behalf of a public limited company);

section 43A (accounting for own shares);”.

Addition of new Regulation 36F

4. The following is inserted after Regulation 36E:

“Application of segregated liability to investment companies established as UCITS. 36F.—The provisions of sections 256A to 256E of the Companies Act 1990 (inserted by *section 25 of the Investment Funds, Companies and Miscellaneous Provisions Act 2005*) shall apply to any investment company authorised pursuant to these Regulations and for this purpose the references to umbrella fund and sub-fund shall be interpreted in accordance with the provisions of these Regulations, the references to authorisation shall be read as referring to authorisation pursuant to these Regulations and the reference to the commencement date shall be read as referring to the commencement date of *section 25 of the Investment Funds, Companies and Miscellaneous Provisions Act 2005*.”.

Addition of new Regulation 51A

5. The following is inserted after Regulation 51:

“UCITS umbrella funds. 51A.—An umbrella fund may acquire the units of one sub-fund for the account of another sub-fund within that umbrella, subject to the provisions of Regulation 51 and such conditions as may be imposed by the Bank.”.

Addition of new Regulation 79A

6. The following is inserted after Regulation 79:

“79A.—(1) Notwithstanding section 148(2) of the Companies Act 1963 (inserted by the European Communities (International Financial Reporting Standards and Miscellaneous Amendments) Regulations 2005 (S.I. No. 116 of 2005)) an investment company to which chapter 1 or 2 of Part VI applies may, in respect of its individual accounts, opt to prepare those accounts in accordance with both of the following, namely—

(a) an alternative body of accounting standards, and

(b) section 149A of the Companies Act 1963,

as if the references in that section 149A to international financial reporting standards were references to that alternative body of accounting standards.

(2) In the application of subsections (4), (5) and (6) of section 148 of the Companies Act 1963 to an investment company which has opted under paragraph (1) to prepare its accounts in accordance with an alternative body of accounting standards—

(a) the reference in that subsection (4) to international financial reporting standards shall be read as a reference to that alternative body of accounting standards, and

(b) there shall be substituted for ‘IFRS’, in each place where it occurs in those subsections (4), (5) and (6), ‘ABAS’ (which shall be read as referring to that alternative body of accounting standards).

(3) For the purposes of this Regulation, accounts shall not be regarded as having been prepared in accordance with an alternative body of accounting standards unless the accounts concerned would, were they to have been prepared by a company or undertaking registered in the relevant jurisdiction, be regarded as having been prepared in accordance with those standards.

(4) In this Regulation—

‘alternative body of accounting standards’ means standards that accounts of companies or undertakings must comply with that are laid down by such body or bodies having authority to lay down standards of that kind in—

(a) United States of America,

(b) Canada,

(c) Japan, or

(d) any other state or territory prescribed for the purposes of the section hereafter mentioned in this paragraph,

as are prescribed under the Companies Act 1990 for the purposes of section 260A(4) (inserted by the *Investment Funds, Companies and Miscellaneous Provisions Act 2005*) of that Act;

‘relevant jurisdiction’ means the state or territory in which the alternative body of accounting standards concerned have effect.”.

Amendment of Regulation 85

7. Regulation 85 is amended by inserting the following after paragraph (10):

“(11) The requirements of this Regulation shall apply with appropriate modifications to auditors of a management company.”.