



Number 41 of 2006

**INVESTMENT FUNDS, COMPANIES AND
MISCELLANEOUS PROVISIONS ACT 2006**

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ACTS REFERRED TO

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Netting of Financial Contracts Act 1995	1995, No. 25
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Number 41 of 2006

**INVESTMENT FUNDS, COMPANIES AND
MISCELLANEOUS PROVISIONS ACT 2006**

AN ACT TO AMEND AND EXTEND THE COMPANIES ACTS, THE IRISH TAKEOVER PANEL ACT 1997, THE CENTRAL BANK ACT 1942, THE CONSUMER INFORMATION ACT 1978 AND THE NETTING OF FINANCIAL CONTRACTS ACT 1995, TO PROVIDE FOR THE IMPLEMENTATION OF DIRECTIVE 2004/109/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL OF 15 DECEMBER 2004 AND TO PROVIDE FOR RELATED MATTERS.

[24th December, 2006]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

PART 1

PRELIMINARY AND GENERAL

1.—(1) This Act may be cited as the Investment Funds, Companies and Miscellaneous Provisions Act 2006.

Short title,
collective citation
and construction.

(2) The Companies Acts and *Parts 2* and *3* shall be read together as one.

2.—(1) Subject to *subsections (2) and (3)*, this Act 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.

Commencement.

(2) *Section 1*, this section and *sections 3 to 6 and 9, 10, 13, 14, 15 and 35* shall come into operation on the passing of this Act.

(3) *Sections 7 and 8* shall be deemed to have come into operation on 1 July 2005.

3.—In this Act—

Definitions.

“Act of 1990” means the Companies Act 1990;

“Act of 1997” means the Irish Takeover Panel Act 1997;

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

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

“Regulations of 2006” means the European Communities (Takeover Bids (Directive 2004/25/EC)) Regulations 2006 (S.I. No. 255 of 2006).

Orders and regulations.

4.—Every order or regulation made under this Act (other than an order made under *section 2* or *24*) 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.

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

AMENDMENTS OF COMPANIES ACTS

Statutory declarations for purposes of Companies Acts.

6.—(1) A statutory declaration made in a place outside the State (in pursuance of or for the purposes of the Companies Acts) shall be regarded as having been validly made (in pursuance of those Acts or for the purposes of them) if it is made in such a place before—

- (a) a person entitled under the Solicitors Act 1954 to practise as a solicitor in the State, or
- (b) a person authorised, under the law of that place, to administer oaths in that place and *subsection (3), (4) or (5)*, as the case may be, is complied with.

(2) Subsection (1) is—

- (a) without prejudice to the circumstances set out in the Statutory Declarations Act 1938 in which a statutory declaration may be made, and
- (b) in addition to, and not in substitution for, the circumstances provided under the Diplomatic and Consular Officers (Provision of Services) Act 1993 or any other enactment in which a statutory declaration made by a person in a place outside the State is regarded as a statutory declaration validly made (whether for purposes generally or any specific purpose).

(3) In cases falling within *subsection (1)(b)* and unless *subsection (4) or (5)* applies, the signature of the person making the declaration (the “declarer”) and, to the extent that that law requires either or both of the following to be authenticated:

- (a) the capacity in which the declarer has acted in making that declaration,
- (b) the seal or stamp of the person who has administered the oath to the declarer,

shall be authenticated in accordance with the law of the place referred to in *subsection (1)(b)*.

(4) If the place referred to in *subsection (1)(b)* is situate in a state that is a contracting party to the EC Convention, then (unless that Convention does not extend to that particular place) the provisions of that Convention with regard to authentication shall apply in relation to the statutory declaration concerned, including the procedures for verification of any matter in circumstances where serious doubts, with good reason, arise in respect of that matter.

(5) If the place referred to in *subsection (1)(b)* is situate in a state that is a contracting party to the Hague Convention but is not a contracting party to the EC Convention, then (unless the Hague Convention does not extend to that particular place) the provisions of the Hague Convention with regard to authentication shall apply in relation to the statutory declaration concerned, including the procedures for verification of any matter in circumstances where serious doubts, with good reason, arise in respect of that matter.

(6) The registrar of companies may, before receiving any statutory declaration purporting to be made in pursuance of, or for the purposes of, the Companies Acts, being a declaration—

- (a) falling within *subsection (1)(b)*, and
- (b) to which neither the provisions of the EC Convention nor the Hague Convention apply as regards the authentication of it,

require such proof, as he or she considers appropriate, of any particular requirements of the law referred to in *subsection (3)*.

(7) A statutory declaration made before the passing of this Act—

- (a) in a place outside the State,
- (b) before—
 - (i) if the place is not a place in England and Wales, Northern Ireland or Scotland, a person authorised, under the law of that place, to administer oaths or a person entitled under the Solicitors Act 1954 to practise as a solicitor in the State, or
 - (ii) if the place is a place in England and Wales, Northern Ireland or Scotland—
 - (I) a person entitled under the law of England and Wales, Northern Ireland or Scotland, as the case may be, to practise as a solicitor in England and Wales, Northern Ireland or Scotland, as the case may be, or to administer oaths there, or
 - (II) a person entitled under the Solicitors Act 1954 to practise as a solicitor in the State,

and

- (c) purporting to be made in pursuance of, or for the purposes of, the Companies Acts,

shall, if the declaration was delivered to the registrar of companies before that passing, be valid and deemed always to have been valid notwithstanding anything in the Diplomatic and Consular Officers (Provision of Services) Act 1993 or any other enactment and anything done on foot of that declaration's delivery to the registrar, including any subsequent registration of that declaration by the registrar, shall be valid and be deemed always to have been valid notwithstanding anything in that Act or any other enactment.

(8) Nothing in *subsection (7)* affects any proceedings commenced before the passing of this Act.

(9) In this section—

“EC Convention” means the Convention Abolishing the Legalisation of Documents in the Member States of the European Communities of 25 May 1987;

“Hague Convention” means the Convention Abolishing the Requirement of Legalisation for Foreign Public Documents done at the Hague on 5 October 1961;

“statutory declaration”, in addition to the meaning assigned to it by the Interpretation Act 2005, means a declaration that conforms with the requirements of the Statutory Declarations Act 1938, save for any requirements contained in section 1 of that Act, or any other provision of it, expressly or impliedly limiting the class of persons who may take and receive a declaration or the places in which a declaration may be received or taken.

Amendment of section 33 of Companies Act 1963.

7.—The following section is substituted for section 33 of the Companies Act 1963:

“Meaning of ‘private company’.

33.—(1) For the purposes of this Act, ‘private company’ means a company which has a share capital and which, by its articles—

- (a) restricts the right to transfer its shares, and
- (b) limits the number of its members to 99 or fewer persons, not including persons who are in the employment of the company and persons who, having been formerly in the employment of the company, were, while in that employment, and have continued after the determination of that employment to be, members of the company, and
- (c) prohibits any invitation or offer to the public to subscribe for any shares, debentures or other securities of the company.

(2) A provision of a company's articles that prohibits any invitation to the public to subscribe for any shares or debentures of the company shall be construed as a prohibition on any invitation or offer being made to the public to subscribe for any shares, debentures or other securities of the company.

(3) Where two or more persons hold one or more shares in a company jointly, they shall, for the purposes of this section, be treated as a single member.

(4) Subsections (5) and (6) shall apply for the purposes of —

- (a) subsection (1)(c), and
- (b) unless a contrary intention appears in the company's articles, any provision of a company's articles which—
 - (i) corresponds in its terms to those of subsection (1)(c),
 - (ii) incorporates by reference the terms of subsection (1)(c), or
 - (iii) has the same legal effect as subsection (1)(c) even though its terms are not identical to those of subsection (1)(c) (and the cases to which this subparagraph applies include the case where subsection (2) applies to the interpretation of the provision).

(5) Each of the following offers of debentures by a company (wheresoever made) shall not be regarded as falling within subsection (1)(c) or the provision of a company's articles referred to in subsection (4)(b), namely—

- (a) an offer of debentures addressed solely to qualified investors,
- (b) an offer of debentures addressed to fewer than 100 persons, other than qualified investors,
- (c) an offer of debentures addressed to investors where the minimum consideration payable pursuant to the offer is at least €50,000 per investor, for each separate offer,
- (d) an offer of debentures whose denomination per unit amounts to at least €50,000,
- (e) an offer of debentures where the offer expressly limits the amount of the total

consideration for the offer to less than
€100,000,

- (f) an offer of those classes of instruments which are normally dealt in on the money market (such as treasury bills, certificates of deposit and commercial papers) having a maturity of less than 12 months.

(6) The following offer of shares by a company (of any amount or wheresoever made) shall not be regarded as falling within subsection (1)(c) or the provision of a company's articles referred to in subsection (4)(b), namely an offer of shares addressed to—

- (a) qualified investors, or
(b) 99 or fewer persons, or
(c) both qualified investors and 99 or fewer other persons.

(7) A word or expression that is used in this section and is also used in the Prospectus (Directive 2003/71/EC) Regulations 2005 (S.I. No. 324 of 2005) shall have in this section the same meaning as it has in those Regulations.

(8) For the purposes of subsection (7), the Regulations referred to in that subsection shall have effect as if Regulation 8 were omitted therefrom.”.

Amendment of
section 21 of
Companies
(Amendment) Act
1983.

8.—The following section is substituted for section 21 of the Companies (Amendment) Act 1983:

“Shares and debentures of private company not to be offered to public.

21.—(1) A private company and any officer of the company who is in default shall be guilty of an offence if the company—

- (a) offers to the public (whether for cash or otherwise) any shares in or debentures of the company, or
(b) allots, or agrees to allot, (whether for cash or otherwise) any shares in or debentures of the company with a view to all or any of those shares or debentures being offered for sale to the public.

(2) Subsection (1) does not apply to the following offers or allotments (wheresoever made):

- (a) an offer of debentures addressed or allotment made solely to qualified investors,

- (b) an offer of debentures addressed to fewer than 100 persons, other than qualified investors,
- (c) an offer of debentures addressed to investors where the minimum consideration payable pursuant to the offer is at least €50,000 per investor, for each separate offer,
- (d) an offer of debentures whose denomination per unit amounts to at least €50,000,
- (e) an offer of debentures where the offer expressly limits the amount of the total consideration for the offer to less than €100,000, or
- (f) an offer of those classes of instruments which are normally dealt in on the money market (such as treasury bills, certificates of deposit and commercial papers) having a maturity of less than 12 months,
- (g) an offer of shares addressed to—
 - (i) qualified investors, or
 - (ii) 99 or fewer persons, or
 - (iii) both qualified investors and 99 or fewer other persons,
- (h) an allotment of shares or debentures, or an agreement to make such an allotment, with a view to those shares or debentures being the subject of any one or more of the offers referred to in paragraphs (a) to (g).

(3) A word or expression that is used in this section and is also used in the Prospectus (Directive 2003/71/EC) Regulations 2005 (S.I. No. 324 of 2005) shall have in this section the same meaning as it has in those Regulations.

(4) Nothing in this section shall affect the validity of any allotment or sale of shares or debentures or of any agreement to allot or sell shares or debentures.

(5) A person guilty of an offence under subsection (1) shall be liable on summary conviction to a fine not exceeding €1,904.61.”.

Exemption from
audit requirement.

9.—(1) Part III of the Companies (Amendment) (No. 2) Act 1999 is amended—

(a) in section 32(1) (as amended by the Companies (Auditing and Accounting) Act 2003)—

(i) by substituting “Subject to sections 32A and 32B” for “Subject to sections 32A and 33(1)”, and

(ii) by substituting the following paragraph for paragraph (ii):

“(ii) unless and until—

(I) circumstances, if any, arise in that financial year which result in one or more of the said conditions not being satisfied in respect of that year, or

(II) circumstances otherwise arise by reason of which the said company is not entitled to the exemption in respect of that financial year,

the provisions mentioned in subsection (2) shall not apply to the said company in respect of that year.”,

(b) in section 32(3)—

(i) by substituting, in paragraph (a)(ii), “€7.3 million” for “€1,500,000” (inserted by the Companies (Auditing and Accounting) Act 2003), and

(ii) by substituting, in paragraph (a)(iii), “€3.65 million” for “£1,500,000”,

(c) by inserting the following section after section 32A (inserted by the Companies (Auditing and Accounting) Act 2003):

“Exemption conditional on notice under section 33(1) not being served.

32B.—Notwithstanding that the conditions specified in section 32(3) are satisfied, a company is not entitled to the exemption in a financial year if a notice, with respect to that year, is served, under and in accordance with section 33(1) and (2), on the company.”,

(d) in section 33—

(i) by substituting the following subsections for subsections (1) and (2):

“(1) Any member or members of a company holding shares in the company that confer, in aggregate, not less than one-tenth of the total voting rights in the company may serve a notice in writing on the company stating that that member or those members do

not wish the exemption to be available to the company in a financial year specified in the notice.

(2) A notice under subsection (1) may be served on the company either—

(a) during the financial year immediately preceding the financial year to which the notice relates, or

(b) during the financial year to which the notice relates (but not later than 1 month before the end of that year).”,

(ii) by deleting subsection (3), and

(iii) in subsection (4), by substituting the following paragraph for paragraph (c):

“(c) no notice under subsection (1) has, in accordance with subsection (2), been served on the company, and”,

and

(e) in section 35, by substituting the following subsection for subsection (1):

“(1) Whenever by reason of—

(a) circumstances referred to in section 32(1)(ii) arising in the financial year concerned the exemption ceases to have effect in relation to a company in respect of that year, or

(b) circumstances otherwise arising a company is not entitled to the exemption in respect of the financial year concerned,

it shall be the duty of the directors of the company to appoint an auditor of the company as soon as may be after those circumstances arise and such an appointment may be made by the directors notwithstanding the provisions of section 160 of the Principal Act.”.

(2) Nothing in subsection (1)(b) prejudices the future exercise of the power under subsection (7) of section 32 of the Companies (Amendment) (No. 2) Act 1999 in relation to subsection (3) (as it stands amended by subsection (1)(b)) of that section 32.

10.—(1) The amendments effected by *section 9* shall apply as respects—

(a) a financial year of a company that commences not earlier than the commencement of that section, and

(b) subject to *subsection (2)*, a financial year of a company that ends not earlier than 2 months after the commencement of that section (not being a financial year to which *paragraph (a)* applies).

Application of *section 9* and transitional provisions.

(2) In cases falling within *subsection (1)(b), section 9* shall have effect as if, instead of the subsection (2) inserted by that section in section 33 of the Companies (Amendment) (No. 2) Act 1999, there were inserted the following subsection in that section 33:

“(2) In cases falling within *section 10(1)(b) of the Investment Funds, Companies and Miscellaneous Provisions Act 2006*, a notice under subsection (1) may be served on the company not later than 1 month before the end of the financial year to which the notice relates.”.

Restrictions on, and disqualifications of, persons from acting as directors, etc.

11.—(1) Section 150 (as amended by the Company Law Enforcement Act 2001) of the Act of 1990 is amended by substituting the following subsection for subsection (4B):

“(4B) The court, on the hearing of an application for a declaration under subsection (1) by the Director, a liquidator or a receiver (in this subsection referred to as the ‘applicant’), may order that the directors against whom the declaration is made shall bear—

- (a) the costs of the application, and
- (b) the whole (or such portion of them as the court specifies) of the costs and expenses incurred by the applicant—
 - (i) in investigating the matters the subject of the application, and
 - (ii) in so far as they do not fall within paragraph (a), in collecting evidence in respect of those matters,

including so much of the remuneration and expenses of the applicant as are attributable to such investigation and collection.”.

(2) Section 160 (as amended by the Company Law Enforcement Act 2001) of the Act of 1990 is amended by substituting the following subsection for subsection (9B):

“(9B) The court, on the hearing of an application for a disqualification order under subsection (2), may order that the persons disqualified or against whom a declaration under section 150 is made as a result of the application shall bear—

- (a) the costs of the application, and
- (b) in the case of an application by the Director, the Director of Public Prosecutions, a liquidator, a receiver or an examiner (in this paragraph referred to as the ‘applicant’), in addition to the costs referred to in paragraph (a), the whole (or such portion of them as the court specifies) of the costs and expenses incurred by the applicant—
 - (i) in investigating the matters the subject of the application, and

- (ii) in so far as they do not fall within paragraph (a), in collecting evidence in respect of those matters,

including so much of the remuneration and expenses of the applicant as are attributable to such investigation and collection.”.

12.—Section 239 of the Act of 1990 is amended—

Dematerialisation.

- (a) by inserting the following subsection after subsection (1):

“(1A) Subject to any exceptions that may be specified in the regulations, the regulations may, in respect of—

- (a) securities of companies admitted to trading on a regulated market,
- (b) securities of companies admitted to trading on a market other than a regulated market, or
- (c) securities of public limited companies of a specified class,

provide that the means provided by the regulations for evidencing and transferring title to such securities shall constitute the sole and exclusive means for doing so (and, accordingly, that any purported transfer of such securities otherwise than by those means shall be void).”.

- (b) in subsection (5), by adding the following paragraph:

“(c) The regulations may—

- (i) require the provision of statements by a company to holders of securities (at specified intervals or on specified occasions) of the securities held in their name;
- (ii) make provision removing any requirement for the holders of securities to surrender existing share certificates to issuers; and
- (iii) make provision that the requirements of the regulations supersede any existing requirements in the articles of association of a company which would be incompatible with the requirements of the regulations.”.

and

- (c) by inserting the following subsection after subsection (5):

“(5A) Without prejudice to the generality of subsections (4) and (5), the regulations shall not contain provisions that would result in a person who, but for the regulations, would be entitled—

- (a) to have his or her name entered in the register of members of a company, or

(b) to give instructions in respect of any securities,
ceasing to be so entitled.”.

Amendment of section 43 of Act of 2005: **13.**—The following section is substituted for section 43 of the Act of 2005:

“Restriction of liability where non-equity securities solely involved. 43.—Where a prospectus is issued solely in respect of non-equity securities—

(a) only—

(i) the offeror or the person who has sought the admission of the securities to which the prospectus relates to trading on a regulated market, and

(ii) subject to, and to the extent provided in, paragraph (c), the guarantor (if any),

and no other person referred to in section 41 shall be liable under that section in the circumstances in which that section applies unless—

(I) the prospectus expressly provides otherwise, or

(II) that other such person is convicted on indictment of an offence created by Irish prospectus law or an offence under section 48 in respect of the issue of that prospectus,

(b) section 383(3) of the Act of 1963 shall not apply to the directors or secretary of the issuer to the extent that such application would thereby impose a liability under section 41 on such directors or secretary, and

(c) no liability shall attach under section 41 to a guarantor of such securities save in respect of statements included in, or information omitted from, the prospectus that relate to the guarantor or the guarantee given by the guarantor.”.

Amendment of section 45 of Act of 2005: **14.**—The following section is substituted for section 45 of the Act of 2005:

“Expert’s consent to inclusion in prospectus of statement attributed to him or her. 45.—(1) The prohibition in subsection (2) only applies in relation to a prospectus if EU prospectus law requires the inclusion in the prospectus of a statement of the kind referred to in paragraph (b) of that subsection.

(2) A prospectus including a statement that is attributed to an expert shall not be issued unless—

- (a) the expert has given and has not, before the publication of the prospectus, withdrawn, in writing, his or her consent to the inclusion in the prospectus of the statement in the form and context in which it is included, and
- (b) a statement that the expert has given and not withdrawn, in writing, that consent appears in the prospectus.

(3) If any prospectus is issued in contravention of this section the issuer and every person who is knowingly a party to the issue thereof shall be guilty of an offence and liable to a fine.”.

15.—The Act of 2005 is amended—

Amendments of Act of 2005 consequential on amendment made by section 14.

- (a) in section 38, by inserting the following subsection after subsection (3):

“(3A) Without limiting the meaning of that expression in any other context in which it is used in this Part, ‘statement’ in section 45(2) (other than paragraph (b) thereof) and any other section of this Part that makes provision in respect of an expert includes a report and a valuation.”.

- (b) in section 41—

- (i) by re-numbering the existing section as subsection (1) thereof, and
- (ii) by adding the following subsection:

“(2) In addition to the persons specified in subsection (1) as being liable in the circumstances there set out, an expert who has given the consent required by section 45 to the inclusion in a prospectus of a statement purporting to be made by him or her shall, subject to sections 42 and 43, be liable to pay compensation to all persons who acquire any securities on the faith of the prospectus for the loss or damage they may have sustained by reason of an untrue statement in the prospectus purporting to be made by him or her as an expert.”.

- (c) in section 42—

- (i) by deleting subsection (1),
- (ii) in subsection (3)(d)(ii), by substituting “and, where required by section 45, that that person had given his or her consent to the inclusion of the statement in the prospectus” for “and that that person had given his or her consent to the issue of the prospectus”.

- (iii) in subsection (4), by substituting “the inclusion in the prospectus of the statement concerned” for “the issue of the prospectus concerned”,
- (iv) in subsection (5), by deleting “as a person who has authorised the issue of the prospectus”,
- (v) in subsection (6)—
 - (I) by deleting “as a person who has authorised the issue of a prospectus”, and
 - (II) in paragraph (a), by substituting “the inclusion in the prospectus of the statement” for “the issue of the prospectus”,
- (d) in section 44—
 - (i) in subsection (1)(b), by substituting “the inclusion in a prospectus of a statement purporting to be made by him or her” for “the issue of a prospectus”, and
 - (ii) by deleting subsection (3),

and

- (e) in section 48, by deleting subsection (4).

Amendment of section 9 of Companies (Auditing and Accounting) Act 2003.

16.—Section 9(2) of the Companies (Auditing and Accounting) Act 2003 is amended by inserting the following paragraph after paragraph (m):

“(ma) to perform the functions conferred on it by transparency (regulated markets) law (within the meaning of Part 3 of the *Investment Funds, Companies and Miscellaneous Provisions Act 2006*) in respect of the matters referred to in Article 24(4)(h) of the Transparency (Regulated Markets) Directive (within the meaning of that Part);”.

Amendment of section 10 of Companies (Auditing and Accounting) Act 2003.

17.—Section 10 of the Companies (Auditing and Accounting) Act 2003 is amended—

- (a) in subsection (4)—
 - (i) in paragraph (a), by substituting “section,” for “section, or”,
 - (ii) in paragraph (b), by substituting “recognition of that body, or” for “recognition of that body,”,
 - (iii) by inserting the following paragraph after paragraph (b):
 - “(c) a person on whom a relevant obligation or obligations is or are imposed to comply with that obligation or those obligations,”,

and

- (iv) by substituting “the body or other person concerned may fail or has failed to comply with the rule, guideline, term or condition or obligation or obligations, as the case may be.” for “the body concerned may fail or has failed to comply with the rule or guideline or with the term or condition, as the case may be.”,

and

- (b) by adding the following subsection:

“(5) In subsection (4), the reference to a relevant obligation or obligations that is or are imposed on a person is a reference to an obligation or obligations that is or are imposed on the person by—

- (a) provisions of transparency (regulated markets) law (within the meaning of *Part 3* of the *Investment Funds, Companies and Miscellaneous Provisions Act 2006*) that implement Article 24(4)(h) of the Transparency (Regulated Markets) Directive (within the meaning of that Part), or
- (b) rules adopted by the Supervisory Authority under subsection (3) concerning the matters that relate to its functions under section 9(2)(ma).”.

18.—Section 29 of the Companies (Auditing and Accounting) Act 2003 is amended by substituting the following subsection for subsection (7):

Amendment of section 29 of Companies (Auditing and Accounting) Act 2003.

“(7) On application under subsection (4) of section 10 for an order compelling compliance with—

- (a) a rule adopted or guideline issued by the Supervisory Authority,
- (b) a term or condition of recognition, or
- (c) an obligation or obligations referred to in that subsection,

the Court may make any order or give any direction it thinks fit.”.

PART 3

TRANSPARENCY REQUIREMENTS REGARDING ISSUERS OF SECURITIES ADMITTED TO TRADING ON CERTAIN MARKETS

19.—(1) In this Part—

Interpretation (*Part 3*).

“Transparency (Regulated Markets) Directive” means Directive 2004/109/EC¹ of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements

¹OJ L390, 31.12.2004, p.38

in relation to information about issuers whose securities are admitted to trading on a regulated market and amending Directive 2001/34/EC, including the first-mentioned Directive as it stands amended for the time being;

“transparency (regulated markets) law” means—

- (a) the measures adopted for the time being by the State to implement the Transparency (Regulated Markets) Directive and any supplemental Directive (whether an Act of the Oireachtas, regulations under section 3 of the European Communities Act 1972, regulations under *section 20* or any other enactment (other than, save where the context otherwise admits, this Part)),
- (b) any measures directly applicable in the State in consequence of the Transparency (Regulated Markets) Directive and, without prejudice to the generality of this paragraph, includes any Regulation or Decision made by the Commission pursuant to the procedure referred to in Article 27(2) of that Directive, and
- (c) any supplementary and consequential measures adopted for the time being by the State in respect of any Regulation or Decision made by the Commission in consequence of the Transparency (Regulated Markets) Directive pursuant to the foregoing procedure;

“supplemental Directive” means any Directive made by the Commission in consequence of the Transparency (Regulated Markets) Directive pursuant to the procedure referred to in Article 27(2) of that Directive.

(2) A word or expression that is used in this Part and is also used in the Transparency (Regulated Markets) Directive shall have in this Part the same meaning as it has in that Directive.

Power to make
certain regulations.

20.—(1) The Minister may make regulations for the purposes of—

- (a) giving effect to the Transparency (Regulated Markets) Directive or any supplemental Directive, and
- (b) supplementing and making consequential provision in respect of any Regulation or Decision made by the Commission in consequence of the first-mentioned Directive in *paragraph (a)* pursuant to the procedure referred to in Article 27(2) of that Directive.

(2) Regulations under this section may contain such incidental, supplementary and consequential provisions as appear to the Minister to be necessary or expedient for the purposes of those regulations, including—

- (a) provisions creating offences (but the regulations may only provide penalties in respect of a summary conviction for any such offence), and
- (b) provisions creating civil liability in respect of contraventions of the regulations so as to enable any person suffering loss thereby to recover compensation for that loss.

(3) Civil liability shall not be created by regulations under *subsection (2)* in respect of a contravention of regulations under this section save in respect of such a contravention that involves either—

- (a) an untrue or misleading statement, or
- (b) the omission from a statement of any matter required to be included in it,

being, in either case, a statement—

- (i) that is contained in a publication made in purported compliance with a provision of transparency (regulated markets) law specified in the regulations, and
- (ii) in respect of which a person suffers a loss by reason of the person's acquiring or contracting to acquire securities (or an interest in them) in reliance on that publication at a time when, and in circumstances in which, it was reasonable for the person to rely on that publication,

and the following condition is fulfilled in respect of that publication.

(4) That condition is that a person discharging responsibilities within the issuer of the securities referred to in *subsection (3)* in relation to that publication (being responsibilities of a kind specified in regulations under this section)—

- (a) knew the statement concerned to be untrue or misleading or was reckless as to whether it was untrue or misleading, or
- (b) knew the omission concerned to be dishonest concealment of a material fact.

(5) Regulations under this section may also make, for the purposes of those regulations, provision analogous to that which is made by Part IV of the Act of 1990.

(6) This section is without prejudice to section 3 of the European Communities Act 1972.

21.—A person who is guilty of an offence created by transparency (regulated markets) law (being an offence expressed by that law to be an offence to which this section applies) shall, without prejudice to any penalties provided by that law in respect of a summary conviction for the offence, be liable, on conviction on indictment, to a fine not exceeding €1,000,000 or imprisonment for a term not exceeding 5 years or both.

Conviction on indictment of offences under transparency (regulated markets) law.

22.—(1) In this section “competent authority” means the competent authority designated under transparency (regulated markets) law for the purposes of the provisions of the Transparency (Regulated Markets) Directive (other than Article 24(4)(h) of that Directive).

Supplementary rules, etc., by competent authority.

(2) The competent authority may make rules imposing or enabling the competent authority to impose requirements on persons on whom an obligation or obligations are imposed by transparency (regulated markets) law, being requirements—

- (a) to do or not to do specified things so as to secure that the provisions of transparency (regulated markets) law are complied with and, in particular (without limiting the generality of this paragraph), to adopt specified procedures and use specified forms in the provision of information to the competent authority,
- (b) to do or not to do specified things so as to secure the effective supervision by the competent authority of activities of the kind to which transparency (regulated markets) law relates and, in particular (without limiting the generality of this paragraph), to make such reports or disclose such matters, at such times and in such manner, to the competent authority or other specified persons as are provided for by the rules or specified by the competent authority pursuant to the rules, being reports or a disclosure of matters that is or are required by virtue or in consequence of the operation of transparency (regulated markets) law.

(3) Rules under this section may, in particular, include rules necessary for the performance by the competent authority of the functions under Article 24 of the Transparency (Regulated Markets) Directive, other than paragraph (4)(h) of that Article.

(4) Rules under this section may contain such consequential, incidental or supplemental provisions as the competent authority considers necessary or expedient.

(5) Rules under this section shall not contain any provision that is inconsistent with transparency (regulated markets) law or require the provision of information to any person the provision of which is not reasonably related to the purposes for which the applicable provisions of the Transparency (Regulated Markets) Directive have been adopted.

(6) The provisions of transparency (regulated markets) law that are expressed by that law to be made for the purpose of enabling the imposition of administrative sanctions shall apply in relation to a contravention of—

- (a) rules under this section, and
- (b) rules adopted by the Irish Auditing and Accounting Supervisory Authority under section 10(3) of the Companies (Auditing and Accounting) Act 2003 concerning the matters that relate to its functions under section 9(2)(ma) of that Act,

as they apply in relation to a contravention of a provision of transparency (regulated markets) law and, accordingly, a sanction that may be imposed pursuant to the first-mentioned provisions of transparency (regulated markets) law in respect of a contravention of a provision of that law may, in accordance with that law, be imposed in respect of a contravention of rules referred to in either of the foregoing paragraphs.

(7) The competent authority may issue guidelines in writing as to the steps that may be taken to comply with transparency (regulated markets) law.

23.—The definition of “Supervisory Directives” in subsection (10) of section 33AK (inserted by the Central Bank and Financial Services Authority of Ireland Act 2003) of the Central Bank Act 1942 is amended by substituting the following paragraphs for paragraph (h) (inserted by the Act of 2005):

Amendment of section 33AK of Central Bank Act 1942.

- “(h) the 2003 Prospectus Directive (within the meaning of Part 5 of the Investment Funds, Companies and Miscellaneous Provisions Act 2005),
- (i) the Transparency (Regulated Markets) Directive (within the meaning of Part 3 of the *Investment Funds, Companies and Miscellaneous Provisions Act 2006*);”.

24.—(1) The Minister, after consultation with the competent authority referred to in *section 22(1)*, may, by provisional order, provide that one or more provisions of transparency (regulated markets) law that apply in relation to a market to which the Transparency (Regulated Markets) Directive applies shall, with such modifications, if any, as are specified in the order, apply to a market specified in the order.

Application of transparency (regulated markets) law to certain markets.

(2) A provisional order under this section shall not have effect unless or until it is confirmed by an Act of the Oireachtas.

PART 4

MISCELLANEOUS

25.—Section 1 of the Act of 1997 is amended—

Amendment of section 1 of Act of 1997.

- (a) by inserting after “relevant transaction” in the definition of “acting in concert”, in subsection (1), “(other than a bid referred to in that subsection)”, and
- (b) by substituting the following subsection for subsection (3):

“(3) (a) For the purposes of this Act, two or more persons shall be deemed to be acting in concert as respects a takeover or other relevant transaction (in neither case being a bid to which the Regulations of 2006 apply) if they co-operate on the basis of an agreement, either express or tacit, either oral or written, aimed at:

(i) either—

(I) the acquisition by any one or more of them of securities in the relevant company concerned, or

(II) the doing, or the procuring of the doing, of any act that will or may result in an increase in the proportion of securities in the relevant company concerned held by any one or more of them;

or

(ii) either—

(I) acquiring control of the relevant company concerned, or

(II) frustrating the successful outcome of an offer made for the purpose of the acquisition of control of the relevant company concerned;

and ‘acting in concert’ shall be construed accordingly.

(b) For the purposes of this subsection and without prejudice to any rules under section 8, persons controlled by another person within the meaning of Article 87 of Directive 2001/34/EC of the European Parliament and of the Council of 28 May 2001 shall be deemed to be persons acting in concert, as respects the matters mentioned in paragraph (a), with that other person and with each other.

(c) In this subsection—

‘bid to which the Regulations of 2006 apply’ means a takeover bid, within the meaning of the Regulations of 2006, which the Panel has, by virtue of Regulation 6 of those Regulations, jurisdiction to supervise;

‘Regulations of 2006’ means the European Communities (Takeover Bids (Directive 2004/25/EC)) Regulations 2006 (S.I. No. 255 of 2006).”.

Amendment of section 2 of Act of 1997.

26.—Section 2 (as amended by the Act of 2005) of the Act of 1997 is amended by substituting the following paragraphs for paragraph (c):

“(c) a public limited company—

(i) one or more of the securities of which are, for the time being, authorised to be traded on any of the following markets, namely:

(I) one or more of the markets operated by the London Stock Exchange or any successor of that Exchange (whether created by the merger of 2 or more exchanges or otherwise);

(II) the New York Stock Exchange;

(III) the market known as Nasdaq operated by Nasdaq Stock Market, Incorporated,

or

- (ii) falling within any other class of public limited company which, in order to secure more fully the protection of shareholders, the Minister, after consultation with the Panel, prescribes for the purposes of this paragraph,

other than a public limited company (in section 2B referred to as an ‘excepted company’) the only securities of which, for the time being, are authorised to be traded on a market referred to in any of the preceding clauses are those specified in section 2B,

- (d) a public limited company one or more of the securities of which are not, for the time being, authorised to be traded on a market referred to in clause (I), (II) or (III) of paragraph (c)(i) but were authorised to be traded on a market referred to in any of those clauses within the period of 5 years prior to the date on which the relevant proposal in relation to the takeover or other relevant transaction was made other than a public limited company (in section 2B also referred to as an ‘excepted company’) the only securities of which were authorised to be traded, within the foregoing period, on a market referred to in any of those clauses are those specified in section 2B.”.

27.—Section 2 (as amended by the Act of 2005) of the Act of 1997 is further amended by substituting the following subparagraph for subparagraph (II) of paragraph (iii):

Further amendment of section 2 of Act of 1997.

“(II) which is not a company referred to in paragraph (c)(i) or (ii) or firstly referred to in paragraph (d).”.

28.—The following section is inserted after section 2A (inserted by the Act of 2005) of the Act of 1997:

Amendment of Act of 1997 — insertion of new section 2B.

“Securities for the purposes of section 2(c) and (d) and application of those provisions. 2B.—(1) The securities referred to in paragraphs (c) and (d) of section 2 in relation to an excepted company 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 in any other body corporate.

(2) The cases to which the qualifications contained in paragraphs (c) and (d) of section 2 concerning an excepted company apply include the case where the authorisation for the trading of the securities concerned was given before the commencement of section 28 of the *Investment Funds, Companies and Miscellaneous Provisions Act 2006.*”.

29.—Section 8 of the Act of 1997 is amended—

Amendment of section 8 of Act of 1997.

- (a) in subsection (1), by substituting “subsections (2), (3), (4) and (7A) to (7D)” for “subsections (2), (3) and (4)”, and

(b) by inserting after subsection (7) the following subsections:

“(7A) The power to make rules under this section includes the power to make provision in such rules to give effect to—

- (a) a provision of the treaties of the European Communities, or
- (b) an act adopted by an institution of those Communities.

(7B) Nothing in the European Communities (Takeover Bids (Directive 2004/25/EC)) Regulations 2006 (S.I. No. 255 of 2006) (referred to subsequently in this section as the ‘Regulations’)—

- (a) prejudices the future exercise of the power of the Panel to make rules under this section for the purpose of giving effect to Directive 2004/25/EC² of the European Parliament and of the Council of 21 April 2004 on takeover bids (or any other act adopted by an institution of the European Communities),
- (b) prevents the Panel from making like provision in rules under this section to that which was made by Regulation 11 of, and the Schedule to, the Regulations.

(7C) The Panel may, by rules under this section, revoke—

- (a) Regulation 11 of, and the Schedule to, the Regulations, and
- (b) the words ‘(being those rules as they stand amended by Regulation 11)’ where they occur in Regulations 16(3), 18(4) and 18(6) of the Regulations.

(7D) (a) Rules under any of the preceding subsections may contain such supplementary, incidental or consequential provisions as appear to the Panel to be necessary or desirable in respect of the matters mentioned in the particular subsection to which the rules concerned relate.

(b) Different rules may be made under this section in relation to any thing referred to in this section respecting a company by reference to whether the company is or is not a company a bid in respect of which the Panel has, by virtue of Regulation 6 of the Regulations, jurisdiction to supervise (which bid is referred to in paragraph (c) as a ‘Directive bid’).

(c) Paragraph (b) is without prejudice to the Panel’s power to make uniform provision in rules

²OJ L142, 30.04.2004, p.12

under this section in relation to every company—

- (i) a Directive bid, or
- (ii) a takeover or other relevant transaction,

in respect of which the Panel has jurisdiction to supervise.”.

30.—The following Schedule is substituted for the Schedule to the Act of 1997: Amendment of Schedule to Act of 1997.

“SCHEDULE

PRINCIPLES APPLICABLE TO THE CONDUCT OF TAKEOVERS, ETC.

1. All holders of the securities of an offeree of the same class must be afforded equivalent treatment; moreover, if a person acquires control of a company, the other holders of securities must be protected.
2. The holders of the securities of an offeree must have sufficient time and information to enable them to reach a properly informed decision on the offer; where it advises the holders of securities, the board of the offeree must give its views on the effects of implementation of the offer on employment, conditions of employment and the locations of the offeree’s places of business.
3. The board of an offeree must act in the interests of the company as a whole and must not deny the holders of securities the opportunity to decide on the merits of the offer.
4. False markets must not be created in the securities of the offeree, of the offeror or of any other company concerned by the offer in such a way that the rise or fall of the prices of the securities becomes artificial and the normal functioning of the markets is distorted.
5. An offeror must announce an offer only after ensuring that he or she can fulfil in full any cash consideration, if such is offered, and after taking all reasonable measures to secure the implementation of any other type of consideration.
6. An offeree must not be hindered in the conduct of its affairs for longer than is reasonable by an offer for its securities.
7. A substantial acquisition of securities (whether such acquisition is to be effected by one transaction or a series of transactions) shall take place only at an acceptable speed and shall be subject to adequate and timely disclosure.”.

31.—The Irish Takeover Panel Act 1997 (Relevant Company) Regulations 2001 (S.I. No. 87 of 2001) are revoked. Revocation of S.I. No. 87 of 2001.

Amendment of
European
Communities
(Takeover Bids
(Directive
2004/25/EC))
Regulations 2006.

32.—(1) The following Regulation is substituted for Regulation 7 of the Regulations of 2006:

“7.—The Panel shall ensure compliance with the principles set out in the Schedule to the Act of 1997 when performing its functions in accordance with these Regulations.”.

(2) The following paragraphs are substituted for paragraph (1) of Regulation 8 of the Regulations of 2006:

“(1) In paragraph (1A) the reference to subsection (3) of section 1 of the Act of 1997 (as it stands amended otherwise than by these Regulations) is a reference to the subsection (3) inserted in that section by the *Investment Funds, Companies and Miscellaneous Provisions Act 2006*.

(1A) Without prejudice to the continued application of subsection (3) of section 1 of the Act of 1997 (as it stands amended otherwise than by these Regulations) to companies referred to in Regulation 4(2), paragraph (2) has effect in relation to the application of the Act of 1997 by virtue of Regulation 4(1).”.

Amendment of
Consumer
Information Act
1978.

33.—Section 9(11)(b) of the Consumer Information Act 1978 (as amended by the Company Law Enforcement Act 2001) is repealed.

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

34.—(1) Section 33C(1) of the Central Bank Act 1942 (inserted by the Central Bank and Financial Services Authority of Ireland Act 2003) is amended by inserting the following paragraph after paragraph (a):

“(ab) to perform the functions the Bank has under regulations for the time being in force under *section 20* of the *Investment Funds, Companies and Miscellaneous Provisions Act 2006*.”.

(2) Section 33AN of the Central Bank Act 1942 (inserted by the Central Bank and Financial Services Authority of Ireland Act 2004) is amended—

(a) by substituting the following definition for the definition of “designated enactment” (inserted by the Act of 2005):

“ ‘designated enactment’ does not include Part 4 or 5 of the *Investment Funds, Companies and Miscellaneous Provisions Act 2005* or *Part 3* of the *Investment Funds, Companies and Miscellaneous Provisions Act 2006*.”,

and

(b) by substituting the following definition for the definition of “designated statutory instrument” (inserted by the Act of 2005):

“ ‘designated statutory instrument’ does not include the Market Abuse (Directive 2003/6/EC) Regulations 2005 (S.I. No. 342 of 2005), the Prospectus (Directive 2003/71/EC) Regulations 2005 (S.I. No. 324 of 2005) or regulations for the time being in force under *section 20* of the *Investment Funds, Companies and Miscellaneous Provisions Act 2006*.”.

(3) Schedule 2 to the Central Bank Act 1942 (inserted by the Central Bank and Financial Services Authority of Ireland Act 2003) is amended by inserting in Part 1 the following item after the item relating to the Investment Funds, Companies and Miscellaneous Provisions Act 2005 (inserted by the Act of 2005):

“

No. - of 2006	<i>Investment Funds, Companies and Miscellaneous Provisions Act 2006</i>	The whole Act
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”.

35.—Section 1 of the Netting of Financial Contracts Act 1995 is amended by substituting the following definition for the definition of “party”:

Amendment of Netting of Financial Contracts Act 1995.

“ ‘party’ means a person constituting one of the parties to an agreement and includes, and shall be deemed always to have included—

- (a) any number of persons who share a single, identical interest in the agreement referred to subsequently in this definition if there is no differentiation in the rights and obligations of each of them in that agreement,
- (b) the partners in a partnership or limited partnership, including any limited partnership established under the Investment Limited Partnerships Act 1994 or the Limited Partnerships Act 1907, and
- (c) the participants in—
 - (i) a common contractual fund authorised pursuant to the Investment Funds, Companies and Miscellaneous Provisions Act 2005, the European Communities (Undertakings for Collective Investment in Transferable Securities) Regulations 2003 (S.I. No. 211 of 2003) or the laws of a Member State (other than the State) adopted to implement Council Directive No. 86/611/EEC of 20 December 1985, as amended, or
 - (ii) a sub-fund of a common contractual fund referred to in subparagraph (i),

(whether or not the fund is acting through a manager or a delegate of a manager),

in circumstances where any of such persons or such partners (acting in their capacity as such) or such fund or sub-fund enters into an agreement.”.