

CHAPTER 5

*Winding up*

1392. Circumstances in which company may be wound up by the court.

CHAPTER 6

*Restoration*

1393. Restoration by the court.

CHAPTER 7

*Public offers of securities, prevention of market abuse, etc.*

1394. Application of *Chapters 1, 2 and 4 of Part 23* to investment companies.

CHAPTER 8

*Umbrella funds and sub-funds*

1395. Segregated liability of investment company sub-funds.
1396. Requirements to be complied with by, and other matters respecting, an umbrella fund to which *section 1395(1)* applies.
1397. Further matters respecting an umbrella fund to which *section 1395(1)* applies.

CHAPTER 9

*Migration of funds*

1398. Definitions (*Chapter 9*).
1399. “Registration documents” — meaning.
1400. Continuation of foreign investment company.
1401. Supplemental provisions in relation to *section 1400*.
1402. Definitions for the purposes of de-registration provisions contained in *sections 1403 and 1404*.
1403. De-registration of companies when continued under the law of place outside the State.
1404. Supplemental provisions in relation to *section 1403*.
1405. Statutory declaration as to solvency.

PART 25

MISCELLANEOUS

CHAPTER 1

*Provisions concerning foreign insolvency proceedings (including those covered by the Insolvency Regulation)*

1406. Preliminary and interpretation (*Chapter 1*).

1407. Recognition of winding up orders of non-European Union states and Denmark.
1408. Purpose of *sections 1409 to 1418*.
1409. Registration of judgments given in insolvency proceedings.
1410. Publication in relation to insolvency proceedings outside State.
1411. Registration of insolvency judgments.
1412. Enforcement in State of insolvency judgments.
1413. Interest on insolvency judgments and payment of costs.
1414. Currency of payments under enforceable insolvency judgments.
1415. Preservation measures.
1416. Venue.
1417. Language of claims in relation to insolvency proceedings outside State.
1418. Non-recognition or non-enforcement of judgments.

## CHAPTER 2

### *Other miscellaneous provisions*

1419. Deemed consent to disclosure with respect to interest in shares or debentures acquired.
1420. Extension of *Chapter 1 of Part 9* to any company liable to be wound up.
1421. Saving for enactments providing for winding up under certain former Companies Acts.
1422. Application of *section 406* to every type of company and society.
1423. Restriction of section 58 of the Solicitors Act 1954.
1424. Prohibition of partnerships with more than 20 members.
1425. Prohibition of banking partnership with more than 10 members.
1426. Signing of statutory financial statements in case of licensed bank registered after 15 August 1879.
1427. Application of *sections 1392 and 1393* to companies that are UCITS.
1428. Relationship between Chapters 1 and 2 of Part 9 and Irish Takeover Panel Act 1997.
1429. Eligibility to act as public auditor.

by the independent person that he or she has given and has not withdrawn consent to the making of the declaration with the report attached to it.

5 (3) The report mentioned in *subsection (2)(c)* shall state whether, in the independent person's opinion, based on the information and explanations given to him or her, the opinion of the director mentioned in *subsection (1)* and the statement of the migrating company's or applicant's assets and liabilities referred to in *subsection (2)(b)* are reasonable.

10 (4) For the purposes of *subsection (3)*, the independent person shall be a person who, at the time the report is made, is—

(a) in the case of an application under *section 1400*, qualified to be the auditor of the migrating company under the laws of the relevant jurisdiction; and

15 (b) in the case of an application under *section 1403*, qualified to be the statutory auditor of the applicant.

(5) A director who makes a declaration under this section without having reasonable grounds for the opinion that the migrating company or applicant is able to pay its debts as they fall due shall be  
20 guilty of a category 2 offence.

(6) Where the migrating company or applicant is wound up within 1 year after the date on which the application is made to the Registrar and its debts are not paid or provided for in full within that year, it shall be presumed, unless the contrary is shown, that the director  
25 did not have reasonable grounds for his or her opinion.

## PART 25

### MISCELLANEOUS

#### CHAPTER 1

30 *Provisions concerning foreign insolvency proceedings (including those covered by the Insolvency Regulation)*

**1406.**—(1) In addition to windings up, *sections 1409 to 1418* apply to insolvency proceedings dealt with in *Parts 8, 9 and 10*. Preliminary and interpretation (*Chapter 1*).

(2) Save as provided in *section 1412* and except where the context otherwise requires, references in this Chapter to numbered Articles  
35 without qualification are references to Articles so numbered of the Insolvency Regulation.

**1407.**—(1) Any order made by a court of any state recognised for the purposes of this section and made for, or in the course of, winding up a company may be enforced by the High Court in the same  
40 manner in all respects as if the order has been made by the High Court. Recognition of winding up orders of non-European Union states and Denmark.

(2) When an application has been made to the High Court under this section, an office copy of any order sought to be enforced shall be sufficient evidence of the order.

45 (3) In this section—

“company” means a body corporate incorporated outside the State;

“recognised” means recognised by order made by the Minister for the purposes of this section and no such order may be made in relation to a state that is a Member State (other than Denmark).

Purpose of sections 1409 to 1418.

**1408.**—The purpose of sections 1409 to 1418 is to re-enact the provisions (made by regulations under the European Communities Act 1972) that gave full effect to the Insolvency Regulation, apart from the provisions in so far as they relate to insolvency proceedings opened under Article 3 of the Insolvency Regulation in the State where the proceedings relate to a company (as defined in section 2(1)); provisions in relation to the latter will be found in Chapter 15 of Part 11. 5  
10

Registration of judgments given in insolvency proceedings.

**1409.**—(1) Without prejudice to Article 16(1) of the Insolvency Regulation, a liquidator appointed in insolvency proceedings who intends— 15

(a) to request under Article 21 of the Insolvency Regulation that notice of the judgment opening the proceedings and, where appropriate, the decision appointing him or her be published in the State; or

(b) to take any other action in the State under the Insolvency Regulation, 20

shall deliver to the Registrar a certified copy of the judgment and, where appropriate, of the decision appointing the liquidator.

(2) Registration under subsection (1) may also be effected by the Registrar on application by a liquidator who does not intend to take any action in the State under the Insolvency Regulation. 25

(3) The certified copy or copies mentioned in subsection (1) shall be accompanied by—

(a) if the judgment or decision is not expressed in the Irish or the English language, a translation, certified to be correct by a person competent to do so, into either of those languages; 30

(b) the prescribed form; and

(c) the prescribed fee.

(4) The Registrar shall issue a certificate of registration to the liquidator. 35

(5) In any proceedings a document purporting to be—

(a) a certified copy of a judgment opening insolvency proceedings or a decision appointing a liquidator in such proceedings; or 40

(b) a translation of such a document which is certified as correct by a person competent to do so,

shall, without further proof, be admissible as evidence of the judgment, the liquidator’s appointment or the translation, unless the contrary is shown. 45

**1410.**—*Section 712* shall apply to insolvency proceedings (as defined in *section 2(1)*) as it applies to insolvency proceedings (as defined in *section 711*).

Publication in relation to insolvency proceedings outside State.

**1411.**—A request by a liquidator under Article 22 of the Insolvency Regulation that the judgment opening the insolvency proceedings be registered in a public register shall be made to the Registrar.

Registration of insolvency judgments.

**1412.**—(1) In this section—

Enforcement in State of insolvency judgments.

“Brussels 1 Regulation” means Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters;

“insolvency judgment” means a judgment referred to in Article 25 of the Insolvency Regulation;

“Master” means the Master of the High Court.

(2) Except where the context otherwise requires, references in this section to numbered Articles without qualification are references to Articles so numbered of the Brussels 1 Regulation.

(3) Having regard to Article 68, references in Article 25 of the Insolvency Regulation to enforcement of insolvency judgments in accordance with certain Articles of the Brussels Convention are to be read as references to enforcement of those judgments in accordance with Articles 38 to 58.

(4) An application under the Brussels 1 Regulation for the enforcement in the State of an insolvency judgment shall be made to the Master.

(5) The Master shall determine the application by order in accordance with the Brussels 1 Regulation.

(6) The Master shall declare the insolvency judgment enforceable immediately on completion of the formalities provided for in Article 53 without any review under Articles 34 and 35 and shall make an enforcement order in relation to the judgment.

(7) An order under *subsection (5)* may provide for the enforcement of part only of the insolvency judgment concerned.

(8) An application to the Master under Article 39 for an enforcement order in respect of an insolvency judgment may include an application for any preservation measures the High Court has power to grant in proceedings that, apart from the provisions of this Chapter, are within its jurisdiction.

(9) Where an enforcement order is made, the Master shall grant any such preservation measures so applied for.

(10) For the purposes of this Chapter, references in Articles 42, 43, 45, 47, 48, 52, 53 and 57 to a declaration of enforceability are to be treated as references to an enforcement order under this section.

(11) Subject to the restrictions on enforcement contained in Article 47(3), if an enforcement order has been made respecting an insolvency judgment, the judgment—

(a) shall, to the extent to which its enforcement is authorised by the enforcement order, be of the same force and effect as a judgment of the High Court; and 5

(b) may be enforced by the High Court, and proceedings taken on it, as if it were a judgment of that Court.

Interest on insolvency judgments and payment of costs.

**1413.**—(1) Where, on application for an enforcement order respecting an insolvency judgment, it is shown— 10

(a) that the judgment provides for the payment of a sum of money; and

(b) that, in accordance with the law of the Member State in which the judgment was given, interest on the sum is recoverable under the judgment at a particular rate or rates and from a particular date or time, 15

the enforcement order, if made, shall provide that the person liable to pay the sum shall also be liable to pay the interest, apart from any interest on costs recoverable under *subsection (2)*, in accordance with the particulars noted in the order, and the interest shall be recoverable by the applicant as though it were part of the sum. 20

(2) An enforcement order may provide for the payment to the applicant by the respondent of the reasonable costs of or incidental to the application for the enforcement order.

(3) A person required by an enforcement order to pay costs shall be liable to pay interest on the costs as if they were the subject of an order for the payment of costs made by the High Court on the date on which the enforcement order was made. 25

(4) Interest shall be payable on a sum referred to in *subsection (1)(a)* only as provided for in this section. 30

Currency of payments under enforceable insolvency judgments.

**1414.**—(1) An amount payable in the State under an insolvency judgment by virtue of an enforcement order shall be payable in the currency of the State.

(2) If the amount is stated in the insolvency judgment in any currency except the currency of the State, payment shall be made on the basis of the exchange rate prevailing, on the date the enforcement order is made, between the currency of the State and any such currency. 35

(3) For the purposes of this section a certificate purporting to be signed by an officer of an authorised institution and to state the exchange rate prevailing on a specified date between a specified currency and the currency of the State shall be admissible as evidence of the facts stated in the certificate. 40

(4) In this section “authorised institution” means—

(a) a licensed bank; 45

(b) a building society within the meaning of the Building Societies Act 1989;

(c) a trustee savings bank licensed under the Trustee Savings Banks Act 1989; or

5 (d) An Post.

**1415.**—(1) A request under Article 38 for measures to secure and preserve any of the debtor’s assets in the State shall be made to the High Court. Preservation measures.

(2) On such a request, the High Court—

10 (a) may grant any such measures that the court has power to grant in proceedings that, apart from the provisions of this Chapter, are within its jurisdiction; and

15 (b) may refuse to grant the measures sought if, in its opinion, the fact that, apart from this section, the court does not have jurisdiction in relation to the subject matter of the proceedings makes it inexpedient for it to grant the measures.

**1416.**—The jurisdiction of the Circuit Court or District Court in proceedings that may be instituted in the State by a liquidator in exercise of his or her powers under Article 18 of the Insolvency Regulation may be exercised by the judge for the time being assigned— Venue.

(a) in the case of the Circuit Court, to the circuit; and

25 (b) in the case of the District Court, to the district court district,

in which the defendant ordinarily resides or carries on any profession, business or occupation.

**1417.**—*Section 715* shall apply to insolvency proceedings (as defined in *section 2(1)*) as it applies to insolvency proceedings (as defined in *section 711*). Language of claims in relation to insolvency proceedings outside State.

**1418.**—It shall be for the High Court to determine whether judgments referred to in Article 25(1), or insolvency proceedings or judgments referred to in Article 26, should not be recognised or enforced on grounds mentioned in those provisions. Non-recognition or non-enforcement of judgments.

35 CHAPTER 2

*Other miscellaneous provisions*

**1419.**—The acquisition by any person of an interest in shares or debentures of a company registered in the State shall be deemed to be a consent by that person to the disclosure by the person, his or her agents or his or her intermediaries of any information required to be disclosed in relation to shares or debentures by or under this Act. Deemed consent to disclosure with respect to interest in shares or debentures acquired.

Extension of Chapter 1 of Part 9 to any company liable to be wound up. Saving for enactments providing for winding up under certain former Companies Acts.

**1420.**—Chapter 1 (other than section 456) of Part 9 shall apply to any company liable to be wound up under this Act.

**1421.**—Nothing in Part 11 or any other Part of this Act shall affect the operation of any enactment which provides for any association, partnership or company being wound up, or being wound up as a company or as an unregistered company under the Companies (Consolidation) Act 1908 or any enactment repealed by that Act. 5

Application of section 406 to every type of company and society.

**1422.**—Section 406 shall apply to—

- (a) any company within the meaning of Chapter 4 of Part 14;
- (b) any friendly society within the meaning of the Friendly Societies Acts 1896 to 1977; and 10
- (c) any society registered under the Industrial and Provident Societies Acts 1893 to 1978,

as it applies to a private company limited by shares.

Restriction of section 58 of the Solicitors Act 1954.

**1423.**—Notwithstanding section 58 of the Solicitors Act 1954, a statutory auditor may draw or prepare any document for the purposes of this Act other than a deed or a constitution and, in the case of the latter (where the company is not a private company limited by shares), whether a memorandum of association or articles of association, or both. 15 20

Prohibition of partnerships with more than 20 members.

**1424.**—(1) No company, association or partnership consisting of more than 20 persons shall be formed for the purpose of carrying on any business (other than the business of banking), that has for its object the acquisition of gain by the company, association or partnership, or by the individual members thereof, unless— 25

- (a) it is registered as a company under this Act;
- (b) it is formed in pursuance of some other statute; or
- (c) it is a partnership formed for the purpose of—
  - (i) carrying on practice as accountants in a case where each partner is a statutory auditor; 30
  - (ii) carrying on practice as solicitors in a case where each partner is a solicitor;
  - (iii) carrying on or promoting the business of thoroughbred horse breeding, being a partnership to which, subject to subsection (5), the Limited Partnerships Act 1907 relates; or 35
  - (iv) the provision of investment and loan finance and ancillary facilities and services to persons engaged in industrial or commercial activities, being a partnership— 40
    - (I) that consists of not more than 50 persons; and
    - (II) to which, subject to subsection (5), the Limited Partnerships Act 1907 relates.

(2) Subject to *subsection (3)*, the Minister may by order declare that the prohibition in *subsection (1)* shall not apply to a partnership that is of a description, and that has been or is formed for a purpose, specified in the order.

5 (3) The Minister shall not make an order under *subsection (2)* unless, after consultation with the Company Law Review Group, the Minister is satisfied that the public interest will not be adversely affected by the discontinuance, in consequence of the order, of the prohibition in *subsection (1)* in relation to the partnerships  
10 concerned.

(4) This section shall not apply to an investment limited partnership within the meaning of the Investment Limited Partnerships Act 1994.

15 (5) The provisions of section 4 (2) of the Limited Partnerships Act 1907 shall not apply to a partnership specified in *subsection (1)(c)* nor to a partnership specified in an order made under *subsection (2)*.

20 **1425.**—No company, association or partnership consisting of more than 10 persons shall be formed for the purpose of carrying on the business of banking, unless it is registered as a company under this Act, or is formed in pursuance of some other statute. Prohibition of banking partnership with more than 10 members.

**1426.**—For the purposes of *section 325* as it applies to a licensed bank that is— Signing of statutory financial statements in case of licensed bank registered after 15 August 1879.

(a) a company registered under this Act; or

25 (b) an existing company registered under a former enactment relating to companies (within the meaning of *section 5*) after 15 August 1879,

the statutory financial statements shall be signed by the secretary of the company and—

30 (i) where there are more than 3 directors of the company – by at least 3 directors of the company; and

(ii) where there are not more than 3 directors — by all the directors of the company.

**1427.**—Each of the following—

35 (a) *section 1392* (circumstances in which company may be wound up by the court); and Application of sections 1392 and 1393 to companies that are UCITS.

(b) *section 1393* (restoration by the court),

40 shall, with the necessary modifications, apply to a company to which the European Communities (Undertakings for Collective Investment in Transferable Securities) Regulations 2011 (S.I. No. 352 of 2011) apply as those sections apply to an investment company.

45 **1428.**—(1) For the avoidance of doubt, nothing in *Chapter 1* or 2 of *Part 9* prejudices the jurisdiction of the Irish Takeover Panel under the Irish Takeover Panel Act 1997 with respect to a compromise or scheme of arrangement that is proposed between a relevant company (within the meaning of that Act) and its members or any Relationship between Chapters 1 and 2 of Part 9 and Irish Takeover Panel Act 1997.

class of them and which constitutes a takeover within the meaning of that Act and, accordingly, that Panel has, and shall be deemed always to have had, power to make rules under section 8 of that Act in relation to a takeover of the foregoing kind, to the same extent and subject to the like conditions, as it has power to make rules 5 under that section in relation to any other kind of takeover.

(2) The Irish Takeover Panel, in exercising its powers under the Irish Takeover Panel Act 1997, and the court, in exercising its powers under *Chapter 1* or *2* of *Part 9*, shall each have due regard to the other's exercise of powers under that Act or either such Chapter, as 10 the case may be.

Eligibility to act as public auditor.

**1429.**—(1) In this section “public auditor” means a public auditor for the purposes of—

- (a) the Industrial and Provident Societies Acts 1893 to 1978; 15  
or
- (b) the Friendly Societies Acts 1896 to 1977.

(2) A person shall not act as a public auditor, of the society or friendly society concerned, in respect of any financial year of it that begins after the commencement of this section unless the person is a member of a body of accountants recognised by the Supervisory Authority for the purposes of this section and stands approved by 20 that body to so act.

(3) In respect of any financial year of the society or friendly society concerned that begins before the commencement of this section, the provisions of the Act of 1990 in relation to the eligibility 25 of a person to act as a public auditor shall, notwithstanding *section 4*, continue in force.

(4) A person who contravenes *subsection (2)* shall be guilty of a category 2 offence.