
COMPANIES BILL 2012

Unofficial version

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PART 16

DESIGNATED ACTIVITY COMPANIES

Chapter 1

Preliminary and definitions

Section

[965963]. Definitions (*Part 16*).

[966964]. Application of *Parts 1 to 14* to DACs.

Chapter 2

Incorporation and consequential matters

[967965]. Way of forming a DAC and the 2 types of DAC.

[968966]. DAC to carry on activity in the State.

[969967]. The form of a DAC's constitution.

[970968]. Supplemental provisions in relation to constitution.

[971969]. Provisions as to names of DACs.

[972970]. Trading under a misleading name.

[973971]. Power to dispense with "designated activity company" or Irish equivalent in name of charitable and other companies.

[974972]. Capacity of a DAC.

[975973]. Capacity not limited by a DAC's constitution.

[976974]. Alteration of objects clause by special resolution.

[977975]. Supplemental provisions in relation to *section [977975]*.

[978976]. Restriction of *section 32(1)* in relation to a DAC limited by guarantee.

[979977]. Alteration of articles by special resolution.

[980978]. Power to alter provisions in memorandum which could have been contained in articles.

[[981979]. Status of existing guarantee company, having a share capital.]

[982980]. Transitional provision – use of "limited" or "teoranta" by existing guarantee company, having a share capital.]

Chapter 3

Share capital

[983981]. Limitation on offers by DACs of securities to the public.

[984982]. Variation of rights attached to special classes of shares.

[985983]. Application of *section 115* in relation to DACs.

[986984]. Uncertificated transfer of securities.

Chapter 4

Corporate governance

[987985]. Directors.

[988986]. Limitation on number of directorships.

[989987]. Membership of DAC limited by guarantee confined to shareholders.

[1990]. — ~~DAC may not dispense with holding of a.g.m.~~

988. DAC, with 2 or more members, may not dispense with holding of a.g.m.]

[991989]. Application of *section 194* in relation to a DAC.

[992990]. Application of *section 195* in relation to a DAC.

Chapter 5

Financial statements, annual return and audit

[993991]. Non-application of *Part 6* to DACs that are credit institutions or insurance undertakings.

[994992]. Requirement for corporate governance statement and modification of certain provisions of *Parts 5* and *6* as they apply to DACs.

[995993]. Modification of definition of “IAS Regulation” in the case of DACs

[996994]. Application of [section]298 and [section]363 to a DAC.

[997995]. Disclosures by DAC that is a [credit institution].

[998996]. Exemption from filing with Registrar financial statements, etc.

Chapter 6

Liability of contributories in winding up

[999997]. Liability as contributories of past and present members and provision concerning winding up after certain re-registration.

Chapter 7

Examinerships

[1000998]. Petitions for examinerships.

Chapter 8

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

[1001999]. Application of *Chapters 1, 2* and *4* of *Part 23* to DACs.

PART 16

DESIGNATED ACTIVITY COMPANIES

Chapter 1

Preliminary and definitions

Definitions (*Part 16*).

[\[963965\]](#). In this Part -

“constitution” shall be read in accordance with *section* [\[967 969\]\(1\)](#);

“DAC limited by guarantee” means a DAC falling within *paragraph (b)* of the definition of “designated activity company” in this section;

“DAC limited by shares” means a DAC falling within *paragraph (a)* of the definition of “designated activity company” in this section;

“designated activity company” or “DAC” means a company that, as provided under [*section*]¹ [\[965967\]\(2\)](#), has either –

- (a) the status of a private company limited by shares registered under this Part (as distinct from a private company limited by shares registered under *Part 2*) ; or
- (b) the status of a private company limited by guarantee, and having a share capital.

Application of *Parts 1 to 14* to DACs.

[\[964966\]](#). (1) The provisions of *Parts 1 to 14* apply to a DAC except to the extent that they are disapplied or modified by –

- (a) this section; or
- (b) any other provision of this Part.

(2) For the purposes of that application, ~~*section 10*~~*section 10(1)*² shall have effect as if it read :

“~~*Unless*~~*(1) Unless*³ expressly provided otherwise, a reference in *Parts 2 to 14* to a company is a reference to a DAC.”.

(3) Subject to *subsection (4)*, the provisions of this Act specified in the Table to this section shall not apply to a DAC.

(4) In relation to a DAC limited by guarantee the non- application of *section 32(1)* is provided for by *section* [\[976978\]](#) and,

¹ Correction of typographical error from Bill as initiated

² [Substituted by point 110 of Seanad Report Amendments.](#)

³ [Substituted by point 111 of Seanad Report Amendments.](#)

accordingly, the entry of that provision in the Table to this section shall (so far as it relates to that type of DAC) be disregarded.

(5) The specification in the foregoing Table of a provision (a “specified provision”) of *Parts 1 to 14* also operates to disapply to a DAC any other provision of those Parts (notwithstanding that it is not specified in that Table) that makes consequential, incidental or supplemental provision on, or in relation to, the specified provision.

Table
Provisions disappplied to DACs

Subject matter	Provision disappplied
Way of forming a private company limited by shares	<i>Section 17</i>
Company to carry on activity in the State [and prohibition of certain activities] ⁴	<i>Section 18</i>
Form of the constitution	<i>Section 19</i>
Certificate of incorporation to state that company is a private company limited by shares	<i>Section 25(3)</i>
Provisions as to names of companies	<i>Section 26(1) to (4)</i>
Trading under a misleading name	<i>Section 27</i>
Amendment of constitution by special resolution	<i>Section 32(1)</i>
Capacity of private company limited by shares	<i>Section 38</i>
Variation of rights attached to special classes of shares	<i>Section [88]</i>
Directors	<i>Section [128]</i>
Share qualifications of directors	<i>Section [136]</i>
[Voting by director in respect of contract, etc. in which director is interested]	<i>Section [161](7)</i>
 Holding of any other office or place of profit under the company by director]⁵	<i>Section [162]</i>
Liability as contributories of past and present members	<i>Section [655]</i>

Chapter 2

Incorporation and consequential matters

Way of forming a DAC and the 2 types of DAC.

~~[965967]~~. (1) A DAC may be formed for any lawful purpose by any person or persons subscribing to a constitution and complying with the relevant provisions of –

- (a) *Chapter 2 of Part 2*, as applied by this Part; and
- (b) this Part,

in relation to registration of a DAC.

⁴ Inserted by point 110 of Committee Amendments.

⁵ ~~Deleted by point 112 of Seanad Report Amendments.~~

(2) If the memorandum of the DAC contains the statement referred to in –

- (a) *section [967969](2)(b)(i)*, the DAC shall have the status of a private company limited by shares registered under this Part (as distinct from a private company limited by shares registered under *Part 2*) ; or
- (b) *section [967969](2)(b)(ii)*, the DAC shall have the status of a private company limited by guarantee, and having a share capital.

(3) Without prejudice to the means by which a DAC may be formed under the relevant provisions referred to in *subsection (1)*, a company may be registered as a DAC by means of –

- (a) re-registration as a DAC (but only as one limited by shares) pursuant to *Chapter 6 of Part 2*;
- (b) the re-registration, or registration, as a DAC of a body corporate pursuant to *Part 20 or Part 22*;
- (c) the merger of 2 or more companies pursuant to *Chapter 3 of Part 9*;
- (d) the division of a company pursuant to *Chapter 4 of Part 9*; or
- (e) the merger operation provided for by the European Communities (Cross-Border Mergers) Regulations 2008 (S.I. No. 157 of 2008).

(4) The liability of a member of a DAC at any time shall be limited –

- (a) in the case of a DAC limited by shares, to the amount, if any, unpaid on the shares registered in the member's name at that time;
- (b) in the case of a DAC limited by guarantee, to –
 - (i) the amount undertaken, as mentioned in *section [967969](2)(e)*, to be contributed by him or her to the assets of the DAC in the event of its being wound up; and
 - (ii) the amount, if any, unpaid on the shares registered in the member's name at that time.

(5) *Subsection (4)* is without prejudice to any other liability to which a member may be subject as provided by this Act.

(6) The number of members of a DAC shall not exceed 149 but, in reckoning that limit, there shall be disregarded any of the following persons.

(7) Those persons are -

- (a) a person in the employment of the DAC who is a member of it;
- (b) a person who, having been formerly in the employment of the DAC, was, while in that employment, and has continued after the termination of the employment to be, a member of it.

(8) Where 2 or more persons hold one or more shares in a DAC jointly, they shall, for the purposes of this section, be treated as a single member.

(9) Any registration of a person as a member of a DAC in excess of the limit provided by *subsection (6)* shall be void.

(10) The certificate of incorporation issued under *section 25(1)* shall state that the company is a designated activity company limited by shares or, as the case may be, a designated activity company limited by guarantee.

DAC to carry on activity in the State.

[\[966968\]](#). A DAC shall not be formed and registered unless it appears to the Registrar that the DAC, when registered, will carry on an activity in the State, being an activity that is mentioned in its memorandum.

The form of a DAC's constitution.

[\[967969\]](#). (1) Subject to *subsection (3)*, the constitution of a DAC shall be in the form of a memorandum of association and articles of association which together are referred to in this Part as a “constitution”.

(2) The memorandum of association of a DAC shall state—

- (a) its name;
- (b) that it is a designated activity company having the status, as the case may be, of –
 - (i) a private company limited by shares; or
 - (ii) a private company limited by guarantee, and having a share capital, registered under this Part;
- (c) its objects;
- [(d) that the liability of its members is limited;]⁶
- ([e]) in the case of a DAC limited by shares, the amount of share capital with which the DAC proposes to be registered and the division thereof into shares of a fixed amount;
- ([f]) in the case of a DAC limited by guarantee – in addition to the matter set out in the preceding paragraph - that each member undertakes that, if the company is wound up while he or she is a member, or within one year after the date on which he or she ceases to be a member, he or she will contribute to the assets of the company such amount as may be required for –
 - (i) payment of the debts and liabilities of the company contracted before he or she ceases to be a member;
 - (ii) payment of the costs, charges and expenses of winding up; and
 - (iii) adjustment of the rights of contributories among themselves,not exceeding an amount specified in the memorandum.

(3) The constitution of a DAC shall—

- (a) in addition to the matters specified in *subsection (2)*, state the number of shares (which shall not be less than one) taken by each subscriber to the

⁶ Inserted by point 134 of Seanad Committee Amendments.

constitution;

(b) be in accordance with the form set out in –

(i) *Schedule 7* - in the case of a DAC limited by shares; or

(ii) *Schedule 8* - in the case of a DAC limited by guarantee,

or, in either case, as near thereto as circumstances permit;

(c) be printed in an entire format, that is to say the memorandum and

articles shall be contained in the one document, being a document either in legible form or (as long as it is capable of being reproduced in legible form) in non-legible form; and

(d) either –

(i) be signed by each subscriber in the presence of at least one witness who shall attest the signature; or

(ii) be authenticated in the manner referred to in *section [888]*.

[4] Where, subsequent to the registration of the constitution, an amendment of the memorandum of association is made affecting the matter of share capital, or another matter, referred to in *subsection (2)*, that subsection shall be read as requiring the memorandum to state the matter as it stands in consequence of that amendment.]⁷

Supplemental provisions in relation to constitution.

[\[968970\]](#). (1) This section –

(a) contains provisions as to the articles of a DAC; and

(b) provides that, in certain circumstances, a default position shall obtain in relation to the articles of a DAC.

(2) In this section –

“mandatory provision” means a provision of any of *Parts 1 to 14* (as applied by this Part) or of this Part that is not an optional provision;

“optional provision” means a provision of any of *Parts 1 to 14* (as applied by this Part) or of this Part that –

(a) contains a statement to the effect, or is governed by provision elsewhere to the effect, that the provision applies save to the extent that the constitution provides otherwise or unless the constitution states otherwise; or

(b) is otherwise of such import.

(3) The articles of a DAC may contain regulations in relation to the DAC.

(4) So far as the articles of a DAC do not exclude or modify an optional provision, that optional provision shall apply in relation to the DAC.

⁷ Inserted by point 135 of Seanad Committee Amendments.

(5) Articles, instead of containing any regulations in relation to the DAC, may consist solely of a statement to the effect that the provisions of the *Companies Act [2014]* are adopted and, if the articles consist solely of such a statement, *subsection (4)* shall apply.

Provisions as to names of DACs.

[\[97971\]](#). (1) The name of a DAC shall end with one of the following:

- designated activity company;
- cuideachta ghníomhaíochta ainmnithe.

(2) The words “designated activity company” may be abbreviated to “d.a.c.” or “dac” (including either such abbreviation in capitalised form) in any usage after the company’s registration by any person including the DAC.

(3) The words “cuideachta ghníomhaíochta ainmnithe” may be abbreviated to “c.g.a.” or “cga” (including either such abbreviation in capitalised form) in any usage after the company’s registration by any person including the DAC.

(4) A DAC carrying on business under a name other than its corporate name shall register in the manner directed by law for the registration of business names but the use of the abbreviations set out in *subsection (2)* or *(3)* shall not of itself render such registration necessary.

Trading under a misleading name.

[\[97972\]](#). (1) Subject to *subsection (6)*, neither a body that is not a DAC nor an individual shall carry on any trade, profession or business under a name which includes, as its last part, the words “designated activity company”, or “cuideachta ghníomhaíochta ainmnithe” or abbreviations of those words.

(2) If a body or individual contravenes *subsection (1)*, the body or individual and, in the case of a body, any officer of it who is in default, shall be guilty of a category 3 offence.

(3) A DAC shall not, in the following circumstances, use a name which may reasonably be expected to give the impression that it is any type of a company other than a DAC or that it is any other form of body corporate.

(4) Those circumstances are circumstances in which the fact that it is a DAC is likely to be material to any person.

(5) If a DAC contravenes *subsection (3)*, the DAC and any officer of it who is in default shall be guilty of a category 3 offence.

(6) *Subsection (1)* shall not apply to any company -

- (a) to which *Part 21* applies; and

(b) which has provisions in its constitution that would entitle it to rank as a DAC if it had been registered in the State.

Power to dispense with “designated activity company” or Irish equivalent in name of charitable and other companies.

[\[971973\]](#). (1) A DAC shall, notwithstanding its registration as a company with limited liability, be exempt from the provisions of this Act relating to the use of the words “designated activity company” or “cuideachta ghníomhaíochta ainmnithe” as part of its name and the publishing of its name, but shall enjoy all the privileges and shall (subject to this section) be subject to all the obligations of a DAC, where -

(a) its objects are the promotion of commerce, art, science, education, religion, charity or any other prescribed object; and

(b) its constitution -

(i) requires its profits (if any) or other income to be applied to the promotion of its objects;

(ii) prohibits the making of distributions to its members; and

(iii) requires all the assets which would otherwise be available to its members to be transferred on its winding up to another company whose objects comply with *paragraph (a)* and which meets the requirements of this paragraph; and

(c) a director or secretary of the company (or, in the case of an association about to be formed as a limited company, one of the persons who are to be the first directors or the person who is to be the first secretary of the company) has delivered to the Registrar a statement in the prescribed form that the company complies or, where applicable, will comply with the requirements of *paragraphs (a)* and *(b)*.

(2) The Registrar shall refuse to register as a DAC any association about to be formed as a DAC by a name which does not include the words “designated activity company” or “cuideachta ghníomhaíochta ainmnithe” unless a statement, as provided for under *subsection (1)(c)*, has been delivered to the Registrar.

(3) An application by a company registered as a DAC for a change of name, being a change that includes or consists of the omission of the words “designated activity company” or “cuideachta ghníomhaíochta ainmnithe”, shall be made in accordance with *section 30* and the Registrar shall refuse to accede to the application unless a statement, as provided for under *subsection (1)(c)*, has been delivered to the Registrar.

(4) A DAC which is exempt under *subsection (1)* and which is permitted to omit the words “designated activity company” or “cuideachta ghníomhaíochta ainmnithe” from its name shall not alter its constitution so that it ceases to comply with the requirements of that subsection.

(5) If it appears to the Registrar that a DAC which is registered under a name not including the words “designated activity company” or

“cuideachta ghníomhaíochta ainmnithe” -

- (a) has carried on any business other than the promotion of any of the objects mentioned in *subsection (1)(a)*;
- (b) has applied any of its profits or other income otherwise than in promoting such objects; or
- (c) has made a distribution to any of its members,

the Registrar may, in writing, direct the DAC to change its name within such period as may be specified in the direction so that its name ends with the words “designated activity company” or “cuideachta ghníomhaíochta ainmnithe”, and the change of name shall be made in accordance with *section 30*.

(6) A DAC which has received a direction under *subsection (5)* shall not thereafter be registered by a name which does not include the words “designated activity company” or “cuideachta ghníomhaíochta ainmnithe” without the approval of the Registrar.

(7) A person who -

- (a) alters the constitution of a DAC in contravention of *subsection (4)*; or
- (b) fails to comply with a direction from the Registrar under *subsection (5)*,

shall be guilty of a category 3 offence.

[(8) *Subsections (9) to (12)* have effect notwithstanding—

- (a) the repeal by the Act of 2001 of section 24, as originally enacted, of the Act of 1963 (the “original section 24”); or
- (b) the repeal by this Act of section 24, inserted by *section 88(1)* of the Act of 2001, of the Act of 1963 (the “substituted section 24”) or of the Act of 2001.

(9) A licence that—

- (a) had been granted by the Minister pursuant to subsection (1) or (2) of the original section 24 to a private company limited by shares (being a company that has reregistered as a DAC pursuant to *Chapter 6 of Part 2*); and
- (b) is in force immediately before the commencement of this section,

shall continue to have effect but with the modification that it shall operate to exempt the company from the use of the words “designated activity company” or “cuideachta ghníomhaíochta ainmnithe” as part of its name and the publishing of its name.

(10) Subsections (4) to (7) of the original section 24 shall continue in force in relation to the foregoing licence as if that section 24 had never been repealed, except that references in those subsections to the Minister, wherever occurring, shall be read as references to the Registrar.

(11) An exemption that immediately before the repeal of the Act of 2001 operated, by virtue of the substituted section 24, in favour of a private company limited by shares (being a company that has re-registered as a DAC pursuant to *Chapter 6 of Part 2*) shall continue to have effect but—

- (a) with the modification that it shall operate to exempt the company from the use of the words “designated activity company”

or “cuideachta ghníomhaíochta ainmnithe” as part of its name and the publishing of its name; and

(b) subject to *subsection (12)*.

(12) *Subsections (4) to (7)* shall, with the necessary modifications, apply to a foregoing exemption as they apply to an exemption under *subsection (1)*.

(13) In relation to a DAC that avails itself of the exemption under *subsection (1)*, or continues to avail itself of a licence or exemption referred to in *subsection (9) or (11), section [151]* shall have effect as if, in addition to the particulars specified in *subsection (2)(a) to (c)* of that section to be included on all business letters and order forms of the DAC, there were specified in that subsection the fact of the DAC being a limited company.

(14) In this section “Act of 2001” means the Company Law Enforcement Act 2001.]⁸

[...] ⁹

Capacity of a DAC.

[972974]. (1) A DAC shall have the capacity to do any act or thing stated in the objects set out in its memorandum.

(2) For the purposes of *subsection (1)* –

(a) the reference in it to an object includes a reference to anything stated in the memorandum to be a power to do any act or thing (whether the word “power” is used or not);

(b) if an object is stated in the DAC’s memorandum without the following also being stated in relation to it, the capacity of the DAC extends to doing any act or thing that appears to it to be requisite, advantageous or incidental to, or to facilitate, the attainment of that object and that is not inconsistent with any enactment,

and a subsequent reference in this Part to an object of a DAC shall be read accordingly.

Capacity not limited by a DAC’s constitution.

[973975]. (1) The validity of an act done by a DAC shall not be called into question on the ground of lack of capacity by reason of anything contained in the DAC’s objects.

(2) A member of a DAC may bring proceedings to restrain the doing of an act which, but for *subsection (1)*, would be beyond the DAC’s capacity but no such proceedings shall lie in respect of any act to be done in fulfilment of a legal obligation arising from a previous act of the DAC.

(3) Notwithstanding the enactment of *subsection (1)*, it remains the duty of the directors to observe any limitations on their powers flowing from the DAC’s objects and action by the directors which, but for *subsection (1)*, would be beyond the DAC’s capacity may only be ratified by the DAC by special resolution.

(4) A resolution ratifying such action shall not affect any liability incurred by the directors or any other person; if relief from any such

⁸ Substituted by point 111 of Committee Amendments.

liability is to be conferred by the DAC it must be agreed to separately by a special resolution of it.

(5) A party to a transaction with a DAC is not bound to enquire as to whether it is permitted by the DAC's objects.

Alteration of objects clause by special resolution.

[974976]. (1) Subject to *subsection (2)*, a DAC may, by special resolution, alter the provisions of its memorandum of association by abandoning, restricting or amending any existing object or by adopting a new object and any alteration so made shall be as valid as if originally contained therein, and be subject to alteration in like manner.

(2) If an application is made to the court in accordance with this section for the alteration to be cancelled, it shall not have effect except in so far as it is confirmed by the court.

(3) Subject to *subsection (4)*, an application under this section may be made—

(a) by the holders of not less, in the aggregate, than 15 per cent in nominal value of the DAC's issued share capital or any class thereof ; or

(b) by the holders of not less than 15 per cent of the DAC's debentures, entitling the holders to object to alterations of its objects.

(4) An application shall not be made under this section by any person who has consented to or voted in favour of the alteration.

(5) An application under this section shall be made within 21 days after the date on which the resolution altering the DAC's objects was passed and may be made on behalf of the persons entitled to make the application by such one or more of their number as they may appoint in writing for the purpose.

(6) On an application under this section, the court may –

(a) make an order cancelling the alteration or confirming the alteration, either wholly or in part, and on such terms and conditions as it thinks fit; and

(b) if it thinks fit, adjourn the proceedings in order that an arrangement may be made to the satisfaction of the court for the purchase of the interests of dissenting members and may give such directions and make such orders as it may think expedient for facilitating or carrying into effect any such arrangement.

(7) An order under this section may, if the court thinks fit, provide for the purchase by the DAC of the shares of any members of the DAC and for the reduction accordingly of the DAC's company capital and may make such alterations in the constitution of the DAC as may be required in consequence of that [provision; and such a purchase may be so ordered notwithstanding anything in *section 103*]¹⁰.

Supplemental provisions in relation to *section [974976]*.

[975977]. (1) Where an order under *section [974976]* requires the DAC not to make any, or any specified, alteration in its constitution, then, notwithstanding anything in this Act, but subject to the provisions of the order, the DAC shall not have power, without the leave of the court, to make any such alteration in contravention of that requirement.

(2) Any alteration in the constitution of a DAC made by virtue of an order under *section [974976]*, other than one made by resolution

⁹ Deleted in Seanad Committee Amendments.

of the DAC, shall be of the same effect as if duly made by resolution of the DAC and the provisions of this Act shall apply to the constitution as so altered accordingly.

(3) Notice of the meeting at which the special resolution altering a DAC's objects is intended to be proposed shall be given to any holders of the DAC's debentures that entitle the holders to object to alterations of its objects; that notice shall be the same as that given to members of the DAC, so however that not less than 10 days' notice shall be given to the holders of any such debentures.

(4) If the written resolution procedure is used in the matter, notice, which shall not be less than 10 days, of the proposed use of that procedure shall, together with a copy of the proposed text of the resolution, be given to the debenture holders referred to in *subsection (3)*.

(5) In default of any provisions in the DAC's constitution regulating the giving to the foregoing debenture holders of notice referred to in *subsection (3)* or *(4)*, the provisions of *Part 4* or, as the case may be, of the DAC's constitution regulating the giving of notice to members shall apply.

(6) Without prejudice to *subsections (3)* and *(4)*, in the case of a DAC which is, by virtue of *section [971973]*, permitted to omit the words "designated activity company" or "cuideachta ghníomhaíochta ainmnithe" from its name, notice of –

(a) the meeting at which the special resolution altering a DAC's objects is intended to be proposed; or

(b) if the written resolution procedure is used in the matter, notice of the proposed use of that procedure, together with a copy of the proposed text of the resolution,

shall be given to the Registrar and *subsections (3)* to *(5)* shall apply as respects such notice as they apply as respects notice of the meeting or resolution to debenture holders.

(7) Where a DAC passes a resolution altering its objects—

(a) if no application is made under *section [974976]* with respect to the alteration, it shall, within 15 days after the end of the period for making such an application, deliver to the Registrar a copy of its memorandum of association as altered; and

(b) if such an application is made, it shall—

(i) forthwith give notice of that fact to the Registrar; and

(ii) within 15 days after the date of any order cancelling or confirming the alteration, deliver to the Registrar a certified copy of the order and, in the case of an order confirming the alteration, a copy of the memorandum as altered.

(8) The court may by order at any time extend the time for delivery of documents to the Registrar under *subsection (7)(b)* for such period as the court may think proper.

(9) If a DAC makes default in giving notice or delivering any document to the Registrar as required by *subsection (7)*, the DAC and any officer of it who is in default shall be guilty of a category 4 offence.

Restriction of *section 32(1)* in relation to a DAC limited by guarantee.

[976978]. (1) Other than in respect of making an amendment of the type specified in *subsection (2)*, *section 32(1)* shall not apply in relation to a DAC limited by guarantee.

¹⁰ Substituted by point 197 of Report Amendments.

(2) The amendment referred to in *subsection (1)* is an amendment of the amount referred to in *section [967969](2)(e)* that is specified in the memorandum of the DAC limited by guarantee.

Alteration of articles by special resolution.

[977979]. (1) Subject to the provisions of this Act and to the conditions contained in its memorandum, a DAC may, by special resolution, alter or add to its articles.

(2) Any alteration or addition so made in the articles shall, subject to the provisions of this Act, be as valid as if originally contained therein and be subject in like manner to alteration by special resolution.

Power to alter provisions in memorandum which could have been contained in articles.

[978980]. (1) Subject to *subsection (2)*, *sections 32(4)* and *(5)* and [212], any provision contained in a DAC's memorandum which could lawfully have been contained in articles instead of in the memorandum may, subject to the provisions of this section, be altered by the DAC by special resolution.

(2) If an application is made to the court for the alteration to be cancelled, it shall not have effect except in so far as it is confirmed by the court.

(3) This section shall not apply where the memorandum itself provides for or prohibits the alteration of all or any of the foregoing provisions, and shall not authorise any variation or abrogation of the special rights of any class of members.

(4) *Section [974976](3) to (7)* (other than *subsection (3)(b)*) and *section [975977]* (other than *subsections (3) to (6)*) shall apply in relation to any alteration and to any application made under this section as they apply in relation to alterations and to applications made under those sections.

Chapter 3

Share capital

[Status of existing guarantee company, having a share capital]

[979981]. (1) This section—

- (a) makes provision as to the status of an existing guarantee company, having a share capital; and
- (b) continues in force the memorandum and articles of such a company.

(2) In this section—

“existing guarantee company, having a share capital” means a private company limited by guarantee, having a share capital, which—

- (a) was incorporated under any former enactment relating to companies (within the meaning of *section 5*); and
- (b) is in existence immediately before the commencement of this section;

“mandatory provision” means a provision of any of *Parts 1 to 14* (as applied by this Part) or of this Part that is not an optional provision;

“optional provision” means a provision of any of *Parts 1 to 14* (as applied by this Part) or of this Part that—

(a) contains a statement to the effect, or is governed by provision elsewhere to the effect, that the provision applies save to the extent that the constitution provides otherwise or unless the constitution states otherwise; or

(b) is otherwise of such import.

(3) An existing guarantee company, having a share capital shall, on and from the commencement of this section, continue in existence and be deemed to be a DAC limited by guarantee to which this Part applies.

(4) *Section [981983]* contains provisions—

(a) for enabling such a company to continue to use, for a limited period, “limited” or “teoranta” in its name despite the foregoing status that it has assumed; and

(b) deeming the name of such a company, after a specified period and in default of its having changed its name in that fashion, to be altered by the replacement of—

(i) “designated activity company” for “limited” at the end thereof; or

(ii) “cuideachta ghníomhaíochta ainmnithe” for “teoranta” at the end thereof,

as the case may be.

(5) Reference, express or implied, in this Act to the date of registration of a company mentioned in a preceding subsection shall be read as a reference to the date on which the company was registered under the Joint Stock Companies Act 1862, the Companies (Consolidation) Act 1908 or the prior Companies Acts, as the case may be.

(6) The memorandum and articles of an existing guarantee company, having a share capital shall—

(a) save to the extent that they are inconsistent with a mandatory provision; and

(b) in the case of the memorandum, subject to *section [980982](6)*,

continue in force but may be altered or added to under and in accordance with the conditions under which memorandums or articles, whenever registered, are permitted by this Act to be altered or added to.

(7) References in the provisions of a memorandum or articles so continued in force to any provision of the prior Companies Acts shall be read as references to the corresponding provision of this Act.

(8) To the extent that an existing guarantee company, having a share capital was, immediately before the commencement of this section, governed by—

(a) the regulations of Table D in the First Schedule to the Act of 1963; or

(b) the regulations of any Table referred to in section 3(9)(b), (c) or (d) of the Act of 1963,

it shall, after that commencement, continue to be governed by those regulations but—

- (i) this is save to the extent that those regulations are inconsistent with a mandatory provision;
- (ii) those regulations may be altered or added to under and in accordance with the conditions under which articles, whenever registered, are permitted by this Act to be altered or added to; and
- (iii) references in the regulations to any provision of the prior Companies Acts shall be read as references to the corresponding provision of this Act.]¹¹

[Transitional provision — use of “limited” or “teoranta” by existing guarantee company, having a share capital

[980982]. (1) In this section—

“existing guarantee company, having a share capital” has the same meaning as it has in *section [979981]*;

“new provisions” means the provisions of this Part (and the relevant provisions of *Part 2* as applied by this Part) relating to the use of either of the required sets of words (or their abbreviations) set out in *subsection (2)*;

“transition period” means the period of 18 months beginning after the commencement of this section.

(2) For the purposes of this section, each of the following is a required set of words—

- (a) “designated activity company”;
- (b) “cuideachta ghníomhaíochta ainmnithe”.

(3) The reference—

- (a) in the preceding definition of “new provisions”; and
- (b) in *subsection (4)*,

to provisions relating to the use of any words includes a reference to provisions conferring an exemption from the use of those words.

(4) During—

- (a) the transition period; or
- (b) if before the expiry of that period the company has changed its name to include either of the required sets of words, the period preceding the making of that change,

the provisions of the prior Companies Acts relating to the use of limited or teoranta (or their abbreviations) shall apply as respects the name of an existing guarantee company, having a share capital in place of the new provisions.

(5) On and from—

- (a) the expiry of the transition period; or
 - (b) the company changing its name to include either of the required sets of words,
- whichever happens first, the new provisions shall apply as respects the name of an existing guarantee company, having a share capital.

¹¹ Inserted by point 112 of Committee Amendments.

(6) Without prejudice to the generality of *subsection (5)*, on the expiry of the transition period (and the company has not changed its name before then to include either of the required sets of words), the name of an existing guarantee company, having a share capital, as set out in its memorandum, shall be deemed to be altered by the replacement of—

(a) “designated activity company” for “limited” at the end thereof; or

(b) “cuideachta ghníomhaíochta ainmnithe” for “teoranta” at the end thereof,

as the case may be.

(7) Where the name, as set out in its memorandum, of an existing guarantee company, having a share capital is altered by virtue of *subsection (6)*, the Registrar shall issue to the company a fresh certificate of incorporation in respect of it, being a certificate of incorporation that is altered to meet the circumstances of the case.]¹²

Limitation on offers by DACs of securities to the public.

[[981983](#)]. *Section [68]* shall apply to a DAC as if the following subsection were substituted for *subsection (2)*:

“(2) A company shall –

(a) neither apply to have securities (or interests in them) admitted to trading or to be listed on; nor

(b) have securities (or interests in them) admitted to trading or listed on,

any market, whether a regulated market or not, in the State or elsewhere; however nothing in this subsection prohibits the admission to trading or listing (or an application being made therefor) on any market of debentures (or interests in them) for the purposes of any of *paragraphs (a) to (e) of subsection (3)*.”.

Variation of rights attached to special classes of shares.

[[982984](#)]. (1) This section shall have effect with respect to the variation of the rights attached to any class of shares in a DAC whose share capital is divided into shares of different classes, whether or not the DAC is being wound up.

(2) Where the rights are attached to a class of shares in the DAC otherwise than by the memorandum, and the articles of the DAC do not contain provision with respect to the variation of the rights, those rights may be varied if, but only if—

(a) the holders of 75 per cent, in nominal value, of the issued shares of that class, consent in writing to the variation; or

(b) a special resolution, passed at a separate general meeting of the holders of that class, sanctions the variation,

and any requirement (however it is imposed) in relation to the variation of those rights is complied with, to the extent that it is not comprised in the requirements in *paragraphs (a) and (b)*.

(3) Where —

(a) the rights are attached to a class of shares in the DAC by the memorandum or otherwise;

¹² Inserted by point 113 of Committee Amendments.

(b) the memorandum or articles contain provision for the variation of those rights; and

(c) the variation of those rights is connected with the giving, variation, revocation or renewal of an authority for the purposes of *section [69](1)* or with a reduction of the company's company capital by either of the means referred to in *section [84]*,

those rights shall not be varied unless—

(i) the requirement in *subsection (2)(a)* or *(b)* is satisfied; and

(ii) any requirement of the memorandum or articles in relation to the variation of rights of that class is complied with to the extent that it is not comprised in the requirement in *subsection (2)(a)* or *(b)*.

(4) Where the rights are attached to a class of shares in the DAC by the memorandum or otherwise and—

(a) where they are so attached by the memorandum, the articles contain provision with respect to their variation which had been included in the articles at the time of the DAC's original incorporation; or

(b) where they are so attached otherwise, the articles contain such provision (whenever first so included),

and in either case the variation is not connected as mentioned in *subsection (3)(c)*, those rights may only be varied in accordance with that provision of the articles.

(5) Where the rights are attached to a class of shares in the DAC by the memorandum and the memorandum and articles do not contain provisions with respect to the variation of the rights, those rights may be varied if all the members of the DAC agree to the variation.

(6) The provisions of *sections [180]* and *[181]* and the provisions of the DAC's articles relating to general meetings shall, so far as applicable, apply in relation to any meeting of shareholders required by this section or otherwise to take place in connection with the variation of the rights attached to a class of shares and shall so apply with the necessary modifications and subject to the following provisions, namely—

(a) the necessary quorum at any such meeting, other than an adjourned meeting, shall be 2 persons holding or representing by proxy at least one-third in nominal value of the issued shares of the class in question and at an adjourned meeting one person holding shares of the class in question or his or her proxy;

(b) any holder of shares of the class in question present in person or by proxy may demand a poll.

(7) Any amendment of a provision contained in the articles of a DAC for the variation of the rights attached to a class of shares or the insertion of any such provision into the DAC's articles shall itself be treated as a variation of those rights.

(8) *Section [89]* shall apply in relation to a variation, pursuant to this section, of rights attached to any class of shares as it applies in relation to a variation, pursuant to *section [88]*, of such rights.

(9) References to the variation of the rights attached to a class of shares in –

(a) this section; and

(b) except where the context otherwise requires, in any provision for the variation of the rights attached to a class of shares contained in the DAC's memorandum or articles,

shall include references to their abrogation.

(10) Nothing in *subsections (2)* to *(5)* shall be read as derogating from the powers of the court under *section [1287]* or any of the

following sections, that is to say, *sections* [212],[453,]¹³ [455], [974976] and [975977].

Application of section [114] in relation to DACs.

[983985]. In its application to this Part, *section* [114] shall apply as if each reference in it to the acquisition and holding of shares in a company included, in a case where the holding company is a DAC limited by guarantee, a reference to becoming, and being, a member of the company otherwise than by means of acquiring and holding shares.

Uncertificated transfer of securities.

[984986]. [Sections [10854087] to [10874089] shall apply to securities of a DAC as they apply]¹⁴ to securities of a PLC.

Chapter 4

Corporate governance

Directors.

[985987]. [(1)] A DAC shall have at least 2 directors.

[(2) Nothing in *Parts 1 to 14* that makes provision in the case of a company having a sole director shall apply to a DAC.]¹⁵

Limitation on number of directorships.

[986988]. For the purposes of this Part *section* [142] shall apply as if the following subsection were substituted for *subsection (1)* :

“(1) A person shall not, at a particular time, be a director of more than –

(a) 25 designated activity companies; or

(b) 25 companies, one, or more than one, of which is a designated activity company and one, or more than one, of

which is any other type of company capable of being wound up under this Act.”.

Membership of DAC limited by guarantee confined to shareholders.

[987989]. For the avoidance of doubt, no person, other than a subscriber to its memorandum or a person who is subsequently allotted a share in it and entered on its register of members, may be a member of a DAC limited by guarantee.

~~[DAC may not dispense with holding of a.g.m.~~

~~[990]. *Section* [175](3) and (4) (which relate to dispensing with the holding of an annual general meeting) shall not apply to a DAC.~~

DAC, with 2 or more members, may not dispense with holding of a.g.m.

988. *Section* 175(3) and (4) (which relate to dispensing with the holding of an annual general meeting) shall not apply to a DAC if it has more than one member.]¹⁶

¹³ Inserted by point 136 of Seanad Committee Amendments.

¹⁴ Substituted by point 198 of Report Amendments.

¹⁵ Inserted by point 137 of Seanad Committee Amendments.

Application of section [193] in relation to a DAC.

[989991]. Section [193] shall apply to a DAC as if, in subsection (1), after “Notwithstanding any provision to the contrary in this [Act]¹⁷”, there were inserted “and unless the constitution provides otherwise”.

Application of section [194] in relation to a DAC.

[990992]. Section [194] shall apply to a DAC as if after “Notwithstanding any provision to the contrary in this [Act]¹⁸”, in each place where it occurs in subsections (1) and (4), there were inserted “and unless the constitution provides otherwise,”.

Chapter 5

Financial statements, annual return and audit

Non-application of Part 6 to DACs that are credit institutions or insurance undertakings.

[991993]. Part 6 shall not apply to a DAC that is a credit institution or an insurance undertaking -

- (a) to the extent provided by regulations made under section 3 of the European Communities Act 1972 to give effect to Community acts on accounts of credit institutions and insurance undertakings, respectively; or
- (b) to the extent provided by any other enactment.

Requirement for corporate governance statement and modification of certain provisions of Parts 5 and 6 as they apply to DACs.

[992994]. Chapter 3 of Part 23 has effect in relation to, amongst other companies, a DAC that has debentures admitted to trading on a regulated market in an EEA state.

[Modification of definition of “IAS Regulation” in the case of DACs

[993995]. Section [4471116] (modification of definition of “IAS Regulation”) shall apply in the case of a DAC as it applies in the case of PLC.]¹⁹

Application of [section]²⁰[297] and [section]²¹[362] to a DAC.

[994996]. (1) Section [297] shall apply to a DAC as if the following paragraph were substituted for paragraph (a) of subsection (8):

“(a) any debentures or other debt securities of the company or any shares, debentures or other debt securities of a subsidiary

¹⁶ [Substituted by point 113 of Seanad Report Amendments.](#)

¹⁷ Substituted by point 138 of Seanad Committee Amendments.

¹⁸ Substituted by point 139 of Seanad Committee Amendments.

¹⁹ Inserted by point 140 of Seanad Committee Amendments.

²⁰ Correction of typographical error from Bill as initiated.

undertaking have been admitted to trading on a regulated market in an EEA state; or”.

[2] *Section 350(11)(b)* shall apply to a DAC as if the words “(in so far as applicable to a private company limited by shares” were omitted.]²²

[3] *Section [362]* shall apply to a DAC as if the words “(in so far as applicable to a private company limited by shares)”, in each place where they occur, were omitted and the cases specified in that section in which the audit exemption, [\[as referred to section 358\]\(1\) or \(2\)](#) [as referred to in section 358 or 359](#)²³, as the case may be, is not available to a company, or a holding company and its subsidiary undertakings, included a case in which the company or holding company, as appropriate, is a credit institution or an insurance undertaking.

Disclosures by DAC that is a [credit institution]²⁴.

[\[995997\]](#). In addition to its having effect in relation to a public limited company, *section [~~112~~1120]* shall have effect in relation to a DAC.

Exemption from filing with Registrar financial statements, etc.

[\[996998\]](#). [(1) *Sections [347]* and *[348]* shall not apply to a DAC if it satisfies the following conditions:

- (a) it has been formed for charitable purposes; and
- (b) it stands exempted from those sections by an order made by the relevant authority

(which order the relevant authority is, by virtue of this section, empowered to make),

and the exemption provided by that order may, as the relevant authority considers appropriate, be either for an indefinite or a limited period.]²⁵

(2) The following provisions have effect in relation to a DAC referred to in *subsection (1)* –

- (a) unless the DAC is entitled to and has availed itself of the audit exemption conferred by *Chapter 15 or 16 of Part 6*, the statutory auditors of the DAC shall prepare a separate report to the directors which –
 - (i) confirms that they audited the relevant statutory financial statements for the relevant financial year; and
 - (ii) includes within it the report made to the members of the DAC pursuant to *section [391]*;

and

- (b) a copy of the report prepared under *paragraph (a)* shall be annexed to the annual return delivered by the DAC to the Registrar.

(3) The reference in *subsection (2)* to a copy of the report prepared under *paragraph (a)* of it is a reference to a copy that satisfies the following conditions –

²¹ Correction of typographical error from Bill as initiated.

²² Inserted by point 141 of Seanad Committee Amendments.

²³ [Substituted by point 114 of Seanad Report amendments](#)

²⁴ Amendment consequential to Report Amendments.

²⁵ Substituted by point 114 of Committee Amendments.

- (a) it is a true copy of the original save for the difference that the signature or signatures on the original[, and any date or dates thereon, shall appear in typeset form]²⁶ on the copy; and
- (b) it is accompanied by a certificate of a director and the secretary of the company, that bears the signature of the director and the secretary in electronic or written form, stating that the copy is a true copy of the original (and the foregoing statement need not be qualified on account of the difference permitted by *paragraph (a)* as to the form of a signature[or of a date]²⁷).

(4) In *subsection (5)* –

“electronic means” means those provided for under the Electronic Commerce Act 2000 and effected in compliance with any requirements of the Registrar of the kind referred to in sections 12(2)(b) and 13(2)(a) of that Act;

“required documents” means the copy of the report referred to in *paragraph (a)* of *subsection (3)*, accompanied by the certificate referred to in *paragraph (b)* of that subsection;

“required period” means the period referred to in *section [343](2)* or *(3)*, as the case may be, or, where that period stands extended in accordance with *section [343](5)* and *(6)*, that period as it stands so extended.

(5) Where a DAC makes its annual return by electronic means to the Registrar within the required period then, notwithstanding that the required documents have not been annexed to the annual return, the annual return shall be deemed to have been delivered to the Registrar within the required period with the foregoing documents annexed to it if those documents are delivered to the Registrar within 28 days after the date on which the annual return has been delivered to the Registrar by electronic means.

[(6) In this section “relevant authority” means—

- (a) before the establishment day (within the meaning of the Charities Act 2009, the Commissioners of Charitable Donations and Bequests for Ireland); and
- (b) on or after the foregoing day, the Charities Regulatory Authority.]²⁸

Chapter 6

Liability of contributories in winding up

Liability as contributories of past and present members and provision concerning winding up after certain re-registration.

[997999]. (1) Subject to *subsection (2)*, in the event of a DAC being wound up, every present and past member shall be liable

²⁶ Substituted by point 199 of Report Amendments.

²⁷ Inserted by point 200 of Report Amendments.

²⁸ Inserted by point 115 of Committee Amendments.

to contribute to the assets of the DAC to an amount sufficient for payment of its debts and liabilities, and the costs, charges and expenses of the winding up, and for the adjustment of the rights of the contributories among themselves.

(2) The following qualifications apply in relation to *subsection (1)*:

(a) in the case of a DAC limited by shares, no contribution shall be required from any member exceeding the amount, if any, unpaid on the shares in respect of which he or she is liable as a present or past member;

(b) in case of a DAC limited by guarantee, no contribution shall, subject to *subsection (3)*, be required from any member exceeding the amount undertaken to be contributed by him or her to the assets of the DAC in the event of its being wound up;

(c) a past member shall not be liable to contribute if he or she has ceased to be a member for one year or more before the commencement of the winding up;

(d) a past member shall not be liable to contribute in respect of any debt or liability of the DAC contracted after he or she ceased to be a member;

(e) a past member shall not be liable to contribute unless it appears to the court that the existing members are unable to satisfy the contributions required to be made by them in pursuance of this Act;

(f) nothing in this Act shall invalidate any provision contained in any policy of insurance or other contract whereby the liability of individual members on the policy or contract is restricted, or whereby the funds of the DAC are alone made liable in respect of the policy or contract;

(g) a sum due to any member of the DAC, in his or her character of a member, by way of dividends, profits or otherwise, shall not be deemed to be a debt of the company, payable to that member in a case of competition between himself or herself and any other creditor not a member of the DAC, but any such sum may be taken into account for the purpose of the final adjustment of the rights of the contributories among themselves.

(3) In a winding up of a DAC limited by guarantee, every member of the DAC shall be liable, in addition to the amount undertaken to be contributed by him or her to the assets of the DAC in the event of its being wound up, to contribute to the extent of any sums unpaid on any shares held by him or her.

(4) Without prejudice to the application of that section to a DAC, and [its]²⁹adaptation generally, by *section [966964]* of *section [665]* (winding up of company that had been an unlimited company before re-registration), *paragraph (c) of section [665]* shall apply as if the reference in it to *section [655](2)(a)* were -

(a) in the case of a DAC limited by shares, a reference to *subsection (2)(a)* of this section;

(b) in the case of a DAC limited by guarantee, a reference to *subsections (2)(a) and (3)* of this section.

²⁹ Correction of typographical error from Bill as initiated

Chapter 7

Examinerships

Petitions for examinerships.

[9981000]. *Section [510]* shall apply to a DAC as if the following subsections were substituted for *subsections (2) and (3)*:

“(2) Where the company referred to in *section [509]* is an insurer or the holding company of an insurer, a petition may be presented only by the Central Bank, and *subsection (1)* shall not apply to the company.

(3) Where the company referred to in *section [509]* is –

- (a) a [credit institution]³⁰ or the holding company of a [credit institution]³¹;
- (b) a company which one or more trustee savings banks have been reorganised into pursuant to an order under section 57 of the Trustee Savings Banks Act 1989; or
- (c) a company which a building society has converted itself into under Part XI of the Building Societies Act 1989,

a petition may be presented only by the Central Bank, and *subsection (1)* shall not apply to the company.”.

Chapter 8

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

Application of Chapters 1, 2 and 4 of Part 23 to DACs.

[9991001]. *Chapters 1, 2 and 4 of Part 23*, so far as they are applicable to companies other than public limited companies, shall apply to a DAC.

³⁰ Substituted by point 201 of Report Amendments.

³¹ Substituted by point 202 of Report Amendments.