
COMPANIES BILL 2012

Unofficial version

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PART 23

PUBLIC OFFERS OF SECURITIES, FINANCIAL REPORTING BY TRADED COMPANIES, PREVENTION OF MARKET ABUSE, ETC.

Chapter 1

Public offers of securities

Interpretation (*Chapter 1*).

[1348]. (1) In this Chapter —

“2003 Prospectus Directive” means Directive 2003/71/ EC of the European Parliament and of the Council of 4 November 2003, including that Directive as it stands amended for the time being;

“body corporate” includes a company;

“EU prospectus law” means—

- (a) the measures adopted for the time being by a Member State (including the State) or an EEA state, to implement the 2003 Prospectus Directive;
- (b) any measures directly applicable in consequence of the 2003 Prospectus Directive and, without prejudice to the generality of this paragraph, includes the Prospectus Regulation; and
- (c) any supplementary and consequential measures adopted for the time being by a Member State (including the State) or an EEA state in respect of the Prospectus Regulation;

“expert”, save where a different construction in respect of that expression applies for the purposes of this Chapter by virtue of Irish prospectus law, includes engineer, valuer, accountant and any other individual or body (whether incorporated or unincorporated) the profession of whom, or the profession of members, officers or employees of which, gives authority to a statement made by the individual or body;

“Irish prospectus law” means—

- (a) the measures adopted for the time being by the State to implement the 2003 Prospectus Directive (whether an Act of the Oireachtas, regulations under section 3 of the European Communities Act 1972, regulations under *section [1354]* or any other enactment (other than, save where the context otherwise admits, this Chapter);
- (b) any measures directly applicable in the State in consequence of the 2003 Prospectus Directive and, without prejudice to the generality of this paragraph, includes the Prospectus Regulation; and
- (c) any supplementary and consequential measures adopted for the time being by the State in respect of the Prospectus Regulation;

“issuer” means a body corporate or other legal entity which issues or proposes to issue securities;

“local offer” means an offer of securities to the public in the State where—

- (a) the offer expressly limits the amount of the total consideration for the offer to less than [€5,000,000]¹⁹⁶ (and the means by which that limit shall be calculated, in particular in the case of a series of such offers of securities, shall be the same as that provided for by regulations under *section [1354]* in relation to analogous limits specified by those regulations for any purpose);
- (b) the securities are other than those referred to in any of paragraphs (a) to (g) or paragraph (i) or (j) of Article 1(2) of the 2003 Prospectus Directive; and
- (c) the offer is not of a kind described in Article 3(2) of the 2003 Prospectus Directive;

“Minister” means the Minister for Finance;

“offer of securities to the public” has the same meaning as it has in Irish prospectus law;

“offering document” means a document prepared for a local offer which document, if prepared in connection with an offer to which the 2003 Prospectus Directive applies, would be a prospectus;

“offeror” means a body corporate or other legal entity or an individual which or who offers securities to the public;

“promoter” means, subject to *subsection (5)*, a promoter who was a party to the preparation of a prospectus, or of the portion thereof containing an untrue statement;

“prospectus” means a document or documents in such form and containing such information as may be required by or under this Chapter or EU prospectus law, howsoever the document or documents are constituted, but does not include any advertisements in newspapers or journals derived from the foregoing;

“Prospectus Regulation” means Commission Regulation (EC) No. 809/2004 of 29 April 2004, implementing Directive 2003/71/EC of the European Parliament and of the Council as regards information contained in prospectuses as well as the format, incorporation by reference and publication of such prospectuses and dissemination of advertisements;

“securities” has the same meaning as it has in Irish prospectus law, and includes shares and debentures of a company.

(2) A word or expression that is used in this Chapter and is also used in the 2003 Prospectus Directive shall have in this Chapter the same meaning as it has in that Directive, unless—

- (a) the contrary intention appears; or
- (b) Irish prospectus law provides otherwise.

(3) For the purposes of this Chapter—

- (a) a statement included in a prospectus shall be deemed to be untrue if it is misleading in the form and context in which it is included; and
- (b) a statement shall be deemed to be included in a prospectus if it is contained therein or in any report or memorandum appearing on the face thereof or by reference incorporated therein.

¹⁹⁶ Substituted by point 172 of Seanad Committee Amendments.

(4) Without limiting the meaning of that expression in any other context in which it is used in this Chapter, “statement” in *section [1352](2)* (other than *paragraph (b)* thereof) and any other section of this Chapter that makes provision in respect of an expert, includes a report and a valuation.

(5) Nothing in this Chapter shall limit or diminish any liability which any person may incur under the general law.

(6) For the purposes of *sections [1349]* and *[1351]*, the following persons shall be deemed not to be a promoter or a person who has authorised the issue of the prospectus—

- (a) a professional adviser to any person referred to in *section [1349]* acting as such;
- (b) an underwriter or professional adviser to an underwriter acting as such.

(7) The person referred to as the “purchaser” in the following case shall be deemed to be an underwriter for the purposes of *subsection (6)(b)*.

(8) That case is one in which—

- (a) a person (the “offeror”) intends to make an offer of securities to the public; and
- (b) another person (the “purchaser”)—
 - (i) agrees to purchase those securities with the intention of their immediate resale, to give effect to that intention of the offeror, at a profit or subject to payment by the offeror to the purchaser of a commission; and
 - (ii) binds himself or herself to purchase, or procure the purchase of, any of the securities not so resold.

Civil liability for misstatements in prospectus.

[1349]. (1) Subject to *sections [1350]* and *[1351]*, the following persons shall be liable to pay compensation to all persons who acquire any securities on the faith of a prospectus for the loss or damage they may have sustained by reason of —

- (a) any untrue statement included therein; or
- (b) any omission of information required by EU prospectus law to be contained in the prospectus,

namely —

- (i) the issuer who has issued the prospectus or on whose behalf the prospectus has been issued;
- (ii) the offeror of securities to which the prospectus relates;
- (iii) every person who has sought the admission of the securities to which the prospectus relates to trading on a regulated market;
- (iv) the guarantor of the issue of securities to which the prospectus relates;
- (v) every person who is a director of the issuer at the time of the issue of the prospectus;
- (vi) every person who has authorised himself or herself to be named and is named in the prospectus as a director of the issuer or as having agreed to become such a director either immediately or after an interval of time;

(vii) every person being a promoter of the issuer;

(viii) every person who has authorised the issue of the prospectus (not being the competent authority designated under Irish prospectus law).

(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 [1353]* to the inclusion in a prospectus of a statement purporting to be made by him or her shall, subject to *sections [1350]* and *[1351]*, 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.

Exceptions and exemptions.

[1350]. (1) A person shall not be liable under *section [1349]* solely on the basis of a summary of a prospectus, including any translation thereof, unless it is misleading, inaccurate or inconsistent when read together with other parts of the prospectus.

(2) Subject to *subsection (4)*, a person shall not be liable under *section [1349]* if he or she proves—

(a) that, having consented to become a director of the issuer, he or she withdrew, in writing, his or her consent before the issue of the prospectus, and that it was issued without his or her authority or consent; or

(b) that the prospectus was issued without his or her knowledge or consent and that, on becoming aware of its issue, he or she forthwith gave reasonable public notice that it was issued without his or her knowledge or consent; or

(c) that after the issue of the prospectus and before the acquisition of securities thereunder by the person referred to in *section [1349]*, he or she, on becoming aware of any untrue statement therein or omission of material information required by EU prospectus law to be contained therein, withdrew, in writing, his or her consent thereto and gave reasonable public notice of the withdrawal and of the reason therefor; or

(d) that—

(i) as regards—

(I) every untrue statement not purporting to be made on the authority of an expert or of a public official document or statement;

(II) the omission from the prospectus of any information required by EU prospectus law to be contained therein,

he or she had reasonable grounds to believe, and did up to the time of the issue of the securities believe, that the statement was true or that the matter whose omission caused loss was properly omitted; and

(ii) as regards every untrue statement purporting to be a statement by an expert or contained in what purports to be a copy of or extract from a report or valuation of an expert, it fairly represented the statement, or was a correct and fair copy of or extract from the report or valuation, and he or she had reasonable grounds to believe and did up to the time of the issue of the prospectus believe that the person making the statement

was competent to make it and, where required by *section [1353]*, that that person had given his or her consent to the inclusion of the statement in the prospectus and had not withdrawn, in writing, that consent before the publication of the prospectus or, to the defendant's knowledge, before issue of securities thereunder; and

(iii) as regards every untrue statement purporting to be a statement made by an official person or contained in what purports to be a copy of or extract from a public official document, it was a correct and fair representation of the statement or copy of or extract from the document.

(3) In *subsections (4) and (5)* "by reason of the relevant consent", in relation to an expert, means by reason of his or her having given the consent required of him or her by *section [1353]* to the inclusion in the prospectus of the statement concerned.

(4) *Subsection (2)* shall not apply in the case of an expert, by reason of the relevant consent, in respect of an untrue statement purporting to be made by him or her as an expert.

(5) An expert who, apart from this subsection, would be liable under *section [1349]*, by reason of the relevant consent, in respect of an untrue statement purporting to be made by him or her as an expert shall not be so liable if he or she proves—

- (a) that having given his or her consent to the inclusion in the prospectus of the statement, he or she withdrew it in writing before publication of the prospectus; or
- (b) that, after publication of the prospectus and before the acquisition of securities thereunder by the person referred to in *section [1349]*, on becoming aware of the untrue statement, withdrew his or her consent in writing and gave reasonable public notice of the withdrawal and of the reason therefor; or
- (c) that he or she was competent to make the statement and that he or she had reasonable grounds to believe and did up to the time of such acquisition of the securities believe that the statement was true.

Restriction of liability where non-equity securities solely involved.

[1351]. 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 [1349]* 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 [1357]* in respect of the issue of that prospectus;

- (b) neither *section [223](1)* nor *[226](1)* shall apply to the directors or secretary of the issuer to the extent that such application would thereby impose a liability under *section [1359]* on such directors or secretary; and
- (c) no liability shall attach under *section [1349]* 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.

Indemnification of certain persons.

[1352]. (1) This section applies where—

- (a) a prospectus contains the name of a person as a director of the issuer, or as having agreed to become a director thereof, and the person has not consented to become a director, or has withdrawn, in writing, his or her consent before the issue of the prospectus, and has not authorised or consented to the issue thereof; or
- (b) the consent of an expert is required by *section [1353]* to the inclusion in a prospectus of a statement purporting to be made by the expert and he or she either has not given that consent or has withdrawn, in writing, that consent before the issue of the prospectus.

(2) The directors of the issuer, except any without whose knowledge or consent the prospectus was issued, and any other person who authorised the issue thereof shall be liable to indemnify the person named as mentioned in *subsection (1)* or, as the case may be, whose consent was required as so mentioned against each of the following –

- (a) all damages, costs and expenses to which the person may be made liable by reason of the person's name having been inserted in the prospectus or of the inclusion therein of a statement purporting to be made by the person as an expert, as the case may be;
- (b) all costs and expenses in defending himself or herself against any action or legal proceeding brought against him or her in respect thereof.

Expert's consent to issue of prospectus containing statement by him or her.

[1353]. (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 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 has 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 a category 3 offence.

Regulations (Chapter 1).

[1354]. (1) The Minister may make regulations for the purposes of—

- (a) giving effect to the 2003 Prospectus Directive; and
- (b) supplementing and making consequential provision in respect of the Prospectus Regulation.

(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 revoking instruments made under other enactments.

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

Saver for existing Prospectus Regulations.

[1355]. (1) Regulations made under section 46 of the Investment Funds, Companies and Miscellaneous Provisions Act 2005 and in force immediately before the commencement of this section shall continue in force as if they were regulations made under *section [1354]* and may be amended or revoked accordingly.

(2) Without prejudice to *Schedule 6* or to the generality of section 26(2)(f) of the Interpretation Act 2005, the reference in Regulation 107(4) of the Prospectus (Directive 2003/71/EC) Regulations 2005 (S.I. No. 324 of 2005) to section 47 of the Investment Funds, Companies and Miscellaneous Provisions Act 2005 shall, after the commencement of this section, be read as a reference to *section [1356]*.

(3) The adaptation of reference effected by *subsection (2)* does not affect the operation of section 27 of the Interpretation Act 2005 as it concerns a prosecution initiated before or after the repeal by this Act of section 47 of the Investment Funds, Companies and Miscellaneous Provisions Act 2005 in respect of an offence referred to [in]¹⁹⁷ that section 47 committed before that repeal.

Penalties on conviction on indictment and defences in respect of certain offences.

[1356]. (1) A person who is guilty of an offence created by Irish prospectus 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.

¹⁹⁷ Inserted by point 148 of Committee Amendments.

(2) In any proceedings against a person in respect of an offence created by Irish prospectus law, it shall be a defence to prove—

- (a) as regards any matter not disclosed in the prospectus concerned, that the person did not know it; or
- (b) the contravention arose from an honest mistake of fact on the person's part; or
- (c) the contravention was in respect of matters which, having regard to the circumstances of the case, was immaterial or as respects which, having regard to those circumstances, the person ought otherwise reasonably to be excused.

Untrue statements and omissions in prospectus: criminal liability.

[1357]. (1) Where a prospectus is issued and—

- (a) includes any untrue statement; or
- (b) omits any information required by EU prospectus law to be contained in it,

any person who authorised the issue of the prospectus (not being the competent authority designated under Irish prospectus law) shall be guilty of a category 2 offence unless he or she proves—

- (i) as regards an untrue statement, either that the statement was, having regard to the circumstances of the case, immaterial or that he or she honestly believed and did, up to the time of the issue of the prospectus, believe that the statement was true; or
- (ii) as regards any information omitted, either that the omission was, having regard to the circumstances of the case, immaterial or that he or she did not know it; or
- (iii) that the making of the statement or omission was otherwise such as, having regard to the circumstances of the case, ought reasonably to be excused.

(2) Without prejudice to the generality of *section [865](1)*, summary proceedings in relation to an offence under this section may be brought and prosecuted by the competent authority designated under Irish prospectus law.

(3) If at a trial for an offence under this section or an offence created by Irish prospectus law, the judge or jury has to consider whether the defendant honestly believed a particular thing or was honestly mistaken in relation to a particular thing, the presence or absence of reasonable grounds for such a belief or for his or her having been so mistaken is a matter to which the judge or jury is to have regard, in conjunction with any other relevant matters, in considering whether the defendant so believed or was so mistaken.

Requirements about minimum subscriptions, matters to be stated in offer documentation in that regard, etc.

[1358]. (1) No allotment shall be made of any share capital of a PLC offered for subscription unless—

- (a) that capital is subscribed for in full; or
- (b) the offer states that, even if the capital is not subscribed for in full, the amount of that capital subscribed for may be allotted in any event or in the event of the conditions specified in the offer being satisfied,

and, where conditions are so specified, no allotment of the capital shall be made by virtue of *paragraph (b)* unless those conditions are

satisfied.

(2) Without prejudice to the generality of *subsection (1)*, where a prospectus states –

- (a) the minimum amount which, in the opinion of the directors, must be raised from an issue of shares; and
- (b) that no allotment shall be made of any of those shares unless that minimum amount has been subscribed and the sum payable on application for the amount so stated has been paid up,

then no such allotment shall be made unless that minimum amount has been subscribed and the foregoing sum so payable has been paid up.

(3) The amount stated in the prospectus as mentioned in *subsection (2)* shall be reckoned exclusively of any amount payable otherwise than in cash.

(4) Any condition requiring or binding any applicant for shares to waive compliance with any requirement of *subsections (1) to (3)* or *section [1359]* as it applies to those subsections shall be void.

(5) *Subsections (2) and (3)* and, so far as it relates to those subsections, *subsection (4)* shall not apply to any allotment of shares subsequent to the first allotment of shares offered to the public for subscription.

Supplemental provisions in relation to *section [1358]*.

[1359]. (1) *Subsection (2)* applies where either –

- (a) shares have been allotted in contravention of *section [1358](1)*; or
- (b) the conditions referred to in *section [1358](2)* have not been satisfied on the expiration of 40 days after the date of first issue of the prospectus concerned.

(2) Where this subsection applies –

- (a) all money received from applicants for shares shall be repaid forthwith after –
 - (i) in a case falling within *subsection (1)(a)*, the contravention referred to in that provision; or
 - (ii) in a case falling within *subsection (1)(b)*, the expiration of the period of 40 days referred to in that provision, to the applicants without interest;
- (b) if any such money is not so repaid after that contravention or, in a case falling within *subsection (1)(b)*, the expiration of 48 days after the date of first issue of the prospectus concerned, the directors of the PLC shall, subject to *subsection (3)*, be jointly and severally liable to repay that money with interest at the appropriate rate from that contravention or, as the case may be, the expiration of the 48th day.

(3) A director shall not be liable as mentioned in *subsection (2)(b)* if he or she proves that the default in the repayment of the money

was not due to any misconduct or negligence on his or her part.

(4) *Section [1358](1)* shall apply in the case of shares offered as wholly or partly payable otherwise than in cash as it applies in the case of shares offered for subscription and –

(a) in *section [1358](1)* the word “subscribed” shall be read accordingly; and

(b) *section [1358](4)* and *subsections (1) to (3)* of this section shall accordingly apply in the first-mentioned case as they apply in the second-mentioned case, but with the following modifications.

(5) Those modifications are that references in *subsections (2) and (3)* to the repayment of money received from applicants for shares shall be read as including references to the return of any other consideration so received (including, if the case so requires, the release of the applicant from any undertaking) or, if it is not reasonably practicable to return the consideration, the payment of money equal to the value of the consideration at the time it was so received, and references to interest shall have effect accordingly.

Further supplemental provisions in relation to *section [1358]*: effect of irregular allotment.

[1360]. (1) An allotment made by a PLC to an applicant in contravention of *section [1358](1) or (2)* shall be voidable at the instance of the applicant within 30 days after the date of the allotment and not later, and shall be so voidable notwithstanding that the PLC is in the course of being wound up.

(2) Where an allotment is avoided under this section, the PLC shall, within 30 days after the date of avoidance, deliver to the Registrar a notice to that effect and *subsection ([10]) of section [~~1021+023~~]* shall apply in relation to this subsection as it applies in relation to *subsection ([9])* of that section.

(3) If any director of a PLC knowingly contravenes, or permits or authorises the contravention of, any of the provisions of *section [1358]* with respect to allotment, he or she shall be liable to compensate the PLC and the allottee, respectively, for any loss, damage, costs or expenses which the PLC or allottee has sustained or incurred by reason of the contravention.

(4) No proceedings to recover any such loss, damage, costs or expenses shall be commenced after the expiration of 2 years after the date of the delivery to the Registrar of the return of allotments in question.

[...] ¹⁹⁸

Local offers.

[1361]. (1) An offering document prepared for a local offer shall contain the following statements in print in clearly legible type -

¹⁹⁸ Deleted by point 148 of Committee Amendments.

(a) on the front page or otherwise in a prominent position:

“This document,

—has not been prepared in accordance with Directive 2003/71/EC on prospectuses or any measures made under that Directive or the laws of Ireland or of any EU Member State or EEA treaty adherent state that implement that Directive or those measures,

—has not been reviewed, prior to its being issued, by any regulatory authority in Ireland or in any other EU Member State or EEA treaty adherent state, and therefore may not contain all the information required where a document is prepared pursuant to that Directive or those laws.”;

(b) elsewhere in the offering document:

(i) where the offering document contains information on past performance:

“*Past performance may not be a reliable guide to future performance.*”;

(ii) where the offering document contains information on simulated performance:

“*Simulated performance may not be a reliable guide to future performance.*”;

(iii) “*Investments may fall as well as rise in value.*”;

(iv) where securities are described as being likely to yield income or as being suitable for an investor particularly seeking income from his or her investment, and where the income from the securities can fluctuate:

“*Income may fluctuate in accordance with market conditions and taxation arrangements.*”;

(v) where the primary market for the securities or the currency of the underlying business is in a currency other than euro:

“*Changes in exchange rates may have an adverse effect on the value, price or income of the securities.*”;

(vi) where the securities do not constitute a readily realisable investment:

“*It may be difficult for investors to sell or realise the securities and/or obtain reliable information about their value or the extent of the risks to which they are exposed.*”.

(2) Any requirement of *subsection (1)* as to the inclusion of a particular statement in an offering document shall be regarded as satisfied if words substantially to the effect of that statement are instead included in that document.

(3) If an offeror fails to comply with *subsection (1)* the offeror shall be guilty of a category 3 offence.

(4) No offering document prepared for a local offer shall be issued by or on behalf of a PLC or in relation to an intended PLC unless, on or before the date of its publication, a copy of the offering document has been delivered to the Registrar.

Exclusion of Investment Intermediaries Act 1995.

[1362]. (1) Any document issued in connection with an offer of securities by or on behalf of an issuer, offeror or person seeking admission of securities to trading on a regulated market shall not be regarded as constituting an investment advertisement within the

meaning of section 23 of the Investment Intermediaries Act 1995.

(2) In *subsection (1)* “document” includes, in the case of a local offer, an offering document.

Power to make certain rules and issue guidelines.

[1363]. (1) In this section “competent authority” means the competent authority designated under Irish prospectus law.

(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 Irish prospectus law, being requirements—

- (a) to do or not to do specified things so as to secure that the provisions of Irish prospectus 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 Irish prospectus 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 Irish prospectus law.

(3) Rules under this section may include rules providing for the manner in which or the matters by reference to which (or both) a determination is to be made of any issue as to whether a transaction or transactions is or are of a significant size for the purposes of the provisions of Irish prospectus law implementing Article 2(2)(a) of the 2003 Prospectus Directive.

(4) The reference in *subsection (1)* to an obligation imposed on a person by Irish prospectus law includes a reference to an obligation imposed on a person by virtue of the person’s exercising a right or option provided under Irish prospectus law.

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

(6) Rules under this section shall not contain any provision that is inconsistent with Irish prospectus 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 2003 Prospectus Directive have been adopted.

(7) The provisions of Irish prospectus 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 rules under this section as they apply in relation to a contravention

of a provision of Irish prospectus law and, accordingly, a sanction that may be imposed pursuant to the first-mentioned provisions of Irish prospectus 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 under this section.

(8) The competent authority may issue guidelines in writing as to the steps that may be taken to comply with Irish prospectus law.

(9) Rules made under section 51 of the Investment Funds, Companies and Miscellaneous Provisions Act 2005 and in force immediately before the commencement of this section shall continue in force as if they were rules made under this section and may be amended or revoked accordingly.

Certain agreements void.

[1364]. A condition—

(a) requiring or binding an applicant for securities to waive compliance with any requirement of—

(i) this Chapter; or

(ii) EU prospectus law;

or

(b) where EU prospectus law applies, purporting to affect him or her with notice of any contract, document or matter not specifically referred to in the prospectus concerned,

shall be void.

Chapter 2

Market abuse

Interpretation (Chapter 2).

[1365]. (1) In this Chapter —

“2003 Market Abuse Directive” means Directive 2003/6/EC of the European Parliament and of the Council of 28 January 2003 on insider dealing and market manipulation (market abuse), including that Directive as it stands amended for the time being;

“Irish market abuse law” means—

(a) the measures adopted for the time being by the State to implement the 2003 Market Abuse Directive and the supplemental Directives (whether an Act of the Oireachtas, regulations under section 3 of the European Communities Act 1972, regulations under *section [1366]* or any other enactment (other than, save where the context otherwise admits, this Chapter);

(b) any measures directly applicable in the State in consequence of the 2003 Market Abuse Directive and, without

prejudice to the generality of this paragraph, includes the Market Abuse Regulation; and

- (c) any supplementary and consequential measures adopted for the time being by the State in respect of the Market Abuse Regulation;

“Market Abuse Regulation” means Commission Regulation 2273/2003 of 22 December 2003;

“Minister” means the Minister for Finance;

“supplemental Directives” means—

- (a) Commission Directive No. 2003/124/EC of 22 December 2003;
- (b) Commission Directive No. 2003/125/EC of 22 December 2003; and
- (c) Commission Directive No. 2004/72/EC of 29 April 2004.

(2) A word or expression that is used in this Chapter and is also used in the 2003 Market Abuse Directive or the supplemental Directives shall have, in this Chapter, the same meaning as it has in the 2003 Market Abuse Directive or the supplemental Directives, unless—

- (a) the contrary intention appears; or
- (b) Irish market abuse law provides otherwise.

Regulations (*Chapter 2*).

[1366]. (1) The Minister may make regulations for the purposes of—

- (a) giving effect to the 2003 Market Abuse Directive and the supplemental Directives; and
- (b) supplementing and making consequential provision in respect of the Market Abuse Regulation.

(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 provisions creating offences (but the regulations may only provide penalties in respect of a summary conviction for any such offence).

(3) Regulations under this section may also—

- (a) make, for the purposes of those regulations, provision analogous to that which was made by section 3 of the Companies (Amendment) Act 1999 (repealed by section 31 of the Investment Funds, Companies and Miscellaneous Provisions Act 2005) for the purposes of the first-mentioned Act;
- (b) impose on a market operator a requirement similar to that which is imposed by Article 6(9) of the 2003 Market Abuse Directive on the person referred to in that Article 6(9).

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

Saver for existing Market Abuse Regulations.

[1367]. (1) Regulations made under section 30 of the Investment Funds, Companies and Miscellaneous Provisions Act 2005 and in force immediately before the commencement of this section shall continue in force as if they were regulations made under *section [1365]* and may be amended or revoked accordingly.

(2) Without prejudice to *Schedule 6* or to the generality of section 26(2)(f) of the Interpretation Act 2005, the reference in Regulation 49(2) of the Market Abuse (Directive 2003/6/EC) Regulations 2005 (S.I. No. 342 of 2005) to section 32 of the Investment Funds, Companies and Miscellaneous Provisions Act 2005 shall, after the commencement of this section, be read as a reference to *section [1368]*, but this is subject to *subsection (3)*.

(3) The adaptation of reference effected by *subsection (2)* does not affect the operation of section 27 of the Interpretation Act 2005 as it concerns a prosecution initiated before or after the repeal by this Act of section 32 of the Investment Funds, Companies and Miscellaneous Provisions Act 2005 in respect of an offence referred to in that section 32 committed before that repeal.

Conviction on indictment of offences under Irish market abuse law: penalties.

[1368]. A person who is guilty of an offence created by Irish market abuse 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 €10,000,000 or imprisonment for a term not exceeding 10 years or both.

Civil liability for certain breaches of Irish market abuse law.

[1369]. (1) If a person contravenes a provision of Irish market abuse law (being a provision the purpose of which is expressed by that law to be for the implementation of Article 2, 3 or 4 of the 2003 Market Abuse Directive) the person shall be liable—

- (a) to compensate any other party to the transaction concerned who was not in possession of the relevant information for any loss sustained by that party by reason of any difference between the price at which the financial instruments concerned were acquired or disposed of and the price at which they would have been likely to have been acquired or disposed of in such a transaction at the time when the first-mentioned transaction took place if that information had been generally available; and
- (b) to account to the body corporate or other legal entity which issued the financial instruments concerned for any profit accruing to the first-mentioned person from acquiring or disposing of those instruments.

(2) If a person contravenes a provision of Irish market abuse law (being a provision the purpose of which is expressed by that law to be for the implementation of Article 5 of the 2003 Market Abuse Directive) the person shall be liable—

- (a) to compensate any other party who acquired or disposed of financial instruments by reason of the contravention; and
- (b) to account to the body corporate or other legal entity which issued the financial instruments concerned for any profit accruing to the first-mentioned person from acquiring or disposing of those instruments.

(3) *Subsections (1) and (2)* are without prejudice to any other cause of action which may lie against the person for contravening the provision concerned.

(4) An action under *subsection (1) or (2)* shall not be commenced more than 2 years after the date of the contravention concerned.

Supplementary rules, etc., by competent authority.

[1370]. (1) In this section “competent authority” means the competent authority designated under Irish market abuse law.

(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 Irish market abuse law, being requirements—

- (a) to do or [not to do]¹⁹⁹ specified things so as to secure that the provisions of Irish market abuse 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 Irish market abuse 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 of or in consequence of the operation of Irish market abuse law.

(3) Rules under this section may include rules providing for the manner in which or the matters by reference to which (or both) a determination is to be made of any issue as to whether a financial interest or interests is or are significant for the purposes of the provisions of Irish market abuse law implementing Article 5(1) of Commission Directive No. 2003/125/EC of 22 December 2003.

(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 Irish market abuse 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 2003 Market Abuse Directive or the supplemental Directives have been adopted.

(6) The provisions of Irish market abuse law that are expressed by that law to be made for the purpose of enabling the imposition of

¹⁹⁹ Substituted by point 173 of Seanad Committee Amendments.

administrative sanctions shall apply in relation to a contravention of rules under this section as they apply in relation to a contravention of a provision of Irish market abuse law and accordingly, a sanction that may be imposed pursuant to the first-mentioned provisions of Irish market abuse 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 under this section.

(7) The competent authority may issue guidelines in writing as to the steps that may be taken to comply with Irish market abuse law.

(8) Rules made under section 34 of the Investment Funds, Companies and Miscellaneous Provisions Act 2005 and in force immediately before the commencement of this section shall continue in force as if they were rules made under this section and may be amended or revoked accordingly.

Application of Irish market abuse law to certain markets.

[1371]. (1) The Minister, after consultation with the competent authority designated under Irish market abuse law, may, by provisional order, provide that one or more provisions of Irish market abuse law that apply in relation to a market to which the 2003 Market Abuse Directive applies shall, with such modifications if any, as are specified in the order, apply to a market specified in the order.

(2) The Minister may, by provisional order, amend or revoke a provisional order under this section (including a provisional order under this subsection).

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

Chapter 3

Requirement for corporate governance statement and application of certain provisions of *Parts 5 and 6* where company is a traded company

Definition (Chapter 3).

[1372]. In this Chapter “traded company” means -

- (a) a public limited company;
- (b) a designated activity company;
- (c) a company limited by guarantee; or
- (d) a public unlimited company or a public unlimited company, that has no share capital,

that in the case of a public limited company has shares or debentures, or in the case of any of the other foregoing types of company has debentures, admitted to trading on a regulated market in an EEA state.

Corporate governance statement in the case of a traded company.

[1373]. (1) Subject to *subsection (3)*, there shall be included in the directors' report referred to in *section [325]* of a traded company a statement (which shall be known and is in this section referred to as a "corporate governance statement") in respect of the financial year concerned.

(2) The corporate governance statement shall be included as a specific section of the directors' report, and shall include, at least, all of the following information -

- (a) a reference to -
 - (i) the corporate governance code -
 - (I) to which the company is subject and where the relevant text is publicly available; or
 - (II) which the company has voluntarily decided to apply and where the relevant text is publicly available; and
 - (ii) all relevant information concerning corporate governance practices applied in respect of the company which are additional to any statutory requirement, and where the information on such corporate governance practices is available for inspection by the public;
- (b) where the company departs, in accordance with any statutory provision, from a corporate governance code referred to in *clause (I) or (II) of paragraph (a)(i)* -
 - (i) an explanation by the company as to which parts of the corporate governance code it departs from in accordance with the statutory provision and the extent to which it departs from such code; and
 - (ii) the reasons for such departure,

and where the company has decided not to apply any provisions of a corporate governance code referred to in *clause (I) or (II) of paragraph (a)(i)*, the company shall explain its reasons for doing so;
- (c) a description of the main features of the internal control and risk management systems of the company in relation to the financial reporting process;
- (d) the information required under Regulation 21(2)(c),(d),(f),(h) and (i) of the European Communities

(Takeover Bids (Directive 2004/25/EC)) Regulations 2006 (S.I. No. 255 of 2006), where the company is subject to those Regulations;

- (e) a description of the operation of the shareholder meeting, the key powers of the shareholder meeting, shareholders' rights and the exercise of such rights;
- (f) the composition and operation of the board of directors and the committees of the board of directors with administrative, management and supervisory functions.

(3) The information required under *subsection (2)* may be set out in a separate report published in conjunction with the [directors' report]²⁰⁰ in accordance with *subsection (4)* or *(5)*, or provided by a reference in the directors' report to where the separate report is publicly available on the website of the company, and where a separate report is provided, the corporate governance statement may contain a reference to the annual report where the information referred to in *subsection (2)(d)* is provided.

(4) Where a company prepares a corporate governance statement in the form of a separate report, such report shall be attached to every balance sheet, referred to in *section [341]*, laid before the annual general meeting of the company and shall be signed on behalf of the directors by 2 of the directors of the company.

(5) Where a company prepares a corporate governance statement in the form of a separate report, a copy of such report shall -

- (a) be published on the website of the company, and a statement that a copy of the report has been so published, together with the address of the website of the company, shall be included in the report of the directors of the company; or
- (b) be annexed to the annual return of the company.

(6) The reference in *subsection (5)(b)* to a copy of the report is a reference to a copy that satisfies the following conditions -

- (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]²⁰¹ 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]²⁰²).

²⁰⁰ Substituted by point 174 of Seanad Committee Amendments.

²⁰¹ Substituted by point 262 of Report Amendments.

²⁰² Inserted by point 263 of Report Amendments.

(7) Where a company prepares a corporate governance statement the statutory auditors of the company, when preparing the report required by *section [391]* in respect of the company, shall-

- (a) establish that the company has prepared a corporate governance statement and whether such statement contains the information required by *subsection (2)(a), (b), (e) and (f)*;
- (b) provide an opinion concerning the consistency or otherwise of the information given in the corporate governance statement under *subsection (2)(c)* relating to the financial year concerned which is consistent with the outcome of their evaluation and testing of the relevant systems for the purposes of preparing that report and the auditors shall state in the report under *section [391]* whether, in their opinion, such information is so consistent, and
- (c) provide an opinion as to whether the information given in the corporate governance statement under *subsection (2)(d)* relating to the financial year concerned is consistent.

(8) *Subsection (2)(a), (b), (e) and (f)* shall not apply to a traded company which has only issued securities, other than shares, admitted to trading on a regulated market, unless such company has issued shares which are traded in a multilateral trading facility.

(9) In *subsection (8)* “multilateral trading facility” has the meaning assigned to it by Article 4(1), point (15) of Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004.

Application of *section [225]* to a traded company.

[1374]. *Section [225]* shall apply to a traded company as if, in *subsection (1)* –

(a) the following subparagraph were substituted for *subparagraph (ii) of paragraph (a)* of the definition of “relevant obligations” –

“(ii) a serious Market Abuse offence, a serious Prospectus offence or a serious Transparency offence;”;

and

(b) the following definition were inserted after the definition of “serious Prospectus offence” :

“ ‘serious Transparency offence’ means an offence referred to in *section [1382]*;”.

Application of *sections [279]* and *[280]* to a traded company excluded.

[1375]. (1) There is excluded from the definition of “relevant holding company” in *section [279](1)* a holding company that is a traded company.

(2) No category of holding company that is a traded company may be the subject of regulations under *section [280]*.

Application of sections [290](7)(b), [293] and [362] to a traded company.

[1376]. (1) Section [290](7) shall apply to a traded company as if the following paragraph were substituted for *paragraph (b)* :

“(b) the company ceases to be a company with securities admitted to trading on a regulated market in an EEA state; or”.

(2) In a case where a traded company has, at the end of its financial year, securities of it admitted to trading on a regulated market in an EEA state *section [293]* shall apply to it as if –

(a) the following subsection were substituted for *subsection (3)* :

“(3) A company that is required to prepare group financial statements shall prepare the statements in accordance with international financial reporting standards and *section [295]*.”;

(b) the following subsection were substituted for *subsection (4)* :

“(4) Group financial statements prepared in accordance with international financial reporting standards and *section 296* shall be known, and are in this Act referred to, as ‘IFRS group financial statements’.”; and

(c) *subsections (5) to (8)* were omitted.

(3) Without prejudice to its adaptation by *sections [994996](2)* and *[12174248](2)*, *section [362]* shall apply to a designated activity company and a company limited by guarantee as if 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*²⁰³, 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 traded company.

Certain exemptions from consolidation of financial statements not available to traded company.

[1377]. (1) In a case where the lower holding company referred to in *section [299]* is a traded company the following paragraph shall be added at the end of *subsection (4)* of that section:

“(f) the lower holding company does not have any shares, debentures or other debt securities admitted to trading on a regulated market in an EEA state.”.

(2) In a case where the lower holding company referred to in *section [300]* is a traded company the following paragraph shall be added at the end of *subsection (4)* of that section:

“(g) the lower holding company does not have any shares, debentures or other debt securities admitted to trading on a regulated market in an EEA state.”.

²⁰³ [Substituted by point 150 of Seanad Report Amendments.](#)

Chapter 4

Transparency requirements regarding issuers of securities admitted to trading on certain markets

[DAC or CLG that is a traded company may not file abridged financial statements

[1378]. *Sections 350 to 356* shall not apply to a designated activity company or a company limited by guarantee that is a traded company.]²⁰⁴

Interpretation (Chapter 4).

[1379]. (1) In this Chapter—

“Minister” means the Minister for Finance;

“Transparency (Regulated Markets) Directive” means Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements 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 (whether an Act of the Oireachtas, regulations under section 3 of the European Communities Act, 1972, regulations under *section [1380]* or any other enactment (other than, save where the context otherwise admits, this Chapter));
- (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 Chapter and is also used in the Transparency (Regulated Markets) Directive shall have in this Chapter the same meaning as it has in that Directive.

²⁰⁴ Inserted by point 175 of Seanad Committee Amendments.

Power to make certain regulations (*Chapter 4*).

[1380]. (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 *Chapter 5 of Part 5* and *Chapter 4 of Part 17*.

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

Saver for existing Transparency Regulations.

[1381]. (1) Regulations made under section 20 of the Investment Funds, Companies and Miscellaneous Provisions Act 2006 and in force immediately before the commencement of this section shall continue in force as if they were regulations made under *section [1380]* and may be amended or revoked accordingly.

(2) Without prejudice to *Schedule 6* or to the generality of section 26(2)(f) of the Interpretation Act 2005, the reference in Regulation 76(6) of the Transparency (Directive 2004/109/EC) Regulations 2007 (S.I. No.277 of 2007) to section 21 of the Investment Funds, Companies and Miscellaneous Provisions Act 2006 shall, after the commencement of this section, be read as a reference to *section [1382]*.

(3) The adaptation of reference effected by *subsection (2)* does not affect the operation of section 27 of the Interpretation Act 2005 as it concerns a prosecution initiated before or after the repeal by this Act of section 21 of the Investment Funds, Companies and Miscellaneous Provisions Act 2006 in respect of an offence referred to in that section 21 committed before that repeal.

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

[1382]. 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.

Supplementary rules, etc. by competent authority.

[1383]. (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).

(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 Supervisory Authority under *section [906](3)* concerning the matters that relate to its functions under *section [905](2)(n)*,

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.

(8) Rules made under section 22 of the Investment Funds, Companies and Miscellaneous Provisions Act 2006 and in force immediately before the commencement of this section shall continue in force as if they were rules made under this section and may be amended or revoked accordingly.

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

[1384]. (1) The Minister, after consultation with the competent authority referred to in *section [1383](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.

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