
COMPANIES BILL 2012

Unofficial version

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PART 24

INVESTMENT COMPANIES

Chapter 1

Preliminary and interpretation

Interpretation (Part 24).

[1385]. (1) In this Part—

“investment company” has the meaning given to it by *section [1386]*;

“Minister” means the Minister for Finance;

“management company” means a company designated by an investment company to undertake the management of the investment company;

“property” means real or personal property of whatever kind (including securities);

“sub-fund” means a portfolio of assets and liabilities maintained by an investment company in accordance with its articles and which has been approved by the Central Bank as a separate sub-fund of the investment company;

“UCITS Regulations” means the European Communities (Undertakings for Collective Investment in Transferable Securities) Regulations 2011 (S.I. No. 352 of 2011);

“umbrella fund” means an investment company which has one or more sub-funds and which is authorised by the Central Bank pursuant to *section [1395]*.

(2) For the purposes of the application by this Part of certain provisions of the UCITS Regulations to investment companies, those provisions shall be read as one with this Part.

Definition of “investment company” and construction of references to nominal value of shares, etc.

[1386]. (1) In this Part “investment company” means a company (not being a company to which the UCITS Regulations apply) that is

—
(a) a public limited company, the sole object of which is stated in its memorandum to be the collective investment of its funds in property with the aim of spreading investment risk and giving members of the company the benefit of the results of the management of its funds; and

(b) the articles or memorandum of which provide —

(i) that the actual value of the paid up share capital of the company shall at all times be equal to the value of the

assets of any kind of the company after the deduction of its liabilities; and

(ii) subject to *subsection (2)*, that the shares of the company shall, at the request of any of the holders thereof, be purchased by the company directly or indirectly out of the company's assets.

(2) To the extent as may be approved and subject to such conditions as may be applied by the Central Bank, a company that otherwise falls within *subsection (1)* shall be regarded as an investment company within the meaning of this Part notwithstanding that the articles or memorandum of it do not provide for the matters referred to in *subsection (1)(b)(ii)*.

(3) For the purposes of *subsection (1)(b)(ii)*, action taken by an investment company to ensure that the stock exchange value of its shares does not deviate from its net asset value by more than a percentage specified in its articles (which deviation shall not be so specified as greater than 5 per cent) shall be regarded as the equivalent of purchase of its shares by the investment company.

(4) The memorandum or articles of an investment company shall be regarded as providing for the matters referred to in *paragraphs (a) and (b) of subsection (1)* notwithstanding the inclusion in the memorandum or articles with respect thereto of incidental or supplementary provisions.

(5) A reference in any provision of this Act to the nominal value of an issued or allotted share in, or of the issued or allotted share capital of, a company shall, in the case of an investment company, be read as a reference to the value of the consideration for which the share or share capital (as the case may be) has been issued or allotted.

Application of Parts 1 to 14 to investment companies.

[1387]. (1) The provisions of *Parts 1 to 14* apply to an investment company save to the extent that they are –

- (a) disappplied to public limited companies by *section [1002+004]*; or
- (b) disappplied by *subsection (3)* or modified by another provision of this Part.

(2) For the purposes of that application, ~~*section 10*~~*section 10(1)*²⁰⁵ shall have effect as if it read :

“~~Unless~~^{(1) Unless}²⁰⁶ expressly provided otherwise, a reference in *Parts 2 to 14* to a company is a reference to an investment company.”.

(3) In addition to those of them disappplied, as mentioned in *subsection (1)(a)*, the provisions of *Parts 1 to 14* specified in the Table to this section shall not apply to an investment company.

(4) The specification in the foregoing Table of a provision (a “specified provision”) of *Parts 1 to 14* also operates to disapply to an

²⁰⁵ [Substituted by point 151 of Seanad Report Amendments.](#)

investment company 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

Subject matter	Provision disapplied
Nominal value of shares	<i>Section [66](1) and (2)(a)</i>
Allotment of shares	<i>Section [69](3) and (5) to (9)</i>
Allotment of shares	<i>Section [70](1),(2),(3),(7),(8),(10) and (11)</i>
Payment of shares	<i>Section [71](2),(3) and (5)</i>
Financial assistance	<i>Section [82]</i>
Variation of company capital	<i>Section [83](3),(4) and (5)</i>
Reduction of company capital	<i>Section [84]</i>
Notice to Registrar of certain alterations in share capital	<i>Sections [92] and [93]</i>
Restriction on company acquiring its own shares	<i>Sections [102] and [103]</i>
Acquisition of own shares	<i>Sections [105] to [107] and [109] to [112]</i>
Holding by subsidiary of shares in its holding company	<i>Sections [114] to [116]</i>
Restrictions on distribution of profits and assets	<i>Sections [117] to [123]</i>
Procedure for declarations, payments, etc of dividends and other things	<i>Sections [124] and [125]</i>
Bonus issues	<i>Section [126]</i>
Access to documents during business hours	<i>Section [127]</i>
Audit committees	<i>Section [167]</i>
Inspection of registers, provision of copies of information in them, etc	<i>Sections [215] to [217]</i>
[Directors' compliance statement and related statement]	Section 225 ²⁰⁷
Holding of own shares or shares in holding company	<i>Section [320](1)</i>
Directors' report: acquisition or disposal of own shares	<i>Section [328]</i>
Signature of statutory auditor's report to appear on certain copies	<i>Section [337](4) and (5)(b)</i>
Annual return and documents annexed to it	<i>Chapter 13 of Part 6</i>
Exclusions, exemptions and special arrangements with regard to public disclosure of financial information	<i>Chapter 14 of Part 6</i>

²⁰⁶ [Substituted by point 152 of Seanad Report Amendments.](#)

²⁰⁷ [Inserted by point 153 of Seanad Report Amendments.](#)

Audit exemption	<i>Chapter 15 of Part 6</i>
Special audit exemption for dormant companies	<i>Chapter 16 of Part 6</i>
Company may be required to contribute to debts of related companies	<i>Section [599]</i>

Application of Part 17 to investment companies.

[1388]. (1) The provisions of *Part 17* apply to an investment company save to the extent that they are disapplied by *subsection (3)* or *(4)*.

(2) For the purposes of that application, references in *Part 17* to a public limited company (however expressed) shall be read as references to a public limited company that is an investment company.

(3) The definitions of “authorised minimum” and “authorised share capital” in *section [1000+002](1)* shall not apply to an investment company.

(4) The provisions of *Part 17* specified in the Table to this section shall not apply to an investment company.

Table

Subject matter	Provision disapplied
Ministerial power in relation to a defined expression	<i>Section [1000+002](2)</i>
Way of forming a PLC and form of its constitution	<i>Section [1004+006](1) to (4) and sections [1005+007] to [1007+009]</i>
Restriction on commencement of business by a PLC	<i>Section [1010+012]</i>
Power to allot certain securities and notification of allotments	<i>Section [1021+023](3),(4) and (8)</i>
Pre-emption rights	<i>Sections [1022+024] and [1023+025]</i>
Expert’s report on non-cash consideration (requirements in respect thereof and dispensations therefrom)	<i>Sections [1028+030] to [1035+037]</i>
Treatment of shares held by or on behalf of a PLC	<i>Sections [1040+042] and [1041+043]</i>
Application of certain provisions of <i>section [82](6)</i> in relation to PLCs	<i>Section [1043+045]</i>
Interests in shares: disclosure of individual and group	<i>Chapter 4 of Part 17</i>

acquisitions	
Acquisition of own shares and certain acquisitions by subsidiaries	<i>Chapter 5 of Part 17</i>
Distribution by a PLC	<i>Chapter 6 of Part 17</i>
Application of <i>section [167]</i> to PLC that is not a public-interest entity under S.I. No. 220 of 2010.	<i>Section [10971099]</i>
Additional rights of shareholders in certain PLCs (provisions implementing Shareholders' Rights Directive 2007/36/EC).	<i>Sections [10091101] to [11101112]</i>
Obligation to convene extraordinary general meeting in event of serious loss of capital	<i>Section [11111113]</i>
Reorganisations	<i>Chapter 13 of Part 17</i>

Adaptation of certain provisions of UCITS Regulations.

[1389]. Regulations 17(11), 40(2), 42(4)(d), 104(2), 125 to 127, 129 to 131, 134(1) to 134(9), 135(1) and 135(2) of the UCITS Regulations apply to an investment company as they apply to the bodies to which those Regulations relate subject to the following modifications—

- (a) a reference in those Regulations to a term or expression specified in the second column of the Table to this section at any reference number shall be read, where the context admits, as a reference to the term or expression specified in the third column of that Table at that reference number; and
- (b) references to cognate terms or expressions in those Regulations shall be read accordingly.

Table

Ref. No.	Term or expression referred to in UCITS Regulations	Construction of term or expression for purposes of this section
(1)	(2)	(3)

1.	“repurchase”	“purchase”
2.	“these Regulations”	“Part 24 of the Companies Act [2014]”
3.	“UCITS”	“investment company”
4.	“unit”	“share”
5.	“unit-holder”	“shareholder”

Chapter 2

Incorporation and registration

Way of forming an investment company.

[1390]. (1) An investment company 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 an investment company.

(2) Without prejudice to the means by which an investment company may be formed under the relevant provisions referred to in subsection (1), a company may be registered as an investment company by means of -

- (a) the re-registration, or registration, as an investment company of a body corporate pursuant to Part 20 or 22;
- (b) the merger of 2 or more bodies corporate pursuant to Chapter 16 of Part 17;
- (c) the division of a body corporate pursuant to Chapter 17 of Part 17;
- (d) the continuance, as an investment company, pursuant to Chapter 9, of a legal entity de-registering as a company in another jurisdiction; or
- (e) the merger operation provided for by the European Communities (Cross-Border Mergers) Regulations 2008 (S.I. No. 157 of 2008).

(3) The liability of a member of an investment company at any time shall be limited to the amount, if any, unpaid on the shares registered in the member's name at that time.

(4) *Subsection (3)* is without prejudice to any other liability to which a member may be subject as provided by this Act.

Investment company to carry on activity in the State.

[1391]. An investment company shall not be formed and registered unless it appears to the Registrar that the company, when registered, will carry on an activity in the State, being an activity that is mentioned in its memorandum.

The form of an investment company's constitution.

[1392]. (1) Subject to *subsection (3)*, the constitution of an investment company 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 an investment company shall state-

- (a) its name;
- (b) that it is a public limited company registered under this Part;
- (c) its object as specified in *section [1386](1)(a)*;
- [(d) that the liability of its members is limited; and]²⁰⁸
- [(e)] in respect of its share capital –
 - (i) that the share capital of the company shall be equal to the value for the time being of the issued share capital of the company;
 - (ii) the division of that share capital into a specified number of shares without assigning any nominal value thereto; and
 - (iii) that the issued share capital of the company for the time being shall not be less than a minimum amount nor more than a maximum amount specified in the memorandum.

(3) The constitution of an investment company 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 constitution;
- (b) be in accordance with the form set out in *Schedule 16* or 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

²⁰⁸ Inserted by point 176 of Seanad Committee Amendments.

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.]²⁰⁹

Supplemental provisions in relation to constitution and continuance in force of existing memorandum and articles.

[1393]. (1) This section –

(a) contains provisions as to the articles of an investment company;

(b) provides that, in certain circumstances, a default position shall obtain in relation to the articles of an investment company; and

(c) continues in force the memorandum and articles of an investment company to which Part XIII of the Act of 1990 applies.

(2) In this section –

“mandatory provision” means a provision of any of *Parts 1 to 14* or *Part 17* (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* or *Part 17* (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 an investment company –

(a) shall contain such regulations in relation to the investment company with respect to such aspects of the activity of collective investment referred to in *section [1386](1)(a)*, or matters related thereto, as are deemed appropriate; and

(b) may contain other regulations in relation to the investment company.

(4) So far as the articles of an investment company do not exclude or modify an optional provision, that optional provision shall apply

²⁰⁹ Inserted by point 177 of Seanad Committee Amendments.

in relation to the investment company.

(5) The memorandum and articles of an investment company to which Part XIII of the Act of 1990 applies and registered before the commencement of this section shall, save to the extent that they are inconsistent with a mandatory provision, 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.

(6) 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.

(7) To the extent that an investment company to which Part XIII of the Act of 1990 applies was, immediately before the commencement of this section, governed by the regulations of Part I of Table A in the First Schedule to the Act of 1963, it shall, after that commencement, continue to be governed by those regulations but -

(a) this is save to the extent that those regulations are inconsistent with a mandatory provision;

(b) 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

(c) references in the regulations to any provision of the prior Companies Acts shall be read as references to the corresponding provision of this Act.

Status of existing investment company.

[1394]. (1) In this section “existing investment company” means an investment company to which Part XIII of the Act of 1990 applies and which -

(a) was incorporated under the prior Companies Acts; and

(b) is in existence immediately before the commencement of this section.

(2) An existing investment company shall, on and from the commencement of this section, continue in existence and be deemed to be an investment company to which this Part applies.

Authorisation by Central Bank.

[1395]. (1) An investment company shall not carry on business in the State unless it has been authorised to do so by the Central Bank on the basis of criteria approved by the Minister.

(2) A person shall not carry on business on behalf of an investment company, in so far as relates to the purchase or sale of the shares of the investment company, unless the investment company has been authorised in the manner referred to in *subsection (1)*.

(3) The Central Bank shall not authorise an investment company to carry on business in the State unless the company has paid up share

capital which, in the opinion of the Bank, will be sufficient to enable it to conduct its business effectively and meet its liabilities.

(4) An application by an investment company for the authorisation referred to in *subsection (1)* shall be made in writing to the Central Bank and contain such information as the Bank may specify for the purpose of determining the application (including such additional information as the Bank may specify in the course of determining the application).

(5) Where the Central Bank proposes to grant an authorisation to an investment company under this section and the Bank is satisfied that the company will raise capital by providing facilities for the direct or indirect participation by the public in the profits and income of the company, the Bank shall, in granting the authorisation, designate the company as a specially designated investment company which may raise capital in that manner, and “specially designated company” in this section and *section [1396]* shall be read accordingly.

(6) An existing investment company (within the meaning of *section [1394]*) that, immediately before the commencement of this section, is a designated company within the meaning of section 256(5) of the Act of 1990, shall be regarded as a specially designated company for the purposes of this section and *section [1396]*; a reference in any other enactment to a designated company (within the meaning of that section 256(5)) shall, on and from the commencement of this section, be read as a reference to a specially designated company.

(7) In the event that a specially designated company does not provide facilities for the direct or indirect participation by the public in the profits and income of the company within a period, not greater than 6 months, which shall be specified in the authorisation under this section, the company shall, on the expiry of the period so specified, be deemed to have ceased to be a specially designated company; for the purposes of the application of this subsection to a company referred to in *subsection (6)* the foregoing reference to an authorisation under this subsection shall be read as a reference to an authorisation under section 256 of the Act of 1990 and, accordingly, a company referred to in *subsection (6)* is subject to the same cessation of its status, as is provided by this subsection for investment companies otherwise, where –

- (a) the period specified in the authorisation under that section 256 expires
after the commencement of this section; and
- (b) the company has not provided facilities for the direct or indirect participation by the public in the profits and income of the company within that period.

(8) An investment company which is not a specially designated company shall not raise capital by providing facilities for the direct or indirect participation by the public in the profits and income of the company.

~~[(9) A company incorporated outside the State which, if it were incorporated in the State, would be an investment company to which~~

~~this Part applies, other than [a migrating company as defined in section [1408]]²¹⁰, shall not advertise or market its shares in any way in the State without the approval of the Central Bank, which approval may be subject to such conditions as the Bank considers appropriate and prudent for the purposes of the orderly and proper regulation of so much of the business of companies of that type as is conducted in the State.]²¹¹~~

~~(1492)~~ If a company contravenes ~~[subsection (1), (8) or (9)]~~subsection (1) or (8)]²¹², the company and any officer of it who is in default shall be guilty of a category 2 offence.

~~(1410)~~ If a person contravenes *subsection (2)*, the person shall be guilty of a category 2 offence.

Powers of Central Bank.

[1396]. (1) Notwithstanding any other powers which may be available to the Central Bank under any other enactment, the Central Bank may impose such conditions for the granting of an authorisation to a company under *section [1395]* as it considers appropriate and prudent for the purposes of the orderly and proper regulation of the business of investment companies.

(2) Conditions imposed under *subsection (1)* may be imposed generally, or by reference to particular classes of company or business (including, but not limited to, whether or not an investment company is a specially designated company), or by reference to any other matter the Central Bank considers appropriate and prudent for the purposes of the orderly and proper regulation of the business of investment companies.

(3) The power to impose conditions referred to in *subsection (1)* includes a power to impose such further conditions from time to time as the Central Bank considers appropriate and prudent for the purposes of the orderly and proper regulation of the business of investment companies.

(4) As appropriate –

(a) conditions imposed by the Central Bank on an investment company may (without prejudice to the generality of *subsections (1) to (3)*) make provision for;

(b) as respects the person or other body referred to in *paragraph (iii) or (v)*, there is otherwise conferred on the Bank power to make provision for,

the following –

(i) the prudential requirements of the investment policies of the company;

(ii) without prejudice to *Chapter 1 of Part 23* and regulations thereunder (so far as they are applicable to securities issued by companies of the closed-end type), prospectuses and other information disseminated by the company;

²¹⁰ Substituted by point 265 of Report Amendments.

²¹¹ Deleted by point 155 of Seanad Report Amendments.

²¹² Substituted by point 156 of Seanad Report Amendments.

- (iii) the vesting of the assets or specified assets of the company in a person nominated by the Central Bank with such of the powers or duties of a trustee with regard to the company as are specified by the Bank;
- (iv) such other supervisory and reporting requirements and conditions relating to its business as the Central Bank considers appropriate and prudent to impose on the company from time to time for the purposes referred to in the foregoing subsections;
- (v) supervisory and reporting requirements and conditions relating to the business of a management company as the Central Bank considers appropriate or prudent to impose on the management company from time to time.

(5) A company shall comply with any conditions relating to its authorisation or business imposed by the Central Bank.

(6) A person or other body referred to in *subsection (4)(iii)* or *(v)* in relation to whom requirements or conditions are imposed by the Central Bank in accordance with *subsection (4)* shall comply with such requirements or conditions.

(7) If a company fails to comply with a condition referred to in *subsection (5)*, the company and any officer of it who is in default shall be guilty of a category 2 offence.

(8) If a person or other body fails to comply with a requirement or condition referred to in *subsection (6)*, the person or body, and (in the case of a body) any officer of it who is in default, shall be guilty of a category 2 offence.

Default of investment company or failure in performance of its investments.

[1397]. (1) An authorisation by the Central Bank under *section [1395]* of an investment company shall not constitute a warranty by the Bank as to the creditworthiness or financial standing of that company.

(2) The Central Bank shall not be liable by virtue of that authorisation or by reason of its performance of the functions conferred on it by this Part in relation to investment companies for any default of the investment company unless the Bank acted in bad faith in performing such functions.

Chapter 3

Share capital

Power of company to purchase own shares.

[1398]. (1) Subject to *subsection (2)*, the purchase by an investment company of its own shares shall be on such terms and in such manner as may be provided by its articles.

(2) An investment company shall not purchase its own shares, for the purposes referred to in *section [1386](1)(b)(ii)*, unless they are fully paid, but nothing in this subsection shall prevent a purchase being made in accordance with *section [1399](2)*.

(3) For the avoidance of doubt, nothing in this Act shall require an investment company to create any reserve account.

Treatment of purchased shares.

[1399]. (1) Shares of an investment company which have been purchased by the company shall be cancelled and the amount of the company's issued share capital shall be reduced by the amount of the consideration paid by the company for the purchase of the shares.

(2) Notwithstanding *subsection (1)*, an umbrella fund may, for the account of any of its sub-funds, and in accordance with conditions imposed by the Central Bank pursuant to *section [1396]*, acquire by subscription or transfer for consideration, shares of any class or classes, howsoever described, representing other sub-funds of the same umbrella fund provided that the acquisition is for a purpose otherwise than that provided for in *section [1386](1)(b)(ii)*.

Chapter 4

Financial statements

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Statutory financial statements

[1400]. (1) To the extent that the use of any alternative body of accounting standards does not contravene any provision of *Part 6* (as that Part applies to investment companies)—

- (a) a true and fair view of the assets and liabilities, financial position and profit or loss of an investment company may be given by the use by the investment company of those standards in the preparation of its Companies Act entity financial statements, and
- (b) a true and fair view of the assets and liabilities, financial position and profit or loss of an investment company and its subsidiary undertakings as a whole may be given by the use by the investment company of those standards in the preparation of its Companies Act group financial statements.

(2) In this section—

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

- (a) United States of America;
- (b) Canada;
- (c) Japan; or
- (d) any other prescribed state or territory;

as may be prescribed;

“relevant financial statements” means Companies Act entity financial statements or Companies Act group financial statements.

(3) Before making regulations for the purposes of *subsection (2)*, the Minister—

- (a) shall consult with the Central Bank and the Supervisory Authority, and
- (b) may consult with any other persons whom the Minister considers should be consulted.

(4) Regulations made under section 3(3) of the Act of 1990 prescribing, for the purposes of the definition of “alternative body of accounting standards” in section 260A(4) of the Act of 1990, bodies having authority to lay down standards of the kind referred to in that definition, and which regulations are in force immediately before the commencement of this section, shall continue in force as if they were regulations made under section 12 for the purposes of *subsection (2)* and may be amended or revoked accordingly.²¹³

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

[1401]. *Chapter 3 of Part 23* has effect in relation to, amongst other companies, an investment company that has shares or debentures admitted to trading on a regulated market in an EEA state.

Chapter 5

Winding up

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

[1402]. (1) *Section [569](1)(e)* shall not apply to an investment company but provision for the winding up of an investment company on the grounds that it is just and equitable to do so is made by this section.

(2) This section is in addition to the cases set out in *section [569]* (so far as not disapplied by *subsection (1)*) in which an investment company may be wound up by the court.

(3) An investment company may be wound up by the court if the court is of opinion that it is just and equitable that the company should be wound up and the following conditions are satisfied —

- (a) the petition for such winding up has been presented by the trustee of the company, that is to say, the person nominated by the Central Bank under *section [1396](4)(iii)* in respect of the company;¹
- (b) that trustee has notified the company of its intention to resign as such trustee and 6 or more months have elapsed after the date of the giving of that notification without a trustee having been appointed to replace it;
- (c) the court, in considering that petition, has regard to—

²¹³ Substituted by point 178 of Seanad Committee Amendments.

- (i) any conditions imposed under *section [1396]* in relation to the resignation from office of such a trustee and the replacement of it by another trustee; and
 - (ii) whether a winding up would best serve the interests of shareholders in the company;
- and
- (d) the petition for such winding up has been served on the company (if any) discharging, in relation to the first-mentioned company, functions of a management company.

Chapter 6

Restoration

Restoration by the court.

[1403]. *Section [741]* shall apply to an investment company as if, in *subsection (1)(a)*, “2 years” were substituted for “20 years”.

Chapter 7

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

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

[1404]. *Chapters 1, 2 and 4 of Part 23* -

- (a) so far as they are applicable to companies other than public limited companies that fall within *Part 17*; and
- (b) with the exception, in particular, of *sections [1359] to [1361]*,

shall apply to an investment company.

Chapter 8

Umbrella funds and sub-funds

Segregated liability of investment company sub-funds.

[1405]. (1) Notwithstanding any statutory provision or rule of law to the contrary, but subject to *Schedule 17* -

- (a) any liability incurred on behalf of or attributable to any sub-fund of an umbrella fund shall be discharged solely out of the assets of that sub-fund; and
- (b) no umbrella fund nor any director, receiver, examiner, liquidator, provisional liquidator or other person shall apply, nor be obliged to apply, the assets of any such sub-fund in satisfaction of any liability incurred on behalf of or attributable to any other sub-fund of the same umbrella fund,

whether such liability was incurred before, on or after 30 June 2005.

(2) *Schedule 17* provides that *subsection (1)* shall not apply to an umbrella fund which was authorised and commenced trading (as that

latter expression is to be read in accordance with that Schedule) before 30 June 2005 unless the conditions specified in that Schedule are satisfied.

Requirements to be complied with by, and other matters respecting, an umbrella fund to which *section [1405](1)* applies.

[1406]. (1) An umbrella fund to which *section [1405](1)* applies shall -

(a) ensure that the words “An umbrella fund with segregated liability between sub-funds” are included in all its letterheads and in any agreement entered into by it in writing with a third party; and

(b) disclose to a third party that it is a segregated liability umbrella fund before it enters into an oral contract with the third party.

(2) If an umbrella fund fails to comply with *subsection (1)(a)* or *(b)*, the umbrella fund and any officer of it who is in default shall be guilty of a category 3 offence.

(3) There shall be implied in every contract, agreement, arrangement or transaction entered into by an umbrella fund to which *section [1405](1)* applies the following terms, that—

(a) the party or parties contracting with the umbrella fund shall not seek, whether in any proceedings or by any other means whatsoever or wheresoever, to have recourse to any assets of any sub-fund of the umbrella fund in the discharge of all or any part of a liability which was not incurred on behalf of that sub-fund;

(b) if any party contracting with the umbrella fund shall succeed by any means whatsoever or wheresoever in having recourse to any assets of any sub-fund of the umbrella fund in the discharge of all or any part of a liability which was not incurred on behalf of that sub-fund, that party shall be liable to the umbrella fund to pay a sum equal to the value of the benefit thereby obtained by it; and

(c) if any party contracting with the umbrella fund shall succeed in seizing or attaching by any means, or otherwise levying execution against, any assets of a sub-fund of an umbrella fund in respect of a liability which was not incurred on behalf of that sub-fund, that party shall hold those assets or the direct or indirect proceeds of the sale of such assets on trust for the umbrella fund and shall keep those assets or proceeds separate and identifiable as such trust property.

(4) All sums recovered by an umbrella fund as a result of any such trust as is described in *subsection (3)(c)* shall be credited against any concurrent liability pursuant to the implied term set out in *subsection (3)(b)*.

(5) Any asset or sum recovered by an umbrella fund pursuant to the implied term set out in *paragraph (b) or (c) of subsection (3)* or by any other means whatsoever or wheresoever in the events referred to in those paragraphs shall, after the deduction or payment of any costs of recovery, be applied so as to compensate the sub-fund affected.

(6) In the event that assets attributable to a sub-fund to which *section [1405](1)* applies are taken in execution of a liability not attributable to that sub-fund, and in so far as such assets or compensation in respect thereof cannot otherwise be restored to that sub-fund affected, the directors of the umbrella fund, with the consent of the custodian, shall certify or cause to be certified, the value of the assets lost to the sub-fund affected and transfer or pay from the assets of the sub-fund or sub-funds to which the liability was attributable, in priority to all other claims against such sub-fund or sub-funds, assets or sums sufficient to restore to the sub-fund affected, the value of the assets or sums lost to it.

Further matters respecting an umbrella fund to which *section [1405](1)* applies.

[1407]. (1) Without prejudice to the other provisions of *sections [1405] and [1406], Schedule 17* and this section, a sub-fund of an umbrella fund is not a legal person separate from that umbrella fund, but an umbrella fund may sue and be sued in respect of a particular sub-fund and may exercise the same rights of set-off, if any, as between its sub-funds as apply at law in respect of companies and the property of a sub-fund is subject to orders of the court as it would have been if the sub-fund were a separate legal person.

(2) Nothing in *section [1405] or [1406], Schedule 17* or this section shall prevent the application of any enactment or rule of law which would require the application of the assets of any sub-fund in discharge of some or all of the liabilities of any other sub-fund on the grounds of fraud or misrepresentation and, in particular, by reason of the application of *section [443], [557], [604] or [608]*.

(3) A sub-fund may be wound up in accordance with *section [569](1)(d) or [586](2)* as if the sub-fund were a separate company but, in any such case, the appointment of the liquidator or any provisional liquidator and the powers, rights, duties and responsibilities of the liquidator or any provisional liquidator shall be confined to the sub-fund or sub-funds which is or are being wound up.

(4) For the purposes of *subsection (3)*, all references made in *section [569](1)(d) or [586](2)*, and in all relevant provisions of this Act relating to the winding up of a company pursuant to *section [569](1)(d) or [586](2)*, to one of the following words shall be read as follows—

- (a) “company” shall be read as referring to the sub-fund or sub-funds which is or are being wound up;
- (b) a “member” or “members” shall be read as referring to the holders of the shares in that sub-fund or sub-funds; and
- (c) “creditors” shall be read as referring to the creditors of that sub-fund or sub-funds.

Chapter 9

Migration of funds

Definitions (Chapter 9).

[1408]. (1) In this Chapter —

“migrating company” means a body corporate which is established and registered under the laws of a relevant jurisdiction and which is a collective investment undertaking;

“registration documents” has the meaning given to it by *section [1409]*;

“relevant jurisdiction”, other than in *sections [1413]* and *[1414]*, means the place, outside the State, prescribed under *subsection (2)* where the migrating company is established and registered at the time of its application under *section [1410]*.

(2) The Minister may make regulations prescribing places, outside the State, for the purposes of the definition of “relevant jurisdiction” in *subsection (1)*, where he or she is satisfied that the law of the place concerned makes provision for migrating companies to continue under the laws of the State or for companies to continue under the laws of that place in a substantially similar manner to continuations under *section [1410]*.

“Registration documents” – meaning.

[1409]. (1) In this Chapter “registration documents”, in relation to a migrating company, means the following documents:

- (a) a copy, certified and authenticated in the prescribed manner, of the certificate of registration or equivalent certificate or document issued with respect to the migrating company under the laws of the relevant jurisdiction;
- (b) a copy, certified and authenticated in the prescribed manner, of the memorandum and articles of the migrating company or equivalent constitutive document of the migrating company;
- (c) a list setting out particulars in relation to the directors and secretary of the migrating company in accordance with the provisions of *section [149]*;
- (d) a statutory declaration, in the prescribed form, of a director of the migrating company made not more than 28 days before the date on which the application is made to the Registrar to the effect that—
 - (i) the migrating company is, as of the date of the declaration, established and registered in the relevant jurisdiction, no petition or other similar proceeding to wind up or liquidate the migrating company has been notified to it and remains outstanding in any place, and no order has been notified to the migrating company or resolution adopted to wind up or liquidate the migrating company in any place;
 - (ii) the appointment of a receiver, liquidator, examiner or other similar person has not been notified to the migrating company and, at the date of the declaration, no such person is acting in that capacity in any place with respect to the migrating company or its property or any part thereof;
 - (iii) the migrating company is not, at the date of the declaration, operating or carrying on business under any scheme, order, compromise or other similar arrangement entered into or made by the migrating company with creditors in any place;

- (iv) at the date of the declaration the migrating company has served notice of the proposed registration on the creditors of the migrating company;
 - (v) any consent or approval to the proposed registration in the State required by any contract entered into or undertaking given by the migrating company has been obtained or waived, as the case may be; and
 - (vi) the registration is permitted by and has been approved in accordance with the memorandum and articles of association or equivalent constitutive document of the migrating company;
- (e) a declaration of solvency prepared in accordance with *section [1415]*;
- (f) a schedule of the charges or security interests created or granted by the migrating company that would, if such charges or security interests had been created or granted by a company incorporated under this Act, have been registrable under *Chapter 2 of Part 7* and such particulars of those security interests and charges as are specified in relation to charges by *section [414]*;
 - (g) notification of the proposed name of the migrating company if different from its existing name; and
 - (h) a copy of the memorandum and articles of the migrating company which the migrating company has resolved to adopt, which shall be in the Irish language or the English language, which shall take effect on registration under *section [1410]* and which the migrating company undertakes not to amend before registration without the prior authorisation of the Registrar.

(2) If the original of any of the documents referred to in *subsection (1)* is not written in the Irish or the English language, then “registration documents” in this Chapter, in so far as that expression relates to such a document, means a translation of the document into the Irish or the English language certified as being a correct translation of it by a person who is competent to so certify.

Continuation of foreign investment company.

[1410]. (1) A migrating company may apply to the Registrar to be registered as an investment company in the State by way of continuation.

(2) Where an application is made under *subsection (1)*, the Registrar shall not register the migrating company as an investment company in the State unless he or she is satisfied that all of the requirements of this Act in respect of the registration and of matters precedent and incidental thereto have been complied with and, in particular, but without prejudice to the generality of the foregoing, he or she is satisfied that—

- (a) the migrating company has delivered to the Registrar an application for the purpose, in the prescribed form and signed by a director of the migrating company, together with the registration documents;
- (b) the name or, if relevant, the proposed new name of the migrating company has not been determined to be undesirable pursuant to *section 26*;
- (c) the migrating company has delivered to the Registrar notice of the address of its proposed registered office in the State;
- (d) the migrating company has applied to the Central Bank to be authorised to carry on business as an investment

company under *section [1395]* and the Central Bank has notified the migrating company and the Registrar that it proposes to authorise the migrating company to so carry on business.

(3) An application under this section shall be accompanied by a statutory declaration in the prescribed form made by a solicitor engaged for this purpose by the migrating company, or by a director of the migrating company, and stating that the requirements mentioned in *subsection (2)* have been complied with. The Registrar may accept such a declaration as sufficient evidence of compliance.

(4) The Registrar shall, as soon as is practicable after receipt of the application for registration, publish notice of it in the CRO Gazette.

(5) Where the Registrar receives a notification under *subsection (2)(d)*, the Registrar —

(a) may issue a certificate of registration of the migrating company by way of continuation of the migrating company as an investment company under the laws of the State; and

(b) if he or she issues such a certificate, shall enter in the register maintained for the purpose of *section [414]*, in relation to charges and security interests of the migrating company specified in *paragraph (f)* of the definition of “registration documents” in *section [1409](1)*, the particulars specified by *section [414]* which have been supplied by the migrating company.

(6) The migrating company shall, as soon as may be after being registered under *subsection (5)*, apply to be de-registered in the relevant jurisdiction.

(7) The Registrar shall enter in the register of companies the date of registration of the migrating company and shall forthwith publish notice in the CRO Gazette of the following matters:

(a) the date of the registration of the migrating company under this section;

(b) the relevant jurisdiction; and

(c) the previous name of the migrating company if different from the name under which it is being registered.

(8) From the date of registration, the migrating company shall be deemed to be an investment company formed and registered under this Part and shall continue for all purposes under this Act, and the provisions of this Part shall apply to the migrating company, but this section does not operate—

(a) to create a new legal entity;

(b) to prejudice or affect the identity or continuity of the migrating company as previously established and registered under the laws of the relevant jurisdiction for the period that the migrating company was established and registered in the relevant jurisdiction;

(c) to affect any contract made, resolution passed or any other act or thing done in relation to the migrating company

- during the period that the migrating company was so established and registered;
- (d) to affect the rights, authorities, functions and liabilities or obligations of the migrating company or any other person;
- or
- (e) to render defective any legal proceedings by or against the migrating company.

(9) Without prejudice to the generality of *subsection (8)*—

- (a) the failure of a migrating company to send to the Registrar the particulars of a charge or security interest created before the date of registration shall not prejudice any rights which any person in whose favour the charge was made or security interest created may have thereunder; and
- (b) any legal proceedings that could have been continued or commenced by or against the migrating company before its registration under this section may, notwithstanding the registration, be continued or commenced by or against the migrating company after registration.

Supplemental provisions in relation to *section [1410]*.

[1411]. (1) The migrating company shall –

- (a) notify the Registrar in the prescribed form; and
- (b) notify the Central Bank,

within 3 days after the date of its de-registration in the relevant jurisdiction, of that de-registration.

(2) On registration of the migrating company under *section [1410](5)*, the Central Bank shall forthwith authorise the migrating company to carry on business under this Part.

(3) If there is any material change in any of the information contained in the statutory declaration mentioned in *paragraph (d)* of the definition of “registration documents” in *section [1409](1)* after the date of the declaration and before the date of the registration under *section [1410]*, the director who made that statutory declaration, and any other director who becomes aware of that material change shall forthwith deliver a new statutory declaration to the Registrar relating to the change.

(4) If the migrating company fails to comply with any provision of *section [1410]* or this section, the Registrar may send to the company by post a registered letter stating that, unless the migrating company rectifies the failure within [30 days]²¹⁴ after the date of the letter and confirms that it has rectified the failure, a notice may be published in the CRO Gazette with a view to striking the migrating company off the register.

²¹⁴ Substituted by point 149 of Committee Amendments.

(5) If the failure mentioned in *subsection (4)* is not rectified within [30 days]²¹⁵ after date of the sending of the letter referred to in that subsection, the Registrar may publish in the CRO Gazette a notice stating that, at the expiration of 1 month after the date of that notice, the migrating company mentioned therein will, unless the matter is resolved, be struck off the register, and the migrating company will be dissolved.

(6) At the expiration of the time mentioned in the notice, the Registrar may, unless cause to the contrary is previously shown by the migrating company, strike the company off the register, and shall publish notice thereof in the CRO Gazette, and on that publication, the migrating company shall be dissolved.

(7) For the purposes of this section, *section [736]* shall apply as if the reference in it to *Chapter 1 of Part 12* included a reference to this section and, accordingly, the other provisions of *Chapter 2* of that Part shall apply with any necessary modifications.

Definitions for the purposes of de-registration provisions contained in sections [1413] and [1414].

[1412]. (1) In *sections [1413]* and *[1414]* —

“applicant” means an investment company that applies under *section [1413]* to be de-registered under *section [1414]*;

“relevant jurisdiction” means the place, outside the State, prescribed under *subsection (2)* in which the investment company proposes to be registered;

“transfer documents”, in relation to an applicant, means the following documents:

(a) a statutory declaration, in the prescribed form, of a director of the applicant made not more than 28 days before the date on which the application is made to the Registrar to the effect that—

(i) the applicant will, upon registration, continue as a body corporate under the laws of the relevant jurisdiction;

(ii) no petition or other similar proceeding to wind up or liquidate the applicant has been notified to the applicant and remains outstanding in any place, and no order has been notified to the applicant or resolution adopted to wind up or liquidate the applicant in any place;

(iii) the appointment of a receiver, liquidator, examiner or other similar person has not been notified to the applicant and, at the date of the declaration, no such person is acting in that capacity in any place with respect to the applicant or its property or any part thereof;

(iv) the applicant is not, at the date of the declaration, operating or carrying on business under any scheme, order, compromise or other similar arrangement entered into or made by the applicant with creditors in any place;

(v) the application for de-registration is not intended to defraud persons who are, at the date of the

²¹⁵ Substituted by point 150 of Committee Amendments.

declaration, creditors of the applicant;

(vi) any consent or approval to the proposed de-registration required by any contract entered into or undertaking given by the applicant has been obtained or waived, as the case may be; and

(vii) the de-registration is permitted by the memorandum and articles of the applicant;

(b) a declaration of solvency prepared in accordance with the provisions of *section [1415]*; and

(c) a copy of a special resolution of the applicant that approves the proposed de-registration and the transfer of the applicant to the relevant jurisdiction.

(2) The Minister may make regulations prescribing places, outside the State, for the purposes of the definition of “relevant jurisdiction” in *subsection (1)*, where he or she is satisfied that the law of the place concerned makes provision for bodies corporate that are substantially similar to applicants under *section [1413]* to continue under the laws of the State in a substantially similar manner to continuations under *section [1410]* or for companies to continue under the laws of that place.

De-registration of companies when continued under the law of place outside the State.

[1413]. (1) An applicant which proposes to be registered in a relevant jurisdiction by way of continuation as a body corporate may apply to the Registrar to be de-registered in the State.

(2) Where an application is made under *subsection (1)*, the Registrar shall not de-register, under *section [1414]*, the applicant as a company in the State unless he or she is satisfied that all of the requirements of this Act in respect of the de-registration and of matters precedent and incidental thereto have been complied with and, in particular, but without prejudice to the generality of the foregoing, he or she is satisfied that—

(a) the applicant has delivered to the Registrar an application for the purpose, in the prescribed form and signed by a director of the applicant, together with the transfer documents;

(b) the applicant has informed the Central Bank of its intention to be de-registered and the Central Bank has notified the Registrar that it has no objection to the de-registration, so long as the applicant complies with any conditions that the Central Bank may impose on the applicant; and

(c) the applicant has delivered to the Registrar notice of any proposed change in its name and of its proposed registered office or agent for service of process in the relevant jurisdiction.

(3) An application under this section shall be accompanied by a statutory declaration in the prescribed form made by a solicitor engaged for this purpose by the applicant, or by a director of the applicant, and stating that the requirements mentioned in *subsection*

(2) have been complied with. The Registrar may accept such a declaration as sufficient evidence of compliance.

(4) The Registrar shall, as soon as is practicable after receipt of the application for de-registration, publish notice of it in the CRO Gazette.

(5) Where an application is made under *subsection (1)*, a person mentioned in *subsection (6)* may apply to the court, on notice to the applicant, the Central Bank, the Registrar and all creditors of the applicant, not later than 60 days after the date of the publication of the notice under *subsection (4)*, for an order preventing the proposal or passage of a resolution specified in *paragraph (c)* of the definition of “transfer documents” in *section [1412](1)* from taking effect in relation to the application, and the court may, subject to *subsection (9)*, make such an order accordingly.

(6) The following persons may apply for an order under *subsection (5)*:

- (a) the holders of not less than 5 per cent of the issued share capital of the applicant and who have not voted in favour of the resolution; or
- (b) any creditor of the applicant.

(7) Notice of an application for an order under *subsection (5)* may be given to the creditors concerned by publication in at least one national newspaper in the State.

(8) The Central Bank and the applicant concerned shall each be entitled to appear and be heard on an application made pursuant to *subsection (5)*.

(9) The court may make an order under *subsection (5)* only if it is satisfied that—

- (a) the proposed de-registration of the applicant would contravene the terms of an agreement or arrangement between the applicant and any shareholder or creditor of the applicant; or
- (b) the proposed de-registration would be materially prejudicial to any shareholder or creditor of the applicant and the interests of shareholders and creditors or both taken as a whole would be materially prejudiced.

(10) An order made under *subsection (5)* shall specify the period in respect of which it shall remain in force.

(11) An order of the court under *subsection (5)* is final and conclusive and not appealable.

Supplemental provisions in relation to *section [1413]*.

[1414]. (1) Unless the court orders otherwise, when one or more than one application is made under *section [1413](5)*, a resolution specified in *paragraph (c)* of the definition of “transfer documents” in *section [1412](1)* in relation to a company shall not take effect until—

- (a) where the application or all the applications to the court are withdrawn—
 - (i) the day on which the resolution is passed;
 - (ii) the day next following the day on which the last outstanding application is withdrawn; or
 - (iii) the 31st day following the publication of the notice under *section [1413](7)*, whichever is the latest; and

(b) where all applications to the court are not withdrawn—

(i) the day on which the resolution is passed;

(ii) the day specified in the order or, if no date is specified in the order, the day next following the day on which the period for which the order is specified to remain in force expires or otherwise ceases to be in force; or

(iii) the day next following the decision of the court,

whichever is the latest.

(2) When the applicant is registered as a company under the laws of the relevant jurisdiction, it shall give notice, in the prescribed form, to the Registrar of that fact within 3 days after the date of its becoming so registered, including its new name, if any, and, as soon as practicable after receiving that notice, the Registrar shall issue a certificate of de-registration of the applicant.

(3) The Registrar shall enter in the register of companies the date of the de-registration of the applicant and shall, within 7 days after the date of issue of the certificate under *subsection (2)*, publish in the CRO Gazette notice of the following matters:

(a) the date of the de-registration of the applicant under this section;

(b) the relevant jurisdiction; and

(c) the new name of the applicant if different from the name under which it was registered.

(4) From the date of registration of the applicant in the relevant jurisdiction, it shall cease to be a company for all purposes of this Act and shall continue for all purposes as a body corporate under the laws of the relevant jurisdiction, but this section does not operate—

(a) to create a new legal entity;

(b) to prejudice or affect the identity or continuity of the applicant as previously constituted under the laws of the State for the period that the applicant was so constituted;

(c) to affect any contract made, resolution passed or any other act or thing done in relation to the applicant during the period that the applicant was constituted under the laws of the State;

(d) to affect the rights, authorities, functions and liabilities or obligations of the applicant or any other person, or

(e) to render defective any legal proceedings by or against the applicant.

(5) Without prejudice to the generality of *subsection (4)*, any legal proceedings that could have been continued or commenced by or against the applicant before its de-registration under this section may, notwithstanding the de-registration, be continued or commenced by or against the applicant after registration.

Statutory declaration as to solvency.

[1415]. (1) Where an application is made under *section [1410] or [1413]*, a director of the migrating company or applicant, as the case may be, making the application shall make a statutory declaration, in the prescribed form, stating that he or she has made a full inquiry into its affairs and has formed the opinion that it is able[, at the time of the application, to pay its debts (being the debts identified for the purposes of *subsection (2)(b)*) as]²¹⁶ they fall due.

²¹⁶ Substituted by point 179 of Seanad Committee Amendments.

- (2) A declaration under *subsection (1)* shall have no effect for the purposes of this section unless—
- (a) it is made not more than 28 days before the date on which the application is made to the Registrar;
 - (b) it states the assets and liabilities of the migrating company or applicant as at the latest practicable date before the date of making of the declaration and in any event at a date not more than 3 months before the date of that making; and
 - (c) a report made by an independent person under *subsection (3)* is attached to the declaration, along with a statement by the independent person that he or she has given and has not withdrawn consent to the making of the declaration with the report attached to it.
- (3) The report mentioned in *subsection (2)(c)* shall state whether, in the independent person’s opinion, based on the information and explanations given to him or her, the opinion of the director mentioned in *subsection (1)* and the statement of the migrating company’s or applicant’s assets and liabilities referred to in *subsection (2)(b)* are reasonable.
- (4) For the purposes of *subsection (3)*, the independent person shall be a person who, at the time the report is made, is –
- (a) in the case of an application under *section [1410]*, qualified to be the auditor of the migrating company under the laws of the relevant jurisdiction; and
 - (b) in the case of an application under *section [1413]*, qualified to be the statutory auditor of the applicant.
- (5) A director who makes a declaration under this section without having reasonable grounds for the opinion that the migrating company or applicant is able to pay its debts as they fall due shall be guilty of a category 2 offence.
- (6) Where the migrating company or applicant is wound up within 1 year after the date on which the application is made to the Registrar and its debts are not paid or provided for in full within that year, it shall be presumed, unless the contrary is shown, that the director did not have reasonable grounds for his or her opinion.