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# Part A14 - Powers and Duties of Minister and of Regulatory and Advisory Bodies

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# Part A14 – Powers and Duties of Minister and of Regulatory and Advisory Bodies

## Chapter 1

### Powers and Duties of the Minister for Enterprise, Trade and Employment

#### Head 1 Annual report by the Minister

The Minister shall cause a general annual report of matters within this Bill to be prepared and laid before both Houses of the Oireachtas not later than 7 months after the end of the calendar year to which the report relates.

**Explanatory note**

*Re-statement of Section 392 of the Companies Act, 1963.*

#### Head 2 Expenses

The expenses incurred by the Minister in the administration of this Bill shall, to such extent as may be sanctioned by the Minister for Finance, be paid out of moneys provided by the Oireachtas.

**Explanatory note**

*Re-statement of Section 393 of the Companies Act, 1963.*

#### Head 3 Authentication of documents issued by the Minister

Any approval, sanction, direction or licence or revocation of licence which, under this Bill may be given or made by the Minister, may be under the hand of any person authorised in that behalf by the Minister.

**Explanatory note**

*Re-statement of Section 394 of the Companies Act, 1963.*

#### Head 4 Laying of orders before Houses of Oireachtas and power to revoke or amend orders and to prescribe forms.

- (1) Every order made under this Bill shall be laid before each House of the Oireachtas as soon as may be after it is made and if a resolution annulling the order is passed by either House within the next 21 days on which that House has sat after the order is laid before it, the order shall be annulled accordingly but without prejudice to the validity of anything previously done thereunder.
- (2) The Minister may, by order, revoke or amend an order (other than an order made under [the power to commence the Bill]) made under this Bill.
- (3) The Minister may, by order, prescribe forms to be used in connection with any of the provisions of this Bill.

**Explanatory note**

*Re-statement of Section 396 of the Companies Act, 1963.*

#### Head 5 Electronic Communications

- (1) The Minister may make such regulations as he thinks fit to give effect to the provisions of the Electronic Communications Act, 2000 as they apply to companies.
- (2) Where, under this Bill, records retained or produced by a company may be accessed by a class of persons, any reasonable form or retention or production may be used by the company and, where any regulations have been made by the Minister, provided such form complies with such regulations.
- (3) The Minister may prescribe regulations which limit or remove the obligation of a company to produce any written extracts from registers.

- (4) Subject to regulations prescribed under subhead 3, in the case of the production of extracts or copies of records or documents, such records or documents may be delivered by electronic means subject to the conditions of Section 12 of the Electronic Communications Act, 2000.
- (5) Where records are retained by a company on a generally accessible website, the company shall notify the Registrar of the relevant address of the website in the prescribed manner.

**Explanatory note**

*This head gives effect to the recommendations of the CLRG in its First Report [at 7.8.] regarding the use of electronic communications.*

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## **Head 6      Power to alter Tables                   and Forms**

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The Minister shall have power, by order, to alter or add to the requirements of this Bill as to the matters to be stated in a company's balance sheet, profit and loss account and group accounts and in particular, of those of the First and Second Schedules to Part A6 and any reference in this Bill to the foregoing matters shall be construed as including any alterations or additions made by orders for the time being in force under this subhead.

**Explanatory note**

*This head is based on Section 395(1) of the Companies Act, 1963.*

## Chapter 2

### The Registrar of Companies

#### Head 7 Registration office

- (1) For the purposes of the registration of companies under this Bill, the Minister shall maintain and administer an office or offices in the State at such places as the Minister thinks fit.
- (2) The Minister may appoint such registrars and assistant registrars as he thinks necessary for the registration of companies under this Bill, and may make regulations with respect to their duties and may remove any persons so appointed.
- (3) The Minister may direct a seal or seals to be prepared for the authentication of documents required for or connected with the registration of companies.

##### **Explanatory note**

*Re-statement of Section 368 of the Companies Act, 1963 as amended by Section 52(3) of the Companies (Amendment) (No.2) Act, 1999.*

#### Head 8 Fees

- (1) There shall be paid to the Registrar such fees as are from time to time specified in regulations prescribed by the Minister.
  - (2) All fees paid to the Registrar in pursuance of this Bill shall be paid into or disposed of for the benefit of the Exchequer in such manner as the Minister for Finance may direct.
- (a) the contents of a register kept by the Registrar;
  - (b) the date on which a document was filed or registered with or delivered to the Registrar;
  - (c) the date on which a document was received by the Registrar; or
  - (d) the most recent date (if any) on which a requirement under the Companies Acts was complied with, by or in relation to a company, shall in all legal proceedings be admissible without further proof until the contrary is shown, as evidence of the facts stated in the certificate.

##### **Explanatory note**

*Re-statement of Section 369 of the Companies Act, 1963.*

*Subsections (1) and (2) of the 1963 Act have been discarded – and their references to the fees originally fixed by Schedules to the 1963 Act.*

#### Head 9 Inspection, production and evidence of documents kept by Registrar

- (1) Any person may—
  - (a) inspect the documents kept by the Registrar, on payment of such fee as may be fixed by the Minister;

##### **Explanatory note**

*Restatement of Section 370 of the Companies Act, 1963, as amended by Section 62 of the Company Law Enforcement Act, 2001.*

#### Head 10 Disposal of documents filed with Registrar

The Registrar shall, after the expiration of 20 years from the dissolution of a company, send all the documents filed in connection with such company to the Public Records Office.

**Explanatory note**

*Restatement of Section 313 of the Companies Act, 1963.*

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**Head 11 System of classification of information**

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- (1) Where, under this Bill, any information relating to any person is required to be delivered to the Registrar and is so received by him, the Registrar may apply such system of classification as he considers appropriate to such information and may assign symbols of identification to persons or classes of persons to whom any such information relates.
- (2) The Minister may make regulations requiring that the symbol assigned under subhead(1) to any person or persons of any class shall be entered on all documents which, under any provision of this Bill, are required to contain the name of that person.
- (3) Regulations under subhead (2) may, in particular, specify particular persons whose duty it shall be to comply or ensure compliance with the regulations.
- (4) A person who makes default in complying with regulations under subhead (2) shall be guilty of a category three offence.

**Explanatory note**

*Restatement of Section 247 of the Companies Act, 1990.*

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**Head 12 Delivery to the registrar of documents in legible form**

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- (1) This head applies to the delivery to the Registrar, under any provision of this Bill of documents in legible form.
- (2) The document must—
  - (a) state in a prominent position the registered number of the company to which it relates;
  - (b) satisfy any requirements prescribed for the purposes of this head as to the form and content of the document; and

- (c) conform to such requirements as may be prescribed for the purpose of enabling the Registrar to copy the document.

- (3) Regulations made for the purposes of this head may make different provision as to the form and content of the document with respect to different descriptions of document.
- (4) Every regulation made under this head shall be laid before each House of the Oireachtas as soon as may be after it is made and if a resolution annulling the regulation is passed by either such House within the next twenty-one days on which that House has sat after the regulation is laid before it, the regulation shall be annulled accordingly, but without prejudice to the validity of anything previously done thereunder.
- (5) In this head, “document” includes any periodic account, abstract, statement or return required to be delivered to the Registrar.

**Explanatory note**

*Restatement of Section 248 of the Companies Act, 1990.*

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**Head 13 Delivery to the Registrar of documents otherwise than in legible form**

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- (1) This head applies to the delivery to the Registrar under any provision of this Bill of documents otherwise than in legible form (whether by electronic means or otherwise).
- (2) Any requirement to deliver a document to the Registrar, or to deliver a document in the prescribed form, shall be satisfied by the communication to the Registrar of the requisite information in any non-legible form prescribed for the purposes of this head.
- (3) Where any document is required to be signed or sealed, it shall instead be authenticated in such manner as may be prescribed for the purposes of this head.
- (4) The document must—
  - (a) contain in a prominent position the registered number of the company to which it relates;
  - (b) satisfy any requirements prescribed for the purposes of this head; and

- (c) be furnished in such manner and conform to such requirements as may be prescribed for the purposes of enabling the Registrar to read and copy the document.
- (5) The Minister may, by regulations, make further provision with respect to the application of this head in relation to instantaneous forms of communication.
- (6) Regulations made for the purpose of this head may make different provision with respect to different descriptions of documents and different forms of communication.
- (7) Every regulation made under this head shall be laid before each House of the Oireachtas as soon as may be after it is made and if a resolution annulling the regulation is passed by either such House within the next twenty-one days on which that House has sat after the regulation is laid before it, the regulation shall be annulled accordingly, but without prejudice to the validity of anything previously done thereunder.
- (8) In this head, “document” includes any periodic account, abstract, statement or return required to be delivered to the Registrar.
- (c) any requirements imposed by or under any other enactment relating to the completion of a document and its delivery to the Registrar,
- the Registrar may serve on the person by whom the document was delivered (or, if there are two or more such persons, on any of them) a notice indicating the respect in which the document does not comply.
- (2) Where the Registrar serves such a notice, then, unless a replacement document—
- (a) is delivered to him within 14 days after the service of the notice; and
- (b) complies with the requirements referred to in subhead(1) or is not rejected by him for failure to comply with those requirements,
- the original document shall be deemed not to have been delivered to him.
- (3) For the purposes of any provision which—
- (a) imposes a penalty for failure to deliver a document, so far as it imposes a penalty for continued contravention; or
- (b) provides for the payment of a fee in respect of the registration of a document being a fee of a greater amount than the amount provided under the provision in respect of the registration of such a document that has been delivered to the Registrar within the period specified for its delivery to him,

**Explanatory note**

*Restatement of Section 249 of the Companies Act, 1990.*

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**Head 14 Power to reject documents sent for registration and amendments consequential on that Head’s insertion**

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- (1) If a document is delivered to the Registrar which does not comply with—
- (a) the requirements of Heads 12 and 13 [equivalents of Sections 248 and 249 of the Companies Act, 1990];
- (b) any other requirement of this Bill (and in particular the provisions of any head under which a requirement to deliver the document concerned to the Registrar arises); or
- (4) Nothing in this head shall have the effect of making valid any matter which a provision of this Bill or of any other enactment provides is to be void or of no effect in circumstances where a document in relation to it is not delivered to the Registrar within the period specified for the document’s delivery to him or her.

**Explanatory note**

*Restatement of Section 249A of the Companies Act, 1990.*

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## Head 15 Performance of duties of Registrar

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(1) Wherever any act is by this Bill or by any statute directed to be done to or by the Registrar which, before the commencement of this heard, was done to or by—

- (a) an assistant Registrar appointed under subhead (2) of that head; or
- (b) any other person employed in the Office of the Registrar to perform generally, duties under any enactment referred to in that subhead,

shall be valid and be deemed always to have been valid as if the Minister had directed under that such an act was to be done to or by such an assistant Registrar or other such person (including in cases where the existing registrar of joint stock companies (or his or her successor) was not absent).

(2) On and from the commencement of this Bill, any act required or authorised by the Registration of Business Names Act, 1963 or the Limited Partnerships Act, 1907, to be done to or by the Registrar of companies, the registrar of joint stock companies or, as the case may be, a person referred to in the enactment concerned as “the registrar” may be done to or by a Registrar or assistant Registrar appointed under Head 7 (2) of this Part [equivalent of Section 368(2) of the Companies Act, 1963] or any other person authorised in that behalf by the Minister.

### **Explanatory note**

*Re-statement of Section 52 of the Companies (Amendment) (No. 2) Act, 1999.*

## Chapter 3

### Irish Auditing and Accounting Supervisory Authority

#### Head 16 Interpretation of this Chapter

(1) In this Part, except where the context otherwise requires—

“amount of turnover” and “balance sheet total” have the same meanings as in Part A6 Head 58 [equivalent of Section 8 of the Companies Act, 1986];

“board” means the board of directors of the Supervisory Authority;

“chief executive officer” means the Chief Executive Officer of the Supervisory Authority;

“designated body” means a body that, under Part A14, Head 18(2) [equivalent of Section 6(2) of Companies (Auditing and Accounting) Act, 2003], is a designated body at the relevant time;

“disciplinary committee” means any disciplinary committee or tribunal (however called) of a prescribed accountancy body;

“enactment” means a statute or an instrument made under a power conferred by a statute;

“functions” includes duties and responsibilities;

“member”, in relation to a prescribed accountancy body, means—

(a) a person; or

(b) a firm,

that is, or was at the relevant time, subject to the investigation and disciplinary procedures approved under Part A14, Head 21 [equivalent Section 9(2)(c) of the Companies (Auditing and Accounting) Act, 2003] for that body;

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

“parent undertaking” has the same meaning as in Part A1, Head 6 [the equivalent of the European Communities (Companies: Group Accounts) Regulations 1992 (S.I. No. 201 of 1992)];

“prescribed accountancy body” means—

(a) a recognised accountancy body; or

(b) any other body of accountants that is prescribed under Part A14, Head 45 (1)(a) [equivalent to Section 48(1)(a) of the Companies (Auditing and Accounting) Act 2003] for the purposes of this Act;

“recognised accountancy body” means a body of accountants recognised for the purposes of Part A6 Head 102 [the equivalent of Section 187 of the Companies Act, 1990];

“reserve fund” means the fund established under Part A14, Head 27 [equivalent of Section 15 of the Companies (Auditing and Accounting) Act, 2003];

“standards”, in relation to a prescribed accountancy body, means the rules, regulations and standards that body applies to its members and to which, by virtue of their membership, they are obliged to adhere;

“subsidiary undertaking” has the same meaning as in Part A1, Head 6 [European Communities (Companies: Group Accounts) Regulations 1992 (S.I. No. 201 of 1992)];

“superannuation benefits” means pensions, gratuities and other allowances payable on resignation, retirement or death;

“Supervisory Authority” means the company designated by the Minister under Part A14, Head 17 [section 5(1) of the Companies (Auditing and Accounting) Act, 2003];

“the 1992 Regulations” means the European Communities (Companies: Group Accounts) Regulations 1992 (S.I. No. 201 of 1992);

“the 1993 Regulations” means the European Communities (Accounts) Regulations 1993 (S.I. No. 396 of 1993).

(2) In this Part, “material interest” is to be construed in accordance with Section 2(3) of the Ethics in Public Office Act, 1995.

#### **Explanatory note**

*Reenactment of Section 4 of the Companies (Auditing and Accounting) Act, 2003.*

#### Head 17 Establishment of Supervisory Authority

(1) The Minister may designate a public company to perform the functions and exercise the powers of the Supervisory Authority under this Bill, if the following requirements are satisfied—

- (a) the company is formed and registered under the Companies Acts after the commencement of this head;
  - (b) the company is a company limited by guarantee;
  - (c) the name of the company is the Irish Auditing and Accounting Supervisory Authority or in the Irish language Údarás Maoirseachta Iniúchta agus Cuntasaíochta na hÉireann;
  - (d) the memorandum of association and articles of association of the company are consistent with this Bill.
- (2) Part A2, Head 9 (1) [equivalent of Section 6(1)(b) of the Companies Act, 1963] does not apply to a company where the Minister informs the Registrar in writing that the Minister proposes to designate the company under Subhead (1).
- (b) the Irish Congress of Trade Unions;
  - (c) the Irish Association of Investment Managers;
  - (d) the Irish Stock Exchange;
  - (e) the Pensions Board;
  - (f) the Irish Financial Services Regulatory Authority;
  - (g) the Revenue Commissioners;
  - (h) the Director of Corporate Enforcement;
  - (i) the Law Society of Ireland;
  - (j) any body prescribed under Part A14, Head 45 (1) (b) [equivalent of section 48(1)(b) of Companies (Auditing and Accounting) Act 2003] as a designated body.

**Explanatory note**

*Reenactment of Section 5 of the Companies (Auditing and Accounting) Act, 2003.*

**Explanatory note**

*Re-enactment of Section 6 of the Companies (Auditing and Accounting) Act, 2003.*

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## Head 18 Membership

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- (1) The Supervisory Authority is to consist of the following members—
- (a) each prescribed accountancy body that is a body corporate;
  - (b) if a prescribed accountancy body is not a body corporate, an individual or body corporate nominated by that prescribed accountancy body to be a member;
  - (c) each designated body that is a body corporate;
  - (d) if a designated body is not a body corporate, an individual or body corporate nominated by that designated body to be a member.
- (2) Unless a regulation under Part A14, Head 45 (1) (b) [equivalent of Section 48(1)(b) of the Companies (Auditing and Accounting) Act, 2003] provides otherwise, each of the following is a designated body for the purposes of this head and Part A14, Head 23 [equivalent of Section 11 of the Companies (Auditing and Accounting) Act, 2003]:
- (a) the Irish Business and Employers Confederation;

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## Head 19 Alterations in memorandum and articles of association

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Any alteration that is made in the memorandum of association or articles of association of the Supervisory Authority takes effect only if the alteration is made with the Minister's prior approval.

**Explanatory note**

*Re-enactment of Section 7 of the Companies (Auditing and Accounting) Act, 2003.*

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## Head 20 Objects

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- (1) The principal objects of the Supervisory Authority, which are to be included in its memorandum of association, are
- (a) to supervise how the prescribed accountancy bodies regulate and monitor their members;
  - (b) to promote adherence to high professional standards in the auditing and accountancy profession;

- (c) to monitor whether the accounts of certain classes of companies and other undertakings comply with the Companies Acts; and
  - (d) to act as a specialist source of advice to the Minister on auditing and accounting matters.
- (2) This head does not prevent or restrict the inclusion in the memorandum of association of all objects and powers, consistent with this Bill, that are reasonable, necessary or proper for, or incidental or ancillary to, the due attainment of the principal objects of the Supervisory Authority.
- (ii) any amendments to the approved constitution or bye laws of each prescribed accountancy body, including amendments to its investigation and disciplinary procedures and to its standards;
  - (d) to conduct under Part A14 Head 35 [equivalent of Section 23 of the Companies (Auditing and Accounting) Act, 2003] enquiries into whether a prescribed accountancy body has complied with the investigation and disciplinary procedures approved for that body under paragraph (c);
  - (e) to impose under Part A14 Head 35 [equivalent of Section 23 of the Companies (Auditing and Accounting) Act, 2003] sanctions on prescribed accountancy bodies;
  - (f) to undertake under Part A14, Head 36 [equivalent of Section 24 of the Companies (Auditing and Accounting) Act, 2003] investigations into possible breaches of the standards of a prescribed accountancy body;
  - (g) to supervise how each recognised accountancy body monitors its members and to undertake under Part A14, Head 37 [equivalent of Section 25 of the Companies (Auditing and Accounting) Act, 2003] reviews of those members;
  - (h) to co operate with the recognised accountancy bodies and other interested parties in developing standards relating to the independence of auditors and to monitor the effectiveness of those standards;
  - (i) to monitor the effectiveness of provisions of [the Companies Acts/this Act] relating to the independence of auditors;
  - (j) to supervise the investigation and disciplinary procedures of each prescribed accountancy body, including by requiring access to its records and by requiring explanations about the performance of its regulatory and monitoring duties;
  - (k) to co operate with the prescribed accountancy bodies and other interested parties in developing auditing and accounting standards and practice notes;

**Explanatory note**

*Reenactment of Section 8 of the Companies (Auditing and Accounting) Act, 2003.*

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**Head 21 Functions**

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- (1) The Supervisory Authority shall do all things necessary and reasonable to further its objects.
- (2) Without limiting its responsibilities under subhead (1), the functions of the Supervisory Authority are as follows:
  - (a) to grant recognition to bodies of accountants for the purposes of Part A6 Head 102 [equivalent of Section 187 of the Companies Act, 1990];
  - (b) to attach under Part A6 Head 109 [equivalent of Section 192 of the Companies Act, 1990] terms and conditions to the recognition of bodies of accountants, including terms and conditions—
    - (i) requiring changes to and the approval by the Supervisory Authority of their regulatory plans, and
    - (ii) requiring their annual reports to the Supervisory Authority on their regulatory plans to be prepared in the manner and form directed by the Supervisory Authority;
  - (c) to require changes to and to approve—
    - (i) the constitution and bye laws of each prescribed accountancy body, including its investigation and disciplinary procedures and its standards, and

- (l) to review under Part A14, Head 38 [equivalent of Section 26 of the Companies (Auditing and Accounting) Act, 2003] whether the accounts of companies and undertakings referred to in that head comply with the Companies Acts and to make applications to the High Court to ensure compliance;
  - (m) to arrange for the regulation and supervision of individually authorised auditors by recognised accountancy bodies;
  - (n) to perform the functions conferred on it by transparency (regulated markets) law (within the meaning of Chapter 14 of Part B2 [equivalent of Part 3 of the Investment Funds, Companies and Miscellaneous Provisions Act, 2006]) in respect of the matters referred to in Article 24(4)(h) of the Transparency (Regulated Markets) Directive (within the meaning of that Chapter);
  - (o) to perform any other duties or discharge any other responsibilities imposed on it by this Bill.
- (a) a prescribed accountancy body to comply with a rule adopted or guideline issued under subhead (3) of this head;
  - (b) a recognised accountancy body to comply with a term or condition attached under Part A6, Head 109 [equivalent of Section 192 of the Companies Act, 1990 (before or after the amendment of that Act by Section 32 of the Companies (Auditing and Accounting) Act, 2003) to the recognition of that body, or if in the Authority's opinion, the body or other person concerned may fail or has failed to comply with the rule, guideline, term or condition or obligation or obligations, as the case may be; or
  - (c) a person on whom a relevant obligation or obligations is or are imposed to comply with that obligation or those obligations.
- (5) In subhead (4), the reference to a relevant obligation or obligations that is or are imposed on a person is a reference to an obligation or obligations that is or are imposed on the person by—

**Explanatory note**

*Reenactment of Section 9 of the Companies (Auditing and Accounting) Act, 2003.*

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**Head 22 General powers**

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- (1) The Supervisory Authority has the power to do anything that appears to it to be requisite, advantageous or incidental to, or to facilitate, the performance of its functions and that is not inconsistent with any enactment.
- (2) A power conferred by subhead (1) is not to be considered to be limited merely by implication from another provision, whether of this or any other Act, that confers a power on the Supervisory Authority.
- (3) The Supervisory Authority may adopt rules and issue guidelines concerning any matter that relates to its functions or powers.
- (4) The Supervisory Authority may apply to the High Court for an order under Part A14, Head 43(7) [equivalent of Section 29(7) of Companies (Auditing and Accounting) Act, 2003] compelling—

- (a) provisions of transparency (regulated markets) law (within the meaning of Chapter 14 of Part B2 [equivalent of Part 3 of the Investment Funds, Companies and Miscellaneous Provisions Act, 2006]) that implement Article 10 24 (4) (h) of the Transparency (Regulated Markets) Directive (within the meaning of that Chapter); or
- (b) rules adopted by the Supervisory Authority under Subhead (3) concerning the matters that relate to its functions under Part A14, Head 21 (2) (n) [equivalent of Section 9(2)(ma) of the Companies (Auditing and Accounting) Act 2003].

**Explanatory note**

*Reenactment of Section of 10 of the Companies (Auditing and Accounting) Act, 2003.*

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**Head 23 Board of directors**

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- (1) Subject to a regulation under Part A14, Head 54 (1) (d) [equivalent of Section 48(1)(d) of Companies (Auditing and Accounting) Act, 2003], the board of directors of the Supervisory Authority is to consist of—

- (a) not more than 14 directors (including the chairperson and the deputy chairperson) appointed by the Minister under subhead (2); and
- (b) the person holding the office of chief executive officer who, by virtue of that office, is a director.
- (2) Subject to a regulation under Part A14, Head 45 (1) (d) [equivalent of Section 48(1)(d) of the Companies (Auditing and Accounting) Act, 2003], the directors appointed by the Minister shall include—
- (a) 3 persons nominated jointly by agreement among the prescribed accountancy bodies;
- (b) 2 persons nominated by the Minister, one of whom—
- (i) is neither an officer or employee of the Minister nor a member, officer or employee of a prescribed accountancy body, and
- (ii) is appointed as chairperson by the Minister; and
- (c) for each designated body, one person nominated by that body.
- (3) Subject to a regulation under Part A14, Head 45 (1) (d) [equivalent of Section 48(1)(d) of Companies (Auditing and Accounting) Act, 2003], the board shall not include at any one time more than 4 directors appointed under subhead (2) who are members of prescribed accountancy bodies, and of those 4 directors—
- (a) 3 may be nominees of the prescribed accountancy bodies; and
- (b) one may be a nominee of a designated body.
- (4) If, at any time, more than one designated body proposes to nominate a member of a prescribed accountancy body for appointment to the board, the designated bodies proposing to do so shall decide among themselves which one of them is to nominate such a member.
- (5) The directors may select the deputy chairperson from among those directors who are not members of a prescribed accountancy body.
- (6) The term of office of a director appointed under subhead (2) shall be specified by the Minister when appointing the director and, subject to subhead (12), may not be less than 3 or more than 5 years.
- (7) The members of the Supervisory Authority may not instruct the directors, at any meeting of those members or by any other means, regarding the carrying out of their duties as directors of the Supervisory Authority.
- (8) Part A4, Head 17 [equivalent of Section 182 of the Companies Act, 1963] does not apply to the Supervisory Authority.
- (9) A director may resign by letter addressed to the Minister and copied to the Supervisory Authority and the resignation takes effect on the date the Minister receives the letter.
- (10) At any time, the Minister may remove for stated reasons, any director appointed under subhead (2), including a director nominated under subhead (2)(b).
- (11) The Minister shall fill any vacancy that arises on the board as a consequence of the resignation or removal of a director by appointing a replacement nominated in the same manner as the replaced director.
- (12) A director appointed under subhead (11) to replace another holds office for the remainder of the replaced director's term of office and the same terms and conditions apply to the new appointee.
- (13) The directors may act despite one or more vacancies in their numbers.

**Explanatory note**

*Reenactment of Section 11 of the Companies (Auditing and Accounting) Act, 2003.*

**Head 24 Chief executive officer**

- (1) The directors appointed under Part A14, Head 23 (2) [equivalent of Section 11(2) of the Companies (Auditing and Accounting) Act, 2003] shall appoint a chief executive officer to—
- (a) carry on, manage and control generally the administration and business of the Supervisory Authority; and
- (b) perform any other functions that may be determined by the board.

- (2) The chief executive officer holds office on and subject to the terms and conditions (including terms and conditions relating to remuneration and allowances) that the directors appointed under Part A14, Head 23 (2) [equivalent of Section 11(2) of the Companies (Auditing and Accounting) Act, 2003] may, with the approval of the Minister given with the consent of the Minister for Finance, determine.
- (3) The directors appointed under Part A14, Head 23 [equivalent of Section 11(2) Companies (Auditing and Accounting) Act, 2003] may remove the chief executive officer from office at any time.
- (3) In addition to capital and other expenditures, the annual programme of expenditure must include the amount of revenue to be received under Part A14, Head 32 (1) and (2) [equivalent of Section 14(1) and (2) Companies (Auditing and Accounting) Act, 2003] that is to be paid into the reserve fund.
- (4) With the consent of the Minister for Finance and after considering the views of the prescribed accountancy bodies, the Minister may approve, with or without amendment, the annual programme of expenditure.
- (5) If the annual programme of expenditure is amended under subhead (4), the Supervisory Authority—

(a) may revise any other part of the work programme; and

(b) if it does so, shall submit to the Minister the revised work programme, including the annual programme of expenditure as amended under subhead (4).

**Explanatory note**

*Re-enactment of Section 12 of the Companies (Auditing and Accounting) Act, 2003.*

**Head 25 Work programme**

- (1) The Supervisory Authority shall prepare and submit to the Minister a work programme for—
- (a) in the case of the initial work programme, the period specified by the Minister; and
- (b) in the case of each subsequent work programme, the period of 3 years beginning on the day after the last day of the period covered by the preceding work programme.
- (2) In preparing the work programme, the Supervisory Authority shall have regard to the need to ensure the most beneficial, effective and efficient use of its resources and shall include the following information—
- (a) the key strategies and activities the Supervisory Authority will pursue to further its objects and perform its functions;
- (b) the outputs the Supervisory Authority aims to achieve and against which its performance will be assessed;
- (c) the staff, resources and expenditures (including an annual programme of expenditure) necessary to pursue the strategies and activities mentioned in paragraph (a).
- (6) The Supervisory Authority may—
- (a) if it considers it necessary to do so, undertake an interim review of a work programme; and
- (b) submit to the Minister, within the period covered by that programme, an amended or supplementary work programme, including an amended or supplementary annual programme of expenditure.
- (7) Subheads (4) and (5) apply with any necessary changes if an amended or a supplementary annual programme of expenditure is submitted to the Minister.
- (8) Subject to subhead (9), the Minister shall ensure that a copy of each work programme (including each revised, amended or supplementary work programme) is laid before each House of the Oireachtas not later than 60 days after the date on which it was submitted to the Minister.
- (9) If a revised work programme (including a revised amended or supplementary work programme) is submitted to the Minister before the unrevised work programme is laid before the Houses of the Oireachtas as required by subhead (8), only the revised work programme need be laid before the Houses.

- (10) The Minister may not give directions to the Supervisory Authority concerning the discharge of a work programme, including an amended or a supplementary work programme.

- (b) requires the Minister's approval before consent is given to the imposition of any levy in that year.

**Explanatory note**

*Reenactment of Section 13 of the Companies (Auditing and Accounting) Act, 2003.*

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**Head 26 Funding**

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- (1) For the purposes specified in subhead (3), in each financial year, a grant not exceeding 40 per cent of the programme of expenditure approved for that year under head 13, shall, subject to the conditions, if any, that the Minister thinks proper, be paid to the Supervisory Authority out of money provided by the Oireachtas.

- (5) The Supervisory Authority shall—

- (a) establish criteria for apportioning a levy among the classes of prescribed accountancy bodies;
- (b) submit the criteria to the Minister for approval before imposing the levy; and

- (c) specify the date on which the levy is due to be paid by those bodies.

- (2) For the purposes specified in subhead (3), the Supervisory Authority may impose, with the Minister's consent and subject to subheads (4) to (6), one or more levies in each financial year of the Supervisory Authority, on each prescribed accountancy body.

- (6) As a consequence of the apportionment of a levy under subhead (5), different classes of prescribed accountancy bodies may be required to pay different amounts of the levy.

- (7) Before consenting to the imposition of a levy under this head, the Minister shall consult with the prescribed accountancy bodies and may consult with any other persons who, in the Minister's opinion, are interested in the matter.

- (3) Money received by the Supervisory Authority under this head may be used only for the purposes of meeting expenses properly incurred by it in performing its functions and exercising its powers under—

- (8) The Supervisory Authority may recover, as a simple contract debt in any court of competent jurisdiction, from a prescribed accountancy body from which the levy is due, a levy imposed under this head.

- (a) Part A14, Heads 36 and 38[equivalent of Sections 24 and 26 of the Companies (Auditing and Accounting) Act, 2003], in the case of money set aside for, or paid into, the reserve fund in accordance with Part A14, Head 27[equivalent of Section 15 of the Companies (Auditing and Accounting) Act, 2003]; or

- (9) For the purpose of providing for activities specified in its work programme, the Supervisory Authority may, from time to time, borrow money subject to the consent of the Minister and the Minister for Finance and to such conditions as they may specify.

- (b) any provision of this Bill, other than Part A14, Heads 36 and 38[equivalent of Sections 24 and 26 of the Companies (Auditing and Accounting) Act 2003], in the case of money not so set aside for, or paid into, that fund.

**Explanatory note**

*Reenactment of Section 14 of the Companies (Auditing and Accounting) Act, 2003.*

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**Head 27 Reserve fund and levy**

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- (4) The total amount levied in any financial year of the Supervisory Authority on all prescribed accountancy bodies—

- (1) The Supervisory Authority shall—

- (a) may not exceed 60 per cent of the programme of expenditure approved for that year under Part A14, Head 25 [equivalent of Section 13 of the Companies (Auditing and Accounting) Act, 2003]; and

- (a) subject to any limit that the Minister may specify, establish and maintain a reserve fund to be used only for the purposes of performing its functions and exercising its powers under Part A14, Head 36 and 38[equivalent of Sections 24 and 26 of the Companies (Auditing and Accounting) Act, 2003];

- (b) set aside in each financial year for the reserve fund, a portion of the revenue received under Part A14, Head 26 (1) and (2) [equivalent of Section 14(1) and (2) of the Companies (Auditing and Accounting) Act, 2003];
  - (c) pay into the reserve fund in each financial year—
    - (i) the amount set aside under paragraph (b) for the fund or, if that amount is amended under Part A14, Head 25 (4)[equivalent of section 13(4) Companies (Auditing and Accounting) Act, 2003], the amended amount,
    - (ii) the proceeds of any levy imposed under subhead (2) of this head, and
    - (iii) any amounts paid to the Supervisory Authority under Head 35 or Part A14, Head 36 (7)[equivalent of Section 23(5)(c) or 24(7) of the Companies (Auditing and Accounting) Act, 2003] and any costs recovered under Part A14, Head 38 (5) or (8)[equivalent of Section 26(5) or (8) of the Companies (Auditing and Accounting) Act, 2003]; and
  - (d) promptly inform the Minister if, in any financial year, the total amount in the reserve fund is likely to exceed any limit specified by the Minister for the purposes of this head.
- (2) With the Minister’s consent and after consulting with any persons who are interested in the matter, the Supervisory Authority may, subject to subheads (3) to (7), impose in each financial year of the Supervisory Authority one or more levies on the following:
- (a) each public limited company (whether listed or unlisted);
  - (b) each private company limited by shares that, in both the most recent financial year and the immediately preceding financial year of the company, meets the following criteria—
    - (i) its balance sheet total for the year exceeds—
      - (A) €25,000,000, or
      - (B) if an amount is prescribed under Part A14, Head 45 (1) (e) [equivalent of Section 48(1)(e) of the Companies (Auditing and Accounting) Act, 2003] for the purpose of this provision, the prescribed amount,
    - (ii) the amount of its turnover for the year exceeds—
      - (A) €50,000,000, or
      - (B) if an amount is prescribed under Part A14, Head 45 (1) (e) [equivalent of Section 48(1)(e) of the Companies (Auditing and Accounting) Act, 2003] for the purpose of this provision, the prescribed amount;
- (3) The total amount levied under subhead (2) in any financial year of the Supervisory Authority on all companies and undertakings—
- (a) may not exceed the total amount paid into the reserve fund for that year under subhead (1)(c)(i); and
  - (b) requires the Minister’s approval before consent is given to the imposition of any levy in that year.
- (4) In determining whether to approve the total amount referred to in subhead (3), the Minister may—
- (c) each private company limited by shares that is a parent undertaking, if the parent undertaking and all of its subsidiary undertakings together, in both the most recent financial year and the immediately preceding financial year of the parent undertaking, meet the criteria in paragraph (b);
  - (d) each undertaking referred to in Regulation 6 of the 1993 Regulations that, in both the most recent financial year and the immediately preceding financial year of the undertaking, meets the criteria in paragraph (b);
  - (e) each undertaking referred to in Regulation 6 of the 1993 Regulations that is a parent undertaking, if the parent undertaking and all of its subsidiary undertakings together, in both the most recent financial year and the immediately preceding financial year of the parent undertaking, meet the criteria in paragraph (b).

- (a) have regard to the Supervisory Authority's work programme; and
  - (b) give due consideration to the use to which the reserve fund was put in the previous financial year.
- (5) The Supervisory Authority shall—
- (a) establish criteria for apportioning a levy among the classes of companies and undertakings liable to pay the levy under subhead (2);
  - (b) submit the criteria to the Minister for approval before imposing the levy; and
  - (c) specify the date on which the levy is due to be paid by those companies and undertakings.
- (6) As a consequence of the apportionment of a levy under subhead (5), different classes of companies or undertakings may be required to pay different amounts of the levy.
- (7) Subhead (2) does not apply in respect of a company or an undertaking of a class exempted under Part A14, Head 45 (1) (j) [equivalent of Section 48(1)(j) of the Companies (Auditing and Accounting) Act, 2003] from this head.
- (8) Where both a parent undertaking and one or more of its subsidiary undertakings would otherwise be liable to pay a levy imposed under this head, only the parent undertaking is required to pay the levy.
- (9) Subhead (8) applies whether the parent undertaking is a public limited company, a private limited company or an undertaking referred to in Regulation 6 of the 1993 Regulations.
- (10) The Supervisory Authority may recover, as a simple contract debt in any court of competent jurisdiction, from a company or undertaking from which the levy is due, a levy imposed under this head.

**Explanatory note**

*Reenactment of Section 15 of the Companies (Auditing and Accounting) Act, 2003.*

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**Head 28 Excess revenue**

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- (1) The Supervisory Authority shall apply any excess of its revenue over its expenditure in any year to meet its programme of expenditure approved for the subsequent year under Head 13, and the amounts payable under Part A14, Head 26 (1) and (2) [equivalent of Section 14(1) and (2) of the Companies (Auditing and Accounting) Act, 2003] for the subsequent year shall be appropriately reduced.
- (2) Money in or set aside for, the reserve fund is not considered to be revenue for the purposes of this head.

**Explanatory note**

*Reenactment of Section 16 of the Companies (Auditing and Accounting) Act, 2003.*

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**Head 29 Staff**

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- (1) Subject to Subhead (2) and to the limits of the staffing numbers specified under section 13 in its work programme, the Supervisory Authority may, from time to time, appoint persons to be members of its staff.
- (2) The numbers, grades and terms or conditions of its staff shall be determined by the Supervisory Authority with the approval of the Minister given with the consent of the Minister for Finance.
- (3) The Supervisory Authority may from time to time engage the services of professional and other advisers.

**Explanatory note**

*Reenactment of section 17 of the Companies (Auditing and Accounting) Act, 2003.*

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**Head 30 Disclosure of interests by directors**

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- (1) In this head—

“meeting” means a meeting of the board of the Supervisory Authority or of a committee of its directors;

“specified matter” means—

- (a) an arrangement to which the Supervisory Authority is a party or a proposed such arrangement; or

- (b) a contract or other agreement with the Supervisory Authority or a proposed such contract or other agreement.
- (2) Any director of the Supervisory Authority who is present at a meeting where a specified matter arises and who, otherwise than in his or her capacity as such a director, has a material interest in that matter shall—
- (a) at the meeting, disclose to the Authority the fact of the interest and its nature;
- (b) absent himself or herself from the meeting or the part of the meeting during which the matter is discussed;
- (c) take no part in any deliberations of the directors relating to the matter, and;
- (d) refrain from voting on any decision relating to the matter;
- (3) Where a director discloses a material interest under this head—
- (a) the disclosure shall be recorded in the minutes of the meeting concerned; and
- (b) for as long as the matter to which the disclosure relates is being dealt with by the meeting, the director shall not be counted in the quorum for the meeting.
- (4) Where at a meeting a question arises as to whether or not a course of conduct, if pursued by a director, would constitute a failure by him or her to comply with subhead (2) (c)—
- (a) the chairperson of the meeting may, subject to subhead (5), determine the question;
- (b) the chairperson's determination is final; and
- (c) the particulars of the determination shall be recorded in the minutes of the meeting.
- (5) If the chairperson is the director in respect of whom the question arises, the other directors present at the meeting shall choose one of their number to be the chairperson of the meeting for the purposes of subhead (4).
- (6) A director of the Supervisory Authority who, otherwise than in his or her capacity as such a director, has a material interest in a specified matter, shall neither influence nor seek to influence any decision to be made by the Authority in relation to that matter.
- (7) On being satisfied that a director of the Supervisory Authority has contravened subhead (2) or (6), the Minister may—
- (a) if he or she thinks fit, remove that director from office; or
- (b) if the director concerned is the chief executive officer, recommend to the board that he or she be removed from that office.
- (8) A director removed from office under this head is disqualified for appointment under Part A14, Heads 23 or 24 [equivalent of Section 11 or 12 of the Companies (Auditing and Accounting) Act, 2003].
- (9) Part A5 Head 12 [Equivalent of Section 194 of the Companies Act, 1963] does not apply to a director of the Supervisory Authority.
- (10) Nothing in this head prejudices the operation of any rule of law restricting directors of a company from having any interest in contracts with the company.

**Explanatory note**

*Reenactment of Section 18 of the Companies (Auditing and Accounting) Act, 2003.*

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**Head 31 Disclosure of interests by staff**

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- (1) A member of the staff of the Supervisory Authority who, otherwise than in his or her capacity as such a member, has a material interest in a specified matter, as defined in Part A14, Head 30(1) [equivalent of Section 18(1) of Companies (Auditing and Accounting) Act, 2003], shall—
- (a) disclose to the Authority the fact of the interest and its nature;
- (b) take no part in the negotiation of the arrangement, contract or other agreement concerned or in any deliberation by the Authority or members of its staff relating to that matter;

- (c) refrain from making any recommendation relating to the matter; and
  - (d) neither influence nor seek to influence a decision to be made in relation to the matter.
- (2) Subhead (1) does not apply to contracts or proposed contracts of employment of members of the staff of the Supervisory Authority with the Authority.
- (3) Where a person contravenes this head, the Supervisory Authority may make such alterations to the person's terms and conditions of employment as it considers appropriate or terminate the person's contract of employment.

**Explanatory note**

*Reenactment of Section 19 of the Companies (Auditing and Accounting) Act, 2003.*

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## Head 32 Superannuation

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- (1) The Supervisory Authority may, if it considers it appropriate to do so, prepare and submit to the Minister a scheme or schemes for granting superannuation benefits to or in respect of one or more of the following:
- (a) the chief executive officer;
  - (b) any staff of the Authority.
- (2) Each superannuation scheme shall fix the time and conditions of retirement for all persons to or in respect of whom superannuation benefits are payable under the scheme, and different times and conditions may be fixed in respect of different classes of persons.
- (3) A superannuation scheme submitted to the Minister under this head shall, if approved by the Minister with the consent of the Minister for Finance, be carried out in accordance with its terms.
- (4) A superannuation scheme may be amended or revoked by a subsequent scheme prepared, submitted and approved under this head.
- (5) The Supervisory Authority may not grant, or enter any arrangement for the provision of, any superannuation benefit to or in respect of a person referred to in Subhead (1) except in accordance with a superannuation scheme approved under this head or approved by the Minister with the consent of the Minister for Finance.

- (6) If any dispute arises as to the claim of any person to, or the amount of, a superannuation benefit payable in pursuance of a superannuation scheme approved under this head, the dispute shall be submitted to the Minister who shall refer it to the Minister for Finance whose decision shall be final.
- (7) The Minister shall ensure that a superannuation scheme approved under this head is laid before each House of the Oireachtas as soon as practicable after it is approved.
- (8) Either House of the Oireachtas may, by a resolution passed within 21 sitting days after the day on which the superannuation scheme is laid before it, annul the scheme.
- (9) The annulment of a superannuation scheme under subhead (8) takes effect immediately on the passing of the resolution concerned, but does not affect the validity of anything done under the scheme before the passing of the resolution.

**Explanatory note**

*Re-enactment of Section 20 of the Companies (Auditing and Accounting) Act, 2003.*

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## Head 33 Accounts and audit

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- (1) The Supervisory Authority shall keep records of, and prepare all proper and usual accounts of—
- (a) all income received by it, including the sources;
  - (b) all expenditure incurred by it and
  - (c) its assets and liabilities.
- (2) Not later than 3 months after the end of the financial year to which the accounts relate, the Supervisory Authority shall submit the accounts prepared under this head to the Comptroller and Auditor General for audit.
- (3) After the audit, the Comptroller and Auditor General shall present to the Minister the audited accounts together with the Comptroller and Auditor General's report.
- (4) The Minister shall ensure that, as soon as possible after the audited accounts and the report are presented to the Minister, copies of them are—

- (a) laid before each House of the Oireachtas; and
  - (b) supplied to the prescribed accountancy bodies.
- (5) The Supervisory Authority shall—
- (a) at the Minister’s request, permit any person appointed by the Minister to examine its accounts in respect of any financial year or other period;
  - (b) facilitate the examination of the accounts by the appointed person; and
  - (c) pay the fee that may be set by the Minister for the examination.
- (c) systems, procedures and practices used by the Supervisory Authority for evaluating the effectiveness of its operations;
  - (d) any matter affecting the Supervisory Authority that is referred to in a special report under Part A14, Head 22 [equivalent of Section 11(2) of the Companies (Auditing and Accounting) Act, 2003] of the Comptroller and Auditor General (Amendment) Act, 1993 or in any other report of the Comptroller and Auditor General that is laid before Dáil Éireann, in so far as the other report relates to a matter specified in any of paragraphs (a) to (c).

**Explanatory note**

*Reenactment of Section 21 of the Companies (Auditing and Accounting) Act, 2003.*

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## Head 34 Accountability mechanisms

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- (1) As soon as practicable but not later than 4 months after the end of each financial year, the Supervisory Authority shall make a written report to the Minister of its activities during that year.
- (2) The annual report must be prepared in such manner and form as the Minister may direct.
- (3) The Minister shall ensure that a copy of the annual report is laid before each House of the Oireachtas not later than 6 months after the end of the financial year to which the report relates.
- (4) Whenever required to do so by the Committee of Dáil Éireann established under the Standing Orders of Dáil Éireann to examine and report to Dáil Éireann on the appropriation accounts and reports of the Comptroller and Auditor General, the chief executive officer and the chairperson of the board shall give evidence to that Committee on the following—
  - (a) the regularity and propriety of the transactions recorded or to be recorded in any account subject to audit by the Comptroller and Auditor General that the Supervisory Authority is required by law to prepare;
  - (b) the Supervisory Authority’s economy and efficiency in using its resources;

- (5) Whenever requested by any other committee appointed by either House of the Oireachtas or appointed jointly by both Houses, the chief executive officer and the chairperson of the board shall account to the committee for the performance of the functions and the exercise of the powers of the Supervisory Authority.
- (6) The Supervisory Authority shall have regard to any recommendations relating to its functions or powers that are made by a committee in response to an account given under subhead (5).
- (7) In performing duties under subhead (4) or (5), neither the chief executive officer nor the chairperson of the board shall question or express an opinion on the merits of any policy of the Government or a Minister of the Government or on the merits of the objectives of such a policy.

**Explanatory note**

*Reenactment of Section 22 of the Companies (Auditing and Accounting) Act, 2003.*

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## Head 35 Intervention in disciplinary process of prescribed accountancy bodies

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- (1) In this head, “approved investigation and disciplinary procedures” means—
  - (a) in relation to a prescribed accountancy body that is a recognised accountancy body, the investigation and disciplinary procedures approved under Head 21 (2) (c) of this Part [equivalent of Section 9(2)(c) of the Companies (Auditing and Accounting) Act, 2003]; and

- (b) in relation to any other prescribed accountancy body, the investigation and disciplinary procedures approved under Head 21 (2) (c) of this Part [equivalent of Section 9(2)(c) of the Companies (Auditing and Accounting) Act, 2003].
- (2) Following a complaint or on its own initiative, the Supervisory Authority may, for the purpose of determining whether a prescribed accountancy body has complied with the approved investigation and disciplinary procedures, enquire into—
- (a) a decision by that body not to undertake an investigation into a possible breach of its standards by a member;
- (b) the conduct of an investigation by that body into a possible breach of its standards by a member; or
- (c) any other decision of that body relating to a possible breach of its standards by a member, unless the matter is or has been the subject of an investigation under Head 36 (2) of this Part, [equivalent of Section 24(2) of the Companies (Auditing and Accounting) Act, 2003] relating to that member.
- (3) For the purposes of an enquiry under this head, the Supervisory Authority may—
- (a) inspect and make copies of all relevant documents in the possession or control of the prescribed accountancy body; and
- (b) require the prescribed accountancy body to explain why it reached a decision referred to in subhead (2) (a) or (c) or to explain how it conducted its investigation.
- (4) If at any time before completing an enquiry under this head into a matter relating to a member of a prescribed accountancy body, the Supervisory Authority forms the opinion that it is appropriate or in the public interest that the matter be investigated under Head 36 of this Part [equivalent of Section 24 of the Companies (Auditing and Accounting) Act, 2003], the Authority may apply to the Court for permission to investigate the matter under that head.
- (5) If not satisfied after completing the enquiry that the prescribed accountancy body complied with the approved investigation and disciplinary procedures, the Supervisory Authority may advise or admonish the prescribed accountancy body or may censure it by doing one or more of the following—
- (a) annulling all or part of a decision of that body relating to the matter that was the subject of the enquiry;
- (b) directing that body to conduct an investigation or a fresh investigation into the matter;
- (c) requiring that body to pay to the Supervisory Authority an amount not exceeding the greater of the following:
- (i) €125,000,
- (ii) the amount prescribed under Head 45 (1) (f) of this Part [equivalent of Section 48(1)(f) of the Companies (Auditing and Accounting) Act, 2003].
- (6) Where the Supervisory Authority applies under this head to the Court for permission to investigate, under Head 36 of this Part [equivalent of Section 24 of the Companies (Auditing and Accounting) Act, 2003] any matter relating to a member of a prescribed accountancy body or decides to direct a prescribed accountancy body to conduct an investigation or a fresh investigation under this head into any matter, the following rules apply—
- (a) in the case of an application to the Court for permission to investigate a matter, any decision of that body relating to the matter is suspended if and as soon as the body is notified by the Supervisory Authority that permission has been granted under Head 43 (3) of this Part [equivalent of Section 29(3) of the Companies (Auditing and Accounting) Act, 2003];
- (b) in the case of a direction to conduct an investigation, any decision of that body relating to the matter is suspended as soon as the body is notified by the Supervisory Authority of the direction;

(c) in the case of a direction to conduct a fresh investigation, any decision of that body relating to the matter is suspended if and as soon as the body is notified by the Supervisory Authority that the direction has been confirmed under Head 43 (6) of this Part [equivalent of Section 29(6) of the Companies (Auditing and Accounting) Act, 2003].

- (7) The Supervisory Authority may publish each decision made under subhead (5) and the reasons for the decision after giving the prescribed accountancy body and the member concerned not less than 3 months notice in writing of its intention to do so.
- (8) The prescribed accountancy body or the member concerned may appeal to the Court against a decision made by the Supervisory Authority under subhead (5).
- (9) An appeal under subhead (8) must be brought before the expiry of the notice given under subhead (7) to the prescribed accountancy body and the member concerned.
- (10) If not satisfied that a prescribed accountancy body has, when undertaking an investigation or a fresh investigation into the matter under subhead (5) (b), complied with the approved investigation and disciplinary procedures, the Supervisory Authority may appeal to the Court against any decision of the prescribed accountancy body relating to the matter.
- (11) An appeal under subhead (10) must be brought within 3 months after the Supervisory Authority was notified by the prescribed accountancy body of its decision.
- (12) For the purposes of this head, any decision made or any investigation conducted by the disciplinary committee of a prescribed accountancy body is considered to have been made or conducted by the prescribed accountancy body.

**Explanatory note**

*Re-enactment of Section 23 of the Companies (Auditing and Accounting) Act, 2003.*

**Head 36 Investigation of possible breaches of standards of prescribed accountancy bodies**

(1) In this head—

“client” includes an individual, a body corporate, an unincorporated body of persons and a partnership;

“refusal” includes failure and “refuses” includes fails;

“relevant person”, in relation to an investigation of a member of a prescribed accountancy body, means—

(a) a member of the prescribed accountancy body;

(b) a client or former client of such member;

(c) if the client or former client is a body corporate, a person who is or was an officer, employee or agent of the client or former client;

(d) the prescribed accountancy body or a person who is or was an officer, employee or agent of that body; or

(e) any person whom the Supervisory Authority reasonably believes has information or documents relating to the investigation other than information or documents the disclosure of which is prohibited or restricted by law.

(2) If, in the Supervisory Authority’s opinion, it is appropriate or in the public interest to undertake an investigation into a possible breach of a prescribed accountancy body’s standards by a member, the Authority may do so—

(a) following a complaint; or

(b) on its own initiative,

- but no investigation may be undertaken into a matter that is or has been the subject of an enquiry under Head 35 of this Part [equivalent Section 23 of Companies (Auditing and Accounting) Act, 2003] relating to that member except with the permission of the High Court granted on application under Head 35 (4) of this Part [equivalent of Section 23(4) of the Companies (Auditing and Accounting) Act, 2003].
- (3) For the purposes of an investigation under this head, the Supervisory Authority may require a relevant person to do one or more of the following—
- (a) produce to the Supervisory Authority all books or documents relating to the investigation that are in the relevant person's possession or control;
  - (b) attend before the Supervisory Authority;
  - (c) give the Supervisory Authority any other assistance in connection with the investigation that the relevant person is reasonably able to give.
- (4) For the purposes of an investigation under this head, the Supervisory Authority may—
- (a) examine on oath, either by word of mouth or on written interrogatories, a relevant person;
  - (b) administer oaths for the purposes of the examination; and
  - (c) record, in writing, the answers of a person so examined and require that person to sign them.
- (5) The Supervisory Authority may certify the refusal to the High Court if a relevant person refuses to do one or more of the following—
- (a) produce to the Supervisory Authority any book or document that it is the person's duty under this head to produce;
  - (b) attend before the Supervisory Authority when required to do so under this head;
  - (c) answer a question put to the person by the Supervisory Authority with respect to the matter under investigation.
- (6) On receiving a certificate of refusal concerning a relevant person, the Court may enquire into the case and after hearing any evidence that may be adduced, may do one or more of the following—
- (a) direct that the relevant person attend or re-attend before the Supervisory Authority or produce particular books or documents or answer particular questions put to him or her by the Supervisory Authority;
  - (b) direct that the relevant person need not produce particular books or documents or answer particular questions put to him or her by the Supervisory Authority;
  - (c) make any other ancillary or consequential order or give any other direction that the Court thinks fit.
- (7) If the Supervisory Authority finds that the member committed a breach of the prescribed accountancy body's standards—
- (a) the Supervisory Authority may impose on the member any sanction to which the member is liable under the approved constitution and bye laws of the prescribed accountancy body (including a monetary sanction); and
  - (b) in addition, the member is liable to pay the amount specified by the Supervisory Authority towards its costs in investigating and determining the case, excluding any costs of or incidental to an enquiry by the Court under subhead (6).
- (8) The member who is the subject of a decision made by the Supervisory Authority under subhead (7) may appeal to the High Court against the decision.
- (9) An appeal under subhead (8) must be brought within 3 months after the member concerned was notified by the Supervisory Authority of its decision.
- (10) The production of any books or documents under this head by a person who claims a lien on them does not prejudice the lien.
- (11) Any information produced or answer given by a member of a prescribed accountancy body in compliance with a requirement under this head may be used in evidence against the member in any proceedings whatsoever, save proceedings for an offence (other than perjury in respect of such an answer).

- (12) A finding or decision of the Supervisory Authority under this head is not a bar to any civil or criminal proceedings against the member who is the subject of the finding or decision.

**Explanatory note**

Re-enactment of Section 24 of the Companies (Auditing and Accounting) Act, 2003.

**Head 37 Review of members of recognised accountancy bodies**

- (1) The Supervisory Authority may, if in its opinion it is appropriate to do so, undertake a review of a member of a recognised accountancy body to determine whether that body has been or is regulating its members in the manner approved under Part A14, Head 21 (2) (b) [equivalent of Section 9(2)(b) of the Companies (Auditing and Accounting) Act, 2003] or approved under [equivalent of the Companies Act, 1990 before or after the amendment of that Act by Section 32 of Companies (Auditing and Accounting) Act, 2003].
- (2) For the purposes of a review under this head—
- (a) the Supervisory Authority may inspect and make copies of all relevant documents in the possession or control of the recognised accountancy body whose practices are under review;
  - (b) the member of the recognised accountancy body shall co operate with the Supervisory Authority as if the recognised accountancy body were undertaking the review; and
  - (c) if the member fails to co operate in accordance with paragraph (b) of this subhead, Part A14, Head 36 (3) to (7) [equivalent of Section 24(3) to (7) of the Companies (Auditing and Accounting) Act, 2003] applies, with any necessary modifications, in relation to the member as if the review were an investigation under Part A14, Head 36 [equivalent of Section 24 of the Companies (Auditing and Accounting) Act, 2003].

**Explanatory note**

Re-enactment of Section 25 of the Companies (Auditing and Accounting) Act, 2003.

**Head 38 Review of whether accounts comply with [Companies Acts/this Act]**

- (1) In this head—

“relevant undertaking” means—

- (a) a public limited company (whether unlisted or listed);
- (b) a subsidiary undertaking of a public limited company referred to in paragraph (a) (whether the subsidiary undertaking is a company or is an undertaking referred to in Regulation 6 of the 1993 Regulations);
- (c) a private company limited by shares that, in both the relevant financial year and the immediately preceding financial year of the company, meets the following criteria:
  - (i) its balance sheet total for the year exceeds,
    - (A) €25,000,000, or
    - (B) if an amount is prescribed under Part A14, Head 45 (1) (h) [equivalent of Section 48(1)(h) of the Companies (Auditing and Accounting) Act, 2003] for the purpose of this provision, the prescribed amount;
  - (ii) the amount of its turnover for the year exceeds,
    - (A) €50,000,000, or
    - (B) if an amount is prescribed under Part A14, Head 45 (1) (h) [equivalent of Section 48(1)(h) of the Companies (Auditing and Accounting) Act, 2003] for the purpose of this provision, the prescribed amount;

(d) a private company limited by shares that is a parent undertaking, if the parent undertaking and all of its subsidiary undertakings together, in both the relevant financial year and the immediately preceding financial year of the parent undertaking, meet the criteria in paragraph (c);

(e) each subsidiary undertaking of a parent undertaking that comes within paragraph (d);

(f) an undertaking referred to in Regulation 6 of the 1993 Regulations that, in both the relevant financial year and the immediately preceding financial year of the undertaking, meets the criteria in paragraph (c);

(g) an undertaking referred to in Regulation 6 of the 1993 Regulations that is a parent undertaking, if the parent undertaking and all of its subsidiary undertakings together, in both the relevant financial year and the immediately preceding financial year of the parent undertaking, meet the criteria in paragraph (c); or

(h) each subsidiary undertaking of a parent undertaking that comes within paragraph (g),

but does not include a company or an undertaking of a class exempted under Part A14, Head 45 (1) (j) [equivalent of Section 48(1)(j) of the Companies (Auditing and Accounting) Act, 2003] from this head.

(2) A reference in this head to the directors of a relevant undertaking is to be construed in the case of an undertaking that does not have a board of directors as a reference to the corresponding persons appropriate to that undertaking.

(3) Subject to subhead (12), the Supervisory Authority may give notice to the directors, of a relevant undertaking concerning its annual accounts where—

(a) a copy of the annual accounts has been sent out under Part A6 Head 48 [equivalent of Section 159 of the Companies Act, 1963] or laid before the undertaking at its annual general meeting or delivered to the Registrar, and

(b) it appears to the Supervisory Authority that there is, or may be, a question whether the annual accounts comply with this Bill.

(4) The notice to the directors of the relevant undertaking must specify—

(a) the matters in respect of which it appears to the Supervisory Authority that the question of compliance with this Bill arises or may arise; and

(b) a period of not less than 30 days within which those directors are required to give the Supervisory Authority an explanation of the annual accounts or to prepare revised annual accounts that comply with this Bill.

(5) If before the end of the specified period, or such longer period as the Supervisory Authority may allow, the directors of the relevant undertaking prepare revised annual accounts, the Supervisory Authority may, taking account of the circumstances of the case and the degree of co operation by the directors with the Supervisory Authority, require that undertaking to pay some or all of the costs the Supervisory Authority incurred under this head in relation to that undertaking.

(6) If at the end of the specified period or such longer period as the Supervisory Authority may allow, the directors of the relevant undertaking have, in the Supervisory Authority's opinion, neither given a satisfactory explanation of the annual accounts nor revised them to comply with the Companies Acts, the Supervisory Authority may apply to the High Court for a declaration of non compliance and an order under subhead (8).

(7) If an application is made to the Court under subhead (6), the Supervisory Authority shall give to the Registrar for registration—

(a) notice of the application; and

(b) a general statement of the matters at issue in the proceedings.

(8) If satisfied after hearing the application that the relevant undertaking's annual accounts referred to in subhead (3) do not comply with the Companies Acts, the Court may make a declaration to that effect and may, by order, do one or more of the following—

(a) require the directors to revise the annual accounts so that they comply with those Acts,

(b) give directions respecting one or more of the following,

- (i) the auditing of the revised annual accounts,
  - (ii) the revision of any directors' report,
  - (iii) the steps to be taken by the directors to bring the court order to the notice of persons likely to rely on the annual accounts that were the subject of the declaration,
  - (iv) such other matters as the Court thinks fit;
- (c) require the directors of the relevant undertaking to pay,
- (i) the costs incurred by the Supervisory Authority under Subheads (3) and (4) in relation to that undertaking, and
  - (ii) any reasonable expenses incurred by the relevant undertaking in connection with or in consequence of the reparation of revised annual accounts.
- (9) For the purpose of Part A14, Head 20 (1) (c) [equivalent of Section 8(1)(c) of the Companies (Auditing and Accounting) Act, 2003], every director of the relevant undertaking at the time the annual accounts were approved is considered to have been a party to their approval unless the director shows that he or she took all reasonable steps to prevent their being approved.
- (10) In making an order under Part A14, Head 20 (1) (c) [equivalent of Section 8(1)(c) of the Companies (Auditing and Accounting) Act, 2003], the Court—
- (a) shall have regard to whether any or all of the directors who approved the annual accounts that were the subject of the declaration knew, or ought to have known, that they did not comply with this Bill, and
  - (b) may exempt one or more directors from the order or may order the payment of different amounts by different directors.
- (11) On the conclusion of the proceedings, the Supervisory Authority shall give to the Registrar of companies for registration, —
- (a) a copy of the court order; or
  - (b) notice that the application has failed or been withdrawn.
- (12) The Supervisory Authority shall consult with the Irish Financial Services Regulatory Authority before making any decisions under this head with respect to a company regulated by the latter Authority, including a decision to give notice under subhead(3).
- (13) This head applies equally to revised annual accounts, in which case references to revised annual accounts are to be construed as references to further revised annual accounts.
- (14) For the purpose of applying this head to a partnership that is referred to in Regulation 6 of the 1993 Regulations and that is a relevant undertaking, —
- (a) the partnership is to be treated as though it were a company formed and registered under this Bill, and
  - (b) the head applies with any modifications necessary for that purpose.
- (15) Where revised annual accounts are prepared under this head then, subject to a direction given under Part A14, Head 20 (1) (b) [equivalent of Section 8(1)(b) of the Companies (Auditing and Accounting) Act, 2003], any provision of this Bill respecting the preparation, auditing, circulation and disclosure of annual accounts, applies with the necessary changes to the revised annual accounts.

**Explanatory note**

*Re-enactment of Section 26 of the Companies (Auditing and Accounting) Act, 2003.*

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**Head 39 Delegation of Supervisory Authority's functions and powers**

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- (1) The Supervisory Authority may delegate some or all of its functions and powers under Part A14, Heads 35 to 38 [equivalent of Sections 23 to 26 of the Companies (Auditing and Accounting) Act, 2003] to a committee established for that purpose and constituted as follows—

- (a) in the case of functions and powers under Part A14, Heads 35 to 37 [equivalent of Sections 23 to 25 of the Companies (Auditing and Accounting) Act, 2003], a committee consisting of directors of the Authority and such professional and other advisers as the Authority considers necessary;
- (b) in the case of functions and powers under Part A14, Head 38 [equivalent of Section 26 of the Companies (Auditing and Accounting) Act, 2003], a committee constituted in the manner described in paragraph (a) of this head or consisting of only such professional and other advisers as the Authority considers necessary.
- (2) Where functions or powers under a provision referred to in subhead (1) are delegated to a committee, any references in that provision to the Supervisory Authority are to be construed as references to that committee.
- (3) Subject to the regulations made under Part A14, Head 40 [equivalent of Section 28(4) of the Companies (Auditing and Accounting) Act, 2003], a committee may regulate its own procedure.
- (4) The Supervisory Authority may, if it reasonably considers it appropriate to do so, perform any of its other functions or exercise any of its other powers through or by any of its officers or employees or any other person duly authorised by it in that behalf.
- (3) Nothing in Part A14, Heads 35, 36 or 37 [equivalent of Section 23, 24 or 25 of the Companies (Auditing and Accounting) Act, 2003] compels the disclosure by any person of any information that the person would be entitled to refuse to produce on the grounds of legal professional privilege or authorises the inspection or copying of any document containing such information that is in the person's possession.
- (4) The Supervisory Authority shall make regulations respecting the procedures to be followed in conducting enquiries under Part A14 Head 35 [equivalent of Section 23 of the Companies (Auditing and Accounting) Act, 2003], investigations under Part A14, Head 36 [equivalent of Section 24 of the Companies (Auditing and Accounting) Act, 2003] and reviews under Part A14, Head 37 [equivalent of Section 25 of the Companies (Auditing and Accounting) Act, 2003].

**Explanatory note**

*Re-enactment of Section 28 of the Companies (Auditing and Accounting) Act, 2003.*

**Explanatory note**

*Re-enactment of Section 27 of the Companies (Auditing and Accounting) Act, 2003.*

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## Head 40 Hearings, privileges and procedural rules

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- (1) The Supervisory Authority may for the purposes of exercising its functions under Part A14, Heads 35 or 36 [equivalent of Section 23 or 24 of the Companies (Auditing and Accounting) Act, 2003] conduct an oral hearing in accordance with regulations made under subhead (4) of this head.
- (2) A witness before the Supervisory Authority is entitled to the same immunities and privileges as a witness before the High Court.

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## Head 41 Supervisory Authority's seal and instruments

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- (1) Judicial notice shall be taken of the Supervisory Authority's seal.
- (2) Every document that appears to be an instrument made by the Supervisory Authority and to be sealed with its seal apparently authenticated in accordance with its articles of association, shall be received in evidence and be deemed to be such instrument without proof, unless the contrary is shown.

**Explanatory note**

*Re-enactment of Section 30 of the Companies (Auditing and Accounting) Act, 2003.*

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## Head 42 Confidentiality of information

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- (1) No person shall disclose, except in accordance with law, information that—
- (a) is obtained in performing the functions or exercising the powers of the Supervisory Authority; and
- (b) has not otherwise come to the notice of members of the public.

- (2) Without limiting subhead (1), the persons to whom that subhead applies include the following—
- (a) a member or director or former member or director of the Supervisory Authority;
  - (b) an employee or former employee of the Supervisory Authority;
  - (c) a professional or other adviser to the Supervisory Authority, including a former adviser.

- (3) Subhead (1) does not prohibit the Supervisory Authority from disclosing information referred to in that subhead—

- (a) if the disclosure is, in its opinion, necessary to enable it to state the grounds on which it made a decision under Part A14, Heads 35, 36 or 37 [equivalent of Sections 23, 24 or 26 of the Companies (Auditing and Accounting) Act, 2003]; or
- (b) if the information is, in its opinion, connected with the functions of, and if the disclosure is made to, any of the following—
  - (i) the Minister;
  - (ii) the Minister for Finance;
  - (iii) the Garda Síochána;
  - (iv) the Director of Public Prosecutions;
  - (v) the Director of Corporate Enforcement;
  - (vi) the Revenue Commissioners;
  - (vii) the Comptroller and Auditor General;
  - (viii) the Central Bank and Financial Services Authority of Ireland;
  - (ix) the Irish Takeover Panel;
  - (x) the Irish Stock Exchange;
  - (xi) the Pensions Board;
  - (xii) a prescribed accountancy body;
  - (xiii) a member of a recognised accountancy body who is qualified for appointment as an auditor;

(xiv) an inspector appointed under any other enactment;

(xv) any person prescribed under Part A14, Head 45 (1) (i) [equivalent of Section 48(1)(i) of the Companies (Auditing and Accounting) Act, 2003] for the purposes of this head.

- (4) A person who contravenes subhead (1) is guilty of an offence.

**Explanatory note**

*Re-enactment of Section 31 of the Companies (Auditing and Accounting) Act, 2003.*

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### Head 43 Appeals to and orders of High Court, including orders confirming decisions of Supervisory Authority

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- (1) In an appeal under Part A14 Head 35(8) or (1) or Part A14 Head 36(8) [equivalent of Section 23(8), (10) or 24(8) of the Companies (Auditing and Accounting) Act, 2003], the High Court may consider any evidence adduced or argument made, whether or not adduced or made to the Supervisory Authority or other body whose decision is under appeal.
- (2) On the hearing of the appeal, the Court may make any order or give any direction it thinks fit, including an order—
- (a) confirming the decision under appeal; or
  - (b) modifying or annulling that decision.
- (3) On application under Part A14, Head 35 [equivalent of Section 23(4) of the Companies (Auditing and Accounting) Act, 2003] for an order granting permission for an investigation under Part A14, Head 36 [equivalent of section 24 of the Companies (Auditing and Accounting) Act, 2003] into a possible breach of a prescribed accountancy body's rules by a member, the Court may—
- (a) grant or refuse to grant permission; and
  - (b) make any ancillary or consequential order it thinks fit, including, if permission is granted, an order setting aside any decision of the body relating to the member.

(4) A decision of the Supervisory Authority annulling all or part of a decision of a prescribed accountancy body under Part A14 Head 35 (5) (a) [equivalent of Section 23(5)(a) of the Companies (Auditing and Accounting) Act, 2003], directing a fresh investigation under Part A14 Head 35 (5) (b) [equivalent of Section 23(5)(b) of the Companies (Auditing and Accounting) Act, 2003] or requiring the payment of an amount under Part A14 Head 35 (5) (c) or Part A14 36 (7) (a) [equivalent of Section 23(5)(c) or 24(7)(a) or (b) of the Companies (Auditing and Accounting) Act, 2003] does not take effect until that decision is confirmed by the Court either—

- (a) on appeal under Part A14 Head 35 (8) or Part A14 Head 36 (8) [equivalent of Section 23(8) or 24(8) of the Companies (Auditing and Accounting) Act, 2003]; or
- (b) on application by the Supervisory Authority under subhead (6) of this head.

(5) Subhead (4)(b) applies also in relation to a decision of the Supervisory Authority requiring payment of costs under Part A14, Head 38 (5) [equivalent of Section 26(5) of the Companies (Auditing and Accounting) Act, 2003].

(6) On application by motion on notice by the Supervisory Authority for an order confirming a decision referred to in subhead (4) or (5), the Court may make an order confirming the decision or may refuse to make such an order.

(7) On application under Part A14, Head 22 (4) [equivalent of Section 10(4) Companies (Auditing and Accounting) Act, 2003] for an order compelling compliance with—

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

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

**Explanatory note**

*Re-enactment of Section 29 of the Companies (Auditing and Accounting) Act, 2003.*

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**Head 44 Liability of Supervisory Authority for Acts, omissions, etc.**

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(1) Neither the Supervisory Authority nor any person who is or was a member, director or other officer or employee of the Supervisory Authority is liable for damages for anything done, anything purported to be done or anything omitted to be done by the Supervisory Authority or that person in performing their functions or exercising their powers under this Bill, unless the act or omission is shown to have been in bad faith.

(2) The matters in respect of which subhead (1) applies include, but are not limited to, the following—

- (a) any advice given or admonition or censure administered, to a prescribed accountancy body under Part A14, Head 35 (5) [equivalent of Section 23(5) of the Companies (Auditing and Accounting) Act, 2003];
- (b) any statement published under Part A14, Head 35 (7) [equivalent of Section 23(7) of the Companies (Auditing and Accounting) Act, 2003] concerning a prescribed accountancy body;
- (c) any investigation under Part A14, Head 36 [equivalent of Section 24 of the Companies (Auditing and Accounting) Act, 2003] of a possible breach of the standards of a prescribed accountancy body by a member of that body or any sanction or penalty imposed on such a member;
- (d) any certificate of refusal issued by the Supervisory Authority in connection with an investigation under Part A14, Head 36 [equivalent of Section 24 of the Companies (Auditing and Accounting) Act, 2003];
- (e) any review under Part A14, Head 37 [equivalent of Section 25 of the Companies (Auditing and Accounting) Act, 2003] of a member of a recognised accountancy body;

- (f) any notice given or statement made by the Supervisory Authority under Part A14, Head 38 [equivalent of Section 26 of the Companies (Auditing and Accounting) Act 2003] respecting whether an undertaking's accounts comply with the Companies Acts.
- (3) Subject to any enactment or rule of law, the Supervisory Authority may indemnify any person who is or was a member, director, officer or employee of the Supervisory Authority in respect of anything done or omitted to be done by that person in good faith in carrying out duties under this Bill.
- (4) The power to indemnify under subhead (3) includes, but is not limited to, the power to indemnify a person referred to in that subhead for any liability to pay damages or costs because of anything done or omitted to be done by that person in carrying out duties under this Bill where the liability—
- (a) has been determined in proceedings before a court or tribunal in another state or arises by virtue of an agreement entered into in settlement of such proceedings; and
- (b) would not have been determined had subheads (1) and (2) been applied in those proceedings or would not have been the subject of such an agreement but for that person's reliance in good faith on a legal opinion or advice that those subheads would not be applied by the court or tribunal in those proceedings.
- (b) prescribing designated bodies for the purposes of Part A14, Head 18 and 23 [equivalent of sections 6 and 11 Companies (Auditing and Accounting) Bill 2003];
- (c) providing that, effective on a specified date, a body referred to in Part A14, Head 18 (2) [equivalent of Section 6(2) of the Companies (Auditing and Accounting) Act, 2003] ceases to be a designated body;
- (d) varying, as a consequence of a regulation under paragraph (b) or (c), the numbers specified in Part A14, Head 23 (1) (2) and (3) [equivalent of Section 11(1) of the Companies (Auditing and Accounting) Act, 2003], as the Minister considers necessary or expedient;
- (e) prescribing for the purposes of the criteria referred to in Part A14, Head 27 (2) (b) [equivalent of Section 15(2)(b) of the Companies (Auditing and Accounting) Act, 2003] amounts that are higher or lower than the euro amounts specified in that head and that apply instead of the euro amounts;
- (f) prescribing the amount of a penalty under Part A14 Head 35 (5) [equivalent of Section 23(5)(c) of the Companies (Auditing and Accounting) Act, 2003];
- (g) prescribing for the purpose of Part A14 Head 35 (7) [equivalent of Section 23(7) of the Companies (Auditing and Accounting) Act, 2003] the manner in which notice is to be given;
- (h) prescribing, for the purposes of the criteria referred to in paragraph (c) of the definition of "relevant undertaking" in Part A14, Head 38 [equivalent of Section 26 of the Companies (Auditing and Accounting) Act, 2003], amounts that are higher or lower than the euro amounts specified in that definition and that apply instead of the euro amounts;
- (i) prescribing for the purposes of Part A14 Head 42 (1) [equivalent of Section 31(3) of the Companies (Auditing and Accounting) Act, 2003] persons to whom the Supervisory Authority may disclose information;

**Explanatory note**

*Re-enactment of Section 33 of the Companies (Auditing and Accounting) Act, 2003.*

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**Head 45 Minister's power to make regulations**

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- (1) Subject to Part A14, Head 46 [equivalent of Section 49 of the Companies (Auditing and Accounting) Bill, 2003], the Minister may make regulations respecting any matter that is referred to in this Act as prescribed or that is necessary or advisable for giving effect to this Bill, including regulations—
- (a) prescribing bodies of accountants for the purposes of this Act,

- (j) exempting from all or any of Part A14, Head 27 and 38 [equivalent of Sections 15 and 26 of the Companies (Auditing and Accounting) Act, 2003], Part A5, Head 7, Part A6, Head 13 and Part A6, Heads 34 to 35 [equivalents of sections 205A, 205B, 205C, 205D and 205E of the Companies Act, 1990]—
- (i) qualifying companies within the meaning of Section 110 of the Taxes Consolidation Act, 1997 (as inserted by Section 48 of the Finance Act 2003), and
- (ii) classes of other companies and other undertakings, if the extent to which or the manner in which they are or may be regulated under any enactment makes it, in the Minister's opinion, unnecessary or inappropriate to apply those provisions to them;
- (k) prescribing for the purposes of the definition of "accounting standards" in Part A6 Head 13 [equivalent of Section 205A of the Companies Act, 1990] one or more bodies that issue statements of accounting standards;
- (l) prescribing, for the purposes of the definitions of "large private company" and "relevant undertaking" in Part A4 Head 34 [equivalent of Section 205B of the Companies Act, 1990] or for the purposes of Part A5 Head 7(5) [equivalent of Section 205E(9) of the Companies Act, 1990], amounts that are higher or lower than the euro amounts specified in those definitions or in Part A5 Head 7(5) [equivalent of section 205E(9) of the Companies Act, 1990], as the case may be and that apply instead of the euro amounts;
- (m) prescribing for the purposes of Part A4 Head 34 [equivalent of Section 205B of the Companies Act, 1990]—
- (i) additional functions to be performed by audit committees,
- (ii) conditions to be met under subhead (8)(c) of that head, and
- (iii) supplementary rules governing the operation of those committees; and
- (n) prescribing the format in which information must be disclosed under Part A6 Head 35 [equivalent of Section 205D of the Companies Act, 1990] for audit work, audit related work and non audit work.
- (2) On a body ceasing,
- (a) to be a prescribed accountancy body because of the revocation of a regulation made under subhead (1)(a); or
- (b) to be a designated body because of a regulation under subhead (1)(c)
- any director who was nominated by that body under Section 11 immediately ceases to hold office.
- (3) Before preparing for the purposes of Part A14, Head 46 [equivalent of Section 49 of the Companies (Auditing and Accounting) Act 2003] a draft regulation under subhead (1)(a), (e), (h) or (l) of this head, the Minister shall consider any recommendations that the Supervisory Authority may make.
- (4) Subject to subhead (3), before making a regulation under this head the Minister may consult with any persons that the Minister considers should be consulted.
- (5) Regulations under this head may contain any transitional and other supplementary and incidental provisions that appear to the Minister to be appropriate.

**Explanatory note**

*Re-enactment of Section 48 of the Companies (Auditing and Accounting) Act, 2003.*

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**Head 46 Prior approval by Oireachtas required for certain regulations**

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A regulation may not be made under Part A14, Head 45 (1) (a), (e), (h), (j) or (l) [equivalent of Section 48(1)(a), (e), (h), (j) or (l) of the Companies (Auditing and Accounting) Act, 2003] unless—

- (a) a draft of the proposed regulation has been laid before the Houses of the Oireachtas; and
- (b) a resolution approving the draft has been passed by each House.

**Explanatory note**

*Re-enactment of Section 49 of the Companies (Auditing and Accounting) Act, 2003.*

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**Head 47 Laying of other regulations before Oireachtas**

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- (1) The Minister shall ensure that a regulation made under this Bill, other than one to which Part A14, Head 46 [equivalent of Section 49 of the Companies (Auditing and Accounting) Act, 2003] applies, is laid before each House of the Oireachtas as soon as practicable after it is made.
- (2) Either House of the Oireachtas may, by a resolution passed within 21 sitting days after the day on which the regulation is laid before it, annul the regulation.
- (3) The annulment of a regulation under subhead (2) takes effect immediately on the passing of the resolution concerned, but does not affect the validity of anything done under the regulation before the passing of the resolution.

**Explanatory note**

*Re-enactment of Section 50 of the Companies (Auditing and Accounting) Act, 2003.*

## Chapter 4

### Director of Corporate Enforcement

#### Head 48 Director of Corporate Enforcement

- (1) There shall be a Director of Corporate Enforcement.
- (2) The Minister shall, in writing, appoint a person to be the Director of Corporate Enforcement.
- (3) The Minister shall not appoint a person to be the Director unless the Civil Service Commissioners, after holding a competition under Section 15 of the Civil Service Commissioners Act, 1956, have, under Section 17 of that Act, selected the person for appointment and advised the Minister accordingly.
- (4) The Director shall be a corporation sole and, notwithstanding any casual vacancy in the office from time to time, shall have perpetual succession and shall be capable in his or her corporate name of holding and disposing of real or personal property and of suing and being sued.
- (5) The Director shall perform the functions conferred on him or her by or under this or any other Act and shall be assisted in the performance of those functions by the officers of the Director.
- (6) All judges, courts or other persons or bodies acting judicially shall take judicial notice of the signature of the Director on or affixed to any document and it shall be presumed, unless the contrary is proved, that it has been duly signed or affixed.

#### **Explanatory note**

*Re-enactment of Section 7 of the Company Law Enforcement Act, 2001.*

#### Head 49 Terms and conditions of appointment of Director

- (1) Subject to subhead (2), a person appointed to be the Director shall hold office for such period not exceeding 5 years beginning on the date of his or her appointment, and on such terms and conditions (which shall include a scheme of superannuation under Section 9), as the Minister, with the consent of the Minister for Finance, may determine, and the Minister may, if he or she thinks fit, with the consent of the Minister for Finance, continue the appointment (including an appointment previously continued under this subhead) for such further period, not exceeding 5 years at any one time, as the Minister thinks appropriate.
- (2) A person appointed as the Director is, by virtue of the appointment, a civil servant within the meaning of the Civil Service Regulation Act, 1956, as amended.
- (3) The Director shall not hold any other office or employment in respect of which emoluments are payable.

#### **Explanatory note**

*Re-enactment of Section 8 of the CLEA, 2001.*

#### Head 50 Superannuation

- (1) The Minister shall, with the consent of the Minister for Finance, if he or she considers it appropriate to do so, make and carry out a scheme or schemes for the granting of superannuation benefits to or in respect of one or more of the following, namely, the Director, the Acting Director and any officer of the Director.
- (2) Every such scheme shall fix the time and conditions of retirement for the person or persons to or in respect of whom superannuation benefits are payable under the scheme, and different times and conditions may be fixed in respect of different classes of such person.
- (3) Every such scheme may be amended or revoked by a subsequent scheme made under this head with the consent of the Minister for Finance.

- (4) No superannuation benefit shall be granted by the Minister to or in respect of the Director, the Acting Director or an officer of the Director otherwise than in accordance with a scheme under this head or, if the Minister with the consent of the Minister for Finance, sanctions the granting of such a benefit, in accordance with that sanction.
- (5) If any dispute arises as to the claim of any person to, or the amount of, any superannuation benefit payable in pursuance of a scheme or schemes under this head, such dispute shall be submitted to the Minister who shall refer it to the Minister for Finance, whose decision shall be final.
- (6) A scheme under this head shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the scheme is passed by either such House within the next 21 days on which that House has sat after the scheme is laid before it, the scheme shall be annulled accordingly, but without prejudice to the validity of anything previously done thereunder.
- (7) In this head, "superannuation benefits" means pensions, gratuities and other allowances payable on resignation, retirement or death.
- (c) regarded pursuant to Part XIII of the Second Schedule to the European Parliament Elections Act, 1997, as having been elected to the European Parliament, he or she shall thereon cease to be the Director.
- (4) A person who is for the time being—
- (a) entitled under the Standing Orders of either House of the Oireachtas to sit in that House;
- (b) a member of the European Parliament; or
- (c) a member of a local authority,
- is, while he or she is so entitled or is such a member, disqualified from being the Director.

**Explanatory note**

*Re-enactment of Section 10 of the Company Law Enforcement Act, 2001.*

**Explanatory note**

*Re-enactment of Section 9 of the Company Law Enforcement Act, 2001.*

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## Head 51 Removal, disqualification or cessation of Director

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- (1) The Minister may at any time, for stated reasons, remove the Director from office.
- (2) If the Director is removed from office under this head, the Minister shall cause to be laid before each House of the Oireachtas a statement of the reasons for the removal.
- (3) Where the Director is—
- (a) nominated as a member of Seanad Éireann;
- (b) nominated as a candidate for election to either House of the Oireachtas or to the European Parliament or becomes a member of a local authority; or

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## Head 52 Acting Director of Corporate Enforcement

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- (1) Subject to subhead (2), the Minister may appoint a person to be the Acting Director of Corporate Enforcement to perform the functions of the Director during—
- (a) a period, or during all periods, when the Director is absent from duty or from the State or is, for any other reason, unable to perform the functions of the Director;
- (b) any suspension from office of the Director; or
- (c) a vacancy in the office of Director.
- (2) A person shall not be appointed to perform the functions of the Director for a continuous period of more than 6 months during a vacancy in the office of Director.
- (3) The Minister may, at any time, terminate an appointment under this head.

**Explanatory note**

*Re-statement of Section 11 of the Company Law Enforcement Act, 2001.*

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## Head 53 Functions of Director

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- (1) The functions of the Director are—
- (a) to enforce the Companies Acts, including by the prosecution of offences by way of summary proceedings;
  - (b) to encourage compliance with the Companies Acts;
  - (c) to investigate instances of suspected offences under the Companies Acts;
  - (d) at his or her discretion, to refer cases to the Director of Public Prosecutions where the Director of Corporate Enforcement has reasonable grounds for believing that an indictable offence under the Companies Acts has been committed;
  - (e) to exercise, insofar as the Director feels it necessary or appropriate, a supervisory role over the activity of liquidators and receivers in the discharge of their functions under the Companies Acts;
  - (f) for the purpose of ensuring the effective application and enforcement of obligations, standards and procedures to which companies and their officers are subject, to perform such other functions in respect of any matters to which the Companies Acts relate as the Minister considers appropriate and may by order confer on the Director; and
  - (g) to perform such other functions for a purpose referred to in paragraph (f) as may be assigned to him or her by or under the Companies Acts or any other Act.
- (2) The Director may do all such acts or things as are necessary or expedient for the purpose of the performance of his or her functions under this or any other Act.
- (3) Notwithstanding that he or she has been so seconded but without prejudice to subheads (5) and (6), a member of the Garda Síochána seconded to the office of the Director shall continue to be under the general direction and control of the Commissioner of the Garda Síochána.

- (4) A member of the Garda Síochána so seconded shall continue to be vested with and may exercise or perform the powers or duties of a member of the Garda Síochána for purposes other than the purposes of this Bill, as well as for the purposes of this Bill.
- (5) The Director shall be independent in the performance of his or her functions.
- (6) The Director may perform such of his or her functions as he or she thinks fit through or by an officer of the Director and in the performance of those functions the officer shall be subject to the directions of the Director only.

### **Explanatory note**

*Re-enactment of Section 12 of the Company Law Enforcement Act, 2001.*

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## Head 54 Delegation

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- (1) Without prejudice to the generality of Part A14 Head 53 (6), the Director may, in writing, delegate to an officer of the Director any of the Director's powers under this or any other Act, except this power of delegation.
- (2) A power delegated under subhead (1) shall not be exercised by the delegate except in accordance with the instrument of delegation.
- (3) A delegate shall, on request by a person affected by the exercise of a power delegated to him or her, produce the instrument of delegation under this head, or a copy of the instrument, for inspection.
- (4) A delegation under this head is revocable at will and does not prevent the exercise by the Director of a power so delegated.

### **Explanatory note**

*Re-enactment of Section 13 of the Company Law Enforcement Act, 2001.*

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## Head 55 Director or officer of Director indemnified against losses.

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Neither the Director nor any officer of the Director shall be liable in damages in respect of any thing done or omitted to be done in good faith by him or her in the performance or purported performance of a function under the Companies Acts or any other Act.

**Explanatory note**

*Re-enactment of Section 15 of the Company Law Enforcement Act, 2001.*

**Head 56 Reporting by Director**

- (1) The Director shall, not later than 3 months after the end of each year, present a report to the Minister about the performance of the Director's functions and other activities of the Director in that year, and the Minister shall cause a copy of the report to be laid before each House of the Oireachtas within 2 months of receipt of the report.
- (2) A report under subhead (1) shall include information in such form and about such matters as the Minister may direct but nothing in that or this subhead shall be construed as requiring the Director to include in such a report information the inclusion of which therein would, in the opinion of the Director, be likely to prejudice the performance by him or her of any of his or her functions.
- (3) The Director shall furnish to the Minister such information about the performance of the Director's functions as the Minister may from time to time require (other than information the provision of which under this subhead would, in the opinion of the Director, be likely to prejudice the performance by him or her of any of his or her functions).
- (4) When so requested, the Director shall account to an appropriately established Committee of either House of the Oireachtas for the performance of his or her functions but in discharging his or her duties under this subhead the Director shall not be required to furnish any information or answer any questions the furnishing or answering of which would, in the opinion of the Director, be likely to prejudice the performance by him or her of any of his or her functions.

**Explanatory note**

*Re-enactment of Section 16 of the Company Law Enforcement Act, 2001.*

**Head 57 Disclosure of information**

- (1) Information obtained by virtue of the performance by the Director of any of his or her functions which has not otherwise come to the notice of the public, shall not be disclosed, except in accordance with law, by any person, including—
  - (a) the Director or a former Director;
  - (b) a professional or other adviser (including a former adviser) to the Director; and
  - (c) an officer or former officer of the Director.
- (2) Notwithstanding subhead (1), information referred to in that subhead which, in the opinion of the Director, may be required—
  - (a) for a purpose or reason specified in Part A13 Head 16(1) [equivalent of Subsection (1) of Section 21 of the Act of 1990];
  - (b) for the performance by a competent authority (within the meaning of that Part A13, Head 16) of a function or functions of the authority; or
  - (c) for the performance by the Director of a function or functions of the Director,

may be disclosed by or under the authority of the Director to the extent that, in the opinion of the Director, is necessary for that purpose.
- (3) Notwithstanding subhead (1), information which, in the opinion of the Director or an officer of the Director, may relate to the commission of an offence which is not an offence under the Companies Acts may be disclosed to any member of An Garda Síochána.
- (4) A person who contravenes this head is guilty of an offence.

**Explanatory note**

*Re-enactment of Section 17 of the Company Law Enforcement Act, 2001.*

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## **Head 58 Information relating to offences under Companies Acts may be disclosed to Director or officer of the Director**

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### **Explanatory note**

*Re-enactment of Sections 14 (3) to (6) of the Company Law Enforcement Act, 2001.*

Notwithstanding any other law, information which, in the opinion of the Competition Authority or a member of An Garda Síochána or an officer of the Revenue Commissioners, may relate to the commission of an offence under the Companies Acts may be disclosed by that Authority, member or officer to the Director or an officer of the Director.

### **Explanatory note**

*Re-enactment of Section 18 of the Company Law Enforcement Act, 2001.*

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## **Head 59 Transfer of functions**

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- (1) A person authorised by the Minister under a relevantly amended provision shall be regarded as having been so authorised by the Director of Corporate Enforcement under that provision as relevantly amended.
- (2) Where, before its relevant amendment, legal proceedings were pending under a provision of this Bill to which the Minister is or was then the plaintiff or the prosecutor, the name of the Director of Corporate Enforcement shall be substituted in those proceedings for that of the Minister, or added in those proceedings as may be appropriate, and those proceedings shall not abate by reason of that substitution or addition.
- (3) To avoid doubt where, immediately before its relevant amendment, legal proceedings were pending under a provision of this Bill as then in force in which the Minister was a defendant, the Director of Corporate Enforcement shall not be substituted for the Minister in those proceedings notwithstanding the amendment of that provision.
- (4) In this head, “relevant amendment” means an amendment by any Act which comprises or includes the substitution for “Minister” of “Director of Corporate Enforcement” (including the substitution of an entire provision or part of a provision which has the effect of transferring a function from the Minister to the Director of Corporate Enforcement), and “relevantly amended” has a corresponding meaning.

## Chapter 5

### Company Law Review Group

#### Head 60 Establishment of Company Law Review Group

There shall be a body to be known as the Company Law Review Group.

**Explanatory note**

*Re-enactment of Section 67 of the Company Law Enforcement Act, 2001.*

*May be necessary, for transitional purposes, to provide for the continuation of the existing CLRG rather than to provide for the establishment of a new body.*

*“There is hereby established ...” has been replaced by “There shall be ...”.*

#### Head 61 Functions of Review Group

- (1) The Review Group shall monitor, review and advise the Minister on matters concerning—
  - (a) the implementation of the Companies Acts;
  - (b) the amendment of the Companies Acts;
  - (c) the consolidation of the Companies Acts;
  - (d) the introduction of new legislation relating to the operation of companies and commercial practices in Ireland;
  - (e) the Rules of the Superior Courts and case law judgments insofar as they relate to the Companies Acts;
  - (f) the approach to issues arising from the State’s membership of the European Union, insofar as they affect the operation of the Companies Acts;
  - (g) international developments in company law, insofar as they may provide lessons for improved State practice; and
  - (h) other related matters or issues, including issues submitted by the Minister to the Review Group for consideration.

- (2) In advising the Minister the Review Group shall seek to promote enterprise, facilitate commerce, simplify the operation of [the Companies Acts], enhance corporate governance and encourage commercial probity.

**Explanatory note**

*Re-enactment of Section 68 of the Company Law Enforcement Act, 2001.*

#### Head 62 Membership of Review Group

- (1) The Review Group shall consist of such and so many persons as the Minister from time to time appoints to be members of the Review Group.
- (2) The Minister shall from time to time appoint a member of the Review Group to be its chairperson.
- (3) Members of the Review Group shall be paid such remuneration and allowances for expenses as the Minister, with the consent of the Minister for Finance, may from time to time determine.
- (4) A member of the Review Group may at any time resign his or her membership of the Review Group by letter addressed to the Minister.
- (5) The Minister may at any time, for stated reasons, terminate a person’s membership of the Review Group.

**Explanatory note**

*Re-enactment of Section 69 of the Company Law Enforcement Act, 2001.*

#### Head 63 Meetings and business of Review Group

- (1) The Minister shall, at least once in every 2 years, after consultation with the Review Group, determine the programme of work to be undertaken by the Review Group over the ensuing specified period.
- (2) Notwithstanding subhead (1), the Minister may, from time to time, amend the Review Group’s work programme, including the period to which it relates.

- (3) The Review Group shall hold such and so many meetings as may be necessary for the performance of its functions and the achievement of its work programme and may make such arrangements for the conduct of its meetings and business (including by the establishment of sub-committees and the fixing of a quorum for a meeting) as it considers appropriate.
- (4) In the absence of the chairperson from a meeting of the Review Group, the members present shall elect one of their number to be chairperson for that meeting.
- (5) A member of the Review Group, other than the chairperson, who is unable to attend a meeting of the Review Group, may nominate a deputy to attend in his or her place.

**Explanatory note**

*Re-enactment of Section 70 of the Company Law Enforcement Act, 2001.*

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## **Head 64 Annual Report and provision of information to Minister**

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- (1) No later than 3 months after the end of each calendar year, the Review Group shall make a report to the Minister on its activities during that year and the Minister shall cause copies of the report to be laid before each House of the Oireachtas within a period of 2 months from the receipt of the report.
- (2) A report under subhead (1) shall include information in such form and regarding such matters as the Minister may direct.
- (3) The Review Group shall, if so requested by the Minister, provide a report to the Minister on any matter—
  - (a) concerning the functions or activities of the Review Group; or
  - (b) referred by the Minister to the Review Group for its advice.

**Explanatory note**

*Re-enactment of Section 71 of the Company Law Enforcement Act, 2001.*