
Part B3 – Designated Activity Companies

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Part B3 - Designated Activity Companies

Chapter 1

Preliminary and Definitions

Head 1 Defined terms

(1) In this Part—

“**designated activity company**” or “**dac**” or “**DAC**” means

- (a) a private company limited by shares with the capacity, including the power, to do only those acts or things set out in its constitution [memorandum of association], or
- (b) a private company limited by guarantee and having a share capital with the capacity, including the power, to do only those acts or things set out in its constitution;

“**member**” means member of a designated activity company or DAC;

“**constitution**” has the meaning ascribed to it in Head 4 of this Part.

Explanatory Note

The concept of a “designated activity company” is derived from paragraphs 10.9.9 to 10.9.13 of the First Report of the Company Law Review Group. The concept originally came from the recognition that there would be a need to provide for a type of company similar to the existing private company limited by shares, i.e. a private company with an objects clause. On further reflection, the Steering Committee concluded that it would also be appropriate to include private companies limited by guarantee and having a share capital within this type of company.

Head 2 Interpretation of this Part

- (1) The provisions of Parts A1 to A14 of Pillar A apply to DACs subject to such amendments thereto, or exclusions therefrom, as are contained in this Part.
- (2)
- (a) The provisions contained in the following table shall not apply to a DAC limited by shares to which this Part applies:

Part	Head	Title
A2	2	Way of forming a company limited by shares
A2	3	The form of the constitution
A2	8(3)	Effect of registration
A2	9(1) – (3)	Provisions as to names of companies
A2	10	Trading under a misleading name
A2	20	Capacity of a private company limited by shares
A2	22	Persons or bodies of persons authorised to bind a company
A3	4	Limitation on offer of securities to the public
A3	46	Holding by subsidiary of shares or [an interest/membership by guarantee] in its holding company.
A4	2	Directors
A4	10	Share qualifications of directors
A4	16	Rotation of Directors
A4	28 (o)	Meetings of Directors and Committees of Directors
A4	29	Holding of any other office or place of profit under the company by a director
A4	35	Definition of member
A4	46	Annual General Meeting
A4	64&65	Unanimous and majority written resolutions
A11	86	Liability as contributories of past and present members

(b) The provisions contained in the following table shall not apply to a DAC limited by guarantee with a share capital to which this Part applies:

Part	Head Intended	Title
A2	2	Way of forming a company limited by shares
A2	3	The form of the constitution
A2	8(3)	Effect of registration
A2	9(1) – (3)	Provisions as to names of companies
A2	10	Trading under a misleading name
A2	20	Capacity of a private company limited by shares
A2	22	Persons or bodies of persons authorised to bind a company
A3	4	Limitation on offer of securities to the public
A3	46	Holding by subsidiary of shares or [an interest/membership by guarantee] in its holding company.
A4	2	Directors
A4	10	Share or interest qualifications of directors
A4	16	Rotation of Directors
A4	28 (o)	Meetings of Directors and Committees of Directors
A4	29	Holding of any other office or place of profit under the company by a director
A4	46	Annual General Meeting
A4	64&65	Unanimous and majority written resolutions
A6	36	Signing of Companies Acts individual accounts
A11	86	Liability as contributories of past and present members

Chapter 2

Incorporation and Consequential Matters

Subhead (6) re-enacts Section 5(3) of Companies (Amendment) Act, 1983 for a DAC.

Head 3 Way of forming a designated activity company

- (1) A DAC may be formed for any lawful purpose by any person or persons subscribing to a constitution and complying with the registration requirements in this Part.
- (2) The number of members is limited to 99 not including current or former employees of the DAC.
- (3) A company may be registered as a DAC following—
 - (i) Re-registration as a DAC of an existing company other than a DAC, pursuant to Part B6;
 - (ii) the merger of two or more DACs pursuant to Part B3, Chapter 9; or
 - (iii) the division of a DAC into two or more DACs pursuant to Part B3, Chapter 9.
- (4) The liability of each member shall be limited to the amount, if any, unpaid on the shares held by him, if any, or to such amount as the members have undertaken to contribute to the assets of the DAC in the event of its being wound up.
- (5) A DAC shall not be formed and registered unless it appears to the Registrar that the DAC, when registered, will carry on an activity in the State.
- (6) The certificate of incorporation issued under Head 8(1) of Part A2 shall state that the company is a designated activity company (DAC).
- (7) Part A2, Head 2 shall not apply to the formation of a DAC.

Explanatory Note

This head sets out the manner in which a DAC may be formed, and delimits the liability of any member of such a company. The text of the head broadly follows the model of Head 2, Part A2. It allows for single member companies.

Subhead (4) recognises that members may be limited either by shares or by shares and guarantee.

Head 4 The form of the constitution

- (1) Subject to Subhead (3), the constitution of a DAC shall be in the form of a memorandum and articles of association which together shall be referred to in this Part as a constitution.
- (2) The memorandum of association of a DAC shall state—
 - (a) its name;
 - (b) that it is a DAC, registered under this Part;
 - (c) its objects;
 - (d) the amount of share capital with which the DAC proposes to be registered, and the division thereof into shares of a fixed amount.
- (3) If a DAC adopts supplemental regulations, those regulations shall be in the form of articles of association.
- (4) The memorandum of association shall—
 - (a)
 - (i) in the case of a private company limited by shares with the capacity, including the power, to do only those acts or things set out in its constitution, be in the form [as set out in the First Schedule to this Part] or as near thereto as circumstances permit,
 - (ii) in the case of a private company limited by guarantee and having a share capital with the capacity, including the power, to do only those acts or things set out in its constitution, be in the form [as set out in the Second Schedule to this Part] or as near thereto as circumstances permit;
 - (b) be printed in an entire format;
 - (c) be signed by each subscriber in the presence of at least one witness who must attest the signature.

- (5) In the case of any DAC, the articles of association, if any, shall—
 - (a) be in the form set out in the First and Second Schedules to this Part,
 - (b) be printed in an entire format, and
 - (c) be signed by each subscriber in the presence of at least one witness who must attest the signature.
- (6) Where the constitution is delivered to the Registrar otherwise than in legible form and is authenticated by each subscriber in such manner as is directed by the Registrar, the requirements in Subhead (4) for signature by each subscriber in the presence of at least one witness and for attestation of such signature shall not apply.
- (7) Part A2, Head 3 shall not apply to a DAC.
- (2) The words “designated activity company” may be abbreviated to “(dac)”/ “(DAC)” or “(d.a.c.)”/“(D.A.C.)” in any usage after the registration by any person including the DAC.
- (3) The words “Irish equivalent” may be abbreviated to “(ooo)”/ “(OOO)” or “(o.o.o.)”/“(O.O.O.)” in any usage after the registration by any person including the [Irish equivalent].
- (4) Every DAC carrying on business under a name other than its corporate name shall register in the manner directed by law for the registration of business names but the use of the abbreviations in Subheads (2) and (3) shall not of itself render such registration necessary.
- (5) Part A2, Head 9 shall not apply to a DAC

Explanatory Note

This head is modelled on Head 5 of Part B2 dealing with provisions as to names of PLCs. It is recognised that currently a charity may apply for a licence under Section 24 of the Companies Act, 1963 to dispense with the Ltd./teo in its name, see head below.

Explanatory Note

The wording at Subhead (4) has been amended to reflect the fact that the constitution of a DAC is a two-part document and to reflect the intention to attach a Schedule (model constitution) for DACs consisting of two Parts: Part I will set out the contents of the memorandum and Part II will be blank to allow for supplemental regulations.

The wording at Head 2(d) has been modelled on the wording of Head 4(2)(d) of Part B2.

Signature requirements are as set out at Head 5, Part A2, i.e. the statement accompanying the constitution shall be signed by or on behalf of the subscribers and shall be accompanied by a consent signed by each of the persons named in it as a director, secretary or joint secretary to act in that capacity.

A new Subhead (6) is added to facilitate online incorporation. It is modelled on Section 2(6)(A) of the UK Companies Act, 1985.

[N.B. Heads 5, 6, 7 and 8 of A2 apply]

Head 5 Provisions as to names of DACs

- (1) The name of a company limited by guarantee shall end with one of the following:
 - “(designated activity company)”
 - “([Irish equivalent])”.

Head 6 Trading under a misleading name

- (1) A person who is not a DAC and, if that person is a company, any officer of the company who is in default, shall be guilty of a category three offence if he carries on any trade, profession or business under a name which includes, as its last part, the words “designated activity company” or “[Irish Equivalent]” or abbreviations of those words.
- (2) A DAC and any officer of the DAC who is in default shall be guilty of a category three offence if, in circumstances in which the fact that it is a DAC is likely to be material to any person, it uses a name which may reasonably be expected to give the impression that it is a company other than a DAC.
- (3) Subhead (1) shall not apply to any company-
 - (a) to which Part B7 [equivalent of Part XI of the Companies Act, 1963] applies; and
 - (b) which has provisions in its constitution that would entitle it to rank as a DAC if it had been registered in the State.

Explanatory Note

An amended re-enactment of Sections 56(1), (2) and (4) of the Companies (Amendment) Act, 1983.

Head 7 Power to dispense with “designated activity company” or “Irish equivalent” in name of charitable and other companies

- (1) A DAC shall, notwithstanding its registration as a company with limited liability, be exempt from the provisions of this Bill relating to the use of the words “designated activity company” or “Irish equivalent” as part of its name and the publishing of its name, but shall enjoy all the privileges and shall (subject to this head) be subject to all the obligations of DACs, where -
- (a) its objects are the promotion of commerce, art, science, education, religion, charity or any other prescribed object; and
 - (b) its constitution -
 - (i) requires its profits (if any) or other income to be applied to the promotion of its objects,
 - (ii) prohibits the payment of dividends or the making of distributions to its members, and
 - (iii) requires all the assets which would otherwise be available to its members to be transferred on its winding-up to another company whose objects comply with paragraph (a) and which meets the requirements of this paragraph; and
 - (c) a director or secretary of the company (or, in the case of an association about to be formed as a limited company, one of the persons who are to be the first directors or the person who is to be the first secretary of the company) has delivered to the Registrar a statement in the prescribed form that the company complies or, where applicable, will comply with the requirements of paragraphs (a) and (b).
- (2) The Registrar shall refuse to register as a DAC any association about to be formed as a DAC by a name which does not include the word [“dac”] or [“000”] unless a declaration as provided for under Subhead (1)(c) has been delivered to the Registrar.

- (3) An application by a company registered as a DAC for a change of name including or consisting of the omission of the words “designated activity company” shall be made in accordance with Part A2, Head 13 [equivalent of Section 23 of the Companies Act, 1963] and the Registrar shall refuse to accede to the application unless a declaration as provided for under Subhead (1)(c) has been delivered to him.
- (4) A DAC which is exempt under Subhead (1) and which is permitted to omit the words “designated activity company” from its name shall not alter its constitution so that it ceases to comply with the requirements of that subhead.
- (5) If it appears to the Registrar that a company which is registered under a name not including the words “designated activity company” -
- (a) has carried on any business other than the promotion of any of the objects mentioned in Subhead (1)(a);
 - (b) has applied any of its profits or other income otherwise than in promoting such objects; or
 - (c) has paid a dividend to any of its members,
- the Registrar may, in writing, direct the DAC to change its name within such period as may be specified in the direction so that its name ends with the words “designated activity company”, and the change of name shall be made in accordance with Part A2, Head 13 [equivalent of Section 23 of the Companies Act, 1963].
- (6) A DAC which has received a direction under Subhead (5) shall not thereafter be registered by a name which does not include the words “designated activity company” without the approval of the Registrar.
- (7) A person who -
- (a) alters the constitution of a DAC in contravention of Subhead (4); or
 - (b) fails to comply with a direction from the Registrar under Subhead (5),
- shall be guilty of a category three offence.

Explanatory Note

Amended re-enactment of Section 24 of the Companies Act, 1963.

[N.B. Heads 11 to 19 of A2 apply]

Head 8 Way in which and extent to which objects of a DAC may be altered

- (1) Notwithstanding Part A2, Head 15, a DAC may only alter its objects in accordance with this head.
- (2) Subject to Subhead (3), a DAC may, by special resolution, alter the provisions of its constitution by abandoning, restricting or amending any existing object or by adopting a new object and any alteration so made shall be as valid as if originally contained therein and be subject to alteration in like manner.
- (3) If an application is made to the court in accordance with this head for the alteration to be cancelled it shall not have effect except in so far as it is confirmed by the court.
- (4) Subject to Subhead (5) an application under this head may be made-
 - (a) by not less than 15 per cent of the DAC's members; or
 - (b) by the holders of not less than 15 per cent of the DAC's debentures, entitling the holders to object to alterations of its objects.
- (5) An application shall not be made under this head by any person who has consented to or voted in favour of the alteration.
- (6) An application under this head must be made within 21 days after the date on which the resolution altering the DAC's objects was passed and may be made on behalf of the persons entitled to make the application by such one or more of their number as they may appoint in writing for the purpose.
- (7) On an application under this head, the court may make an order cancelling the alteration or confirming the alteration, either wholly or in part, and on such terms and conditions as it thinks fit, and may, if it thinks fit, adjourn the proceedings in order that an arrangement may be made to the satisfaction of the court for the purchase of the interests of dissenting members, and may give such directions and make such orders as it may think expedient for facilitating or carrying into effect any such arrangement.
- (8) An order under this head may, if the court thinks fit, provide for the purchase by the company of the shares of any members of the company and for the reduction accordingly of the company's capital and may make such alterations in the constitution of the company as may be required in consequence of that provision.
- (9) Where an order under this head requires the company not to make any, or any specified, alteration in its constitution, then, notwithstanding anything in this Bill, the company shall not have power without the leave of the court to make any such alteration in breach of that requirement.
- (10) Any alteration in the constitution of a company made by virtue of an order under this head, other than one made by resolution of the company, shall be of the same effect as if duly made by resolution of the company, and the provisions of this Bill shall apply to the constitution altered accordingly.
- (11) The debentures entitling the holders to object to alterations of a DAC's objects shall be any debentures secured by a floating charge which were issued or first issued before the operative date [1 April 1964] or form part of the same series as any debentures so issued, and a special resolution altering a DAC's objects shall require the same notice to the holders of any such debentures as to members of the DAC, so however that not less than 10 days' notice shall be given to the holders of any such debentures. In default of any provisions regulating the giving of notice to any such debenture holders, the provisions of the DAC's articles regulating the giving of notice to members shall apply.
- (12) In the case of a DAC which is, by virtue of a permission from the Registrar, granted under Part B3, Head 7 [equivalent of Section 24 of the Companies Act, 1963], exempt from the obligation to use the word ["dac"] or ["000"] as part of its name, a resolution altering the DAC's objects shall also require the same notice to the Registrar as to holders of debentures.
- (13) Where a DAC passes a resolution altering its objects-
 - (a) if no application is made with respect thereto under this head, it shall within 15 days from the end of the period for making such an application, deliver to the Registrar a printed copy of its constitution as altered; and

- (b) if such an application is made it shall-
- (i) forthwith give notice of that fact to the Registrar, and
 - (ii) within 15 days from the date of any order cancelling or confirming the alteration, deliver to the Registrar an office copy of the order and, in the case of an order confirming the alteration, a printed copy of the constitution as altered.

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

- (14) If a DAC makes default in giving notice or delivering any document to the Registrar as required by Subhead (10), the DAC and every officer of the DAC who is in default shall be guilty of a category three offence.
- (15) In relation to a resolution for altering the provisions of a company's constitution relating to the objects of the company passed before the operative date, this head shall have effect as if, in lieu of Subheads (3) to (13), there had been enacted Subsections (2) to (10) of Section 10 of the Companies Act, 1963, as amended by the Companies Acts, 1963-2006.

Explanatory Note

This is an amended version of Section 10 of the Companies Act, 1963.

Subhead (4) of this head is identical to the UK provision (Section 5(2) of 1985 UK Act).

The permission of the Registrar referred to in Subhead (9) links back to the application which a DAC may make to the Registrar in this regard under Head 7 (3).

Section 10(11) of the Companies Act, 1963 is spent as transitional and therefore has not been re-enacted.

Head 9 Power to alter provisions in memorandum which could have been contained in articles

- (1) Subject to Subhead (2) of this head, Subheads (4) and (5) of Head 15 of Part A2 and Head 72 of Part A4, any provision contained in a company's memorandum which could lawfully have been contained in articles of association instead of in the memorandum may, subject to the provisions of this head, be altered by the company by special resolution.
- (2) If an application is made to the court for the alteration to be cancelled, it shall not have effect except in so far as it is confirmed by the court.
- (3) This head shall not apply where the memorandum itself provides for or prohibits the alteration of all or any of the said provisions, and shall not authorise any variation or abrogation of the special rights of any class of members.
- (4) Subheads (4), (5), (6), (7), (8), (9), (10), (13) and (14) of Head 8 of this Part (except paragraph (b) of the said Subhead (4)) shall apply in relation to any alteration and to any application made under this head as they apply in relation to alterations and to applications made under that head.
- (5) This head shall apply to a company's memorandum whether registered before, on or after the operative date.

Explanatory Note

This head is based on Section 28 of the Companies Act, 1963.

Head 10 Corporate Capacity of a DAC

- (1) A DAC shall have the capacity to do any act or thing stated in the objects set out in its constitution.
- (2) Part A2, Head 20 shall not apply to a DAC.

Explanatory Note

This head and Heads 11 and 12 mirror Heads 8, 9, and 10 of Part B2 respectively.

Head 11 Corporate capacity not limited by the constitution of a DAC

- (1) The validity of an act done by a DAC shall not be called into question on the ground of lack of capacity by reason of anything contained in the constitution of a DAC.
- (2) A member of a DAC may bring proceedings to restrain the doing of an act which, but for Subhead (1), would be beyond the capacity of that DAC; but no such proceedings shall lie in respect of any act to be done in fulfilment of a legal obligation arising from a previous act of that DAC.
- (3) It remains the duty of the directors to observe any limitations on their powers flowing from the constitution of a DAC; and action by the directors which but for Subhead (1) would be beyond the capacity of that DAC may only be ratified by the DAC by special resolution.
- (4) A resolution ratifying such action shall not affect any liability incurred by the directors or any other person; relief from any such liability must be agreed to separately by special resolution.
- (5) A party to a transaction with a DAC is not bound to enquire as to whether it is permitted by the constitution of that DAC.

Explanatory Note

This head mirrors the wording of Head 9 of Part B2 which mitigates the excesses of the doctrine of ultra vires.

Head 12 Corporate authority and the power of directors to bind a DAC

- (1) In favour of a person dealing with a DAC in good faith, the power of the board of directors to bind the DAC, or authorise others to do so, or of any person registered with the Registrar for the purposes of of Part A2, Head 21 [equivalent of Reg 6 (3) S.I. 173 of 1963] as a person authorised to bind the DAC, shall be deemed to be free of any limitation under the DAC's constitution.

- (2) For the purposes of Subhead (1) -
 - (a) a person "deals with" a DAC if he is a party to any transaction or other act to which the DAC is a party;
 - (b) a person shall not be regarded as acting in bad faith by reason only of his knowing that an act is beyond the powers of the persons referred to in Subhead (1) under the DAC's constitution; and
 - (c) a person shall be presumed to have acted in good faith unless the contrary is proved.
- (3) The references in Subheads (1) and (2) to limitations on the directors' powers or those of a person registered with the Registrar for the purposes of Part A2, Head 21 as a person authorised to bind the DAC under the DAC's constitution include limitations deriving-
 - (a) from a resolution of the DAC in general meeting or a meeting of any class of shareholders; or
 - (b) from any agreement between the members of the DAC or of any class of shareholders.
- (4) Subhead (1) does not affect any right of a member of the DAC to bring proceedings to restrain the doing of an act which is beyond the powers of the directors or of a person registered with the Registrar for the purposes of Part A2, Head 21 as a person authorised to bind the DAC; but no such proceedings shall lie in respect of an act to be done in fulfilment of a legal obligation arising from a previous act of the DAC.
- (5) Subhead (1) does not affect any liability incurred by the directors, or any other person including a person registered with the Registrar for the purposes of Part A2, Head 21 as a person authorised to bind the DAC, by reason of the directors or a person registered with the Registrar for the purposes of Part A2, Head 21 of Part A2 as a person authorised to bind the DAC, exceeding their powers.
- (6) A party to a transaction with a DAC is not bound to enquire as to whether there is any limitation on the powers of the board of directors to bind the DAC or authorise others to do so or on the powers of a person registered with the Registrar for the purposes of Part A2, Head 21 as a person authorised to bind the DAC.

Explanatory Note

This head seeks to protect persons dealing with a company who may be faced with the defence that the persons with whom they dealt did not have the authority to conclude such a transaction. Again, shareholders are protected and may injunct transactions which are beyond the powers of directors.

[N.B. Heads 21 to 36 of A2 apply]

Head 13 Re-registration of existing private companies limited by shares as DACs

Pursuant to Part A2, Heads 37 to 43, every existing private company limited by shares may re-register as a DAC by passing an ordinary resolution after the status date and before the end of the transition period, resolving that the company be so registered and complying otherwise with the provisions of this Part.

Explanatory Note

This mirrors the provisions at Part A2, Head 37. Heads 38 to 43 are relevant if the procedure set out at Head 37 is followed.

Chapter 3

Share Capital

[Heads 1 to 2 and 5 to 41 of A3 apply]

Head 14 Limitation on offer of securities to the public

- (1) A DAC may not make an invitation or offer of securities to the public in respect of which a prospectus must be published in accordance with Irish prospectus law.
- (2) Subhead (1) shall not prevent a DAC from publishing a prospectus solely for the purpose of obtaining an admission to trading on a regulated market for its debentures, which shall include debenture stock, bonds and any other debt instruments of a company or any forms of securitised debt, including depositary receipts in respect of such securities, whether constituting a charge on the assets of the company or not.
- (3) The contravention of Subhead (1) is a category two offence.

Head 15 Allotment of debentures or other debt securities to be dealt in on stock exchange or regulated market

- (1) Where a prospectus, whether issued generally or not, states that application has been or will be made for permission for the debentures or other debt securities offered thereby to be dealt in on any stock exchange or regulated market, any allotment made on an application in pursuance of the prospectus shall, whenever made, be void if the permission has not been applied for before the third day after the first issue of the prospectus or if the permission has not been granted within 6 weeks from the date of the closing of the subscription lists.

- (2) Where the permission has not been applied for as aforesaid or has not been granted, the company shall forthwith repay without interest all money received from applicants in pursuance of the prospectus, and if any such money is not repaid within 8 days after the company becomes liable to repay it, the directors of the company shall be jointly and severally liable to repay that money with interest at the rate of 5 per cent. per annum from the expiration of the eighth day, so however that a director shall not be liable if he proves that the default in the repayment of the money was not due to any misconduct or negligence on his part.
- (3) All money received as aforesaid shall be kept in a separate bank account so long as the company may become liable to repay it under Subhead (2); and, if default is made in complying with this subhead, the company and every officer of the company who is in default shall be guilty of a category three offence.
- (4) Any condition requiring or binding any applicant for debentures or other debt securities to waive compliance with any requirement of this head shall be void.
- (5) This head shall have effect—
 - (a) in relation to any debentures or other debt securities agreed to be taken by a person underwriting an offer thereof by a prospectus as if he had applied therefor in pursuance of the prospectus; and
 - (b) in relation to a prospectus offering debentures or other debt securities for sale with the following modifications—
 - (i) references to sale shall be substituted for references to allotment,
 - (ii) the persons by whom the offer is made, and not the company, shall be liable under Subhead (2) to repay money received from applicants, and references to the company's liability under that subhead shall be construed accordingly, and
 - (iii) for the reference in Subhead (3) to the company and every officer of the company who is in default, there shall be substituted a reference to any person by or through whom the offer is made and who knowingly and wilfully authorises or permits the default.

- (6) In reckoning for the purposes of this head the third day after another day, any intervening day which is a Saturday or Sunday or which is a public holiday shall be disregarded and if the third day (as so reckoned) is itself a Saturday or Sunday or such a public holiday there shall for the said purposes be substituted the first day thereafter which is none of them.
- (7) The provisions of this head shall not apply in relation to an allotment of non-equity securities.
- (ii) the shares or [interest/membership by guarantee] shall, for the purposes of the consolidated accounts prepared by the holding company in accordance with Part A6, Heads 15 and 16 [equivalent of Section 150 and Section 152 of the Companies Act, 1963], be treated in the same manner as is required in respect of shares held as treasury shares under Part A3, Head 33 [equivalent of Section 43A of the Companies Act, 1983 (inserted by Section 232 (c) of the 1990 Act)], and

Explanatory Note

Restatement of Section 57 of the Companies Act, 1963.

Head 16 Holding by subsidiary of shares (or an interest/membership by guarantee) in its holding company.

- (1) Notwithstanding Head 45 of Part A3 [equivalent of Section 32 of the Companies Act, 1963] or, Part A5, Head 37 [equivalent of Section 60 of the Companies Act, 1990], a DAC may, subject to the provisions of this head, acquire and hold shares (or an interest/membership by guarantee) in a company which is its holding company.
- (2) The acquisition and holding by a subsidiary under Subhead (1) of shares or an interest in its holding company shall be subject to the following conditions —
- (a) The consideration for the acquisition of such shares or [interest/membership by guarantee] shall be provided for out of the profits of the subsidiary available for distribution;
- (b) Upon the acquisition of such shares or [interest/membership by guarantee] and for so long as the shares or [interest/membership by guarantee] are held by the subsidiary —
- (i) the profits of the subsidiary available for distribution shall for all purposes be restricted by a sum equal to the total cost of the shares or [interest/membership by guarantee] acquired,
- (iii) the subsidiary shall not exercise any voting rights in respect of the [interest/membership by guarantee] and any purported exercise of those rights shall be void.
- (3) A contract for the acquisition (whether by allotment or transfer) by a subsidiary of shares or [an interest/membership by guarantee] in its holding company shall not be entered into without being authorised in advance both by the subsidiary and its holding company and the provisions of Part A3, Heads 38 and 39 [equivalent of Section 213 and 214 of the Companies Act, 1990] shall apply, with the necessary modifications, to the granting, variation, revocation and release of such authority.
- (4) For the purposes of this head, a subsidiary's profits available for distribution shall not include the profits attributable to any shares in the subsidiary for the time being held by the subsidiary's holding company so far as they are profits for the period before the date on or from which the shares or [interest/membership by guarantee] were acquired by the holding company.
- (5) This head shall not apply to shares or [an interest/membership by guarantee] held by a subsidiary in its holding company in the circumstances permitted by Part A3, Head 45 [equivalent of Section 32 of the Companies Act, 1963].
- (6) Part A3, Head 42 shall not apply to a DAC.

Explanatory Note

Part A3, Head 42 has been amended for the purposes of this Part to replace shares with " shares or [an interest/membership by guarantee]..."
This covers the situation where a subsidiary holds shares or [an interest/membership by guarantee] in its holding company.

[Heads 43 to 52 of Part A3 apply]

Head 17 Power to make regulations for transfer of securities

- (1) The Minister may make provision by regulations for enabling title to securities to be evidenced and transferred without a written instrument.
- (2) Subject to any exceptions that may be specified in the regulations, the regulations may, in respect of—
 - (a) securities of companies admitted to trading on a regulated market;
 - (b) securities of companies admitted to trading on a market other than a regulated market; or
 - (c) securities of public limited companies of a specified class,

provide that the means provided by the regulations for evidencing and transferring title to such securities shall constitute the sole and exclusive means for doing so (and, accordingly, that any purported transfer of such securities otherwise than by those means shall be void).

- (3) In this head—
 - (a) “securities” means transferable securities as defined by Article 1(4) of Directive 93/22/EEC with the exception of money market instruments as defined by Article 1(5) of Directive 93/22/EEC, having a maturity of less than 12 months;
 - (b) references to title to securities include any legal or equitable interest in securities; and
 - (c) references to a transfer of title include a transfer by way of security.

- (4) The regulations may make provision—
 - (a) for procedures for recording and transferring title to securities; and
 - (b) for the regulation of those procedures and the persons responsible for or involved in their operation; and

- (c) for dispensing with the obligations of a DAC under Head 32 of Part A3 [equivalent of Section 86 of the Companies Act, 1963] to issue certificates and providing for alternative procedures.

- (5) The regulations shall contain such safeguards as appear to the Minister appropriate for the protection of investors and for ensuring that competition is not restricted, distorted or prevented.

(6)

- (a) The regulations may, for the purpose of enabling or facilitating the operation of the new procedures, make provision with respect to the rights and obligations of persons in relation to securities dealt with under the procedures;

- (b) The regulations shall be framed so as to secure that the rights and obligations in relation to securities dealt with under the new procedures correspond, so far as practicable, with those which would arise apart from any regulations under this head;

- (c) The regulations may-

- (i) require the provision of statements by a company to holders of securities (at specified intervals or on specified occasions) of the securities held in their name;

- (ii) make provision removing any requirement for the holders of securities to surrender existing share certificates to issuers; and

- (iii) make provision that the requirements of the regulations supersede any existing requirements in the articles of association of a company which would be incompatible with the requirements of the regulations.

- (7) Without prejudice to the generality of Subheads (5) and (6), the regulations shall not contain provisions that would result in a person who, but for the regulations, would be entitled—

- (a) to have his or her name entered in the register of members of a company; or

- (b) to give instructions in respect of any securities, ceasing to be so entitled.

- (8)
- (a) The regulations may include such supplementary, incidental and transitional provisions as appear to the Minister to be necessary or expedient;
 - (b) In particular, provision may be made for the purpose of giving effect to—
 - (i) the transmission of title of securities by operation of law,
 - (ii) any restriction on the transfer of title to securities arising by virtue of the provisions of any enactment or instrument, court order or agreement,
 - (iii) any power conferred by any such provision on a person to deal with securities on behalf of the person entitled.
- (9) The regulations may, for the purposes mentioned in this head, make provision with respect to the persons who are to be responsible for the operation of the new procedures and for those purposes may empower the Minister to delegate to any person willing and able to discharge them any functions of his under the regulations.
- (10) The regulations may make different provision for different cases.
- (11) 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.

Explanatory Note

Restatement of Section 239 of the Companies Act, 1990.

The definition of “securities” is taken from Regulation 2 (1) of the Prospectus (Directive 2003/71/EC) Regulations 2005.

Chapter 4

Corporate Governance

[Head 1 of A4 applies]

Head 18 Directors

- (1) Every DAC shall have at least two directors.
- (2) Part A4, Head 2 shall not apply to a DAC.

Explanatory Note

This head gives effect to the recommendation given by the CLRG in its First Report, that the minimum requirement of two directors should remain for all companies other than the new model private company, including unlimited companies [Para 11.8.11]. The head mirrors Part B2, Head 62.

[Heads 3 to 9 of Part A4 apply]

Head 19 Share or interest qualifications of directors

- (1) If the constitution of a DAC requires a director to hold a specified share, interest or guarantee qualification, then-
 - (a) The office of director of a DAC shall be vacated if the director does not, within 2 months from the date of his appointment or within such shorter time as may be fixed by the constitution, obtain his qualification, or if after the expiration of the said period or shorter time, he ceases at any time to hold his qualification; and
 - (b) A person vacating office under this head shall be incapable of being re-appointed director of the DAC until he has obtained his qualification.
- (2) Part A4, Head 10 shall not apply to a DAC.

Explanatory Note

This is an amended version of Part A4, Head 10. The amendment is intended to reflect the fact that the DAC qualification may be a guarantee or interest instead of a share qualification.

[Part A4, Heads 11 to 34 apply]

Note: Head 34 of Part A4 [equivalent of Section 205B of the Companies Act, 1990] applies to a DAC as to a large private company where a DAC meets the balance sheet total and amount of turnover requirements specified for a large private company at Head 34 (1) (a) or the conditions otherwise specified at Head 34 (1) (b).

Head 20 Membership

- (1) The subscribers to the memorandum of association in the constitution of a DAC shall be deemed to have agreed to become members of the DAC, and, on its registration, shall be entered as members in its register of members.
- (2) Every other person who agrees to become a member of a DAC, and whose name is entered in its register of members, shall be a member of the company.
- (3) Supplementary provisions on qualification for membership, its duration and termination may be set out in the constitution of a DAC.
- (4) The constitution of a DAC must state the number of members with which the company proposes to be registered and, if the company has a share capital, the amount of share capital with which the company proposes to be registered.
- (5) Where a DAC has increased the number of its members beyond the registered number, it shall, within 15 days after the increase was resolved on or took place, deliver particulars of the increase to the Registrar.

If default is made in complying with this subhead, the company and every officer of the company who is in default shall be liable to a fine.
- (6) The memorandum of association of a DAC may state the maximum number of persons who may be members of the DAC, subject to the power of the directors to register an increase in the number of members.
- (7) A member may resign his membership by serving notice to that effect upon the directors at the registered office of the DAC, such notice to expire no earlier than the date of service of the notice of resignation.

- (8) Save where the constitution of a DAC provides otherwise, the directors may require a member to resign his membership by serving notice upon the member terminating his membership to expire no earlier than the date of service of the notice of termination.
- (9) Save where the constitution of a DAC provides otherwise, every member shall have one vote.
- (10) The death of a member shall terminate his membership.
- (11) It shall be a category two offence to personate a member of a DAC.
- (12) Part A4, Head 35, shall not apply to a DAC.
- (4) A general meeting held in pursuance of Subhead (3) shall, subject to any directions of the Director of Corporate Enforcement, be deemed to be an annual general meeting of the DAC but, where a meeting so held is not held in the year in which the default in holding the DAC's annual general meeting occurred, the meeting so held shall not be treated as the annual general meeting for the year in which it is held unless at that meeting the DAC resolves that it shall be so treated.
- (5) Where, pursuant to Subhead (4), a DAC resolves that a meeting shall be so treated, a copy of the resolution shall, within 21 days after the passing thereof, be delivered to the Registrar for registration.
- (6) If default is made in holding a meeting of the DAC in accordance with Subhead (1), or in complying with any direction of the Director of Corporate Enforcement under Subhead (3), the DAC and every officer of the DAC who is in default shall be guilty of a category four offence and if default is made in complying with Subhead (5), the DAC and every officer of the DAC who is in default shall be guilty of a category four offence.

Explanatory Note

This head is new, however it is based on Model Regulation 1 of Table D Part III of the First Schedule to the Companies Act, 1963.

[Heads 36 to 42 of Part A4 apply]

Head 21 Annual General Meeting

- (1) Subject to Subhead (2), every DAC shall in each year, hold a general meeting as its annual general meeting in addition to any other meetings in that year and shall specify the meeting as such in the notices calling it and not more than 15 months shall elapse between the date of one annual general meeting of a DAC and that of the next.
- (2) So long as a DAC holds its first annual general meeting within 18 months of its incorporation, it need not hold it in the year of its incorporation or in the following year.
- (3) If default is made in holding a meeting of a DAC in accordance with Subhead (1), the Director of Corporate Enforcement may, on the application of any member of the DAC, call or direct the calling of a general meeting of the DAC and give such ancillary or consequential directions as the Director of Corporate Enforcement thinks expedient, including directions modifying or supplementing in relation to the calling holding and conducting of the meeting, the operation of the DAC's constitution, and it is hereby declared that the directions which may be given under this subhead include a direction that one member of the DAC present in person or by proxy shall be deemed to constitute a meeting.

- (7) Part A4, Head 43 shall not apply to a DAC unless a DAC has only one member.

Explanatory Note

This head disapplies Subhead (3) of Part A4, Head 46, which allows a private company to dispense with the requirement to hold an AGM, to the DAC unless a DAC has only one member, in which case it can, as now, dispense with the necessity of holding an AGM.

[Heads 44 to 61 of Part A4 apply]

Head 22 Unanimous written resolutions

- (1) Notwithstanding anything to the contrary in this Bill, unless the constitution provides otherwise, a resolution in writing signed by all the members for the time being entitled to attend and vote on such resolution at a general meeting (or being bodies corporate by their duly appointed representatives) shall be as valid and effective for all purposes as if the resolution had been passed at a general meeting of the company duly convened and held, and if described as a special resolution shall be deemed to be a special resolution within the meaning of this Bill.

- (2) Any such resolution shall be deemed to have been passed at a meeting held on the date on which it was signed by the last member to sign, and where the resolution states a date as being the date of his signature thereof by any member the statement shall be prima facie evidence that it was signed by him on that date.
- (3) This head does not apply to a resolution for the purposes of Part A6, Heads 83 to 86 and Part A6, Head 98 [the equivalent of Section 160 of the Companies Act, 1963 – appointment and remuneration of auditors] and Part A4, Head 17 [the equivalent of Section 182 of the Companies Act, 1963 – removal of directors].
- (4) Part A4, Heads 62 and 63 shall not apply to a DAC.

Explanatory Note

This head disappplies Head 62 and 63, Part A4 to DACs and re-enacts Section 141(8) of the Companies Act, 1963, consequently the ability to make majority written resolutions is not extended to DACs (nor is this ability extended to any other non-CLS company).

[Heads 56-61 of Part A4 apply]

Chapter 5

Duties of Directors and other Officers

[Heads 1-44 of Part A4 apply]

Chapter 6

Financial Statements, Annual Return and Audit

Head 23 Exemption from consolidation: size of group

Head 19 of Part A6 shall apply to a DAC subject to the substitution of Subhead (9) (a) thereof with the following Subhead (9) (a):

“any debentures or other debt securities of the DAC or and shares, debentures of other debt securities of a subsidiary undertaking have been admitted to trading on a regulated market of any EEA state, or”.

Head 24 Exemption from consolidation: holding company that is a subsidiary of another EEA registered undertaking

Head 20 of Part A6 shall apply to a DAC with the addition of the following paragraph (f) in Subhead (3):

- (f) “the exempted holding company may not have any debentures or other debt securities admitted to trading on a regulated market of any EEA State.”

Head 25 Exemption from consolidation: holding company that is a subsidiary of a non-EEA undertaking

Head 21 of Part A6 shall apply to a DAC with the addition of the following paragraph (g) in Subhead (3):

- (g) “the exempted holding company may not have any debentures or other debt securities admitted to trading on a regulated market of any EEA State.”

Head 26 Information on related undertakings: Exemption from disclosures

Head 27 of Part A6 shall apply to a DAC with the addition of the following paragraph (7):

- (7) “This head shall not apply to a parent undertaking any of whose debentures or other debt securities have been admitted to trading on a regulated market of any EEA State.”

Head 27 Information on related undertakings: Provision for certain information to be annexed to annual return

Head 29 of Part A6 shall apply to a DAC with the addition of the following Subhead (5):

- (5) “Subhead (1) shall not apply to a parent undertaking any of whose debentures or other debt securities have been admitted to trading on a regulated market of any EEA State.”

Head 28 Approval and signing of statutory financial statements by board of directors

Head 36 of Part 6 shall apply to a DAC subject to the substitution of Subhead (1) thereof with the following Subhead (1):

- (1) “Where the directors of the company are satisfied that the statutory financial statements give a true and fair view and otherwise comply with this Bill or, where applicable, with Article 4 of the IAS Regulation, they shall be approved by the board of directors and signed on their behalf by a majority of the directors where there are more than two directors or by the two directors, where there are only two directors.”

Head 29 Approval and signing of directors' report

Head 43 of Part 6 shall apply to a DAC subject to the substitution of Subhead (1) thereof with the following Subhead (1):

- (1) "The directors' report and, where applicable, the group directors' report shall be approved by the board of directors and signed on their behalf by a majority of the directors where there are more than two directors or by the two directors, where there are only two directors."

Chapter 7**Debentures and Registration of Charges**

[Heads 1 to 19 of Part A7 apply]

Chapter 8**Receivers**

[Heads 1 to 20 of Part A8 apply]

Chapter 9**Reorganisations**

[Heads 1 to 46 of Part A9 apply]

Chapter 10**Examinerships**

[Heads 1 to 41 of Part A10 apply]

Chapter 11

Winding-Up

[Heads 1 to 85 of Part A11 apply]

Head 30 Liability as contributories of past and present members

(1) In the event of a DAC being wound up, every present and past member shall be liable to contribute to the assets of the DAC to an amount sufficient for payment of its debts and liabilities, and the costs, charges and expenses of the winding-up, and for the adjustment of the rights of the contributories among themselves, subject to Subhead (2) and the following qualifications—

- (a) a past member shall not be liable to contribute if he has ceased to be a member for one year or more before the commencement of the winding-up;
- (b) a past member shall not be liable to contribute in respect of any debt or liability of the DAC contracted after he ceased to be a member;
- (c) a past member shall not be liable to contribute unless it appears to the court that the existing members are unable to satisfy the contributions required to be made by them in pursuance of this Bill;
- (d) no contribution shall be required from any member exceeding:
 - (i) the amount, if any, unpaid on the shares in respect of which he is liable as a present or past member, or
 - (ii) the amount undertaken to be contributed by him to the assets of the DAC in the event of its being wound up;
- (e) nothing in this Bill shall invalidate any provision contained in any policy of insurance or other contract whereby the liability of individual members on the policy or contract is restricted, or whereby the funds of the DAC are alone made liable in respect of the policy or contract;

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

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

(3) Part A11, Head 86 shall not apply to a DAC.

Explanatory Note

This is an amended re-enactment of Section 207 of the Companies Act, 1963.

The separate provisions for companies limited by shares and limited by guarantee, in paragraph 207(1) (d) and (e) respectively, removed from Part A11, Head 86 have been re-instated to reflect that a DAC may be a company limited either by shares or guarantee.

Section 207(2) has been deleted in line with the CLRG recommendation that the provision is obsolete.

[Heads 87 to 155 of Part A11 apply]

Chapter 12

Strike Off and Restoration

[Heads 1 to 13 of Part A12 apply]

Chapter 13

Compliance, Investigation and Enforcement

[Heads 1 to 68 of Part A13 apply]

Chapter 14

Regulatory and Advisory Bodies

[Heads 1 to 64 of Part A14 apply]

Chapter 15

Market Abuse

Head 31 Interpretation

(1) In this Chapter —

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

“Irish market abuse law” means—

- (a) the measures adopted for the time being by the State to implement the 2003 Market Abuse Directive and the supplemental Directives (whether an Act of the Oireachtas, regulations under Section 3 of the European Communities Act, 1972, regulations under Section 30 or any other enactment (other than, save where the context otherwise admits, this Chapter));
- (b) any measures directly applicable in the State in consequence of the 2003 Market Abuse Directive and, without prejudice to the generality of this paragraph, includes the Market Abuse Regulation; and
- (c) any supplementary and consequential measures adopted for the time being by the State in respect of the Market Abuse Regulation;

“Market Abuse Regulation” means Commission Regulation 2273/2003 of 22 December 2003; 3

“supplemental Directives” means—

- (a) Commission Directive No. 2003/124/EC of 22 December 2003 4;
- (b) Commission Directive No. 2003/125/EC of 22 December 2003 5; and
- (c) Commission Directive No. 2004/72/EC of 29 April 2004 6.

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

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

Explanatory Note

Restatement of Section 29 of the Investment Funds, Companies and Miscellaneous Provisions Act, 2005.

Head 32 Regulations (Chapter 15)

(1) The Minister may make regulations for the purposes of—

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

(2) Regulations under this head may contain such incidental, supplementary and consequential provisions as appear to the Minister to be necessary or expedient for the purposes of those regulations, including provisions creating offences (but the regulations may only provide penalties in respect of a summary conviction for any such offence).

(3) Regulations under this head may also—

- (a) make, for the purposes of those Regulations, provision analogous to that which was made by Section 3 of the Companies (Amendment) Act, 1999 (repealed by Section 31) for the purposes of that Act;
- (b) impose on a market operator, a requirement similar to that which is imposed by Article 6(9) of the 2003 Market Abuse Directive on the person referred to in that Article 6(9).

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

Explanatory Note

Restatement of Section 30 of the Investment Funds, Companies and Miscellaneous Provisions Act, 2005.

Head 33 Conviction on indictment of offences under Irish market abuse law: penalties

A person who is guilty of an offence created by Irish market abuse law (being an offence expressed by that law to be an offence to which this head applies) shall, without prejudice to any penalties provided by that law in respect of a summary conviction for the offence, be liable, on conviction on indictment, to a fine not exceeding €10,000,000 or imprisonment for a term not exceeding 10 years, or both.

Explanatory Note

Restatement of Section 32 of the Investment Funds, Companies and Miscellaneous Provisions Act, 2005.

Head 34 Civil liability for certain breaches of Irish market abuse law

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

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

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

- (a) to compensate any other party who acquired or disposed of financial instruments by reason of the contravention; and
 - (b) to account to the body corporate or other legal entity which issued the financial instruments concerned for any profit accruing to the first-mentioned person from acquiring or disposing of those instruments.
- (3) Subheads (1) and (2) are without prejudice to any other cause of action which may lie against the person for contravening the provision concerned.
- (4) An action under Subhead (1) or (2) shall not be commenced more than 2 years after the date of the contravention concerned.

Explanatory Note

Restatement of Section 33 of the Investment Funds, Companies and Miscellaneous Provisions Act, 2005.

Head 35 Supplementary rules, etc., by competent authority

- (1) In this head “competent authority” means the competent authority designated under Irish market abuse law.
- (2) The competent authority may make rules imposing or enabling the competent authority to impose requirements on persons on whom an obligation or obligations are imposed by Irish market abuse law, being requirements—
- (a) to do or not to do specified things so as to secure that the provisions of Irish market abuse law are complied with and, in particular (without limiting the generality of this paragraph), to adopt specified procedures and use specified forms in the provision of information to the competent authority;

(b) to do or not to do specified things so as to secure the effective supervision by the competent authority of activities of the kind to which Irish market abuse law relates and, in particular (without limiting the generality of this paragraph), to make such reports or disclose such matters, at such times and in such manner, to the competent authority or other specified persons as are provided for by the rules or specified by the competent authority pursuant to the rules, being reports or a disclosure of matters that is or are required by virtue or in consequence of the operation of Irish market abuse law.

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

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

(5) Rules under this head shall not contain any provision that is inconsistent with Irish market abuse law or require the provision of information to any person, the provision of which is not reasonably related to the purposes for which the applicable provisions of the 2003 Market Abuse Directive or the supplemental Directives have been adopted.

(6) The provisions of Irish market abuse law that are expressed by that law to be made for the purpose of enabling the imposition of administrative sanctions shall apply in relation to a contravention of rules under this head as they apply in relation to a contravention of a provision of Irish market abuse law and, accordingly, a sanction that may be imposed pursuant to the first-mentioned provisions of Irish market abuse law in respect of a contravention of a provision of that law may, in accordance with that law, be imposed in respect of a contravention of rules under this head.

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

Explanatory Note

Restatement of Section 34 of the Investment Funds, Companies and Miscellaneous Provisions Act, 2005.

Head 36 Application of Irish market abuse law to certain markets

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

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

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

Explanatory Note

Restatement of Section 37 of the Investment Funds, Companies and Miscellaneous Provisions Act, 2005.

Chapter 16

Public Offers Of Securities

Head 37 Interpretation

(1) In this Chapter, unless the context otherwise requires—

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

“body corporate” includes a company;

“EEA Agreement” means the Agreement on the European Economic Area signed at Oporto on 2 May 1992, as amended for the time being;

“EU prospectus law” means—

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

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

“Irish prospectus law” means—

- (a) the measures adopted for the time being by the State to implement the 2003 Prospectus Directive (whether an Act of the Oireachtas, regulations under Section 3 of the European Communities Act, 1972, regulations under Section 46 or any other enactment (other than, save where the context otherwise admits, this Chapter));
- (b) any measures directly applicable in the State in consequence of the 2003 Prospectus Directive and, without prejudice to the generality of this paragraph, includes the Prospectus Regulation; and
- (c) any supplementary and consequential measures adopted for the time being by the State in respect of the Prospectus Regulation;

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

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

- (a) the offer expressly limits the amount of the total consideration for the offer to less than €2,500,000 (and the means by which that limit shall be calculated, in particular in the case of a series of such offers of securities, shall be the same as that provided for by regulations under Head 46 in relation to analogous limits specified by those regulations for any purpose);
- (b) the securities are other than those referred to in any of paragraphs (a) to (g) or paragraph (i) or (j) of Article 1(2) of the 2003 Prospectus Directive; and
- (c) the offer is not of a kind described in Article 3(2) of the 2003 Prospectus Directive;

“Member State of the EEA” means a state that is a contracting party to the EEA Agreement;

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

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

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

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

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

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

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

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

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

(3) For the purposes of this Chapter—

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

(4) Without limiting the meaning of that expression in any other context in which it is used in this Part, “statement” in Part B3, Head 42 (2) [equivalent of Section 45(2) of the Investment Funds, Companies and Miscellaneous Provisions Act, 2005] (other than paragraph (b) thereof) and any other head of this Part that makes provision in respect of an expert includes a report and a valuation.

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

(6) For the purposes of Heads 41 and 43, the following persons shall be deemed not to be a promoter or a person who has authorised the issue of the prospectus—

- (a) a professional adviser to any person referred to in Head 41 acting as such;
- (b) an underwriter or professional adviser to an underwriter acting as such.

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

(8) That case is one in which—

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

Explanatory Note

Restatement of Section 38 of the Investment Funds, Companies and Miscellaneous Provisions Act, 2005.

Head 38 Civil liability for misstatements in prospectus

(1) Subject to Heads 39 and 40 of this Part [equivalent of 2005 Act, Sections 42 and 43], the following persons shall be liable to pay compensation to all persons who acquire any securities on the faith of a prospectus for the loss or damage they may have sustained by reason of—

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

namely—

- (i) the issuer who has issued the prospectus or on whose behalf the prospectus has been issued,
- (ii) the offeror of securities to which the prospectus relates,
- (iii) every person who has sought the admission of the securities to which the prospectus relates to trading on a regulated market,
- (iv) the guarantor of the issue of securities to which the prospectus relates,
- (v) every person who is a director of the issuer at the time of the issue of the prospectus,
- (vi) every person who has authorised himself or herself to be named and is named in the prospectus as a director of the issuer or as having agreed to become such a director either immediately or after an interval of time,
- (vii) every person being a promoter of the issuer,
- (viii) every person who has authorised the issue of the prospectus (not being the competent authority designated under Irish prospectus law).

- (2) In addition to the persons specified in Subhead (1) as being liable in the circumstances there set out, an expert who has given the consent required by Part B3, Head 42 [equivalent of Section 45 of the Investment Funds, Companies and Miscellaneous Provisions Act, 2005] to the inclusion in a prospectus of a statement purporting to be made by him or her shall, subject to Part B3, Heads 39 and 40 [equivalent of Sections 42 and 43 of the Investment Funds, Companies and Miscellaneous Provisions Act, 2005], be liable to pay compensation to all persons who acquire any securities on the faith of the prospectus for the loss or damage they may have sustained by reason of an untrue statement in the prospectus purporting to be made by him or her as an expert.

Explanatory Note

Restatement of Section 41 of the Investment Funds, Companies and Miscellaneous Provisions Act, 2005.

Head 39 Exceptions and exemptions

- (1) A person shall not be liable under Part B3, Head 38 [equivalent of Section 41 of the Investment Funds, Companies and Miscellaneous Provisions Act, 2005] solely on the basis of a summary of a prospectus, including any translation thereof, unless it is misleading, inaccurate or inconsistent when read together with other parts of the prospectus.
- (2) Subject to Subhead (4), a person shall not be liable under Part B3, Head 38 [equivalent of Section 41 of the Investment Funds, Companies and Miscellaneous Provisions Act, 2005] if he or she proves—
 - (a) that, having consented to become a director of the issuer, he or she withdrew in writing, his or her consent before the issue of the prospectus, and that it was issued without his or her authority or consent, or
 - (b) that the prospectus was issued without his or her knowledge or consent, and that on becoming aware of its issue he or she forthwith gave reasonable public notice that it was issued without his or her knowledge or consent; or

- (c) that after the issue of the prospectus and before the acquisition of securities thereunder by the person referred to in Part B3, Head 38 [equivalent of Section 41 of the Investment Funds, Companies and Provisions Act, 2005], he or she, on becoming aware of any untrue statement therein or omission of material information required by EU prospectus law to be contained therein, withdrew in writing, his or her consent thereto and gave reasonable public notice of the withdrawal and of the reason therefor; or
- (d) that—
- (i) as regards—
- (I) every untrue statement not purporting to be made on the authority of an expert or of a public official document or statement,
- (II) the omission from the prospectus of any information required by EU prospectus law to be contained therein,
- he or she had reasonable grounds to believe, and did up to the time of the issue of the securities believe, that the statement was true or that the matter whose omission caused loss was properly omitted, and
- (ii) as regards every untrue statement purporting to be a statement by an expert or contained in what purports to be a copy of or extract from a report or valuation of an expert, it fairly represented the statement, or was a correct and fair copy of or extract from the report or valuation, and he or she had reasonable grounds to believe and did up to the time of the issue of the prospectus believe, that the person making the statement was competent to make it and, where required by Part B3, Head 42 [equivalent of Section 45 of the Investment Funds, Companies and Miscellaneous Provisions Act, 2005], that that person had given his or her consent to the inclusion of the statement in the prospectus and had not withdrawn in writing, that consent before the publication of the prospectus or, to the defendant's knowledge, before issue of securities thereunder, and
- (iii) as regards every untrue statement purporting to be a statement made by an official person or contained in what purports to be a copy of or extract from a public official document, it was a correct and fair representation of the statement or copy of or extract from the document.
- (3) In Subheads (4) and (5) "by reason of the relevant consent", in relation to an expert, means by reason of his or her having given the consent required of him or her by Part B3, Head 42 [equivalent of Section 45 of the Investment Funds, Companies and Miscellaneous Provisions Act, 2005] to the inclusion in the prospectus of the statement concerned.
- (4) Subhead (2) shall not apply in the case of an expert, by reason of the relevant consent, in respect of an untrue statement purporting to be made by him or her as an expert.
- (5) An expert who, apart from this subhead, would under Part B3, Head 38 [equivalent of Section 41 of the Investment Funds, Companies and Miscellaneous Provisions Act, 2005] be liable, by reason of the relevant consent, in respect of an untrue statement purporting to be made by him or her as an expert shall not be so liable if he or she proves—
- (a) that, having given his or her consent to the inclusion in the prospectus of the statement, he or she withdrew it in writing before publication of the prospectus; or
- (b) that, after publication of the prospectus and before the acquisition of securities thereunder by the person referred to in Part B3, Head 38 [equivalent of Section 41 of the Investment Funds, Companies and Miscellaneous Provisions Act, 2005] on becoming aware of the untrue statement, withdrew his or her consent in writing and gave reasonable public notice of the withdrawal, and of the reason therefor; or
- (c) that he or she was competent to make the statement and that he or she had reasonable grounds to believe and did up to the time of such acquisition of the securities believe that the statement was true.

Explanatory Note

Restatement of Section 42 of Investment Funds, Companies and Miscellaneous Provisions Act, 2005.

Head 40 Restriction of liability where non-equity securities solely involved

Where a prospectus is issued solely in respect of non-equity securities—

(a) only—

(i) the offeror or the person who has sought the admission of the securities to which the prospectus relates to trading on a regulated market, and

(ii) subject to, and to the extent provided in, paragraph (c), the guarantor (if any), and no other person referred to in Head 38 of this Part [equivalent of Section 41 of the Investment Funds, Companies and Miscellaneous Provisions Act, 2005] shall be liable under that head in the circumstances in which that head applies unless—

(I) the prospectus expressly provides otherwise, or

(II) that other such person is convicted on indictment of an offence created by Irish prospectus law or an offence under Head 45 of this Part [equivalent of Section 48 of the Investment Funds, Companies and Miscellaneous Provisions Act, 2005] in respect of the issue of that prospectus;

(b) Subhead 5 (1) of Part A5 [equivalent of Section 383(3) of the Companies Act, 1963] shall not apply to the directors or secretary of the issuer to the extent that such application would thereby impose a liability under Head 38 of this Part [equivalent of Section 41 of the Investment Funds, Companies and Miscellaneous Provisions Act, 2005] on such directors or secretary; and

(c) no liability shall attach under Head 38 of this Part [equivalent of Section 41 of the Investment Funds, Companies and Miscellaneous Provisions Act, 2005] to a guarantor of such securities save in respect of statements included in, or information omitted from, the prospectus that relate to the guarantor or the guarantee given by the guarantor.

Explanatory Note

Restatement of Section 43 of the Investment Funds, Companies and Miscellaneous Provisions Act, 2005 (as amended by the Investment Funds, Companies and Miscellaneous Provisions Act, 2006).

Head 41 Indemnification of certain persons

(1) This head applies where—

(a) a prospectus contains the name of a person as a director of the issuer, or as having agreed to become a director thereof, and he or she has not consented to become a director, or has withdrawn, in writing, his or her consent before the issue of the prospectus, and has not authorised or consented to the issue thereof; or

(b) the consent of an expert is required by Head 42 of this Part [equivalent of Section 45 of the Investment Funds, Companies and Miscellaneous Provisions Act, 2005] to the inclusion in a prospectus of a statement purporting to be made by him or her and he or she either has not given that consent or has withdrawn in writing, that consent before the issue of the prospectus.

(2) The directors of the issuer, except any without whose knowledge or consent the prospectus was issued, and any other person who authorised the issue thereof shall be liable to indemnify the person named as mentioned in Subhead (1) or whose consent was required as so mentioned, as the case may be, against all damages, costs and expenses to which he or she may be made liable by reason of his or her name having been inserted in the prospectus or of the inclusion therein of a statement purporting to be made by him or her as an expert as the case may be, or in defending himself or herself against any action or legal proceeding brought against him or her in respect thereof.

Explanatory Note

Restatement of Section 44 of the Investment Funds, Companies and Miscellaneous Provisions Act, 2005.

Head 42 Expert's consent to issue of prospectus containing statement by him or her

- (1) A prospectus including a statement purporting to be made by an expert shall not be issued unless—
 - (a) the expert has given and has not, before publication of the prospectus, withdrawn in writing, his or her consent to the issue thereof with the statement included in the form and context in which it is included; and
 - (b) to the extent that the inclusion in the prospectus of the following is required by EU prospectus law, a statement that the expert has given and has not withdrawn, in writing, that consent appears in the prospectus.
- (2) If any prospectus is issued in contravention of this head the issuer and every person who is knowingly a party to the issue thereof shall be guilty of a category three offence.

Explanatory Note

Restatement of Section 45 of the Investment Funds, Companies and Miscellaneous Provisions Act, 2005.

In keeping with the new schema for categorisation of offences it may be necessary on the enactment of the General Scheme to re-enact the MAD Regulations or at least the offence provisions therein to reflect the new categorisation.

Head 43 Regulations (Chapter 16)

- (1) The Minister may make regulations for the purposes of—
 - (a) giving effect to the 2003 Prospectus Directive; and
 - (b) supplementing and making consequential provision in respect of the Prospectus Regulation.

- (2) Regulations under this head may contain such incidental, supplementary and consequential provisions as appear to the Minister to be necessary or expedient for the purposes of those regulations, including—
 - (a) provisions creating offences (but the regulations may only provide penalties in respect of a summary conviction for any such offence); and
 - (b) provisions revoking instruments made under other enactments.
- (3) This head is without prejudice to Section 3 of the European Communities Act, 1972.

Explanatory Note

Restatement of Section 46 of the Investment Funds, Companies and Miscellaneous Provisions Act, 2005.

Head 44 Penalties on conviction on indictment and defences in respect of certain offences

- (1) A person who is guilty of an offence created by Irish prospectus law (being an offence expressed by that law to be an offence to which this head applies) shall, without prejudice to any penalties provided by that law in respect of a summary conviction for the offence, be liable, on conviction on indictment, to a fine not exceeding €1,000,000 or imprisonment for a term not exceeding 5 years or both.
- (2) In proceedings for an offence created by Irish prospectus law, it shall be a defence for the defendant to prove—
 - (a) as regards any matter not disclosed in the prospectus concerned, that he or she did not know it; or
 - (b) the contravention arose from an honest mistake of fact on his or her part; or
 - (c) the contravention was in respect of matters which, having regard to the circumstances of the case, was immaterial or as respects which, having regard to those circumstances, he or she ought otherwise reasonably to be excused.

Explanatory Note

Restatement of Section 47 of the Investment Funds, Companies and Miscellaneous Provisions Act, 2005.

Head 45 Untrue statements and omissions in prospectus: criminal liability

- (1) Where a prospectus is issued and—
- (a) includes any untrue statement; or
 - (b) omits any information required by EU prospectus law to be contained in it,
- any person who authorised the issue of the prospectus (not being the competent authority designated under Irish prospectus law) shall be guilty of a category 2 offence unless he or she proves—
- (i) as regards an untrue statement, either that the statement was, having regard to the circumstances of the case, immaterial or that he or she honestly believed and did, up to the time of the issue of the prospectus, believe that the statement was true, or
 - (ii) as regards any information omitted, either that the omission was, having regard to the circumstances of the case, immaterial or that he or she did not know it, or
 - (iii) that the making of the statement or omission was otherwise such as, having regard to the circumstances of the case, ought reasonably to be excused.
- (2) Summary proceedings for an offence under this head may be brought and prosecuted by the competent authority designated under Irish prospectus law.
- (3) If at a trial for an offence under this head or an offence created by Irish prospectus law, the judge or jury has to consider whether the defendant honestly believed a particular thing or was honestly mistaken in relation to a particular thing, the presence or absence of reasonable grounds for such a belief or for his or her having been so mistaken is a matter to which the judge or jury is to have regard, in conjunction with any other relevant matters, in considering whether the defendant so believed or was so mistaken.

Explanatory Note

Amended restatement of Section 48 of the Investment Funds, Companies and Miscellaneous Provisions Act, 2005.

Head 46 Local offers

- (1) An offering document prepared for a local offer shall contain the following statements in print in clearly legible type—
- (a) on the front page or otherwise in a prominent position:

“This document,

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

—has not been reviewed, prior to its being issued, by any regulatory authority in Ireland or in any other EU Member State or EEA treaty adherent state,

and therefore may not contain all the information required where a document is prepared pursuant to that Directive or those laws;”
 - (b) elsewhere in the offering document:
 - (i) where the offering document contains information on past performance:

“Past performance may not be a reliable guide to future performance.”,
 - (ii) where the offering document contains information on simulated performance:

“Simulated performance may not be a reliable guide to future performance.”,
 - (iii) “Investments may fall as well as rise in value.”,

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

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

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

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

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

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

- (2) Any requirement of Subhead (1) as to the inclusion of a particular statement in an offering document shall be regarded as satisfied if words substantially to the effect of that statement are instead included in that document.
- (3) If an offeror fails to comply with Subhead (1) the offeror shall be guilty of a category three offence.
- (4) No offering document prepared for a local offer shall be issued by or on behalf of a company or in relation to an intended company unless, on or before the date of its publication, a copy of the offering document has been delivered to the Registrar for registration.
- (5) Summary proceedings for an offence under this head may be brought and prosecuted by the competent authority designated under Irish prospectus law or by the registrar of companies.

Explanatory Note

Restatement of Section 48 of the Investment Funds, Companies and Miscellaneous Provisions Act, 2005.

Head 47 Exclusion of Investment Intermediaries Act 1995

- (1) Any document issued in connection with an offer of securities by or on behalf of an issuer, offeror or person seeking admission of securities to trading on a regulated market, shall not be regarded as constituting an investment advertisement within the meaning of Section 23 of the Investment Intermediaries Act, 1995.
- (2) “Document” in Subhead (1) includes, in the case of a local offer, an offering document.

Explanatory Note

Restatement of Section 50 of the Investment Funds, Companies and Miscellaneous Provisions Act, 2005.

Head 48 Power to make certain rules and issue guidelines

- (1) In this head “competent authority” means the competent authority designated under Irish prospectus law.
- (2) The competent authority may make rules imposing or enabling the competent authority to impose requirements on persons on whom an obligation or obligations are imposed by Irish prospectus law, being requirements—
- (a) to do or not to do specified things so as to secure that the provisions of Irish prospectus law are complied with and, in particular (without limiting the generality of this paragraph), to adopt specified procedures and use specified forms in the provision of information to the competent authority;
- (b) to do or not to do specified things so as to secure the effective supervision by the competent authority of activities of the kind to which Irish prospectus law relates and, in particular (without limiting the generality of this paragraph), to make such reports or disclose such matters, at such times and in such manner, to the competent authority or other specified persons as are provided for by the rules or specified by the competent authority pursuant to the rules, being reports or a disclosure of matters that is or are required by virtue or in consequence of the operation of Irish prospectus law.

- (3) Rules under this head may include rules providing for the manner in which or the matters by reference to which (or both) a determination is to be made of any issue as to whether a transaction or transactions is or are of a significant size for the purposes of the provisions of Irish prospectus law implementing Article 2(2)(a) of the 2003 Prospectus Directive.
- (4) The reference in Subhead (1) to an obligation imposed on a person by Irish prospectus law includes a reference to an obligation imposed on a person by virtue of the person's exercising a right or option provided under Irish prospectus law.
- (5) Rules under this head may contain such consequential, incidental or supplemental provisions as the competent authority considers necessary or expedient.
- (6) Rules under this head shall not contain any provision that is inconsistent with Irish prospectus law or require the provision of information to any person the provision of which is not reasonably related to the purposes for which the applicable provisions of the 2003 Prospectus Directive have been adopted.
- (7) The provisions of Irish prospectus law that are expressed by that law to be made for the purpose of enabling the imposition of administrative sanctions shall apply in relation to a contravention of rules under this head as they apply in relation to a contravention of a provision of Irish prospectus law and, accordingly, a sanction that may be imposed pursuant to the first-mentioned provisions of Irish prospectus law in respect of a contravention of a provision of that law may, in accordance with that law, be imposed in respect of a contravention of rules under this head.
- (8) The competent authority may issue guidelines in writing as to the steps that may be taken to comply with Irish prospectus law.

Explanatory Note

Restatement of Section 51 of the Investment Funds, Companies and Miscellaneous Provisions Act, 2005.

Head 49 Avoidance of certain agreements

A condition—

- (a) requiring or binding an applicant for securities to waive compliance with any requirement of—
 - (i) this Chapter, or
 - (ii) EU prospectus law; or
- (b) where EU prospectus law applies, purporting to affect him or her with notice of any contract, document or matter not specifically referred to in the prospectus concerned,

shall be void.

Explanatory Note

Restatement of Section 52 of the Investment Funds, Companies and Miscellaneous Provisions Act, 2005.

First Schedule

Model form of Memorandum of Association of a Designated Activity Company (DAC), being a Private Company limited by shares

1. The name of the company is: THE WESTERN MINING COMPANY DESIGNATED ACTIVITY COMPANY
2. The company is a designated activity company, registered under Part B3 of the [Companies Bill, 2007].
3. The objects for which the company is established are the mining of minerals of all kinds and the doing of all such other things as are incidental or conducive to the attainment of the above object.
4. The liability of the members is limited.
5. The share capital of the company is €200,000, divided into 200,000 shares of €1 each.

We, the several persons whose names and addresses are subscribed, wish to be formed into a company in pursuance of this memorandum of association, and we agree to take the number of shares in the capital of the company set opposite our respective names.

<i>Names, Addresses and Descriptions of Subscribers</i>	<i>Number of Shares taken by each Subscriber</i>
1. Patrick McKenna Address:	300
2. Bridget McCloy Address:	2,700
Total shares taken:	3,000

Dated the _____ day of _____ 20 ____

Witness to the above Signatures:

Name: _____

Address: _____

ARTICLES OF ASSOCIATION

Note

This form may be used by a DAC which comes within paragraph (a) of the definition of DAC in Head 1, e.g. a private company limited by shares and having an objects clause. The form is modelled on Table B in the 1963 Act, which is the model form of Memo for a private company limited by shares under that Act. Paragraph 1 has been modified in comparison to the 1963 version, so that the inverted commas around the company name have been removed, a colon has been inserted in their place, and the name of the company has been capitalised in its entirety for the sake of legal certainty. Following a discussion at the DAC Committee, the description of the company type (Designated Activity Company) has been included in its entirety at the end of the company name (without an intervening comma). However, Head 5, which contains the provisions as to names of DACs, would permit the use in practice of the abbreviations "DAC", "dac", "D.A.C.", "d.a.c.", "designated activity company" or the Irish equivalents. Paragraph 2 is a new addition, to comply with Head 4 (2) (b), which requires the Memo to state that the company is a DAC registered under this Part of the Act.

cond Schedule

Second Schedule

Model form of Memorandum of Association of a Designated Activity Company (DAC), being a Private Company limited by Guarantee and having a Share Capital

1. The name of the company is: THE WESTERN COUNTIES TOURISM DEVELOPMENT COMPANY DESIGNATED ACTIVITY COMPANY
2. The company is a designated activity company, registered under Part B3 of the [Companies Bill, 2007].
3. The objects for which the company is established are the promotion of tourism in the western counties of Ireland by providing facilities for tourists, and the doing of all such other things as are incidental or conducive to the attainment of the above object.
4. The liability of the members is limited.
5. Every member of the company undertakes to contribute to the assets of the company in the event of its being wound up while he is a member, or within one year afterwards, for payment of the debts and liabilities of the company contracted before he ceases to be a member, and the costs, charges and expenses of winding up, and for the adjustment of the rights of the contributories among themselves, such amount as may be required, not exceeding €50.
6. The share capital of the company is €10,000, divided into 10,000 shares of €1 each.

We, the several persons whose names and addresses are subscribed, wish to be formed into a company in pursuance of this memorandum of association, and we agree to take the number of shares in the capital of the company set opposite our respective names.

<i>Names, Addresses and Descriptions of Subscribers</i>	<i>Number of Shares taken by each Subscriber</i>
1. Ann Larkin Address:	1,000
Total Shares taken	1,000

Dated the _____ day of _____ 20 ____

Witness to the above Signatures:

Name: _____

Address: _____

ARTICLES OF ASSOCIATION

The following Regulations (if any) shall apply to this designated activity company:

Note

This form may be used by a DAC which comes within paragraph (b) of the definition of DAC in Head 1, e.g. a private company limited by guarantee and having a share capital. The form is modelled on Table D in the 1963 Act, which is the model form of Memo for a company limited by guarantee and having a share capital under that Act. As above, Paragraph 1 has been modified in comparison to the 1963 version, so that the inverted commas around the company name have been removed, a colon has been inserted in their place, and the name of the company has been capitalised in its entirety for the sake of legal certainty. Following a discussion at the DAC Committee, the description of the company type (Designated Activity Company) has been included in its entirety at the end of the company name (without an intervening comma). However, Head 5, which contains the provisions as to names of DACs, would permit the use in practice of the abbreviations "DAC", "dac", "D.A.C.", "d.a.c.", "designated activity company" or the Irish equivalents. Again as above, Paragraph 2 is a new addition, to comply with Head 4(2)(b), which requires the Memo to state that the company is a DAC registered under this Part of the Act.