
Part B4 – Guarantee Companies

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Part B4 – Guarantee Companies

Chapter 1

Preliminary and Definitions

Head 1 Defined terms:

In this Part:

“company limited by guarantee” or “guarantee company” means a company which does not have a share capital and which has the liability of its members wholly limited by the constitution to such amount as the members may respectively thereby undertake to contribute to the assets of the company in the event of its being wound up.

“constitution” has the meaning ascribed to it in Head 5 of this Part.

“member” means member of a company limited by guarantee or clg.

Explanatory Note

The definition of “company limited by guarantee” is derived from section 2 Companies Act, 1963 and paragraph 5(2)(b) Companies Act, 1963, with the

substitution of the term “memorandum” by the term “constitution”.

In principle, the CLRG agreed the need for a designated name for all guarantee companies, e.g. clg (company limited by guarantee).

In this respect, it must be acknowledged that a charity may dispense with ltd/teoranta in its name via the exemption procedure under section 24 of the Companies Act, 1963 (as amended by section 88 of Company Law Enforcement Act, 2001). Under that section, a company may make a declaration to the Registrar that it meets certain conditions

Head 2 Interpretation of this Part

- (1) The provisions of Parts A1 to A14 of Group A apply to a CLG except to the extent that they are disapplied or modified by this Part.
- (2) The provisions contained in the following table shall not apply to a CLG to which this Part applies:

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A3	4	Limitation on offer of securities to the public
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A4	68	Registration of, and obligation of, company to supply copies of certain resolutions and agreements
A4	72	Remedy in case of oppression
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A6	38(4)	Contents of Directors' Report: General matters
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A6	42	Directors' Report: Statement on relevant audit information
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A9	27-46	Division of Guarantee companies
A11	86	Liability as contributories of past and present members

Chapter 2

Incorporation and Consequential Matters

Head 3 Definitions

Part A2, Head 1 shall not apply to guarantee companies.

Head 4 Way of forming a Guarantee Company

- (1) A CLG may be formed for any lawful purpose by any person or persons subscribing to a constitution and complying with the registration requirements in this Bill.
- (2) A company other than a CLG may be registered as a CLG following:
 - (i) re-registration as a CLG of an existing company pursuant to [Part B6];
 - (ii) the merger of two or more guarantee companies pursuant to [Part B4, Chapter 9]; or
 - (iii) the division of two or more guarantee companies pursuant to [Part B4, Chapter 9].
- (3) A CLG shall not be formed and registered unless it appears to the Registrar that the company, when registered, will carry on an activity in the State.
- (4) Part A2, Head 2 shall not apply to the formation of a CLG.
- (5) The certificate of incorporation issued under Head 8(1) of Part A2 shall state that the company is a company limited by guarantee (CLG).

Explanatory Note

This is a new head.

Subhead (1) reduces the minimum number of members for a public guarantee to 2.

subhead (3) is taken in substance from Part B2 provisions. This is done on the understanding that Part B9 will provide for the full scheme of conversions for guarantee companies.

Subhead (5) re-enacts section 5(3) of Companies (Amendment) Act, 1983 for a CLG.

Head 5 The form of a Guarantee Company's constitution

- (1) Subject to Subhead (3), the constitution of a CLG 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 CLG shall state-
 - (a) its name;
 - (b) that it is a guarantee company, registered under this Part;
 - (c) its objects; and
 - (d) that each member undertakes that, if the company is wound up while he or she is a member, or within one year after he or she ceases to be a member, he or she will contribute to the assets of the company, such amount as may be required for—
 - (i) payment of the debts and liabilities of the company contracted before he or she ceases to be a member,
 - (ii) payment of the costs, charges and expenses of winding-up, and
 - (iii) adjustment of the rights of contributories among themselves, not exceeding a specified amount.
- (3) If a CLG adopts supplemental regulations, those regulations shall be in the form of articles of association.
- (4) The constitution shall—
 - (a) be in accordance with the form set out in the 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) 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 the signature do not apply.

(6) Part A2, Head 3 shall not apply to a CLG.

Explanatory Note

Subhead (1) is new.

Paragraphs 2(a)-(c) are an amended restatement of Section 6(1)(a) of the Companies, Act, 1963.

Subheads (3) to (6) are new.

[N.B. Heads 5 - 8 of A2 apply]

Head 6 Provisions as to names of guarantee companies

(1) The name of a company limited by guarantee shall end with one of the following:

- (company limited by guarantee)
- (cuideachta faoi theorainn ráthaíochta).

(2) The words “(company limited by guarantee)” may be abbreviated to “(clg)”/ “(CLG)” or “(c.l.g.)”/“(C.L.G.)” in any usage after the registration by any person including the company limited by guarantee.

(3) The words “(cuideachta faoi theorainn ráthaíochta)” may be abbreviated to “(ctr)”/ “(CTR)” or “(c.t.r.)”/“(C.T.R.)” in any usage after the registration by any person including the company limited by guarantee.

(4) Every CLG 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 CLG

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 license under Section 24 of the Companies Act, 1963 to dispense with the *ltd./teoranta* in its name, see head below.*

Head 7 Trading under a misleading name

(1) A person who is not a CLG 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 “company limited by guarantee” (“cuideachta faoi theorainn ráthaíochta”) or abbreviations of those words.

(2) A CLG and any officer of the CLG who is in default shall be guilty of a category three offence if, in circumstances in which the fact that it is a CLG 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 CLG.

(3) Subhead (1) shall not apply to any company—

- (a) to which Part B7 [equivalent of Part XI of the Companies Bill, 1963] applies; and
- (b) which has provisions in its constitution that would entitle it to rank as a CLG 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) Bill, 1983.

Head 8 Power to dispense with “company limited by guarantee” or “cuideachta faoi theorainn ráthaíochta” in name of charitable and other companies

(1) A CLG shall, notwithstanding its registration as a company with limited liability, be exempt from the provisions of this Act relating to the use of the word [“clg”] or [“ctr”] 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 limited companies, 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 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 CLG (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 CLG) has delivered to the Registrar a statement in the prescribed form that the CLG complies or, where applicable, will comply with the requirements of paragraphs (a) and (b).
- (2) The Registrar shall refuse to register as a limited company any association about to be formed as a limited company by a name which does not include the word ["clg"] or ["ctr"] 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 CLG for a change of name including or consisting of the omission of the word ["clg"] or ["ctr"] 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 grant the application unless a declaration as provided for under Subhead (1)(c) has been delivered to the Registrar.
- (4) A company which is exempt under subhead (1) and whose name does not include the word ["clg"] or ["ctr"] 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 word ["clg"] or ["ctr"]—
- (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 company to change its name within such period as may be specified in the direction so that its name ends with the word ["clg"] or ["ctr"], 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 company which has received a direction under Subhead (5) shall not thereafter be registered by a name which does not include the word ["clg"] or ["ctr"] without the approval of the Registrar.
- (7) A person who—
- (a) changes the name of a company in contravention of Subhead (3);
 - (b) alters its constitution in contravention of Subhead (4); or
 - (c) fails to comply with a direction from the Registrar under Subhead (5)
- shall be guilty of a category three offence.
- (8) Summary proceedings in relation to an offence under Subhead (7) may be brought and prosecuted by the Registrar.

Explanatory Note

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

[N.B. Heads 11 - 13 of A2 applies]

Head 9 Effect of Constitution

- (1) Subject to the provisions of this Bill, the constitution shall, when registered, bind the CLG and the members thereof to the same extent as if they respectively had been signed and sealed by each member and contained covenants by each member to observe all the provisions of the constitution.
- (2) All money payable by any member to the CLG under the constitution shall be a debt due from him to the CLG.

- (3) An action to recover a debt created by this head shall not be brought after the expiration of 12 years from the date on which the causes of action accrued.
- (4) Every provision in the constitution, or in any resolution of the CLG, purporting to give any person a right to participate in the divisible profits of the CLG, otherwise than as a member, shall be void.
- (5) For the purpose of the provisions of this Bill relating to the constitution of a CLG and of this head, every provision in the constitution, or in any resolution, of a CLG purporting to divide the CLG into shares or interests, shall be treated as a provision for a share capital, notwithstanding that the nominal amount or number of the shares or interests is not specified thereby.
- (6) Part A2, Head 14 shall not apply to a CLG
- (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 CLG'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 dissentient members, and may give such directions and make such orders as it may think expedient for facilitating or carrying into effect any such arrangement.

Explanatory Note

Subheads(1), (2) and (3) replicate Part A2, Head 14. Subheads (4) and (5) are a modified restatement of Section 26 of the Companies Act, 1963.

Head 10 Way in which and extent to which objects of company may be altered

- (1) Notwithstanding Part A2, Head 15, a CLG may only alter its objects in accordance with this head.
- (2) Subject to Subhead (3), a CLG 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% of the CLG's members; or
 - (b) by the holders of not less than 15% of the CLG's debentures, entitling the holders to object to alterations of its objects.
- (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 CLG's objects shall be any debentures secured by a floating charge which were issued or first issued before the operative date or form part of the same series as any debentures so issued, and a special resolution altering a CLG's objects shall require the same notice to the holders of any such debentures as to members of the guarantee CLG, 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 CLG's articles regulating the giving of notice to members shall apply.

- (12) In the case of a CLG which is, by virtue of a licence from the Minister granted under Head 8 [equivalent of Section 24 of Companies Act, 1963], exempt from the obligation to use the word ["clg"] or ["ctr"] as part of its name, a resolution altering the CLG's objects shall also require the same notice to the Minister as to holders of debentures.

- (13) Where a CLG 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 CLG makes default in giving notice or delivering any document to the Registrar as required by Subhead (10), the CLG and every officer of the CLG 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 (14), there had been enacted Subheads (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 Companies Act, 1963.

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

Head 11 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 31 of this Part, 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 11 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.

[N.B. Heads 16 & 19 of A2 apply]

Head 12 Corporate capacity of a CLG

- (1) A CLG 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 CLG.

Explanatory Note

This head, and the following Heads 13 and 14, mirror Part B2 Heads 8, 9 and 10 respectively.

Head 13 Corporate capacity not limited by a CLG's constitution

- (1) The validity of an act done by a CLG shall not be called into question on the ground of lack of capacity by reason of anything contained in the CLG's constitution.
- (2) A member of a CLG may bring proceedings to restrain the doing of an act which but for Subhead (1) would be beyond the CLG's capacity, but no such proceedings shall lie in respect of any act to be done in fulfilment of a legal obligation arising from a previous act of the CLG.
- (3) It remains the duty of the directors to observe any limitations on their powers flowing from the CLG's constitution, and action by the directors which but for Subhead (1) would be beyond the CLG's capacity may only be ratified by the company 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 CLG is not bound to enquire as to whether it is permitted by the CLG's constitution.

Explanatory Note

This head mirrors the wording of Part B2, Head 9.

Head 14 Corporate authority and the power of directors to bind a CLG

- (1) In favour of a person dealing with a CLG in good faith, the power of the board of directors to bind the CLG, or authorise others to do so, or of any person registered with the Registrar for the purposes of Part A2, Head 21 [equivalent of Reg.6(3) S.I. 173 of 1963] as a person authorised to bind the CLG, shall be deemed to be free of any limitation under the CLG's constitution.
- (2) For the purposes of Subhead(1) -
 - (a) a person "deals with" a CLG if he is a party to any transaction or other act to which the CLG 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 CLG'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 CLG under the CLG's constitution include limitations deriving -
 - (a) from a resolution of the CLG in general meeting or a meeting of any class of shareholders; or
 - (b) from any agreement between the members of the CLG or of any class of shareholders.
- (4) Subhead (1) does not affect any right of a member of the CLG 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 CLG, 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 CLG.

- (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 CLG, by reason of the directors or a person registered with the Registrar for the purposes of Part A2, Head 21 as a person authorised to bind the CLG, exceeding their powers.
- (6) A party to a transaction with a CLG is not bound to enquire as to whether there is any limitation on the powers of the board of directors to bind the PLC 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 CLG.

Explanatory Note

This head mirrors Part B2, Head 10. 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 15 Conversion of Existing Guarantee Companies

- (1) In this Part the term 'transition period' shall mean the period ending 18 months after the commencement of this Part.
- (2) Every existing guarantee company that does not have a share capital shall at the end of the transition period become a "clg" to which this Part applies.
- (3) Where an existing guarantee company has not, by the end of the transition period, changed its name to comply with Part B4, Head 7 then from the end of the transition period the provisions of Part B4, Head 7 shall apply to that company and from that time forward -
- (a) The word "limited" at the end of the company name shall be replaced by "company limited by guarantee", or
- (b) The word "teoranta" at the end of the company name shall be replaced by "cuideachta faoi theorainn ráthaíochta".

- (4) Subject to Part B4, Head 8 from the end of the transition period it will be a category four offence for an existing CLG not having a share capital to use or display its name in any way other than provided for in Part B4, Head 7.

Explanatory Note

In Head 1 of Part A2 the transition period is defined as expiring 12 months after the status date, itself being defined as six months after commencement of Part A2. Thus expiry of the transition period will be co-terminous with expiry of the transition period for Part A2, assuming both Parts are commenced on the same date.

Head 16 Part A2, Heads 37, 38, 39, 40, 41 and 42 shall not apply to a guarantee company.

Part A2, Heads 37, 38, 39, 40, 41 and 42 shall not apply to a guarantee company.

Explanatory Note

These heads are provisions relating to the conversion of 'existing private companies limited by shares' to private companies and are therefore do not apply to guarantee companies.

[Head 38 of A2 applies]

Chapter 3

Share Capital

Head 17 Prohibition on issue of shares by a guarantee company

- (1) No CLG may be formed with the power to issue share capital.
- (2) Notwithstanding any provision in its constitution, no CLG may have a share capital or have the power to issue share capital after the transition date.
- (3) Any existing guarantee company with an issued share capital shall, after the transition period, be deemed to be a designated activity company (dac).
- (4) Part A3, Head 2 shall not apply to a CLG

Explanatory Note

This is a new head. The head places a prohibition on the formation of a clg with a share capital. Existing guarantee companies are prohibited from having a share capital or having the power to raise share capital. Any existing guarantee company with a share capital at the end of the transition period will be re-designated as a DAC.

Head 18 Limitation on offer of securities to the public

- (1) Save to the extent prohibited by its constitution, a CLG shall have the capacity to offer, allot and issue 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, to the public subject to compliance, where applicable with Chapter 13 of Part B2.
- (2) Part A3, Head 3 shall not apply to a CLG.

Explanatory Note

The effect of the head is to apply prospectus law and prevent a CLG from issuing debentures or debt instruments to the public where a prospectus would be needed. The head modifies the text of Part A3, Head 3 by replacing the references to 'securities' with 'debts or other debt instruments'. The wording of the head is subject to review.

Head 19 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 bank holiday shall be disregarded and if the third day (as so reckoned) is itself a Saturday or Sunday or such a bank 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.

Explanatory Note

Restatement of Section 57 of the Companies Act, 1963.

Head 20 Shares

- (1) Where a CLG is prohibited by its constitution or by this Part from having members other than by guarantee, then the provisions of Part A3 that relate to membership by shareholding shall not apply.
- (2) Part A3, Heads 5 to 41 and 43 to 52 shall not apply to a CLG.

Explanatory Note

This is a new head. The provisions of Part A3 (as specified in this Head) relate to shares and therefore are not capable of applying to a CLG which is prohibited from having members other than by guarantee.

Head 21 Holding by subsidiary of shares or [an interest/membership by guarantee] in its holding company.

- (1) Notwithstanding Part A3, Head 45 [equivalent of Section 32 of the Companies Act, 1963] or Part A3, Head 15 [equivalent of Section 60 of the Companies Act, 1990], a CLG 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,
 - (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 Sections 150 & Sections 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 41 [equivalent of Sections 43A of the Companies Act, 1983 (inserted by Section 232 (c) of the 1990 Act)], and
 - (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 Sections 212 to s.217 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 [interest/membership by guarantee] 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 [interest/membership by guarantee] was 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 Sections 32 of the Companies Act, 1963].
- (6) Part A3, Head 46 shall not apply to a CLG.
- (2) Subhead (1) does not prohibit—
- (a) the giving of financial assistance in accordance with the validation procedure defined in Part A4, Head 71;
 - (b) the payment of a dividend or making of any distribution out of profits available for distribution;
 - (c) the discharge by a CLG of a liability lawfully incurred by it;
 - (d) where the lending of money is part of the ordinary business of the CLG, the lending of money by the CLG in the ordinary course of its business;
 - (e) the provision by a CLG, in accordance with any scheme for the time being in force, of money for the purchase of, or subscription for, fully paid shares in its holding company, being a purchase or subscription of or for shares to be held by or for the benefit of employees or former employees of the CLG or of any subsidiary of the CLG including any person who is or was a director holding a salaried employment or office in the CLG or any subsidiary of the CLG;
 - (f) the making by a CLG of loans to persons, other than directors, bona fide in the employment of the CLG or any subsidiary of the CLG with a view to enabling those persons to purchase or subscribe for fully paid shares in its holding company to be held by themselves as beneficial owners thereof;
 - (g)
 - (i) the provision of a loan, a guarantee, the provision of security or otherwise to discharge or refinance an existing financial assistance (whether by means of a loan, guarantee, the provision of security or otherwise) where the financial assistance (whether by means of a loan, guarantee, the provision of security or otherwise) had occurred pursuant to the validation procedure or a special resolution passed in accordance with the validation procedure in Part A4, Head 71,

Explanatory Note

This head amends Part A3, Head 46 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.

Head 22 Financial assistance

- (1) It shall not be lawful for a CLG, where it is a subsidiary of a holding company, to give, whether directly or indirectly, and whether by means of a loan, guarantee, the provision of security or otherwise, any financial assistance for the purpose of or in connection with an acquisition (whether by subscription, purchase, exchange, redemption or otherwise) made or to be made by any person of or for any shares in its holding company, unless it is given in compliance with the succeeding subhead of this head.

- (ii) the provision of any subsequent or successive financial assistance (whether by way of a loan, guarantee or the provision of security or otherwise) in connection with subsequent or successive refinancings;
 - (h) the giving by a CLG of warranties to an acquirer of shares in its holding company for the purpose of or in connection with that acquisition;
 - (i) the payment by a CLG of fees and expenses of the advisers to the CLG and of any subscriber for shares incurred in connection with that subscription;
 - (j) the incurring of expense by a CLG in order to facilitate the admission to or continuance of a trading facility of securities of the CLG on a stock exchange or securities market including the expenses associated with the preparation of and filing of any documents required under the laws of any jurisdiction in which the securities in question are admitted to trading or are afforded a trading facility;
 - (k) the incurring of any expense by a CLG or its subsidiary in order to ensure compliance with Irish Takeover Panel Act, 1997;
 - (l) the reimbursement by an offeree CLG or by a subsidiary of an offeree CLG of expenses of an offeror pursuant to an agreement approved by or in terms approved of by Irish Takeover Panel;
 - (m) in connection with an allotment of shares, the payment of commissions not exceeding 10% of the money received in respect of such allotment to intermediaries, and the payment of professional fees.
- (3) Any transaction in breach of this head shall be voidable at the instance of the company against any person (whether a party to the transaction or not) who had actual or imputed notice of the facts which constitute such breach.
- (4) If a company acts in contravention of this head every officer of the company who is in default shall be guilty of a category two offence.

Explanatory Note

This head is an amended re-enactment of Section 60 of the Companies Act, 1963, as amended by Regulation 10 of the First Schedule of the Companies (Amendment) Act, 1983, and Section 89 of the Company Law Enforcement Act, 2001.

Subhead (1) is an amended re-enactment of Section 60(1). The reference to "purchase or subscription" has been replaced by "...Acquisition (whether by subscription, purchase, exchange, redemption or otherwise)". The reference to "...Subject to the following subsections" has been deleted and replaced by "...Unless it has been given in accordance with the succeeding subheads of this head". This is due to the fact that subsections 60(2)-(11) have been deleted and instead there is now a more generalised validation procedure provided for in Part IV of the Bill.

Subhead (2)(a) refers to the single validation procedure now contained in Part IV. This new validation procedure was introduced in accordance with the views of the First report of the Company Law Review Group. It replaces the procedures contained in Sections 60(2) to 60(11) of the Companies Act, 1963, Section 256 of the Companies Act, 1963 and section 31 of the Companies Act, 1990. Subheads (2)(b) & (2)(c) are a re-enactment of Sections 60(11) of the Companies Act, 1963. Subheads 2(d) - 2(f) are a re-enactment of Section 60(13) of the Companies Act, 1963.

Subheads 2(g) - 2(m) are new. They give effect to the views of the Company Law Review Group in its First Report that, owing to width of Section 60, many bona fide transactions are prohibited. The Review Group considered that a number of transactions, specifically Subhead (2) should be exempt from the prohibition and, thus, from the requirement to be effected through a validation procedure.

Subhead (3) is a re-enactment of Section 60(14) of the Companies Act, 1963.

Subhead(6) is a slightly amended re-enactment of Section 60(15) of the Companies Act, 1963.

Head 23 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.

(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.

Subsection (3) (c) has been omitted, since Head 32 of Part A3 is disapplied from CLGs.

Chapter 4

Corporate Governance

[N.B. Part A4, Head 1 applies]

Head 24 Directors

- (1) Every CLG shall be required to have at least two directors.
- (2) Part A4, Head 2 shall not apply to CLGs.

Explanatory Note

New head giving 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 private companies including CLGs [Para 11.8.11]. The head mirrors Part B2, Head 62.

[N.B. Heads 3-9 of Part A4 apply]

Head 25 Disqualification of Directors

- (1) The office of director shall be vacated if the director—
 - (a) without the consent of the CLG in general meeting holds any other office or place of profit in the CLG; or
 - (b) is adjudged bankrupt in the State or in a Member State of the European Communities or makes any arrangement or composition with his creditors generally; or
 - (c) becomes prohibited from being a director by reason of any order made under Part A4, Head 7 [equivalent of Section 183A of the Companies Act, 1963] or Part A13, Head 42 [equivalent of Section 160 of the Companies Act, 1990]; or
 - (d) becomes of unsound mind; or
 - (e) resigns his office by notice in writing to the CLG; or
 - (f) is directly or indirectly interested in any contract with the CLG and fails to declare the nature of his interest in the manner required by Part A5, Head 12 [equivalent of Section 194 of the Companies Act, 1963].

- (2) Part A4, Head 10 does not apply.

Explanatory Note

This is an amended version of Regulation 39 of Table C of the 1963 Act, updated to take account of the provisions re disqualification in the Company Law Enforcement Act, 2001

[Heads 11 to 15 of Part A4 apply]

Head 26 Removal of Directors

Notwithstanding Part A4, Head 17(1), any restriction in the CLG's constitution on the removal of a director by the members other than by ordinary resolution shall be void.

Explanatory Note

This head acts as a proviso to Head 17 of Part A4. Head 17 re-enacts Section 183 of the Companies Act, 1963 which provides for a private company only to have the power to appoint directors for life. In consequence it is necessary to disapply Head 17(1) to other types of companies.

[Heads 17- 33 of Part A4 apply]

Head 27 Audit Committee

- (1) In this head—

'affiliate,' in relation to an auditor, means a firm, body corporate or partnership considered under Part A6, Head 2(2) [equivalent of Section 182(2) of the Companies Act, 1990] to be an affiliate of the auditor at the relevant time;

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

'internal audit' means an examination of the internal control system of a CLG that is conducted within the company at the request of its audit committee, directors or other officers;

'internal auditor' means a person who conducts an internal audit;

'parent undertaking' and 'subsidiary undertaking' have the same meaning as in the Part A1, Head 6 [equivalent of S.I. No.201 of 1992, EC (Companies: Group Accounts) Regulations, 1992].

- (2) The responsibilities of a committee of directors, to be known as the audit committee, may include, but are not limited to, the following -
- (a) reviewing, before they are presented to the board of directors for approval—
 - (i) the CLG's annual accounts, and
 - (ii) if the CLG is a parent company, the group accounts of the group of undertakings of which the company is the parent company;
 - (b) determining whether the annual accounts so reviewed comply with Part 6, Head 13(7) [equivalent of Section 205A(2) of the Companies Act, 1990] and whether, in the committee's opinion, they give at the end of the financial year a true and fair view of—
 - (i) the state of affairs of the CLG, and
 - (ii) the profit or loss of the CLG, even if [equivalent of Section 3(2) of the Companies (Amendment) Act, 1986] Part A6, Head 13(3) [equivalent of Section 3(1) of the Companies (Amendment) Act, 1986] does not apply to the CLG's profit and loss account;
 - (c) determining whether the group accounts so reviewed comply with Part A6, Head 13(7) [equivalent of Section 205A(2) of the Companies Act, 1990] and whether, in the committee's opinion, they give, at the end of the financial year, a true and fair view of—
 - (i) the state of affairs of the group of undertakings of which the CLG is the parent company, and
 - (ii) the profit or loss of that group;
 - (d) recommending to the board of directors whether or not to approve the annual accounts and group accounts so reviewed;
 - (e) determining, at least annually, whether in the committee's opinion, the CLG has kept proper books of account in accordance with Part A6, Heads 5 to 9 [equivalent of Section 202 of the Companies Act, 1990];
 - (f) reviewing, before its approval by the board of directors, the statement required to be made under Part A5, Head 7(2) [equivalent of Section 205E(5) and (6) of the Companies Act, 1990];
 - (g) determining whether, in the committee's opinion, the statement so reviewed—
 - (i) complies with Part A5, Head 7(2) [equivalent of Section 205E(5) and 5(6) of the Companies Act, 1990], and
 - (ii) is fair and reasonable and is based on due and careful enquiry;
 - (h) recommending to the board of directors whether or not to approve a statement reviewed under paragraph (f);
 - (i) advising the board of directors as to the recommendation to be made by the board to the shareholders concerning the appointment of the CLG's auditor;
 - (j) monitoring the performance and quality of the auditor's work and the auditor's independence from the CLG;
 - (k) obtaining from the auditor, up to date information to enable the committee to monitor the CLG's relationship with the auditor, including, but not limited to, information relating to the auditor's affiliates;
 - (l) recommending whether or not to award contracts to the auditor or an affiliate of the auditor for non-audit work;
 - (m) satisfying itself that the arrangements made and the resources available for internal audits are, in the committee's opinion, suitable;
 - (n) reporting, as part of the report under Part A6, Head 37 [equivalent of Section 158 of the Companies Act, 1963], on the committee's activities for the year, including, but not limited to, the discharge of its responsibilities under paragraph (j);
 - (o) performing any additional functions prescribed by regulation under Part A14, Head 45(1)(m) [equivalent of Section 48(1)(m) of the Companies (Auditing and Accounting) Act, 2003];

- (p) performing any other functions relating to the CLG's audit and financial management that are delegated to it by the board of directors.
- (3) The board of directors of each CLG shall either—
- (a) establish an audit committee that—
- (i) has all or some of the responsibilities specified in Subhead (2), and
- (ii) subject to Subhead (8), otherwise meets the requirements of this head; or
- (b) decide not to establish an audit committee.
- (4) The board of directors of each large CLG to which Subhead (3) applies shall state in their report under Part A6, Head 37 [equivalent of Section 158 of the Companies Act, 1963]—
- (a) whether the CLG has established an audit committee or decided not to do so;
- (b) if the CLG has established an audit committee, whether it has only some of the responsibilities specified in Subhead (2); and
- (c) if the CLG has decided not to establish an audit committee, the reasons for that decision.
- (5) The audit committee is to consist of such directors as the board of directors concerned thinks fit, provided, subject to Subhead (7), both of the following requirements are met -
- (a) the committee consists of not fewer than 2 members;
- (b) all those appointed to the committee qualify under Subhead (6).
- (6) A director qualifies for appointment to the audit committee unless he or she—
- (a) is, or was at any time during the 3 years preceding appointment to the committee—
- (i) an employee of the CLG concerned, or
- (ii) an employee of any subsidiary of the CLG concerned; or
- (b) is the chairperson of the board of directors.
- (7) The requirements specified in paragraphs (a) and (b) of Subhead (5) do not apply if—
- (a) only one director on the board of directors of the CLG concerned qualifies under subhead (6);
- (b) that director—
- (i) is appointed as the sole member of the audit committee, or
- (ii) is appointed as the chairperson of an audit committee consisting of not more than 2 members (including the chairperson) and has, in the case of an equal division of votes, a second or casting vote;
- (c) any conditions prescribed under Section Part A14, Head 45(1)(m) [48(1)(m) of the Companies (Auditing and Accounting) Act, 2003] are met; and
- (d) the directors of the CLG concerned state in their report under Part A6, Head 37 [equivalent of Section 158 of the Companies Act, 1963] the reasons for the CLG's exemption from those requirements.
- (8) Written terms of reference concerning the audit committee's role in the audit and financial management of the CLG concerned shall—
- (a) be prepared and approved by the board of directors;
- (b) be submitted for the information of the shareholders of the CLG concerned at its annual general meeting; and
- (c) be reviewed each year by the board of directors.
- (9) Without limiting the matters that may be included under Subhead (8), the terms of reference must—
- (a) specify how the audit committee will discharge its responsibilities; and
- (b) provide for a programme of separate and joint meetings with the management, auditor and internal auditor of the CLG or undertaking concerned.

- (10) Subhead (8) applies also in relation to any amendments of the audit committee's terms of reference.
- (11) Where the director of a CLG fails to take all reasonable steps to comply with the requirements of Subhead (4) the director is guilty of a category three offence.
- (12) Part A4, Head 34 shall not apply to a CLG.

Explanatory Note

This is an amended version of Part A4, Head 34. The head in effect extends the 'comply or explain' requirement for an audit committee to all guarantee companies, and to any group of companies which has a guarantee company as its parent.

Head 28 Membership

- (1) The subscribers to the memorandum of association in the constitution of a CLG shall be deemed to have agreed to become members of the CLG, and on its registration, shall be entered as members in its register of members.
- (2) Such other persons as the directors admit to membership and who give the requisite guarantee shall be members of the CLG and their names shall be entered in its register of members.
- (3) The constitution of a CLG 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.
- (4) Where a CLG 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.

- (5) The memorandum of association of a CLG may state the maximum number of persons who may be members of the CLG, subject to the power of the directors to register an increase in the number of members.

- (6) A member may resign his membership by serving notice to that effect upon the directors at the registered office of the CLG, such notice to expire no earlier than the date of service of the notice of resignation.
- (7) Save where the constitution of a CLG 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.
- (8) Save where the constitution of a CLG provides otherwise, every member shall have one vote.
- (9) The death of a member shall terminate his membership.
- (10) It shall be a category two offence to personate a member of a CLG.
- (11) Part A4, Head 35, shall not apply to a CLG.

Explanatory Note

This Head is new, however it is based on Model Regulation 3 of Table C of the First Schedule to the Companies Act, 1963.

The Head sets out the principle that new members may not be admitted unless approved by the directors. It also requires that new members must give the requisite guarantee. Membership is not transferable and ceases on resignation or death. The duration of membership and the events or acts which will terminate will be set out in the articles. For example, in the case of apartment management companies it is common to provide that membership ceases when ownership of one of the apartments ceases.

Head 29 Register of Members

- (1) Subject to Subhead (4), every CLG shall keep a register of its members and enter therein the following particulars -
- (a) the names, addresses of the members; and
 - (b) the date at which each person was entered in the register as a member;
 - (c) the date at which any person ceased to be a member.

- (2) The entries required under paragraphs (a), and (b) of Subhead (1) shall be made within 28 days after the conclusion of the agreement with the CLG to become a member or, in the case of a subscriber of constitution, within 28 days after the registration of the CLG.
- (3) The entry required under paragraph (c) of Subhead (1) shall be made within 28 days after the date when the person concerned ceased to be a member, or, if he ceased to be a member otherwise than as a result of action by the CLG, within 28 days of production to the CLG of evidence satisfactory to the CLG of the occurrence of the event whereby he ceased to be a member.
- (4) Subject to Subhead (5), the register of members shall, except when it is closed under the provisions of this Bill, be kept at the registered office of the CLG, so, however, that—
 - (a) if the work of making it up is done at another office of the CLG, it may be kept at that other office; and
 - (b) if the CLG arranges with some other person for the making up of the register to be undertaken on behalf of the CLG by that other person,

it may be kept at the office of that other person at which the work is done.
- (5) The register of members shall not be kept at a place outside the State.
- (6) Subject to Subhead (7), every CLG shall send notice to the Registrar of the place where its register of members is kept and of any change in that place.
- (7) A CLG shall not be bound to send notice under Subhead (6) where the register has, at all times since it came into existence or, in the case of a register in existence on the operative date, at all times since then, been kept at the registered office of the CLG.
- (8) Where a CLG makes default in complying with any of the requirements of Subheads (1) to (5) or makes default for 14 days in complying with Subhead (6), the CLG and every officer of the CLG who is in default shall be guilty of a category three offence .
- (9) Part A4, Head 36 shall not apply to a CLG

Explanatory Note

Subhead (1) of Part A4, Head 36 has been amended so as to remove the requirement for the particulars of the shareholding of a member. In effect it reflects the requirements in Section 116 of the Companies Act, 1963 rather than those in Head 36.

Section 116 of the Companies Act, 1963 requires every company to keep a register of members which should be open to inspection by the public.

[Heads 37 to 42 of Part A4 apply]

Head 30 Transfer of membership of a CLG that is a management company

- (1) This head applies to a CLG that is a management company as defined in Part A1, Head 1.
- (2) A member of a CLG that is a management company shall cease to be a member upon disposal of their estate or interest in property and the person who acquires the property automatically becomes a member of the CLG.
- (3) Part A4, Head 43 shall not apply to a CLG.

Explanatory Note

This is a new head designed to clarify entitlement to transfer membership where a company is also a management company. The equivalent provision in Part A4, Head 43, deals only with transfer of shares, therefore a separate head dealing with membership was required for companies limited by guarantee. The head is intended to create the situation where cessation and acquisition of membership happens automatically upon acquisition or disposal of property, without requirement for anything further.

Head 31 Annual General Meeting

- (1) Subject to Subhead (2), every CLG 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 CLG and that of the next.
- (2) So long as a CLG 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 the CLG in accordance with Subhead (1), the Director of Corporate Enforcement may, on the application of any member of the CLG, call or direct the calling of a general meeting of the CLG 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 CLG's constitution, and the directions which may be given under this subhead may include a direction that one member of the CLG present in person or by proxy shall be deemed to constitute a meeting.
- (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 CLG but, where a meeting so held is not held in the year in which the default in holding the CLG'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 CLG resolves that it shall be so treated.
- (5) Where a CLG 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 CLG in accordance with Subhead (1), or in complying with any direction of the Director of Corporate Enforcement under Subhead (3), the CLG and every officer of the CLG who is in default shall be guilty of a category three offence, and if default is made in complying with Subhead (5), the CLG and every officer of the CLG who is in default shall be guilty of a category three offence.
- (7) Part A4, Head 46 shall not apply to a CLG.

Explanatory Note

This head disapplies Subhead (3) of Head 46, Part A4, which allows a private company to dispense with the requirement to hold an AGM.

[Heads 44 to 46 of Part A4 shall apply]

Head 32 Convening of Extraordinary General Meeting on Requisition

- (1) The directors of a CLG, notwithstanding anything in its constitution shall on the requisition of members of the company holding at the date of the deposit of the requisition not less than one-tenth of the total voting rights of all the members having at the said date a right to vote at general meetings of the CLG forthwith, proceed duly to convene an extraordinary general meeting of the CLG.
- (2) The requisition must state the objects of the meeting and must be signed by the requisitionists and deposited at the registered office of the CLG and may consist of several documents in like form each signed by one or more requisitionists.
- (3) If the directors do not, within 21 days from the date of the deposit of the requisition, proceed duly to convene a meeting to be held within 2 months from the said date, the requisitionists, or any of them representing more than 50% of the total voting rights of all of them, may themselves convene a meeting, but any meeting so convened shall not be held after the expiration of 3 months from the said date.
- (4) A meeting convened under this head by the requisitionists shall be convened in the same manner as nearly as possible as that in which meetings are to be convened by directors.
- (5) Any reasonable expenses incurred by the requisitionists by reason of the failure of the directors duly to convene a meeting shall be repaid to the requisitionists by the CLG, any sum so repaid shall be retained by the CLG out of any sums due or to become due from the CLG by way of fees or other remuneration in respect of their services to such of the directors as were in default.
- (6) For the purposes of this head, the directors shall, in the case of a meeting at which a resolution is to be proposed as a special resolution, be deemed not to have duly convened the meeting if they do not give such notice thereof as is required by Part A4, Head 52 [equivalent of Section 133 of the Companies Act, 1963].
- (7) Part A4, Head 49 shall not apply to a CLG.

Explanatory Note

This head modifies Part A4, Head 49 by deleting the words relating to rights derived from paid up capital from Subhead (1).

[Head 48 of Part A4 applies]

Head 33 Persons Entitled to Notice of General Meetings

- (1)
- (a) Notice of every general meeting shall be given to —
 - (i) every member,
 - (ii) the personal representatives of a deceased member of the CLG, which member would but for his death have the right to vote at the meeting, and
 - (iii) the Official Assignee in bankruptcy of a bankrupt member of the CLG, which member would but for his bankruptcy have the right to vote at the meeting,
 - (iv) the directors and secretary of the CLG;
 - (b) No other person shall be entitled to receive notices of general meetings unless the constitution of a CLG provides otherwise.
- (2) The auditors of a CLG shall be entitled to attend any general meeting of a CLG and to receive all notices of, and other communications relating to any general meeting which any member of the CLG is entitled to receive and to be heard at any general meeting which they attend on any part of the business of the meeting which concerns them as auditors.
- (3) Part A4, Head 51 shall not apply to a CLG

Explanatory Note

This head is equivalent to Head 51, Part A4, however the provisions at 41(1)(b) has been deleted as these relate to shares.

[Heads 50 and 51 of Part A4 apply]

Head 34 Proxies

- (1) Save to the extent that the constitution provides otherwise -
- (a) any member of a CLG entitled to attend and vote at a meeting of the CLG shall be entitled to appoint another person (whether a member or not) as his proxy to attend and vote instead of him, and a proxy so appointed shall have the same right as the member to speak at the meeting and to vote on a show of hands and on a poll;
 - (b) a member of a CLG shall not be entitled to appoint more than one proxy to attend on the same occasion;
 - (c) the instrument appointing a proxy shall be in writing under the hand of the appointer or of his attorney duly authorised in writing, or if the appointer is a body corporate, either under seal or under the hand of an officer or attorney duly authorised. A proxy need not be a member of the CLG;
 - (d) The instrument appointing a proxy and the power of attorney or other authority, if any, under which it is signed, or a notarially certified copy of that power or authority shall be deposited at the office or at such other place within the State as is specified for that purpose in the notice convening the meeting, not less than 48 hours before the time for holding the meeting or adjourned meeting at which the person named in the instrument proposes to vote, or, in the case of a poll, not less than 48 hours before the time appointed for the taking of the poll, and, in default, the instrument of proxy shall not be treated as valid.
- (2) A vote given in accordance with the terms of an instrument of proxy shall be valid notwithstanding the previous death or unsound mind of the principal or revocation of the proxy or of the authority under which the proxy was executed or the transfer of the [interest/ membership by guarantee] in respect of which the proxy is given, if no intimation in writing of such death, unsound mind, revocation or transfer as aforesaid is received by the CLG at the office before the commencement of the meeting or adjourned meeting at which the proxy is used.

- (3) This head shall apply to meetings of any class of members of a CLG as it applies to general meetings of the CLG.
- (4) Subject to Subhead (5), if for the purpose of any meeting of a CLG, invitations to appoint as proxy a person or one of a number of persons specified in the invitations are issued at the CLG's expense to some only of the members entitled to be sent a notice of the meeting and to vote thereat by proxy, every officer of the CLG who knowingly and wilfully authorises or permits their issue as aforesaid shall be guilty of a category three offence.
- (5) An officer shall not be liable under Subhead (4) by reason only of the issue, to a member, at his request in writing, of a form of appointment naming the proxy, or of a list of persons willing to act as proxy if the form or list is available on request in writing to every member entitled to vote at the meeting by proxy.
- (6) Part A4, Head 54 shall not apply to a CLG.
- (b) Where there are joint holders, the vote of the senior who tenders a vote, whether in person or by proxy, shall be accepted to the exclusion of the votes of the other joint holders; and for this purpose, seniority shall be determined by the order in which the names stand in the register of members;
- (c) A member of unsound mind, or a member who has made an enduring power of attorney or in respect of whom an order has been made by any court having jurisdiction in unsoundness of mind, may vote, whether on a show of hands or on a poll, by his committee, receiver, guardian or other person appointed by that court and any such committee, donee or an enduring power of attorney, receiver, guardian, or other person may vote by proxy on a show of hands or on a poll;
- (d) Where a CLG is being wound up no member shall be entitled to vote at any general meeting unless any guarantee payable by him has been paid;
- (e) No objection shall be raised to the qualification of any voter except at the meeting or adjourned meeting at which the vote objected to is given or tendered, and every vote not disallowed at such meeting shall be valid for all purposes. Any such objection made in due time shall be referred to the chairman of the meeting, whose decision shall be final and conclusive.
- (f) Subject to Part B4, Head 34, votes may be given either personally or by proxy.

Explanatory Note

Subhead (2) differs from that contained in Part A4, Head 54 by providing that the constitution of a guarantee company may provide that members by guarantee do not have the right to attend by proxy. The previous position as stated in Section 136 of the Companies Act, 1963 provides that the default position is that members by guarantee do not have the right to attend by proxy but that their articles may provide otherwise.

In Subhead (2), "insanity" has been replaced by "unsound mind". Insanity is generally a criminal law concept, while unsound mind is recognised in civil law. Further, there is a procedure (Order 47 of the Circuit Court Rules 2001) by which an application may be made to declare a person to be of unsound mind, whereas it may not be as easy to establish insanity if that term were to be retained.

[Heads 53 - 56 of Part A4 apply]

Head 35 Votes of Members

- (1) Unless the constitution otherwise provides -
- (a) In the case of each member by guarantee, every member present in person and every proxy shall have one vote, whether on a show of hands or on a poll, so, however, that no individual shall have more than one vote;

- (2) Part A4, Head 59 shall not apply to a CLG.

Explanatory Note

Subhead (1) of this head replaces Subhead(1) of Part A4, Head 59.

In Subhead (3), "lunacy" has been replaced by "unsoundness of mind", for consistency with Head 34, and for the reasons set out in the note to Head 25.

Head 36 Right to demand a poll

- (1) A poll may be demanded whether before or on the declaration of the result of the show of hands by any of the following persons –
 - (a) by the chairman; or
 - (b) subject to the constitution, by at least three members present in person or by proxy; or
 - (c) by any member or members present in person or by proxy and representing not less than 10 percent of the total voting rights of all the members having the right to vote at the meeting;

provided always that where a poll is demanded by any person or class of person mentioned in (a) to (c) above, that person or class of person can withdraw the demand for a poll.

- (2) Except as provided in Subhead (3), if a poll is duly demanded it shall be taken in such manner as the chairman directs, and the result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded.
- (3) A poll demanded on the election of a chairman or on a question of adjournment shall be taken forthwith. A poll demanded on any other question shall be taken at such time as the chairman of the meeting directs, and any business other than that on which a poll is demanded may be proceeded with pending the taking of the poll.
- (4) The instrument appointing a proxy to vote at a meeting of a CLG shall be deemed also to confer authority to demand or join in demanding a poll, and for the purposes of Subhead (1), a demand by a person as proxy for a member shall be the same as a demand by the member.
- (5) Part A4, Head 60 shall not apply to a CLG.

Explanatory Note

This head is equivalent to Part A4, Head 60, however the reference at 60(1)(b) to voting on the basis of share capital has been deleted.

[Heads 59 – 61 of Part A4 apply]

Head 37 Unanimous written resolutions

- (1) Notwithstanding anything to the contrary in this Part, 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, Head 83 [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 CLG.

Explanatory Note

This head disappplies Part A4, Heads 62 and 63 and re-enacts Section 141(8) of the Companies Act, 1963. Consequently, the ability the ability to make majority written resolution is not extended to CLGs.

[Head 64 of Part A4 applies]

Head 38 Registration of and obligation of company to supply copies of, certain resolutions and agreements

- (1) A printed copy of every resolution or agreement to which this head applies shall, within 15 days after the passing or making thereof, be forwarded to the Registrar of companies and recorded by him.

- (2) A copy of every such resolution or agreement for the time being in force shall be embodied in or annexed to every copy of the constitution issued after the passing of the resolution or the making of the agreement.
- (3) A copy of every such resolution or agreement shall be forwarded to any member at his request on payment of €10 or such less sum as the CLG may direct.
- (4) This head shall apply to—
- (a) resolutions that are required by this Bill or by a CLG's constitution to be special resolutions;
 - (b) resolutions which have been agreed to by all the members of a CLG, but which, if not so agreed to, would not have been effective for their purpose unless they had been passed as special resolutions;
 - (c) resolutions or agreements which have been agreed to by all the members of some class of membership but which if not so agreed to, would not have been effective for their purpose unless they had been passed by some particular majority or otherwise in some particular manner, and all resolutions or agreements which effectively bind all the members of any class of membership though not agreed to by all those members;
 - (d) resolutions that a CLG be wound up voluntarily, passed under Part A11, Head 20 [equivalent of Section 251(1)(a) of the Companies Act, 1963]; and
 - (e) resolutions of the directors passed by virtue of Part B2, Head 31 [equivalent of Section 43(3) of the Companies (Amendment) Act, 1983];
- (5) If a CLG fails to comply with Subhead (1), the CLG and every officer of the CLG who is in default shall be guilty of a category four offence.
- (6) If a CLG fails to comply with Subhead (2) or Subhead (3), the CLG and every officer of the CLG who is in default shall be guilty of a category four offence.
- (7) For the purposes of Subheads (5) and (6), a liquidator of a CLG shall be deemed to be an officer of the CLG.

[Heads 67 to 69 of Part A4 apply]

Head 39 Remedy in case of oppression

- (1) Any member of a CLG who complains that the affairs of the CLG are being conducted or that the powers of the directors of the CLG are being exercised in a manner oppressive to him or any of the members (including himself), or in disregard of his or their interests as members, may apply to the court for an order under this head.
- (2) In a case falling within Subhead (1), the Director of Corporate Enforcement may apply for an order under this head.
- (3) If, on any application under Subhead (1) or Subhead (2) the court is of the opinion that the CLG's affairs are being conducted or the directors' powers are being exercised as aforesaid, the court may, with a view to bringing to an end the matters complained of, make such order as it thinks fit, whether directing or prohibiting any act or cancelling or varying any transaction or for regulating the conduct of the CLG's affairs in future, or for the payment of compensation or otherwise.
- (4) Where an order under this head makes any alteration in, or addition to, the CLG's constitution, then, notwithstanding anything in any other provision of this Bill but subject to the provisions of the order, the CLG concerned shall not have power without the leave of the court to make any further alteration in or addition to the constitution inconsistent with the provisions of the order; but, subject to the foregoing provisions of this subhead, the alterations or additions made by the order shall be of the same effect as if duly made by resolution of the CLG and the provisions of this Bill shall apply to the constitution as so altered or added to accordingly.
- (5) An office copy of any order under this head altering or adding to or giving leave to alter or add to a CLG's constitution shall, within 21 days after the making thereof, be delivered by the CLG to the Registrar for registration; and if a CLG fails to comply with this subhead, the CLG and every officer of the CLG who is in default shall be guilty of a category four offence.

Explanatory Note

This head is the equivalent of Part A4, Head 68, with references to shares and share capital deleted.

- (6) The personal representative of a person who, at the date of his death was a member of a CLG, or any trustee of, or person having, a member's interest in a CLG by virtue of the will or intestacy of any such person, may apply to the court under Subhead (1) for an order under this head and accordingly, any reference in that subhead to a member of a CLG shall be construed as including a reference to any such personal representative, trustee or person having a member's interest as aforesaid or to all of them.
- (7) If, in the opinion of the court, the hearing of proceedings under this head would involve the disclosure of information the publication of which would be seriously prejudicial to the legitimate interests of the CLG, the court may order that the hearing of the proceedings or any part thereof shall be in camera.
- (8) Part A4, Head 72, shall not apply to a CLG.

Explanatory Note

This head is the equivalent of Part A4, Head 72, with references to share dealings and to transmission of shares or interest on death deleted.

Chapter 5

Duties of Directors and other Officers

Head 40 Interpretation Provisions

- 1) In this Chapter -

References to 'shares' in Part A5, Heads 33 to 38 shall, for the purposes of the application of those heads to this Part, be interpreted as references to an interest in or membership of a CLG.

- (2) This head shall apply in addition to Part A5, Head 1.

Explanatory Note

[Heads 1 to 5 of Part A5 apply]

Head 41 Directors' compliance statement and related statement

Part A5, Head 7 shall not apply to a CLG.

Explanatory Note

Part A5, head 7 is an amended re-enactment of Section 205E of the Companies Act, 1990 as inserted by Section 45 of the Companies (Auditing and Accounting) Act, 2003. The effect of disapplying Part A5, Head 7 under this head is that directors of a guarantee company are not required to make a directors' compliance statement.

[Head 8 to 12 of Part A5 apply]

Head 42 Duty of director to disclose his interest in contracts made by the company.

- (1) If a CLG fails to comply with Part A5, Head 12(5) the CLG and every officer of the CLG who is in default shall be guilty of a category three offence and if any inspection or production required thereunder is refused, the court may by order compel an immediate inspection or production.
- (2) Any director of a CLG who fails to comply with Head 12(5) of Part A5 shall be guilty of a category three offence.

Explanatory Note

This head is an amended re-enactment of Sections 194(5)(b) and 194(6) of the Companies Act, 1963.

The reason for the exclusion of these subsections from Part A5 is that since their purpose was to protect the investing public, it carries less weight in relation to the private company limited by shares as the shares cannot be offered to the public. Furthermore, it was the opinion of the Company Law Review Group that such a declaration was a matter of contract and, as such, there was no public interest in having the matter prosecuted. They have been reinstated in this part as appropriate to guarantee companies.

[Heads 13 to 38 in Part A5 apply]

Chapter 6

Financial Statements, Annual Return and Audit

Head 43 Exemption from consolidation: size of group

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

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

Head 44 Exemption from consolidation: holding company that is a subsidiary of another EEA registered undertaking

Head 20 of Part A6 shall apply to a CLG 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 45 Exemption from Consolidation: holding company that is a subsidiary of a non-EEA undertaking

Head 21 of Part A6 shall apply to a CLG 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 46 Information on related undertakings: Exemption from disclosures

Head 28 of Part A6 shall apply to a CLG 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 47 Information on related undertakings: Provision for certain information to be annexed to annual return

Head 29 of Part A6 shall apply to a CLG 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 48 Approval and signing of statutory financial statements by Board of Directors

Head 36 of Part A6 shall apply to a CLG 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 49 Approval and signing of directors' report

Head 43 of Part A6 shall apply to a CLG 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.”

Head 50 Obligation for a company's statutory financial statements to be audited

The directors of a CLG shall arrange for the statutory financial statements of the CLG for a financial year to be audited by an independent auditor.

Explanatory Note

This is an alternative to Part A6, Head 44.

Head 51 Independent auditors' report on revised financial statements and revised report

Head 73 of Part 6 shall apply to a CLG subject to the substitution of Subhead (1) thereof with the following Subhead (1):

- “(1) Subject to the next subhead, a company's current independent auditors shall make a report or, as the case may be, a further report under Head 93 in the form required by Head 46 to the company's members under this head on revised financial statements prepared under Head 71 and Head 94 (assessment of accounting records) and Head 95 (reporting of offences) shall apply mutatis mutandis.”

Head 52 Appointment of independent auditors: by directors

- (1) The first independent auditors of a company shall be appointed by the directors at any time before the first annual general meeting.
- (2) Where any casual vacancy in the office of independent auditors arises, it shall be the duty of the directors to appoint independent auditors to the company as soon as may be after that vacancy has arisen.
- (3) Independent auditors appointed pursuant to Subheads (1) or (2) shall hold office until the conclusion of the next annual general meeting of the company held after their appointment at which statutory financial statements are required to be laid so however that —
 - (a) the members of the company may at any general meeting, remove any such independent auditors and appoint in their place any other person (or persons) who have been nominated for appointment by any member of the company and of whose nomination notice has been given to the members of the company not less than 14 days before the date of the meeting; and
 - (b) if the directors fail to exercise their powers under this head, the members of the company in general meeting may appoint independent auditors and thereupon the said powers of the directors shall cease.

Head 53 Appointment of independent auditors: by members of the company

Head 85 of Part A6 shall apply to a CLG provided that paragraph (d) of Subhead (2) shall not apply.

Head 54 Appointment of independent auditors: failure to appoint

- (1) Where at an annual general meeting no independent auditors are appointed by the members, the Minister / Director of Corporate Enforcement may appoint a person to fill the position of independent auditors.
- (2)
 - (a) A CLG shall—
 - (i) within one week of the Minister / Director of Corporate Enforcement's power under Subhead (1) becoming exercisable, give the Minister / Director of Corporate Enforcement notice of that fact, and
 - (ii) where a resolution removing the independent auditors is passed, give notice of that fact in the prescribed form to the Registrar within 14 days of the meeting at which the resolution removing the independent auditors was passed;
 - (b) If a CLG fails to give notice as required by paragraph (a) of this subhead, the CLG and every officer of the CLG who is in default shall be guilty of a category 3 offence.

Head 55 Disclosure of directors' remuneration

Provide that all references to shares in and share capital of the company in Head 24 of Part A6 shall be disapplied in the case of a CLG.

Head 56 Financial Assistance

Provide that all reference to shares in the company in Part A6, Head 32 be disapplied in the case of a CLG but retained in so far as may be relevant to the holding company or subsidiary of a CLG.

Head 57 Holding of shares in holding undertaking

- (1) Where a CLG, or a nominee of the CLG, holds shares in its holding undertaking or an interest in such shares, such shares are treasury shares and shall not be shown as an asset but the consideration paid for such shares -
 - (a) shall be shown as a deduction from the CLG's capital and reserves; and
 - (b) the profits available for distribution shall accordingly be restricted by the amount of such deduction.
- (2) Where shares are held as treasury shares under Subhead (1) the notes to the financial statements shall give separately for the shares held under each subheads -
 - (a) the number and aggregate nominal value of the treasury shares and, where shares of more than one class have been acquired, the number and aggregate nominal value of each class held as treasury shares; and
 - (b) particulars of any restriction on profits available for distribution by virtue of holding such shares.

Head 58 Obligation to prepare directors' report for every financial year

Head 37 of Part A6 shall apply to a CLG provided that paragraphs (c) and (e) of Subhead (1) shall not apply in the case of a CLG.

Head 59 Directors' report: interests in debentures

Head 41 of Part A6 shall apply to a CLG provided that all references to "shares in, or debentures of" the company shall be replaced with "debentures of" where referring to the CLG but shall remain as references to "shares in, or debentures of" in all references to the CLG's holding company or subsidiary where such companies have share capital.

Head 60 Circulation of statutory financial statements

Head 48 of Part A6 shall apply to a CLG provided that the following additional Subhead (1A) shall also apply:

“(1A) In the case of a CLG, Subhead (1) shall not require a copy of the documents referred to in that subhead to be sent to a member of the company who is not entitled to receive notices of general meetings of the company or to a holder of debentures of the company who is not so entitled.”

Head 61 Report to Registrar and to Director of Corporate Enforcement: Accounting Records

Head 94 of Part A6 shall apply to a CLG save that the reference to “shareholders” in Subhead (6) shall be replaced with “members”.

Head 62 Report to Registrar and to Director of Corporate Enforcement: Category 1 and 2 Offences under the Companies Act

Head 95 of Part A6 shall apply to a CLG save that the reference to “shareholders” in Subhead (4) shall be replaced with “members”.

Chapter 7**Debentures and Registration of Charges**

[Heads 1-19 of Part A7 apply]

Chapter 8**Receivers**

[Heads 1-20 of Part A8 apply]

Chapter 9

Reorganisations

Head 63 Reorganisations of Guarantee Companies

[Part A9, Heads 1 to 5 apply]

Head 64 Merger of Guarantee companies

Where one or more CLG are acquiring companies or existing companies in an operation referred to in Head 8 of Part A9, Chapter 3 of Part A9 shall apply to such CLG or CLGs as it applies to a company to which Pillar A applies, provided that references to shares held by members shall instead be construed as referring to relevant rights or incidents of membership, including the right to vote or receive a distribution.

Explanatory Note

The mergers regime in Part A9 is adopted for CLGs, with the above interpretive proviso.

[Part A9, Head 10, 13 and 19-25 apply].

Head 65 Division of Guarantee companies

Where one or more CLGs are acquiring companies in an operation referred to in Head 28 of Part A9, Chapter 4 of Part A9 shall apply to such CLG or CLGs as it applies to a company to which Pillar A applies, provided that references to shares held by members shall instead be construed as referring to relevant rights or incidents of membership, including the right to vote or receive a distribution.

Explanatory Note

The divisions regime in Part A9 is adopted for CLGs, with the above interpretive proviso.

Chapter 10

Examinerships

[Heads 1 – 41 of Part A10 apply]

Chapter 11

Winding-Up

Head 66 Liability as contributories of past and present members

- (1) In the event of a CLG being wound up, every present and past member shall be liable to contribute to the assets of the CLG 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 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 CLG 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 the amount undertaken to be contributed by him to the assets of the CLG 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 CLG are alone made liable in respect of the policy or contract;
 - (f) a sum due to any member of the CLG, in his character of a member, by way of dividends, profits or otherwise, shall not be deemed to be a debt of the CLG, payable to that member in a case of competition between himself and any other creditor not a member of the CLG, 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) Part A11, Head 86 shall not apply to a CLG.

Explanatory Note

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

Chapter 12

Strike Off and Restoration

[Heads 1 – 13 of Part A12 apply]

Chapter 13

Compliance, Investigation and Enforcement

[Heads 1 – 68 of Part A13 apply]

Chapter 14

Regulatory and Advisory Bodies

[Heads 1 – 64 of Part A14 apply]

Chapter 15

Market Abuse

Head 67 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;

“supplemental Directives” means—

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

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

- (a) the contrary intention appears; or

- (b) Irish market abuse law provides otherwise.

Explanatory Note

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

Head 68 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 69 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 70 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 71 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 72 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 73 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 head 79 [equivalent of Section 46 of the 2005 Act], 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 Section 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 B4, Head 78 (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 74 and 76, 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 (5)(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 74 Civil liability for misstatements in prospectus

(1) Subject to Heads 75 and 76 of this Part [equivalent of Section 42 and 43 of the 2005 Act], 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 B4 Head 78 [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 B4, Heads 76 and 77 [equivalents of Sections 42 and 43 of the Investment Funds, Companies and Miscellaneous Amendments 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 75 Exceptions and exemptions

- (1) A person shall not be liable under Part B4, Head 74 [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 B4, Head 74 [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 B4, Head 74 [equivalent of Section 41 of the Investment Funds, Companies and Miscellaneous 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—
 - (l) 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 B4, Head 78 [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 B4, Head 78 [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 B4, Head 74 [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 B4, Head 74 [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 the Investment Funds, Companies and Miscellaneous Provisions Act, 2005.

Head 76 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 74 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 81 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) Head 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 74 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 74 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 77 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 78 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 78 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 79 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 80 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 81 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 82 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 83 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 84 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 85 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.

Schedule

MODEL MEMORANDUM AND ARTICLES OF ASSOCIATION FOR A COMPANY LIMITED BY GUARANTEE (CLG)

1. The name of the company is "The University Foundation, Limited."
2. The objects for which the company is established are the raising of funds for the furtherance of education and research carried out by Irish universities and the doing of all such other things as are incidental or conducive to the attainment of the above object.
3. The liability of the members is limited.
4. 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 €1.

We, the several persons whose names and addresses are subscribed, wish to be formed into a company in pursuance of this memorandum of association.

Names, Addresses and Descriptions of Subscribers.

1. Francis McMaster of _____
.....in the County of _____
.....University Provost. _____

2. Colleen D. Cahill of _____
.....in the County of _____
.....Science Teacher. _____

3. Guy Tabarie of _____
.....in the County of _____
.....Neuroscientist. _____

4. Zara Tristan of _____
.....in the County of _____
.....Economist. _____

Dated the.....day of..... 20.....

Witness to the above signatures

Name: _____

Address: _____