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# Part B5 – Unlimited Companies

## Contents of Part B5

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### Chapter 1 - Preliminary and Interpretation

1. Defined terms
2. Interpretation of this Part

### Chapter 2 - Incorporation and Consequential Matters

3. Way of forming an unlimited company
4. The form of a the constitution for a public unlimited company that has no share capital
5. The form of the constitution for a private unlimited company or a public unlimited company with a share capital
6. Effect of registration
7. Provisions as to names of unlimited companies
8. Trading under a misleading name
9. Corporate capacity of an unlimited company
10. Corporate capacity not limited by the constitution of an unlimited company
11. Way in which and extent to which objects of company may be altered
12. Power to alter provisions in memorandum which could have been contained in articles
13. Security for costs
14. Conversion of existing unlimited company

### Chapter 3 - Share Capital

15. Limitation on offers of securities to the public
16. Allotment of debentures or other debt securities to be dealt in on stock exchange or regulated market
17. Authority to allot and pre-emption rights
18. Variation of company capital
19. Reduction of company capital
20. Transfer of shares
21. Profits available for distribution
22. Power to make regulations for transfer of securities

### Chapter 4 - Corporate Governance

23. Directors
24. Membership of a PULC
25. Membership of a PUC
26. Membership of a ULC
27. Annual General Meeting
28. Unanimous written resolutions

### Chapter 5 - Duties of Directors and other Officers

29. Director's compliance statement and related statement

### Chapter 6 - Accounts, Audit and Annual Return

30. Provisions applicable to a designated ULC
  31. Exemption from consolidation: size of group
  32. Exemption from consolidation: holding company that is a subsidiary of another EEA registered undertaking
  33. Exemption from consolidation: holding company tat is a subsidiary of a non-EEA undertaking
  34. Information on related undertakings: Exemption from disclosures
  35. Information on related undertakings: Provision for certain information to be annexed to annual return
  36. Details of authorised share capital, allotted share capital and movements
  37. Approval and signing of statutory financial statements by board of directors
  38. Approval and signing of directors' report
  39. Disclosure of directors' remuneration
  40. Financial assistance
  41. Holding of shares in holding undertaking
  42. Obligation to prepare directors' report for every financial year
  43. Directors' report: interests in debentures
-

## Part B5 - Unlimited Companies

---

44. Circulation of statutory financial statements
45. Report to Registrar and to Director of Corporate Enforcement: accounting records
46. Report to Registrar and to Director of Corporate Enforcement: Category 1 and 3 Offences under the Companies Act
47. Documents to be annexed to the annual return

### Chapter 7 - Debentures and Registration of Charges

### Chapter 8 - Receivers

### Chapter 9 - Reorganisations

### Chapter 10 - Examinerships

### Chapter 11 - Winding-Up

48. Liability as contributories of past and present members
49. Payment of debts due by contributory to the company and extent to which set-off allowed

### Chapter 12 - Strike Off and Restoration

### Chapter 13 - Compliance, Investigation and Enforcement

### Chapter 14 - Regulatory and Advisory Bodies

### Chapter 15 - Market Abuse

50. Application of this Chapter
51. Interpretation
52. Regulations (Chapter 15)
53. Conviction on indictment of offences under Irish market abuse law: penalties
54. Civil liability for certain breaches of Irish market abuse law
55. Supplementary rules, etc., by competent authority
56. Application of Irish market abuse law to certain markets

### Chapter 16 - Public Offers Of Securities

57. Application of this Chapter
58. Interpretation
59. Civil liability for misstatements in prospectus
60. Exceptions and exemptions
61. Restriction of liability where non-equity securities solely involved
62. Indemnification of certain persons
63. Expert's consent to issue of prospectus containing statement by him or her
64. Regulations (Chapter 16)
65. Penalties on conviction on indictment and defences in respect of certain offences
66. Untrue statements and omissions in prospectus: criminal liability
67. Local offers
68. Exclusion of Investment Intermediaries Act 1995
69. Power to make certain rules and issue guidelines
70. Avoidance of certain agreements

### First Schedule

Memorandum and Articles of Association for a ULC/PUC

### Second Schedule

Memorandum and Articles of Association for a PULC

# Part B5 – Unlimited Companies

## Chapter 1

### Preliminary and Definitions

#### Head 1 Defined terms

(1) In this Part:

“**constitution**” has the meaning assigned to it in Head 5;

“**member**” means member of an unlimited company;

“**PUC**” means a public unlimited company;

“**PULC**” means a public unlimited company that has no share capital;

“**ULC**” means a private unlimited company;

“**unlimited company**” or “**UL**” means a company not having any limit on the liability of its members.

(2) In this Part, references to an ‘unlimited company’ includes references to PUCs, PULCs and ULCs.

#### **Explanatory Note**

*The definition of unlimited company replaces paragraph 5(2)(c) of the Companies Act, 1963, which provides that a company incorporated under the Act may be an unlimited company.*

#### Head 2 Interpretation of this Part

(1) The provisions of Parts A1 to A14 of Group A apply to unlimited companies subject to such amendments thereto, or exclusions therefrom, as are contained in this Part.

(2) [Table setting out provisions that do not apply to a ULC, PUC or PULC as relevant]

Part	Head	Title	ULC	PUC	PULC
A2	2	Way of forming a company limited by shares	Disapply	Disapply	Disapply
A2	3	The form of the constitution	Disapply	Disapply	Disapply
A2	7	Effect of registration	Disapply	Disapply	disapply
A2	9	Provisions as to names of companies	Disapply	Disapply	Disapply
A2	20	Capacity of a private company limited by shares	Disapply	Disapply	Disapply
A2	35	Security for costs	Disapply	Disapply	Disapply
A2	37-43	All of A2 Chapter 6 – Conversion of an existing company to a company limited by shares	Disapply	Disapply	Disapply
A3	4	Limitation on offer of securities to the public	Apply	Disapply	Disapply
A3	5	Allotment of shares	Disapply	Disapply	Disapply
A3	16	Variation of company capital	Disapply	Disapply	Disapply
A3	17	Variation in capital	Disapply	Disapply	Disapply
A3	21	Variation of rights attached to special classes of shares	Apply	Apply	Disapply
A3	27(2)	Transfer of shares	Disapply	Disapply	Disapply
A3	49	Profits available for distribution	Disapply	Disapply	Apply

## Part B5 - Unlimited Companies

Part	Head	Title	ULC	PUC	PULC
A4	2	Directors	Disapply	Disapply	Disapply
A4	35	Definition of member	Disapply	Disapply	Disapply
A4	43	Transfer of shares in management companies	Disapply	Disapply	Disapply
A4	46	Annual general meeting	Disapply	Disapply	Disapply
A4	64&65	Unanimous written resolutions	Disapply	Disapply	Disapply
A5	7	Directors' compliance statement	Disapply	Disapply	Disapply
A6	31	Details of authorised share capital, allotted share capital and movements	Apply	Apply	Disapply
A6	33	Holding of own shares or shares in holding undertaking	Apply	Apply	Disapply
A6	38(4)	Directors' report: general matters	Apply	Disapply	Disapply
A6	40	Directors' report: acquisition or disposal of own shares	Apply	Apply	Disapply
A6	42	Directors' report: Statement on relevant audit information	Apply	Disapply	Disapply
A6	44	Obligation for a company's statutory financial statements to be audited	Apply	Disapply	Disapply
A6	45	Right of members to require audit	Apply	Disapply	Disapply
A6	55	Documents to be annexed to annual return: all companies	Disapply	Apply	Apply
A6	56	Documents to be annexed to annual return: certain companies	Disapply	Apply	Apply
A6	57	Exceptions from requirement to annex statutory financial statements to annual return	Disapply	Apply	Apply
A6	58 – 68	Chapter 14 – Exclusions, exemptions and special provisions	Apply	Disapply	Disapply
A6	74	Company has availed of exemption from audit	Apply	Disapply	Disapply
A6	80	Small and medium sized companies	Apply	Disapply	Disapply
A6	81	Companies exempt from audit by virtue of Head 64	Apply	Disapply	Disapply
A6	82(2)	Modifications of Act	Apply	Disapply	Disapply
A6	85	Appointment of independent auditors by members of company	Apply	Disapply	Disapply
A6	86	Appointment of independent auditors: Failure to appoint	Apply	Disapply	Disapply
A6	97	Removal of independent auditors: statement from independent auditors where audit exemption availed of by company	Apply	Disapply	Disapply
A11	86	Liability as contributories of past and present members	Disapply	Disapply	Disapply
A11	90	Payment of debts due by contributory to the company and extent to which set-off allowed	Disapply	Disapply	Disapply

## Chapter 2

### Incorporation and Consequential Matters

#### Head 3 Way of forming an unlimited company

- (1) An unlimited company 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) Each member shall have unlimited liability.
- (3) A company may also be registered as an unlimited company following -
  - (a) re-registration as an unlimited company of an existing company other than an unlimited company pursuant to [Part B9]; or
  - (b) the merger of two or more unlimited companies pursuant to [Part B5, Chapter 9]; or
  - (c) the division of an unlimited company into two or more unlimited companies pursuant to [Part B5, Chapter 9]
- (4) An unlimited company shall not be formed and registered unless it appears to the Registrar that the company, when registered, will carry on an activity in the State.
- (5) Part A2, Head 2 shall not apply to an unlimited company.

#### **Explanatory Note**

*This head sets out the manner in which an unlimited company may be formed. Following a determination made by the Steering Committee, it amalgamates separate heads applying to private and public companies in Part A2 and Part B2 respectively. Subhead (4) provides for the unlimited liability of members.*

*The proposed head provides for single member private unlimited companies and adopts the two member minimum for public companies under Part B2.*

#### Head 4 The form of a the constitution for a public unlimited company that has no share capital

- (1) Subject to subhead (3) the constitution of a PULC 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 PULC shall state-
  - (a) its name;
  - (b) that it is a PULC, registered under this Part;
  - (c) its objects;
  - (d) the fact that it has no share capital;
  - (e) the fact that its members have unlimited liability.
- (3) If a PULC 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 Second Schedule to this Part or as near thereto as circumstances permit;
  - (b) be printed in an entire format; and
  - (c) be signed by each subscriber in the presence of at least one witness who must attest the signature.
- (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 PULC.

#### **Explanatory Note**

*This head, for the most part, mirrors Part B3 Head 5, which provides for the form of a constitution of a DAC. Paragraphs (d) and (e) have been inserted into subhead (2) to accommodate the two defining features of the public unlimited company without a share capital.*

### **Head 5 The form of the constitution for a private unlimited company or a public unlimited company with a share capital.**

- (1) Subject to subhead (3), the constitution of an ULC or PUC 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 ULC or PUC shall state-
  - (a) its name;
  - (b) that it is either a ULC or PUC, registered under this Part;
  - (c) its objects;
  - (d) the amount of share capital with which the company proposes to be registered and the division thereof into shares of a fixed amount;
  - (e) the fact that its members have unlimited liability.
- (3) If the ULC or PUC 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 First Schedule to this Part or as near thereto as circumstances permit;
  - (b) be printed in an entire format; and
  - (c) be signed by each subscriber in the presence of at least one witness who must attest the signature.
- (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 of Companies, 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 ULC or a PUC.

#### **Explanatory Note**

*This head largely mirrors Part B3 Head 5 with the insertion of 2(d) and (e) to ensure the share capital and the unlimited liability of members is addressed by the constitution of a ULC or PUCs.*

**[N.B. Heads 5 to 7 of A2 apply]**

### **Head 6 Effect of registration**

- (1) On the registration of the constitution of an unlimited company the Registrar shall certify in writing that the unlimited company is incorporated, and shall issue a certificate of incorporation for the unlimited company.
- (2) From the date of incorporation mentioned in the certificate of incorporation, the subscriber or subscribers of the constitution, together with such other persons as may from time to time become members of the unlimited company, shall be a body corporate with the name contained in the constitution, capable forthwith of exercising the functions of an incorporated company, and having perpetual succession and a common seal, but with such liability on the part of the members to contribute to the assets of the unlimited company in the event of its being wound up as is mentioned in this Bill.
- (3) The certificate of incorporation issued under Subhead (1) shall state that the company is an unlimited company.
- (4) A certificate of incorporation given under Subhead(1) shall be conclusive evidence that the requirements mentioned in Part A2, Head 6 [equivalent of Section 3 of the Companies (Amendment) Act, 1982] have been complied with, and that the unlimited company is duly registered under this Bill.
- (5) The persons who are specified in the statement required to be delivered to the Registrar pursuant to Part A2, Head 6 [equivalent of Section 3 of the Companies (Amendment) 1982 Act] as the director or directors, secretary or joint secretaries of the unlimited company to which the statement refers shall, on the incorporation of the unlimited company, be deemed to have been appointed as the first director or directors, or secretary, as the case may be, of the unlimited company, and any indication in the constitution specifying a person as a director or secretary of a unlimited company shall be void unless such person is specified as a director or as secretary in the said statement.
- (6) Part A2, Head 8 shall not apply to an unlimited company.

**Explanatory Note**

*This head mirrors Part A2, Head 8. However, Subhead (1) has been altered to provide for certification by the Registrar that a company is an unlimited company. Section 18(1) of the Companies Act, 1963 previously only provided for the Registrar to certify that “in the case of a limited company, that the company is limited”.*

*Subhead (3) re-enacts section 5(3) of the Companies (Amendment) Act, 1983 for an unlimited company.*

**Head 7 Provisions as to names of unlimited companies**

- (1) The name of an unlimited company shall end with one of the following:
  - “(unlimited company)”
  - “([Irish equivalent])”.
- (2) The words “(unlimited company)” may be abbreviated to [“(uc)”/“(UC)” or“(u.c.)”/“(UC).”] in any usage after the registration by any person including unlimited company.
- (3) The words “Irish equivalent” may be abbreviated to “(ooo)”/“(OOO)” or“(o.o.o.)”/“(O.O.O.)” in any usage after the registration by any person including the ULC.
- (4) Every ULC 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 an unlimited company.

**Explanatory Note**

*This head is modelled on Part B2, Head 5 dealing with provisions as to names of PLCs.*

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

**Head 8 Trading under a misleading name**

- (1) A person who is not an unlimited company 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 “unlimited company” or abbreviations of those words.
- (2) An unlimited company and any officer of the unlimited company who is in default shall be guilty of a category three offence if, in circumstances in which the fact that it is an unlimited company 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 an unlimited company.
- (3) Subhead (1) shall not apply to any company-
  - (a) to which Part B7 [equivalent of Part XI of the Companies Act, 1963] applies; and
  - (b) which has provisions in its constitution that would entitle it to rank as an unlimited company if it had been registered in the State.

**Explanatory Note**

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

**Head 9 Corporate capacity of an unlimited company**

- (1) An unlimited company 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 an unlimited company .

**Explanatory Note**

*This head replicates Part B3, Head 10 on the basis that both private and public unlimited companies must have objects clauses.*

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### **Head 10 Corporate capacity not limited by the constitution of an unlimited company**

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- (1) The validity of an act done by an unlimited company shall not be called into question on the ground of lack of capacity by reason of anything contained in the constitution of an unlimited company.
  - (2) A member of an unlimited company may bring proceedings to restrain the doing of an act which but for subhead (1) would be beyond the capacity of that unlimited company but no such proceedings shall lie in respect of any act to be done in fulfilment of a legal obligation arising from a previous act of that unlimited company.
  - (3) It remains the duty of the directors to observe any limitations on their powers flowing from the constitution of a unlimited company and action by the directors which but for subsection (1) would be beyond the capacity of that unlimited company may only be ratified by the unlimited 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 an unlimited company is not bound to enquire as to whether it is permitted by the constitution of that unlimited company.
- (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 subsection (5) an application under this section may be made-
    - (a) by not less than 15 percent of the unlimited company's members; or
    - (b) by the holders of not less than 15 percent of the unlimited company's debentures, entitling the holders to object to alterations of its objects.
  - (5) An application shall not be made under this head by any person who has consented to or voted in favour of the alteration.
  - (6) An application under this head must be made within 21 days after the date on which the resolution altering the unlimited company'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.
  - (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.

#### **Explanatory Note**

*This head mirrors the wording of Part B2, Head 9 and Part B3, Head 11.*

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### **Head 11 Way in which and extent to which objects of company may be altered**

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- (1) Notwithstanding Part A2, Head 15, an unlimited company may only alter its objects in accordance with this head.
  - (2) Subject to subhead (3), an unlimited company 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.
- (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 an unlimited company'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 an unlimited company's objects shall require the same notice to the holders of any such debentures as to members of the unlimited company, so however that not less than 10 days' notice shall be given to the holders of any such debentures.
- (12) Where an unlimited company 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.
- (13) If an unlimited company makes default in giving notice or delivering any document to the Registrar as required by subhead(10), the unlimited company and every officer of the unlimited company who is in default shall be guilty of a category three offence .
- (14) In relation to a resolution for altering the provisions of a company's constitution relating to the objects of the company passed before the operative date, this head shall have effect as if, in lieu of Subheads (3) to (13), there had been enacted Subheads (2) to (10) of Section 10 of the Companies Act, 1963.

### **Explanatory Note**

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

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## **Head 12 Power to alter provisions in memorandum which could have been contained in articles**

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

**[Heads 21 to 34 of Part A2 applies]**

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.

### Head 13 Security for costs

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Part A2, Head 35 shall not apply to an unlimited company.

### Head 14 Conversion of existing unlimited company

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- (1) In this Part the term 'transition period' shall mean the period ending 18 months after the commencement of this Part.
- (2) Every existing unlimited company shall at the end of the transition period become an "unlimited company" to which this Part applies.
- (3) Where an existing unlimited company has not, by the end of the transition period, changed its name to comply with Part B5, Head 7 then from the end of the transition period the provisions of Part B5, Head 7 shall apply to that company and from that time forward
  - (a) The words "unlimited company" shall be added to the end of the company name;
  - (b) The words "[Irish equivalent]" shall be added to the end of the company name.
- (4) Part A2, Heads 35 to 42 shall not apply to an unlimited company.

#### **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.*

## Chapter 3

### Share Capital

*[Heads 1 and 2 of A3 apply]*

#### Head 15 Limitation on offers of securities to the public

- (1) Part A3, Head 4 shall not apply to a PUC or a PULC.
- (2) Save to the extent prohibited by its constitution a PUC or a PULC shall have the capacity to offer, allot and issue securities (as defined in Part A3, Head 1) to the public subject to compliance, where applicable, with Chapter 13 of Part B2.

#### **Explanatory Note**

*Part A3, Head 4 applies prospectus law and prevents an ULC from issuing shares or debts to the public where a prospectus would be needed. This head disapplies those restrictions from public unlimited companies and imposes an obligation to comply with the prospectus directive. Part A3, Head 4 applies to an ULC.*

#### Head 16 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.
- (8) This head shall not apply to a PULC.

### **Explanatory Note**

*Restatement of Section 57 of the Companies Act, 1963.*

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## **Head 17 Authority to allot and pre-emption rights**

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- (1) An authority to allot shares in an unlimited company pursuant to Subhead 4 (1) of Part A3 shall not exceed a period of 5 years but (whether or not it has been previously renewed under this Subhead) may be renewed for a further period not exceeding 5 years.
- (2) The directors may allot relevant securities, notwithstanding that any authority for the purposes of this head has expired, if the relevant securities are allotted in pursuance of an offer or agreement made by the unlimited company before the authority expired and the authority allowed it to make an offer or agreement which would or might require relevant securities to be allotted after the authority expired.
- (3) A resolution of a company to give, vary, revoke or renew such an authority may, notwithstanding that it alters the constitution of the company, be an ordinary resolution, but Head 68 of Part A4 [equivalent of Section 143 of the Companies Act, 1963] shall apply to it.
- (4) Any director who knowingly and wilfully contravenes, or permits or authorises a contravention of this head shall be guilty of a category three offence.
- (5) An ULC shall not offer, allot or agree to allot any shares (or debentures) of the ULC to which Part B2, Chapter 13, Heads 000-000 [equivalent of Article 2 of Council Directive 2003/71/EC (i.e. Prospectus Directive)] would apply.
- (6) Part A3, Head 5 (8) shall not apply to an unlimited company.

### **Explanatory Note**

*This head essentially restates Part A3, Head 5 but removes the requirement to register the details of an allotment of shares with the Registrar within one month of the allotment [Subhead 4(7)]. Subhead (9) has also been amended so that the restriction on the allotment of shares where a prospectus would be required does not apply to public unlimited companies.*

*Subhead (1) is an amended re-enactment of Section 20(4) of the Companies (Amendment) Act, 1983.*

*Subhead (2) is a re-enactment of Section 20(5) of the Companies (Amendment) Act, 1983.*

*Subhead(3) is a re-enactment of Section 20(6) of the Companies (Amendment) Act, 1983.*

*Subhead (4) is a re-enactment of Section 20(7) of the Companies (Amendment) Act, 1983.*

**[Heads 6 to 11 of Part A3 apply]**

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## **Head 18 Variation of company capital**

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- (1) Unless the constitution provides otherwise, a PUC or an ULC may by special resolution—
- (a) increase the share capital by such sum to be divided into shares of such amount as the resolution may prescribe;
  - (b) consolidate its shares into shares of a larger amount than its existing shares;
  - (c) subdivide its shares into shares of a smaller amount than its existing shares;
  - (d) cancel any shares which at the date of the passing of the resolution have not been taken or agreed to be taken by any person;
  - (e) reduce its share capital in any way.
- (2) Part A3, Head 12 shall not apply to an unlimited company.

### **Explanatory Note**

*This head disapplies Part A3, Head 12 to reflect that there is no limitation upon an unlimited company's ability to vary its company capital. It was not considered necessary to insert a provision to that effect*

## Head 19 Reduction of company capital

- (1) Save to the extent that its constitution otherwise provides, a PUC or ULC may by special resolution, reduce its share capital in any way, and without prejudice to the generality of the foregoing, may thereby:
- (a) extinguish or reduce the liability on any of its shares in respect of share capital not paid up; or
  - (b) either with or without extinguishing or reducing liability on any of its shares, cancel any paid up company capital which is lost or unrepresented by available assets; or
  - (c) either with or without extinguishing or reducing liability on any of its shares, pay off any paid up share capital which is in excess of the wants of the unlimited company.
- (2) A resolution referred to in Subhead (1) which would have the effect of eliminating all share capital shall not be effective unless notwithstanding the passing of the resolution the unlimited company retains at least one member.
- (3) Part A3, Head 13 shall not apply to an unlimited company.

### **Explanatory Note**

*This head acknowledges that an unlimited company may reduce its company capital in any way and removes the restrictions placed by Part A3, Head 13 on a private limited company's ability to reduce share capital.*

**[Heads 14 to 20 of Part A3 apply]**

## Head 20 Transfer of shares

- (1) The instrument of transfer of any share shall be executed by or on behalf of the transferor and the transferee, and the transferor shall be deemed to remain the holder of the share until the name of the transferee is entered in the register in respect thereof.
- (2) Part A3, Head 21 (2) shall not apply to an unlimited company.

## Head 21 Profits available for distribution

Part A3, Head 46 shall not apply to an unlimited company.

### **Explanatory Note**

*This head disapplies Part A3, Head 46 which imposes certain restrictions upon the distribution of profits by a CLS. These restrictions, which are an amended re-enactment of Section 45 of the Companies (Amendment) Act, 1983, are compelled by the 2<sup>nd</sup> EU Company Law Directive. The CLRG has accepted the view that the provisions relating to the distribution of profits are not necessary for unlimited companies and were extended by the 1983 Act to unlimited companies without specific intention.*

## Head 22 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;

## Part B5 - Unlimited Companies

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- (b) references to title to securities include any legal or equitable interest in securities; and
  - (c) references to a transfer of title include a transfer by way of security.
- (4) The regulations may make provision—
- (a) for procedures for recording and transferring title to securities; and
  - (b) for the regulation of those procedures and the persons responsible for or involved in their operation; and
  - (c) for dispensing with the obligations of an unlimited company under Head 32 of Part A3 [equivalent of Section 86 of the Companies Act, 1963] to issue certificates and providing for alternative procedures.
- (5) The regulations shall contain such safeguards as appear to the Minister appropriate for the protection of investors and for ensuring that competition is not restricted, distorted or prevented.
- (6)
- (a) The regulations may, for the purpose of enabling or facilitating the operation of the new procedures, make provision with respect to the rights and obligations of persons in relation to securities dealt with under the procedures.
  - (b) The regulations shall be framed so as to secure that the rights and obligations in relation to securities dealt with under the new procedures correspond, so far as practicable, with those which would arise apart from any regulations under this head.
  - (c) The regulations may—
    - (i) require the provision of statements by a company to holders of securities (at specified intervals or on specified occasions) of the securities held in their name,
    - (ii) make provision removing any requirement for the holders of securities to surrender existing share certificates to issuers, and
    - (iii) make provision that the requirements of the regulations supersede any existing requirements in the articles of association of a company which would be incompatible with the requirements of the regulations.
- (7) Without prejudice to the generality of Subheads (5) and (6), the regulations shall not contain provisions that would result in a person who, but for the regulations, would be entitled—
- (a) to have his or her name entered in the register of members of a company; or
  - (b) to give instructions in respect of any securities, ceasing to be so entitled.
- (8)
- (a) The regulations may include such supplementary, incidental and transitional provisions as appear to the Minister to be necessary or expedient;
  - (b) In particular, provision may be made for the purpose of giving effect to—
    - (i) the transmission of title of securities by operation of law;
    - (ii) any restriction on the transfer of title to securities arising by virtue of the provisions of any enactment or instrument, court order or agreement;
    - (iii) any power conferred by any such provision on a person to deal with securities on behalf of the person entitled.
- (9) The regulations may, for the purposes mentioned in this head, make provision with respect to the persons who are to be responsible for the operation of the new procedures and for those purposes may empower the Minister to delegate to any person willing and able to discharge them any functions of his under the regulations.
- (10) The regulations may make different provision for different cases.
- (11) Every regulation made under this head shall be laid before each House of the Oireachtas as soon as may be after it is made and if a resolution annulling the regulation is passed by either such House within the next twenty-one days on which that House has sat after the regulation is laid before it, the regulation shall be annulled accordingly, but without prejudice to the validity of anything previously done thereunder.

**Explanatory Note**

*Restatement of Section 239 of the Companies Act 1990.*

*The definition of "securities" is taken from regulation 2 (1) of the Prospectus (Directive 2003/71/EC) Regulations 2005.*

# Chapter 4

## Corporate Governance

**[Head 1 of Part A4 applies]**

### Head 23 Directors

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

#### **Explanatory Note**

*This head gives effect to the recommendation given by the CLRG in its First Report, that the minimum requirement of two directors should remain for all companies other than CLS including unlimited companies [Para 11.8.11].*

**[Heads 3 to 34 of Part A4 apply]**

### Head 24 Membership of a PULC

- (1) The subscribers to the memorandum of association in the constitution of a PULC shall be deemed to have agreed to become members of the PULC, 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 PULC and their names shall be entered in its register of members.
- (3) The constitution of an unlimited company 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 an unlimited company 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 guilty of an offence and liable to a fine.

- (5) The memorandum of association of a PULC may state the maximum number of persons who may be members of the PULC, 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 PULC, such notice to expire no earlier than the date of service of the notice of resignation.
- (7) Save where the constitution of a PULC 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 PULC provides otherwise, every member shall have one vote.
- (9) The death of a member shall terminate his membership.
- (10) It shall be a category three offence to personate a member of a PULC
- (11) Part A4, Head 35, shall not apply to a PULC

#### **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 25 Membership of a PUC

- (1) The subscribers to the memorandum of association in the constitution of a PUC shall be deemed to have agreed to become members of the PUC, and on its registration, shall be entered as members in its register of members.
- (2) Every other person who agrees to become a member of a PUC, and whose name is entered in its register of members, shall be a member of the company.

- (3) Supplementary provisions on qualification for membership, its duration and termination may be set out in the constitution of a PUC.
- (4) The constitution of a PUC must state the number of members with which the company proposes to be registered and, if the company has a share capital, the amount of share capital with which the company proposes to be registered.
- (5) Where a PUC has increased the number of its members beyond the registered number, it shall, within 15 days after the increase was resolved on or took place, deliver particulars of the increase to the Registrar.

If default is made in complying with this subhead, the company and every officer of the company who is in default shall be liable to a fine.

- (6) The memorandum of association of a PUC may state the maximum number of persons who may be members of the PUC, subject to the power of the directors to register an increase in the number of members.
- (7) A member may resign his membership by serving notice to that effect upon the directors at the registered office of the PUC, such notice to expire no earlier than the date of service of the notice of resignation.
- (8) Save where the constitution of a PUC provides otherwise, the directors may require a member to resign his membership by serving notice upon the member terminating his membership to expire no earlier than the date of service of the notice of termination.
- (9) Save where the constitution of a PUC provides otherwise, every member shall have one vote.
- (10) The death of a member shall terminate his membership.
- (11) It shall be a category two offence to personate a member of a PUC.
- (12) Part A4, Head 35, shall not apply to a PUC.

**Explanatory Note**

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

**Head 26 Membership of a ULC**

- (1) The subscribers to the memorandum of association in the constitution of an ULC shall be deemed to have agreed to become members of the ULC, and, on its registration, shall be entered as members in its register of members.
- (2) Every other person who agrees to become a member of an ULC, and whose name is entered in its register of members, shall be a member of the company.
- (3) Supplementary provisions on qualification for membership, its duration and termination may be set out in the constitution of an ULC.

- (4) The constitution of an ULC must state the number of members with which the company proposes to be registered and, if the company has a share capital, the amount of share capital with which the company proposes to be registered.
- (5) Where a ULC has increased the number of its members beyond the registered number, it shall, within 15 days after the increase was resolved or took place, deliver particulars of the increase to the registrar.

If default is made in complying with this subhead, the company and every officer of the company who is in default shall be liable to a fine.

- (6) The memorandum of association of an ULC may state the maximum number of persons who may be members of the ULC, subject to the power of the directors to register an increase in the number of members.
- (7) A member may resign his membership by serving notice to that effect upon the directors at the registered office of the ULC, such notice to expire no earlier than the date of service of the notice of resignation.
- (8) Save where the constitution of an ULC provides otherwise, the directors may require a member to resign his membership by serving notice upon the member terminating his membership to expire no earlier than the date of service of the notice of termination.
- (9) Save where the constitution of a ULC provides otherwise, every member shall have one vote.
- (10) The death of a member shall terminate his membership.

## Part B5 - Unlimited Companies

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(11) It shall be a category two offence to personate a member of an ULC.

(12) Part A4, Head 35, shall not apply to an ULC.

### **Explanatory Note**

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

**[Heads 36 to 42 of Part A4 apply]**

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## Head 27 Annual General Meeting

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(1) Subject to Subhead (2), every unlimited company 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 ULC and that of the next.

(2) So long as an unlimited company 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 unlimited company in accordance with Subhead (1), the Director of Corporate Enforcement may, on the application of any member of the unlimited company, call or direct the calling of a general meeting of the unlimited company 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 unlimited company's constitution, and it is hereby declared that the directions which may be given under this Subhead include a direction that one member of the unlimited company 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 unlimited company but, where a meeting so held is not held in the year in which the default in holding the unlimited company'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 unlimited company resolves that it shall be so treated.

(5) Where an unlimited company 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 unlimited company in accordance with Subhead (1), or in complying with any direction of the Director of Corporate Enforcement under Subhead (3), the unlimited company and every officer of the unlimited company who is in default shall be guilty of a category three offence, and if default is made in complying with Subhead (5), the unlimited company and every officer of the unlimited company who is in default shall be guilty of a category three offence.

(7) Part A4, Head 43 shall not apply to an unlimited company .

### **Explanatory Note**

*This head disapplies Subhead (3) of Head 43 Part A4, which allows a CLS to dispense with the requirement to hold an AGM.*

**[Heads 44 to 61 of Part A4 apply]**

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## Head 28 Unanimous written resolutions

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

(2) Any such resolution shall be deemed to have been passed at a meeting held on the date on which it was signed by the last member to sign, and where the resolution states a date as being the date of his signature thereof by any member the statement shall be prima facie evidence that it was signed by him on that date.

- (3) This head does not apply to a resolution for the purposes of Part A6, Heads 83 to 86 and 95 [the equivalents 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 an unlimited company

**Explanatory Note**

*This head disapplies Head 63 and 64, Part A4 to ULCs and re-enacts Section 141(8) of the Companies Act, 1963, consequently, the ability to make majority written resolutions is not extended to ULCs.*

**[Heads 64 to 70 of Part A4 apply]**

## Chapter 5

### Duties of Directors and other Officers

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*[Heads 1 to 5 and 7 to 44 of Part A4 apply]*

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#### **Head 29 Director's compliance statement and related statement.**

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Part A5, Head 7 shall not apply to an unlimited company.

***Explanatory Note***

*This is a re-statement of the current law as Section 45 of the Companies (Auditing and Accounting) Act, 2003 does not apply to unlimited companies.*

## Chapter 6

### Financial Statements, Annual Return and Audit

#### Head 30 Provisions applicable to a designated ULC

- (1) The term “designated ULC” refers to the following ULCs -
- (a) ULCs where all the members thereof who do not have a limit on their liability are—
    - (i) companies limited by shares or by guarantee, or
    - (ii) bodies not governed by the law of the State but equivalent to those in subparagraph (i), or
    - (iii) any combination of the types of bodies referred to in subparagraphs (i) and (ii); and
  - (b) ULCs where all the members thereof who do not have a limit on their liability are—
    - (i)
      - (I) unlimited companies of the type referred to in paragraph (a) that are governed by the laws of a Member State, or
      - (II) partnerships, all the partners whereof are bodies of the types set out in subparagraphs (i) to (iii) of paragraph (a) that are governed by the laws of a Member State, or
      - (III) bodies governed by the laws of a Member State that are of a legal form comparable to those referred to in subparagraph (I), or
    - (ii) any combination of the types of bodies referred to in subparagraph (i) and subparagraphs (i) and (ii) of paragraph (a).
- (2) The term “non-designated ULC” refers to all ULCs that are not designated ULCs.
- (3) The provisions of Part A6 shall apply to a designated ULC without any of the exclusions or qualifications contained in the rest of this Chapter.

#### Explanatory Note

Subhead (1) is a restatement of Regulation 6 of the European Communities (Accounts) Regulations, 1993.

#### Head 31 Exemption from consolidation: size of group

- (1) Head 19 of Part A6 shall apply to a PUC subject to the substitution of Subhead (9)(a) thereof with the following Subhead (9)(a):
- “any shares, debentures or other debt securities of the PUC or of a subsidiary undertaking have been admitted to trading on a regulated market of any EEA state, or”.
- (2) Head 19 of Group A Part A6 shall apply to a PULC subject to the substitution of Subhead (9)(a) thereof with the following Subhead (9)(a):
- “any debentures or other debt securities of the PULC 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 32 Exemption from consolidation: holding company that is a subsidiary of another EEA registered undertaking

- (1) Head 20 of Part A6 shall apply to a PUC with the addition of the following paragraph (f) in Subhead (3):
- “(f) the exempted holding company may not have any shares, debentures or other debt securities admitted to trading on a regulated market of any EEA State. “
- (2) Head 20 of Part A6 shall apply to a PULC 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.

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### **Head 33 Exemption from Consolidation: holding company that is a subsidiary of a non-EEA undertaking**

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- (1) Head 21 of Part A6 shall apply to a PUC with the addition of the following paragraph (g) in Subhead (3):
- “(g) the exempted holding company may not have any shares, debentures or other debt securities admitted to trading on a regulated market of any EEA State.”
- (2) Head 21 of Part A6 shall apply to a PULC 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.”

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### **Head 34 Information on related undertakings: Exemption from disclosures**

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- (1) Head 28 of Part A6 shall apply to a PUC with the addition of the following paragraph (7):
- “(7) This Head shall not apply to a parent undertaking any of whose shares, debentures or other debt securities have been admitted to trading on a regulated market of any EEA State.”
- (2) Head 28 of Part A6 shall apply to a PULC 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.”

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### **Head 35 Information on related undertakings: Provision for certain information to be annexed to annual return**

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- (1) Head 29 of Part A6 shall apply to a PUC with the addition of the following Subhead (5):
- “(5) Subhead (1) shall not apply to a parent undertaking any of whose shares, debentures or other debt securities have been admitted to trading on a regulated market of any EEA State.”
- (2) Head 29 of Part A6 shall apply to a PULC 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.”

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### **Head 36 Details of authorised share capital, allotted share capital and movements**

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Head 31 of Part A6 shall not apply to a PULC or to a non-designated ULC which does not have a share capital, but where there are changes in the interests of members of a PULC or a non-designated ULC which does not have a share capital in the period covered by the financial statements, those changes shall be given in the notes to the financial statements.

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### **Head 37 Approval and signing of statutory financial statements by Board of Directors**

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Head 36 of Part 6 shall apply to a PUC, PULC and non-designated ULC 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 Act 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.”

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### **Head 38 Approval and signing of directors’ report**

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Head 43 of Part 6 shall apply to a PUC, PULC and non-designated ULC 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.”

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### **Head 39 Disclosure of directors’ remuneration**

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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 PULC.

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### **Head 40 Financial Assistance**

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Provide that all reference to shares in the company in Head 32 of Part A6 be disapplied in the case of a PULC or a non-designated ULC which does not have a share capital but retained in so far as may be relevant to the holding company or subsidiary of a PULC or a non-designated ULC which does not have a share capital.

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### **Head 41 Holding of shares in holding undertaking**

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Subhead 33 (1) of A6 shall not apply to a PULC or a non-designated ULC which does not have a share capital.

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### **Head 42 Obligation to prepare directors’ report for every financial year**

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

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### **Head 43 Directors’ report: interests in debentures**

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Head 41 of Part A6 shall apply to a PULC or a non-designated ULC which does not have a share capital provided that all references to “shares in, or debentures of” the company shall be replaced with “debentures of” where referring to the PULC or non-designated ULC which does not have a share capital but shall remain as references to “shares in, or debentures of” in all references to that company’s holding company or subsidiary where such companies have shares capital.

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### Head 44 Circulation of statutory financial statements

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Head 48 shall apply to a PULC or a non-designated ULC which does not have a share capital provided that the following additional Subhead (1A) shall also apply:

“(1A) In the case of a PULC or a non-designated ULC which does not have a share capital, 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.”

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### Head 45 Report to Registrar and to Director of Corporate Enforcement: Accounting Records

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Head 94 of Part A6 shall apply to a PULC or a non-designated ULC which does not have a share capital save that the reference to “shareholders” in Subhead (6) shall be replaced with “members”.

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### Head 46 Report to Registrar and to Director of Corporate Enforcement: Category 1 and 2 Offences under the Companies Act

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Head 95 of Part A6 shall apply to a PULC or a non-designated ULC which does not have a share capital save that the reference to “shareholders” in Subhead (4) shall be replaced with “members”.

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### Head 47 Documents to be annexed to the annual return

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- (1) The auditors of a non-designated ULC shall prepare a separate report to the directors which—
  - (a) confirms that they audited the accounts for the relevant year; and

- (b) includes within it the report made to the members of the company pursuant to Head 92 of Part A6 [equivalent of Section 193 of the Companies Act, 1990].

- (2) A copy of the report prepared in accordance with Subhead (1) shall be certified by a director and by the secretary of the company to be a true copy of that report and shall be attached to the company’s annual return.

#### **Explanatory Note**

*This head is based on Sections 128 (6B) and (6C) of the Companies Act, 1963.*

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## Chapter 7

### Debentures and Registration of Charges

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*[Heads 1 to 19 of Part A7 apply]*

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## Chapter 8

### Receivers

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*[Heads 1 to 20 of Part A8 apply]*

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## Chapter 9

### Reorganisations

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*[Heads 1 to 45 of Part A9 apply]*

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## Chapter 10

### Examinerships

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*[Heads 1 to 41 of Part A10 apply]*

# Chapter 11

## Winding-Up

**[Heads 1 to 85 of Part A11 apply]**

### Head 48 Liability as contributories of past and present members

- (1) In the event of an unlimited company being wound up, every present and past member shall be liable to contribute to the assets of the unlimited company to an amount sufficient for payment of its debts and liabilities, and the costs, charges and expenses of the winding-up, and for the adjustment of the rights of the contributories among themselves, subject to Subhead (2) and the following qualifications -
- (a) a past member shall not be liable to contribute if he has ceased to be a member for one year or more before the commencement of the winding up;
  - (b) a past member shall not be liable to contribute in respect of any debt or liability of the unlimited company 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) 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 unlimited company are alone made liable in respect of the policy or contract;
  - (e) a sum due to any member of the unlimited company in his character of a member, by way of dividends, profits or otherwise, shall not be deemed to be a debt of the unlimited company, payable to that member in a case of competition between himself and any other creditor not a member of the unlimited company, 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 an unlimited company .

#### Explanatory Note

*This head largely mirrors the wording of Head 87, Part A11 which itself is an amended re-enactment of Section 207 of the Companies Act, 1963. However, paragraph 86(1)(d) provides "no contribution shall be required from any member exceeding the amount, if any, unpaid on the shares in respect of which he is liable as a present or past member". Consequently, this paragraph has been disapplied to this Part as it is clearly inconsistent with the purpose of an unlimited company.*

**[Heads 87 to 89 of Part A11 apply]**

### Head 49 Payment of debts due by contributory to the company and extent to which set-off allowed.

- (1) The court may make an order to any contributory for the time being on the list of contributories, to pay in a manner directed by the order, any money due from him or from the estate of the person whom he represents to the unlimited company exclusive of any money payable by him or the estate by virtue of any call in pursuance of this Bill.
- (2) The court in making such an order may allow to the contributory, by way of set-off, any money due to him or to the estate which he represents from the unlimited company on any independent dealing or contract with the ULC , but not any money due to him as a member of the unlimited company in respect of any dividend or profit.
- (3) When all the creditors are paid in full, any money due on any account whatever to a contributory from the unlimited company may be allowed to him by way of set-off against any subsequent call.
- (4) Part A11, Head 90 shall not apply to an unlimited company.

#### Explanatory Note

*This head is an amended re-enactment of Section 237 of the Companies Act , 1963. The reference to unlimited companies has been removed from paragraph (2)(a) as the provision will only apply to unlimited companies. Paragraph (2)(a) has also been removed to reflect the CLRG recommendation that the power of companies to make directors liability unlimited be deleted from the Companies Acts. The remainder of the provision replicates Part A11, Head 90.*

*[Heads 91 to 155 of Part A11 apply]*

### **Chapter 12**

Strike Off and Restoration

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*[Heads 1 – 13 of Part A12 apply]*

### **Chapter 13**

Compliance, Investigation and  
Enforcement

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*[Heads 1 to 68 of Part A13 apply]*

### **Chapter 14**

Regulatory and Advisory Bodies

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*[Heads 1 to 64 of Part A14 apply]*

# Chapter 15

## Market Abuse

### Head 50 Application of this Chapter

This Chapter shall apply to a PUC or a PULC.

### Head 51 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,
- (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 52 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 of the Investment Funds, Companies and Miscellaneous Provisions Act, 2005) 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 head 30 of the Investment Funds, Companies and Miscellaneous Provisions Act, 2005.*

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### **Head 53 Conviction on indictment of offences under Irish market abuse law: penalties**

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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.*

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### **Head 54 Civil liability for certain breaches of Irish market abuse law**

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(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.*

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### **Head 55 Supplementary rules, etc., by competent authority**

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- (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.

## Head 56 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 section (including a provisional order under this subsection).
- (3) A provisional order under this section shall not have effect unless or until it is confirmed by an Act of the Oireachtas.

### **Explanatory Note**

*Restatement of section 37 of Investment Funds, Companies and Miscellaneous Provisions Act 2005.*

### **Explanatory Note**

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

## Chapter 16

### Public Offers Of Securities

#### Head 57 Application of this Chapter

This Chapter shall apply to a PUC or a PULC.

#### Head 58 Interpretation

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

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

**“body corporate”** includes a company;

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

**“EU prospectus law”** means—

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

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

**“Irish prospectus law”** means—

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

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

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

- (a) the offer expressly limits the amount of the total consideration for the offer to less than €2,500,000 (and the means by which that limit shall be calculated, in particular in the case of a series of such offers of securities, shall be the same as that provided for by regulations under 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 B5, Head 63 (2) [equivalent of Section 45(2) of the Investment Funds, Companies and Miscellaneous Provisions Act, 2005] (other than paragraph (b) thereof) and any other head of this Part that makes provision in respect of an expert includes a report and a valuation.

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

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

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

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

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### Head 59 Civil liability for misstatements in prospectus

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- (1) Subject to Heads 60 and 61 of this Part [equivalents of Sections 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 B5 Head 63 [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 B5, Heads 60 and 61 [equivalent of Sections 42 and 43 of the Investment Funds, Companies and Miscellaneous Provisions Act, 2005], be liable to pay compensation to all persons who acquire any securities on the faith of the prospectus for the loss or damage they may have sustained by reason of an untrue statement in the prospectus purporting to be made by him or her as an expert.

#### **Explanatory Note**

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

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### Head 60 Exceptions and exemptions

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- (1) A person shall not be liable under Part B5, Head 59 [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 B5, Head 59 [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 B5, Head 59 [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—
- (I) every untrue statement not purporting to be made on the authority of an expert or of a public official document or statement,
- (II) the omission from the prospectus of any information required by EU prospectus law to be contained therein, he or she had reasonable grounds to believe, and did up to the time of the issue of the securities believe, that the statement was true or that the matter whose omission caused loss was properly omitted, and
- (ii) as regards every untrue statement purporting to be a statement by an expert or contained in what purports to be a copy of or extract from a report or valuation of an expert, it fairly represented the statement, or was a correct and fair copy of o, 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 B5, Head 63 [equivalent of Section 45 of the Investment Funds, Companies and Miscellaneous Amendments 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 B5, Head 63 [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 B5, Head 59 [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 B5, Head 59 [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 61 Restriction of liability where non-equity securities solely involved**

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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 59 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 66 of this Part [equivalent of Section 48 of the Investment Funds, Companies and Miscellaneous Provisions Act, 2005] in respect of the issue of that prospectus,
- (b) Subhead 5 (1) of Part A5 [equivalent of Section 383(3) of the Companies Act 1963] shall not apply to the directors or secretary of the issuer to the extent that such application would thereby impose a liability under Head 59 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 59 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).*

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### **Head 62 Indemnification of certain persons**

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- (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 63 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 63 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 64 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 65 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 66 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 67 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.

**Explanatory Note**

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

**Head 68 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 69 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.*

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### Head 70 Avoidance of certain agreements

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A condition—

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

**Explanatory Note**

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

## First Schedule

### MODEL FORM OF MEMORANDUM OF ASSOCIATION OF AN UNLIMITED COMPANY HAVING A SHARE CAPITAL

1. The name of the company is: "Big Warehouse Unlimited Company".
2. The company is an unlimited company having a share capital, registered under this Part.
3. The objects for which the company is established are the design and manufacture of clothing, and the doing of all such other things as are incidental or conducive to the attainment of the above object.
4. The share capital of the company is €200,000, divided into 200,000 shares of €1 each.
5. The liability of the members is unlimited.

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

<i>Names and Addresses of Subscribers</i>	<i>Number of Shares taken by each Subscriber</i>
1. Henry Klein Address:	300
2. Brendan Pettit Address:	2,700
3. Frances Little	
Total shares taken:	3,000

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_

Witness to the above Signatures:

Name: \_\_\_\_\_

Address: \_\_\_\_\_

## Second Schedule

### MODEL FORM OF MEMORANDUM OF ASSOCIATION OF A PUBLIC UNLIMITED COMPANY NOT HAVING A SHARE CAPITAL

1. The name of the company is: "The Old Head Leisure Unlimited Company"
2. The company is a public unlimited company not having a share capital, registered under this Part
3. The objects for which the company is established are the development of improved methods of cutting and harvesting turf and the doing of all such things as are incidental or conducive to the attainment of the above object.
4. The liability of the members is unlimited.

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

<i>Names and Addresses of Subscribers</i>
1. Emmett O'Toole Address:
2. Máire de Barra Address:
3. Liam Wallis Address:
4. Carla Stewart Address:
5. Jane Grey Address:

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_

Witness to the above Signatures:

Name: \_\_\_\_\_

Address: \_\_\_\_\_