



Number 30 of 1999

COMPANIES (AMENDMENT) (NO. 2) ACT, 1999

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Acts Referred to

Building Societies Act, 1989	1989, No. 17
Central Bank Act, 1971	1971, No. 24
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Investment Limited Partnerships Act, 1994	1994, No. 24
Limited Partnerships Act, 1907	7 Edw. 7. c. 24
Local Government Act, 1941	1941, No. 23
Petty Sessions (Ireland) Act, 1851	14 & 15 Vict., c.93
Registration of Business Names Act, 1963	1963, No. 30
Stock Exchange Act, 1995	1995, No. 9
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COMPANIES (AMENDMENT) (NO. 2) ACT, 1999

AN ACT TO AMEND THE COMPANIES (AMENDMENT) ACT, 1990, TO PROVIDE FOR AN EXEMPTION FROM THE REQUIREMENT THAT THE ACCOUNTS OF COMPANIES AND CERTAIN PARTNERSHIPS BE AUDITED, TO PROHIBIT THE FORMATION OF A COMPANY UNLESS IT APPEARS TO THE REGISTRAR OF COMPANIES THAT THE COMPANY WILL CARRY ON AN ACTIVITY IN THE STATE, TO REQUIRE, SAVE IN CERTAIN CIRCUMSTANCES, ONE OF THE DIRECTORS OF A COMPANY TO BE A PERSON RESIDENT IN THE STATE, TO OTHERWISE AMEND THE LAW RELATING TO COMPANIES AND CERTAIN PARTNERSHIPS AND TO PROVIDE FOR RELATED MATTERS.

[15th December, 1999]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

PART I

Preliminary and General

1.—(1) This Act may be cited as the Companies (Amendment) (No. 2) Act, 1999.

Short title,
collective citation,
construction and
commencement.

(2) The Companies Acts, 1963 to 1986, the Companies (Amendment) Act, 1990, the Companies Act, 1990, the Companies (Amendment) Act, 1999, and this Act (other than *section 40*) may be cited together as the Companies Acts, 1963 to 1999.

(3) The enactments referred to in *subsection (2)* shall be construed together as one.

(4) This Act shall come into operation on such day or days as the Minister may appoint by order or orders either generally or with reference to any particular purpose or provision and different days may be so appointed for different purposes or different provisions.

(5) The power under *subsection (4)* shall be so exercised that—

(a) the one day is appointed on which every provision of *Part III* (other than *subsections (2), (3) and (7) of section 33*), the *First Schedule* and the *Second Schedule* (in so far as it relates to the said Part) shall come into operation, and

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Pt.1 S.1 (b) the day appointed on which *subsections (2), (3) and (7) of section 33* shall come into operation is the day that is 2 months earlier than the said day.

Interpretation generally.

2.—(1) In this Act—

“the Central Bank” means the Central Bank of Ireland;

“the Principal Act” means the Companies Act, 1963.

(2) In this Act—

(a) a reference to a Part, section or Schedule is a reference to a Part or section of, or a Schedule to, this Act unless it is indicated that reference to some other enactment is intended,

(b) a reference to a subsection, paragraph or subparagraph is a reference to the subsection, paragraph or subparagraph of the provision in which the reference occurs unless it is indicated that reference to some other provision is intended,

(c) a reference to any enactment is a reference to that enactment as amended, extended or adapted by or under any subsequent enactment (including this Act).

Orders.

3.—(1) The Minister may by order prescribe any matter or thing which is referred to in this Act as prescribed or to be prescribed.

(2) The Minister may by order amend or revoke an order under this Act (other than an order under *section 1(4)*) but including an order under this subsection).

(3) Every order under this Act (other than an order under *section 1(4)*) shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the order is passed by either such House within the next 21 days on which that House has sat after the order is laid before it, the order shall be annulled accordingly but without prejudice to the validity of anything previously done thereunder.

PART II

Examinerships

Definition.

4.—In this Part “the Act of 1990” means the Companies (Amendment) Act, 1990.

Amendment of section 2 of Act of 1990.

5.—Section 2 of the Act of 1990 is hereby amended—

(a) in subsection (1) (as amended by the Companies Act, 1990), by the substitution for “Where it appears to the court that” of “Subject to subsection (2), where it appears to the court that”, and

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(b) by the substitution for subsection (2) of the following Pt.II S.5 subsection:

“(2) The court shall not make an order under this section unless it is satisfied that there is a reasonable prospect of the survival of the company and the whole or any part of its undertaking as a going concern.”,

and the said subsection (1), as so amended, is set out in the Table to this section.

TABLE

(1) Subject to subsection (2), where it appears to the court that—

- (a) a company is or is likely to be unable to pay its debts, and
- (b) no resolution subsists for the winding-up of the company, and
- (c) no order has been made for the winding-up of the company,

it may, on application by petition presented, appoint an examiner to the company for the purpose of examining the state of the company's affairs and performing such duties in relation to the company as may be imposed by or under this Act.

6.—Section 3 of the Act of 1990 is hereby amended by the substitution of the following paragraphs for paragraph (b) of subsection (2): Amendment of section 3 of Act of 1990.

“(b) Where the company referred to in section 2 is—

- (i) the holder of a licence under section 9 of the Central Bank Act, 1971,
- (ii) a company which a building society has converted itself into under Part XI of the Building Societies Act, 1989,
- (iii) a company which one or more trustee savings banks have been reorganised into pursuant to an order under section 57 of the Trustee Savings Banks Act, 1989,
- (iv) the ACC Bank public limited company,
- (v) the ICC Bank public limited company, or
- (vi) the ICC Investment Bank Limited,

a petition under section 2 may be presented only by the Central Bank, and subsection (1) of this section shall not apply to the company.

(c) Where the company referred to in section 2 is a company referred to in the *Second Schedule* to the *Companies (Amendment) (No. 2) Act, 1999*, (not being a company referred to in *paragraph 18, 19 or 20* of that Schedule or to which paragraph (b) applies) the following provisions shall apply—

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- (i) a petition under section 2 may be presented by—
 - (I) any of the persons referred to in paragraph (a), (b), (c) or (d) of subsection (1) of this section (including by one or more of such persons acting together),
 - (II) the Central Bank, or
 - (III) one or more of such persons and the Central Bank acting together,
- (ii) if the Central Bank does not present such a petition—
 - (I) the petitioner shall, before he presents the petition at the office of the court, cause to be received by the Central Bank a notice in writing of his intention to present the petition, and shall serve a copy of the petition on the Central Bank as soon as may be after the presentation of it at the said office,
 - (II) the Central Bank shall be entitled to appear and be heard at any hearing relating to the petition.”.

Pre-petition report in relation to company.

7.—Section 3 of the Act of 1990 is hereby amended by the insertion of the following subsections after subsection (3):

“(3A) In addition to the matters specified in subsection (4), a petition presented under section 2 shall be accompanied by a report in relation to the company prepared by a person (in this Act referred to as ‘the independent accountant’) who is either the auditor of the company or a person who is qualified to be appointed as an examiner of the company.

(3B) The report of the independent accountant shall comprise the following:

- (a) the names and permanent addresses of the officers of the company and, in so far as the independent accountant can establish, any person in accordance with whose directions or instructions the directors of the company are accustomed to act,
- (b) the names of any other bodies corporate of which the directors of the company are also directors,
- (c) a statement as to the affairs of the company, showing in so far as it is reasonably possible to do so, particulars of the company’s assets and liabilities (including contingent and prospective liabilities) as at the latest practicable date, the names and addresses of its creditors, the securities held by them respectively and the dates when the securities were respectively given,
- (d) whether in the opinion of the independent accountant any deficiency between the assets and liabilities of the company has been satisfactorily accounted for or,

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if not, whether there is evidence of a substantial disappearance of property that is not adequately accounted for, Pt.II S.7

- (e) his opinion as to whether the company, and the whole or any part of its undertaking, would have a reasonable prospect of survival as a going concern and a statement of the conditions which he considers are essential to ensure such survival, whether as regards the internal management and controls of the company or otherwise,
- (f) his opinion as to whether the formulation, acceptance and confirmation of proposals for a compromise or scheme of arrangement would offer a reasonable prospect of the survival of the company, and the whole or any part of its undertaking, as a going concern,
- (g) his opinion as to whether an attempt to continue the whole or any part of the undertaking would be likely to be more advantageous to the members as a whole and the creditors as a whole than a winding-up of the company,
- (h) recommendations as to the course he thinks should be taken in relation to the company including, if warranted, draft proposals for a compromise or scheme of arrangement,
- (i) his opinion as to whether the facts disclosed would warrant further inquiries with a view to proceedings under section 297 or 297A of the Principal Act,
- (j) details of the extent of the funding required to enable the company to continue trading during the period of protection and the sources of that funding,
- (k) his recommendations as to which liabilities incurred before the presentation of the petition should be paid,
- (l) his opinion as to whether the work of the examiner would be assisted by a direction of the court in relation to the role or membership of any creditor's committee referred to in section 21, and
- (m) such other matters as he thinks relevant."

8.—Section 3 of the Act of 1990 is hereby amended by the deletion in subsection (5) of “, and until a *prima facie* case for the protection of the court has been established to the satisfaction of the court”, and the said subsection (5), as so amended, is set out in the Table to this section.

Amendment of section 3(5) of Act of 1990.

TABLE

(5) The court shall not give a hearing to a petition under section 2 presented by a contingent or prospective creditor until such security for costs has been given as the court thinks reasonable.

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Interim protection pending report.

9.—The Act of 1990 is hereby amended by the insertion of the following section after section 3:

“3A. (1) If a petition presented under section 2 shows, and the court is satisfied—

(a) that, by reason of exceptional circumstances outside the control of the petitioner, the report of the independent accountant is not available in time to accompany the petition, and

(b) that the petitioner could not reasonably have anticipated the circumstances referred to in paragraph (a),

and, accordingly, the court is unable to consider the making of an order under that section, the court may make an order under this section placing the company concerned under the protection of the court for such period as the court thinks appropriate in order to allow for the submission of the independent accountant’s report.

(2) That period shall be a period that expires not later than the 10th day after the date of making of the order concerned or, if the 10th day after that date would fall on a Saturday, Sunday or public holiday, the first following day that is not a Saturday, Sunday or public holiday.

(3) For the avoidance of doubt, the fact that a receiver stands appointed to the whole or any part of the property or undertaking of the company at the time of the presentation of a petition under section 2 in relation to the company shall not, in itself, constitute, for the purposes of subsection (1), exceptional circumstances outside the control of the petitioner.

(4) If the petition concerned has been presented by any of the persons referred to in paragraph (c) or (d) of section 3(1) and an order under subsection (1) is made in relation to the company concerned, the directors of the company shall co-operate in the preparation of the report of the independent accountant, particularly in relation to the matters specified in paragraphs (a), (b) and (c) of section 3(3B).

(5) If the directors of the company concerned fail to comply with subsection (4), the person who has presented the petition concerned or the independent accountant may apply to the court for an order requiring the directors to do specified things by way of compliance with subsection (4) and the court may, as it thinks fit, grant such an order accordingly.

(6) If the report of the independent accountant is submitted to the court before the expiry of the period of protection specified in an order under subsection (1), the court shall proceed to consider the petition together with the report as if they were presented in accordance with section 2.

(7) If the report of the independent accountant is not submitted to the court before the expiry of the period of protection specified in an order under subsection (1), then, at the expiry of that period, the company concerned shall cease to be under the protection of the court, but without prejudice to the presentation of a further petition under section 2.

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(8) Any liabilities incurred by the company concerned during the period of protection specified in an order under subsection (1) may not be the subject of a certificate under section 10(2).”

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10.—The Act of 1990 is hereby amended by the insertion of the following section after section 3A (inserted by *section 9*):

Creditors to be heard.

“3B. (1) The court shall not make an order dismissing a petition presented under section 2 or an order appointing an examiner to a company without having afforded each creditor of the company who has indicated to the court his desire to be heard in the matter an opportunity to be so heard.

(2) Nothing in this section shall affect the power of the court under section 3(7) to make an interim order in the matter.”.

11.—The Act of 1990 is hereby amended by the insertion of the following section after section 3B (inserted by *section 10*):

Availability of independent accountant's report.

“3C. (1) The independent accountant shall supply a copy of the report prepared by him under section 3(3A) to the company concerned or any interested party on written application being made to him in that behalf.

(2) If the court, on application to it in that behalf, directs that that supply may be the subject of such omission, there may be omitted from any copy of the report supplied to the company or an interested party such parts of it as are specified in the direction of the court.

(3) The court may, in particular, on such an application, direct that there may be omitted from such a supply of a copy of the report any information the inclusion of which in such a copy would be likely to prejudice the survival of the company or the whole or any part of its undertaking as a going concern.

(4) If the company concerned is a company referred to in section 3(2)(c) and the Central Bank does not propose to present, or has not presented, (whether alone or acting together with other persons) a petition under section 2 in relation to the company, the independent accountant shall, as soon as may be after it is prepared, supply a copy of the report prepared by him under section 3(3A) to the Central Bank and subsections (2) and (3) shall not apply to such a copy.”.

12.—Section 4 of the Act of 1990 is hereby amended—

Amendment of section 4 of Act of 1990.

(a) in subsection (1), by the substitution for “Where the court appoints an examiner to a company” of “Subject to subsection (2), where the court appoints an examiner to a company”, and

(b) in subsection (2), by the insertion of the following at the end of that subsection:

“and shall not, in any case, make such an order unless it is satisfied that there is a reasonable prospect of the survival of the related company, and the whole or any part of its undertaking, as a going concern”.

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and the said subsections (1) and (2), as so amended, are set out in paragraphs 1 and 2, respectively, of the Table to this section.

TABLE

1. (1) Subject to subsection (2), where the court appoints an examiner to a company, it may, at the same or any time thereafter, make an order—

(a) appointing the examiner to be examiner for the purposes of this Act to a related company, or

(b) conferring on the examiner, in relation to such company, all or any of the powers or duties conferred on him in relation to the first-mentioned company.

2. (2) In deciding whether to make an order under subsection (1), the court shall have regard to whether the making of the order would be likely to facilitate the survival of the company, or of the related company, or both, and the whole or any part of its or their undertaking, as a going concern and shall not, in any case, make such an order unless it is satisfied that there is a reasonable prospect of the survival of the related company, and the whole or any part of its undertaking, as a going concern.

Duty to act in good faith.

13.—The Act of 1990 is hereby amended by the insertion of the following section after section 4:

“4A. The court may decline to hear a petition presented under section 2 or, as the case may be, may decline to continue hearing such a petition if it appears to the court that, in the preparation or presentation of the petition or in the preparation of the report of the independent accountant, the petitioner or independent accountant—

(a) has failed to disclose any information available to him which is material to the exercise by the court of its powers under this Act, or

(b) has in any other way failed to exercise utmost good faith.”.

Amendment of section 5 of Act of 1990.

14.—Section 5 of the Act of 1990 is hereby amended—

(a) by the substitution for subsection (1) of the following subsection:

“(1) Subject to section 3A, during the period beginning with the date of the presentation of a petition under section 2 and (subject to subsections (3) and (4) of section 18) ending on the expiry of 70 days from that date or on the withdrawal or refusal of the petition, whichever first happens, the company shall be deemed to be under the protection of the court.”,

(b) in subsection (2)—

(i) by the substitution for paragraph (d) of the following paragraph:

“(d) where any claim against the company is secured by a mortgage, charge, lien or other encumbrance or a pledge of, on or affecting the whole or any part of the property, effects or income of the company, no action may be taken to realise the whole or any part of that security,

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except with the consent of the examiner;” Pt.II S.14

and

- (ii) by the deletion of paragraph (h) (inserted by the Companies Act, 1990).

15.—The Act of 1990 is hereby amended by the insertion of the following section after section 5:

Restriction on payment of pre-petition debts.

“5A. (1) Subject to subsection (2), no payment may be made by a company, during the period it is under the protection of the court, by way of satisfaction or discharge of the whole or a part of a liability incurred by the company before the date of the presentation under section 2 of the petition in relation to it unless the report of the independent accountant contains a recommendation that the whole or, as the case may be, the part of that liability should be discharged or satisfied.

(2) Notwithstanding subsection (1), the court may, on application being made to it in that behalf by the examiner or any interested party, authorise the discharge or satisfaction, in whole or in part, by the company concerned of a liability referred to in subsection (1) if it is satisfied that a failure to discharge or satisfy, in whole or in part, that liability would considerably reduce the prospects of the company or the whole or any part of its undertaking surviving as a going concern.”

16.—Section 6 of the Act of 1990 is hereby amended—

Amendment of section 6 of Act of 1990.

- (a) in subsection (1), by the substitution for “Where the court appoints an examiner to a company and” of “Where, at the date of the presentation of a petition under section 2 in relation to a company,”
- (b) in subsection (2), by the substitution for “Where the court appoints an examiner to a company and” of “Where, at the date of the presentation of a petition under section 2 in relation to a company,” and
- (c) by the substitution for subsection (3) of the following subsection:

“(3) The court shall not make an order under paragraph (a) or (b) of subsection (1) or paragraph (c) of subsection (2) unless the court is satisfied that there is a reasonable prospect of the survival of the company, and the whole or any part of its undertaking, as a going concern.”

and the said subsection (1), as so amended, (other than paragraphs (a) to (d) thereof) and the said subsection (2), as so amended, (other than paragraphs (a) to (e) thereof) are set out in paragraphs 1 and 2, respectively, of the Table to this section.

TABLE

1. (1) Where, at the date of the presentation of a petition under section 2 in relation to a company, a receiver stands appointed to the whole or any part of the property or undertaking of that company the court may make such

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order as it thinks fit including an order as to any or all of the following matters—

2. (2) Where, at the date of the presentation of a petition under section 2 in relation to a company, a provisional liquidator stands appointed to that company, the court may make such order as it thinks fit including an order as to any or all of the following matters—

Disapplication of section 98 of Principal Act to receivers in certain circumstances.

17.—The Act of 1990 is hereby amended by the insertion of the following section after section 6:

“6A. (1) Without prejudice to the generality of section 6 (1), the court, on application being made in that behalf, may, in relation to a receiver who stands appointed to the whole or any part of the property or undertaking of a company, make an order providing that section 98 of the Principal Act shall not apply as respects payments made by the receiver out of assets coming into his hands as such receiver if—

- (a) (i) an examiner has been appointed to the company, or
 - (ii) an examiner has not been appointed to the company but, in the opinion of the court, such an appointment may yet be made,
- and
- (b) the making of the order would, in the opinion of the court, be likely to facilitate the survival of the company, and the whole or any part of its undertaking, as a going concern.

(2) An order under subsection (1) shall not be made without each creditor of the company of the following class being afforded an opportunity to be heard, namely a creditor any of the debts owed to whom by the company are debts which in a winding-up are, by virtue of the provisions of Part VI of the Principal Act relating to preferential payments, required to be paid in priority to all other debts.”.

Repudiation of contracts.

18.—Section 7 of the Act of 1990 is hereby amended by the insertion of the following subsections after subsection (5):

“(5A) Without prejudice to subsection (5B), nothing in this section shall enable an examiner to repudiate a contract that has been entered into by the company prior to the period during which the company is under the protection of the court.

(5B) A provision referred to in subsection (5C) shall not be binding on the company at any time after the service of the notice under this subsection and before the expiration of the period during which the company concerned is under the protection of the court if the examiner is of the opinion that the provision, were it to be enforced, would be likely to prejudice the survival of the company or the whole or any part of its undertaking as a going concern and he serves a notice on the other party or parties to the agreement in which the provision is contained informing him or them of that opinion.

(5C) The provision referred to in subsection (5B) is a provision of an agreement entered into by the company concerned and any other person or persons at any time (including a time that is prior to the period during which the company is under the protection of the court) that provides that the company shall not, or shall not otherwise than in specified circumstances—

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- (a) borrow moneys or otherwise obtain credit from any person other than the said person or persons, or
- (b) create or permit to subsist any mortgage, charge, lien or other encumbrance or any pledge over the whole or any part of the property or undertaking of the company.”.

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19.—Section 8 of the Act of 1990 is hereby amended by the substitution for subsection (5) and subsection (5A) (inserted by the Companies Act, 1990) of the following subsections:

Amendment of section 8 of Act of 1990.

“(5) If any officer or agent of such company or other person—

- (a) refuses to produce to the examiner any book or document which it is his duty under this section to produce, or
- (b) refuses to attend before the examiner when requested to do so, or
- (c) refuses to answer any question which is put to him by the examiner with respect to the affairs of the company,

the examiner may certify the refusal under his hand to the court, and the court may thereupon enquire into the case and, after hearing any witnesses who may be produced against or on behalf of the said officer, agent or other person or any statement which may be offered in defence, make any order or direction it thinks fit.

(5A) Without prejudice to the generality of subsection (5), the court may, after a hearing under that subsection, make a direction—

- (a) to the person concerned to attend or re-attend before the examiner or produce particular books or documents or answer particular questions put to him by the examiner, or
- (b) that the person concerned need not produce a particular book or document or answer a particular question put to him by the examiner.”.

20.—(1) Section 12 of the Act of 1990 is hereby amended by the substitution for paragraph (a) of subsection (2) of the following paragraph:

Amendment of section 12 of Act of 1990.

“(a) An examiner shall, within the time limits specified in paragraph (b), cause to be published in *Iris Oifigiúil* and in at least two daily newspapers circulating in the district in which the registered office or principal place of business of the company is situate a notice of his appointment and the date thereof.”.

(2) Section 12 of the Act of 1990 is hereby further amended by the substitution for subsection (4) of the following subsection:

“(4) Where a company is, by virtue of section 5, deemed to be under the protection of the court, every invoice, order for

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goods or business letter issued by or on behalf of the company, being a document on or in which the name of the company appears, shall, immediately after the mention of that name, include the words 'in examination (under the Companies (Amendment) Act, 1990)'.

Hearing regarding irregularities.

21.—The Act of 1990 is hereby amended by the insertion of the following section after section 13:

“13A. (1) Where, arising out of the presentation to it of the report of the independent accountant or otherwise, it appears to the court that there is evidence of a substantial disappearance of property of the company concerned that is not adequately accounted for, or of other serious irregularities in relation to the company's affairs having occurred, the court shall, as soon as it is practicable, hold a hearing to consider that evidence.

(2) If, before the hearing referred to in subsection (1) is held, the court directs the examiner to do so, the examiner shall prepare a report setting out any matters which he considers will assist the court in considering the evidence concerned on that hearing.

(3) The examiner shall supply a copy of a report prepared by him under subsection (2) to the company concerned on the same day as he causes the report to be delivered to the office of the court.

(4) The examiner shall also supply a copy of a report prepared by him under subsection (2) to each person who is mentioned in the report and any interested party on written application being made to him in that behalf.

(5) If the court, on application to it in that behalf, directs that that supply may be the subject of such omission, there may be omitted from any copy of the report supplied to a person referred to in subsection (4) or an interested party such parts of it as are specified in the direction of the court.

(6) The court may, in particular, on such an application, direct that there may be omitted from such a supply of a copy of the report any information the inclusion of which in such a copy would be likely to prejudice the survival of the company or the whole or any part of its undertaking as a going concern.

(7) The examiner shall, as soon as may be after it is prepared, supply a copy of the report prepared by him under subsection (2) to—

- (a) if the company concerned is a company referred to in paragraph (a) of section 3(2), the Minister, or
- (b) if the company concerned is a company referred to in paragraph (b) or (c) of section 3(2), the Central Bank,

and subsections (5) and (6) shall not apply to such a copy.

(8) The following persons shall be entitled to appear and be heard at a hearing under this section—

[1999.] *Companies (Amendment) (No. 2) Act, 1999.* [No. 30.]

- (a) the examiner, Pt.II S.21
- (b) if the court decided to hold a hearing under this section because of matters contained in the report of the independent accountant, the independent accountant,
- (c) the company concerned,
- (d) any interested party,
- (e) any person who is referred to in the report of the independent accountant or the report prepared under subsection (2),
- (f) if the company concerned is a company referred to in paragraph (a) of section 3 (2), the Minister,
- (g) if the company concerned is a company referred to in paragraph (b) or (c) of section 3(2), the Central Bank.

(9) The court may, on a hearing under this section, make such order or orders as it deems fit (including, where appropriate, an order for the trial of any issue relating to the matter concerned).

(10) The court may, if it considers it appropriate to do so, direct that an office copy of an order under subsection (9) shall be delivered to the registrar of companies by the examiner or such other person as it may specify.”.

22.—Section 18 of the Act of 1990 is hereby amended—

Amendment of section 18 of Act of 1990.

- (a) by the substitution of the following subsection for subsection (1):

“(1) An examiner shall—

- (a) as soon as practicable after he is appointed, formulate proposals for a compromise or scheme of arrangement in relation to the company concerned,
- (b) without prejudice to any other provision of this Act, carry out such other duties as the court may direct him to carry out.”,

- (b) in subsection (2), by the deletion of all the words from “to consider such proposals” to the end of that subsection and the substitution of the following:

“for the purpose of section 23 and shall report on those proposals to the court, within 35 days of his appointment or such longer period as the court may allow, in accordance with section 19.”,

- (c) in subsection (3), by the substitution of “70 days” for “three months”,
- (d) by the substitution of the following subsections for subsections (5) and (6):

[No. 30.] *Companies (Amendment) (No. 2) [1999.] Act, 1999.*

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“(5) The examiner shall supply a copy of his report under this section—

(a) to the company concerned on the same day as he causes the report to be delivered to the office of the court, and

(b) to any interested party on written application being made to him in that behalf.

(6) The examiner shall, as soon as may be after it is prepared, supply a copy of his report under this section to—

(a) if the company concerned is a company referred to in paragraph (a) of section 3(2), the Minister, or

(b) if the company concerned is a company referred to in paragraph (b) or (c) of section 3(2), the Central Bank.

(7) If the court, on application to it in that behalf, directs that that supply may be the subject of such omission, there may be omitted from any copy of the report supplied under subsection (5)(b) to an interested party such parts of it as are specified in the direction of the court.

(8) The court may, in particular, on such an application, direct that there may be omitted from such a supply of a copy of the report any information the inclusion of which in such a copy would be likely to prejudice the survival of the company or the whole or any part of its undertaking as a going concern.

(9) If the examiner is not able to enter into an agreement with the interested parties and any other persons concerned in the matter or formulate proposals for a compromise or scheme of arrangement in relation to the company concerned, he may apply to the court for the grant of directions in the matter and the court may, on such application, give such directions or make such order as it deems fit, including, if it considers it just and equitable to do so, an order for the winding-up of the company.”,

and the said subsections (2) and (3), as so amended, are set out in paragraphs 1 and 2, respectively, of the Table to this section.

TABLE

1. (2) Notwithstanding any provision of the Companies Acts relating to notice of general meetings, (but subject to notice of not less than 3 days in any case) the examiner shall convene and preside at such meetings of members and creditors as he thinks proper, for the purpose of section 23 and shall report on those proposals to the court, within 35 days of his appointment or such longer period as the court may allow, in accordance with section 19.

2. (3) Where, on the application of the examiner, the court is satisfied that the examiner would be unable to report to the court within the period of 70 days referred to in section 5(1) but that he would be able to make a report if that period were extended, the court may by order extend that period by not more than 30 days to enable him to do so.

[1999.] *Companies (Amendment) (No. 2) [No. 30.] Act, 1999.*

23.—Section 23 of the Act of 1990 is hereby amended—

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Amendment of section 23 of Act of 1990.

(a) in subsection (1), by the substitution for “compromise or scheme of arrangement.” of “compromise or scheme of arrangement; save where expressly provided otherwise in this section, this section shall not authorise, at such a meeting, anything to be done in relation to such proposals by any member or creditor.”,

(b) by the deletion of subsection (3),

(c) by the insertion of the following subsection after subsection (4):

“(4A) Nothing in subsection (4) shall, in the case of a creditor who abstains from voting, or otherwise fails to cast a vote, in respect of the proposals, be construed as permitting such an abstention or failure to be regarded as a casting by that person of a vote against the proposals.”,

(d) in subsection (6), by the deletion of “(3) or”,

and

(e) by the addition of the following subsection after subsection (8):

“(9) Without prejudice to subsections (1) to (8), in the case of a company referred to in paragraph (b) or (c) of section 3(2), the examiner shall also afford the Central Bank an opportunity to consider the proposals for a compromise or scheme of arrangement and for this purpose shall furnish to the Central Bank a statement containing the like information to that referred to in subsection (8).”,

and the said subsections (1) and (6), as so amended, are set out in paragraphs 1 and 2, respectively, of the Table to this section.

TABLE

1. (1) This section applies to a meeting of members or creditors or any class of members or creditors summoned to consider proposals for a compromise or scheme of arrangement; save where expressly provided otherwise in this section, this section shall not authorise, at such a meeting, anything to be done in relation to such proposals by any member or creditor.

2. (6) Section 144 of the Principal Act shall apply to any resolution to which subsection (4) relates which is passed at any adjourned meeting.

24.—Section 24 of the Act of 1990 is hereby amended—

Amendment of section 24 of Act of 1990.

(a) in subsection (2), by the addition of the following paragraph after paragraph (c):

“(d) in case the company is a company referred to in paragraph (b) or (c) of section 3(2), the Central Bank.”,

(b) in subsection (4), by the substitution of the following paragraph for paragraph (a):

[No. 30.] *Companies (Amendment) (No. 2) [1999.] Act, 1999.*

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“(a) unless at least one class of creditors whose interests or claims would be impaired by implementation of the proposals has accepted the proposals, or”,

(c) by the insertion of the following subsection after subsection (4):

“(4A) Without prejudice to subsection (4), the court shall not confirm any proposals in respect of a company to which an examiner has been appointed under section 4 if the proposals would have the effect of impairing the interests of the creditors of the company in such a manner as to favour the interests of the creditors or members of any company to which it is related, being a company to which that examiner has been appointed examiner under section 2 or, as the case may be, 4.”,

(d) in subsection (11), by the deletion in paragraph (b) of “members and”,

and

(e) by the substitution of the following subsection for subsection (12) (inserted by the Companies Act, 1990):

“(12) Notwithstanding subsection (4), or any other provision of this Act, nothing in this Act shall prevent the examiner from including in a report under section 18 proposals which will not involve the impairment of the interests of members or creditors of the company, nor the court from confirming any such proposals.”,

and the said paragraph (b) of the said subsection (11), as so amended, is set out in the Table to this section.

TABLE

(b) the report of an examiner under section 18 concludes that, following the required meetings of creditors of a company under this Act, it has not been possible to reach agreement on a compromise or scheme of arrangement.

Provisions with respect to guarantees.

25.—The Act of 1990 is hereby amended by the insertion of the following section after section 25:

“25A. (1) The following provisions shall have effect in relation to the liability of any person (‘the third person’) whether under a guarantee or otherwise, in respect of a debt (‘the debt’) of a company to which an examiner has been appointed:

(a) subject to paragraph (b) and save where the contrary is provided in an agreement entered into by the third person and the person to whom he is liable in respect of the debt (‘the creditor’), the liability shall, notwithstanding section 24(6), not be affected by the fact that the debt is the subject of a compromise or scheme of arrangement that has taken effect under section 24(9),

(b) neither paragraph (a) nor any of the subsequent provisions of this subsection shall apply if the third person is a company to which an examiner has been appointed,

[1999.] *Companies (Amendment) (No. 2) Act, 1999.* [No. 30.]

(c) if the creditor proposes to enforce by legal proceedings or otherwise the obligation of the third person in respect of the liability, then— Pt.II S.25

(i) he shall—

(I) if 14 days' or more notice is given of such meeting, at least 14 days before the day on which the meeting concerned under section 23 to consider the proposals is held, or

(II) if less than 14 days' notice is given of such meeting, not more than 48 hours after he has received notice of such meeting,

serve a notice on the third person containing an offer in writing by the creditor to transfer to the third person (which the creditor is hereby empowered to do) any rights, so far as they relate to the debt, he may have under section 23 to vote in respect of proposals for a compromise or scheme of arrangement in relation to the company,

(ii) if the said offer is accepted by the third person, that offer shall, if the third person furnishes to the examiner at the meeting concerned a copy of the offer and informs the examiner of his having accepted it, operate, without the necessity for any assignment or the execution of any other instrument, to entitle the third person to exercise the said rights, but neither the said transfer nor any vote cast by the third person on foot of the transfer shall operate to prejudice the right of the creditor to object to the proposals under section 25,

(iii) if the creditor fails to make the said offer in accordance with subparagraph (ii), then, subject to subparagraph (iv), the creditor may not enforce by legal proceedings or otherwise the obligation of the third person in respect of the liability,

(iv) subparagraph (iii) shall not apply if a compromise or scheme of arrangement in relation to the company is not entered into or does not take effect under section 24(9) and the creditor has obtained the leave of the court to enforce the obligation of the third person in respect of the liability,

(d) if the third person makes a payment to the creditor in respect of the liability after the period of protection has expired, then any amount that would, but for that payment, be payable to the creditor in respect of the debt under a compromise or scheme of arrangement that has taken effect under section 24(9) in relation to the company shall become and be payable to the third person upon and subject to the same terms and conditions as the compromise or scheme of arrangement provided that it was to be payable to the creditor.

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(2) Nothing in subsection (1) shall affect the operation of—

(a) section 5(2)(f), or

(b) any rule of law whereby any act done by the creditor referred to in that subsection results in the third person referred to therein being released from his obligation in respect of the liability concerned.”.

Provisions with respect to leases.

26.—The Act of 1990 is hereby amended by the insertion of the following section after section 25A (inserted by *section 25*):

“25B. (1) Subject to subsection (3), proposals for a compromise or scheme of arrangement shall not contain, nor shall any modification by the court under section 24 of such proposals result in their containing, a provision providing for either or both—

(a) a reduction in the amount of any rent or other periodical payment reserved under a lease of land that falls to be paid after the compromise or scheme of arrangement would take effect under section 24(9) or the complete extinguishment of the right of the lessor to any such payments,

(b) as respects a failure—

(i) to pay an amount of rent or make any periodical payment reserved under a lease of land, or

(ii) to comply with any other covenant or obligation of such a lease,

that falls to be paid or complied with after the date referred to in paragraph (a), a requirement that the lessor under such a lease shall not exercise, or shall only exercise in specified circumstances, any right, whether under the lease or otherwise, to recover possession of the land concerned, effect a forfeiture of the lease or otherwise enter on the land or to recover the amount of such rent or other payment or to claim damages or other relief in respect of the failure to comply with such a covenant or obligation.

(2) Subject to subsection (3), proposals for a compromise or scheme of arrangement in relation to a company shall not be held by the court to satisfy the condition specified in paragraph (c)(ii) of section 24(4) if the proposals contain a provision relating to a lease of, or any hiring agreement in relation to, property other than land and, in the opinion of the court—

(a) the value of that property is substantial, and

(b) the said provision is of like effect to a provision referred to in paragraph (a) or (b) of subsection (1).

(3) Subsection (1) or (2) shall not apply if the lessor or owner of the property concerned has consented in writing to the inclusion of the provision referred to in subsection (1) or (2) in the proposals for the compromise or scheme of arrangement.

(4) In deciding, for the purposes of subsection (2), whether the value of the property concerned is substantial the matters to

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which the court shall have regard shall include the length of the unexpired term of the lease or hiring agreement concerned. Pt.II S.26

27.—Section 27 of the Act of 1990 is hereby amended—

Amendment of section 27 of Act of 1990.

(a) by the insertion of “(1)” before “The company or any interested party”, and

(b) by the addition of the following subsection:

“(2) As soon as practicable after the revocation under this section of such a confirmation, a copy of the order made by the court shall be delivered to—

(a) the registrar of companies,

(b) in case the company to which the order relates is a company referred to in paragraph (a) of section 3 (2), the Minister, and

(c) in case the company to which the order relates is a company referred to in paragraph (b) or (c) of section 3(2), the Central Bank,

by such person as the court may direct.”.

28.—Section 29 of the Act of 1990 is hereby amended by the substitution for subsection (3) of the following subsections:

Priority of costs, remuneration and expenses of examiner.

“(3) The remuneration, costs and expenses of an examiner which have been sanctioned by order of the court (other than the expenses referred to in subsection (3A)) shall be paid in full and shall be paid before any other claim, secured or unsecured, under any compromise or scheme of arrangement or in any receivership or winding-up of the company to which he has been appointed.

(3A) Liabilities incurred by the company to which an examiner has been appointed that, by virtue of section 10(1), are treated as expenses properly incurred by the examiner shall be paid in full and shall be paid before any other claim (including a claim secured by a floating charge), but after any claim secured by a mortgage, charge, lien or other encumbrance of a fixed nature or a pledge, under any compromise or scheme of arrangement or in any receivership or winding-up of the company to which he has been appointed.

(3B) In subsections (3) and (3A) references to a claim shall be deemed to include references to any payment in a winding-up of the company in respect of the costs, charges and expenses of that winding-up (including the remuneration of any liquidator).”.

29.—Section 30 of the Act of 1990 is hereby amended by the substitution in subsection (1) of “section 13A, 24 or 27” for “section 17 or 24” and the said subsection (1), as so amended, is set out in the Table to this section.

Amendment of section 30 of Act of 1990.

TABLE

(1) An examiner or, where appropriate, such other person as the court may direct, shall, within 14 days after the delivery to the registrar of companies of every order made under section 13A, 24 or 27, cause to be published in *Iris Oifigiúil* notice of such delivery.

[No. 30.] *Companies (Amendment) (No. 2) [1999.] Act, 1999.*

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Repeals.

30.—The following provisions of the Act of 1990 are hereby repealed—

paragraphs (b) and (c) of section 3(3), sections 14, 15, 16 and 17.

PART III

Exemption from requirement to have accounts audited

Definitions.

31.—In this Part—

“the Act of 1986” means the Companies (Amendment) Act, 1986;

“the exemption” means the non-application, by virtue of *section 32*, of section 160 of the Principal Act and the provisions referred to in *subsection (2) of section 32*;

“financial year” means the financial year of the company concerned;

“private company” does not include an unlimited company other than such a company (being a private company) to which Part III of the 1993 Regulations applies;

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

Exemption from
requirement to have
accounts audited.

32.—(1) Subject to *section 33(1)*, if—

(a) the directors of a private company are of opinion that the company will satisfy the conditions specified in *subsection (3)* in respect of a financial year and decide that the company should avail itself of the exemption in that year (and they record that decision in the minutes of the meeting concerned), and

(b) unless that financial year is the first financial year of the company, the company satisfied the said conditions in respect of the preceding financial year,

then—

(i) without prejudice to *section 35*, section 160 of the Principal Act (which requires the appointment of an auditor to a company) shall not apply to the said company in respect of that financial year, and

(ii) unless and until circumstances, if any, arise in that financial year which result in one or more of the said conditions not being satisfied in respect of that year, the provisions mentioned in *subsection (2)* shall not apply to the said company in respect of that year.

(2) The provisions mentioned in *subsection (1)* are those provisions of the *Companies Acts, 1963 to 1999*, (other than this Part) the 1993 Regulations and the European Communities (Single — Member Private Limited Companies) Regulations, 1994 (S.I. No. 275 of 1994), that apply to the company, being provisions that—

(a) confer any powers on an auditor or require anything to be done by or to or as respects an auditor,

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- (b) make provision on the basis of a report of an auditor having been prepared in relation to the accounts of the company in a financial year, Pt.III S.32

and, without prejudice to the generality of the foregoing, include the provisions specified in the *First Schedule*.

(3) The conditions mentioned in *subsection (1)* are that—

(a) in respect of the year concerned—

- (i) the company is a company to which the Act of 1986 applies,
- (ii) the amount of the turnover of the company does not exceed £250,000,
- (iii) the balance sheet total of the company does not exceed £1,500,000,
- (iv) the average number of persons employed by the company does not exceed 50,
- (v) the company is not—
 - (I) a parent undertaking or a subsidiary undertaking (within the meaning of the European Communities (Companies: Group Accounts) Regulations, 1992 (S.I. No. 201 of 1992)),
 - (II) a holder of a licence under section 9 of the Central Bank Act, 1971, or a company that is exempt from the requirement under that Act to hold such a licence,
 - (III) a company to which the European Communities (Insurance Undertakings: Accounts) Regulations, 1996 (S.I. No. 23 of 1996) apply, or
 - (IV) a company referred to in the *Second Schedule* (other than *paragraph 18* thereof),

and

- (b) a failure to comply with the requirement of section 127(1) of the Principal Act as regards the forwarding, to the registrar of companies, of an annual return in respect of the company does not occur in the year concerned.

(4) In this section “amount of turnover” and “balance sheet total” have the same meaning as they have in section 8 of the Act of 1986.

(5) For the purpose of *subsection (3)(a)(iv)*, the average number of persons employed by a company shall be determined by applying the method of calculation prescribed by paragraph 42(4) of the Schedule to the Act of 1986 for determining the number required by subparagraph (1) of that paragraph to be stated in a note to the accounts of a company.

(6) In the application of this section to any period which is a financial year of a company, but is not in fact a year, the amount specified in *subsection (3)(a)(ii)* shall be proportionally adjusted.

(7) Each occasion of an amendment of the kind referred to in *subsection (8)* being effected shall operate to enable the Minister to amend, by order, *subparagraphs (ii) and (iii) of subsection (3)(a)* by substituting for the amount and the total, respectively, specified in those provisions a greater amount and total (not being an amount or

[No. 30.] *Companies (Amendment) (No. 2) [1999.] Act, 1999.*

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total that is greater than the amount or total it replaces by 25 per cent.).

(8) The amendment referred to in *subsection (7)* is an amendment of the total and the amount specified in paragraphs (a) and (b), respectively, of section 8(2) of the Act of 1986, being an amendment made for the purpose of giving effect to an act adopted by an institution of the European Communities.

Section 32:
supplemental
provisions.

33.—(1) A company shall not avail itself of the exemption in a financial year if any member or members of the company holding shares in the company that confer, in aggregate, not less than one-tenth of the total voting rights in that company requests or request the company not to avail itself of the exemption in that year.

(2) A request referred to in *subsection (1)* shall be contained in a notice served by the member or members concerned on the company in the financial year preceding the financial year concerned (but not later than 1 month before the end of that preceding year).

(3) A notice served under and in accordance with *subsection (2)* shall be valid notwithstanding that *subsection (1)* is not in operation on the date of its being served.

(4) If a company avails itself of the exemption in a financial year, the balance sheet prepared by the company in respect of that year shall contain a statement by the directors of the company that, in respect of that year—

- (a) the company is availing itself of the exemption (and the exemption shall be expressed to be “the exemption provided for by *Part III* of the *Companies (Amendment) (No. 2) Act, 1999*”;
- (b) the company is availing itself of the exemption on the grounds that it satisfies the conditions specified in *section 32*,
- (c) no notice containing the request referred to in *subsection (1)* has been served, in accordance with *subsection (2)*, on the company, and
- (d) the directors acknowledge the obligations of the company, under the *Companies Acts, 1963 to 1999*, to keep proper books of account and prepare accounts which give a true and fair view of the state of affairs of the company at the end of its financial year and of its profit or loss for such a year and to otherwise comply with the provisions of those Acts relating to accounts so far as they are applicable to the company.

(5) The statement required by *subsection (4)* shall appear in the balance sheet in a position immediately above the signatures of the directors required by section 156 of the Principal Act or, as the case may be, the statement required by section 18(2) of the Act of 1986.

(6) If *subsection (4)* or (5) is not complied with, the company and every officer of the company who is in default shall be guilty of an offence and be liable to a fine.

(7) The reference in *subsection (1)* to a voting right in a company shall be construed as a reference to a right exercisable for the time being to cast, or to control the casting of, a vote at general meetings of members of the company, not being such a right that is exercisable only in special circumstances.

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34.—(1) If a company—

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- (a) decides that the appointment of a person as auditor to the company should not be continued during the whole or part of a financial year in which the exemption is being availed of in relation to the company, and
- (b) decides, accordingly, to terminate the appointment of that person as auditor to the company,

Removal of auditor consequent on exemption being availed of.

then—

- (i) that person shall, within the period of 21 days beginning on the date of his or her being notified by the company of that decision, serve a notice on the company containing the statement referred to in *subsection (2)*,
- (ii) unless and until that person serves such a notice, any purported termination of his or her appointment as auditor to the company shall not have effect.

(2) The statement to be contained in a notice under *subsection (1)(i)* shall be whichever of the following is appropriate, namely—

- (a) a statement to the effect that there are no circumstances connected with the decision of the company referred to in *subsection (1)* that he or she considers should be brought to the notice of the members or creditors of the company, or
- (b) a statement of any such circumstances as aforesaid.

(3) Where a notice under *subsection (1)(i)* is served on a company—

- (a) the auditor concerned shall, within 14 days after the date of such service, send a copy of the notice to the registrar of companies, and
- (b) subject to *subsection (4)*, the company shall, if the notice contains a statement referred to in *subsection (2)(b)*, within 14 days after the date of such service, send a copy of the notice to every person who is entitled under section 159(1) of the Principal Act to be sent copies of the documents referred to in the said section 159(1).

(4) Copies of a notice served on a company under *subsection (1)* need not be sent to the persons specified in *subsection (3)(b)*, if, on the application of the company concerned or any other person who claims to be aggrieved, the court is satisfied that the notice contains material which has been included to secure needless publicity for defamatory matter and the court may order the company's costs on an application under this subsection to be paid in whole or in part by the auditor concerned notwithstanding that he or she is not a party to the application.

(5) Subsection (2A) (inserted by the Companies Act, 1990) of section 161 of the Principal Act shall not apply to an auditor as respects his or her removal from office in the circumstances referred to in *subsection (1)*.

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Appointment of auditor consequent on exemption ceasing to have effect.

35.—(1) Whenever the exemption ceases to have effect in relation to a company by reason of circumstances referred to in *section 32(1)(ii)* arising in the financial year concerned, it shall be the duty of the directors of the company to appoint an auditor to the company as soon as may be after those circumstances arise and such an appointment may be made by the directors notwithstanding the provisions of *section 160* of the Principal Act.

(2) An auditor appointed pursuant to *subsection (1)* shall hold office until the conclusion of the next meeting of the company held after his or her appointment at which accounts are required to be laid.

(3) If the directors of the company fail to carry out their duty under *subsection (1)*, the company in general meeting may appoint an auditor to the company and *subsection (2)* shall apply to an auditor appointed by it.

Application of Part.

36.—This Part shall apply to a company as respects a financial year that commences on or after the commencement of this Part.

False statements in returns, balance sheets, etc.

37.—(1) If a person in any return, statement, balance sheet or other document required by or for the purposes of any provision of this Part wilfully makes a statement, false in any material particular, knowing it to be so false, he or she shall be guilty of an offence.

(2) A person guilty of an offence under this section shall be liable—

(a) on summary conviction, to a fine not exceeding £1,000 or imprisonment for a term not exceeding 12 months or both, or

(b) on conviction on indictment, to a fine not exceeding £10,000 or imprisonment for a term not exceeding 3 years or both.

Application of Part to partnerships to which Part III of the 1993 Regulations applies.

38.—This Part shall apply to a partnership to which Part III of the 1993 Regulations applies as this Part applies to a private company with the following modifications—

(a) the substitution in this Part for references to *section 160* of the Principal Act of references to *Regulation 22* of the 1993 Regulations,

(b) the substitution in this Part for references to other provisions of the *Companies Acts, 1963 to 1999*, of references to so much of those provisions as are applied to partnerships by the 1993 Regulations,

(c) the substitution in this Part for references to directors of a company of references to partners of a partnership,

and any other necessary modifications (including any modifications necessary to take account of the fact that such partnerships are unincorporated).

Saving.

39.—Nothing in this Part shall authorise the removal of an auditor from office which, apart from this Part, would not be lawful.

[1999.] *Companies (Amendment) (No. 2) Act, 1999.* [No. 30.]

PART IV

Miscellaneous

40.—Section 16 of the Investment Limited Partnerships Act, 1994, is hereby amended by the substitution of the following subsection for subsection (10):

Amendment of section 16 of Investment Limited Partnerships Act, 1994.

“(10) An auditor who fails to comply with subsection (3), (4) or (6) shall be guilty of an offence.”.

41.—Section 240 of the Companies Act, 1990, is hereby amended by the substitution for subsection (5) of the following subsections:

Amendment of section 240 of Companies Act, 1990.

“(5) Notwithstanding section 10(4) of the Petty Sessions (Ireland) Act, 1851, summary proceedings in relation to an offence under the Companies Acts may be commenced—

- (a) at any time within 3 years from the date on which the offence was committed, or
- (b) if, at the expiry of that period, the person against whom the proceedings are to be brought is outside the State, within 6 months from the date on which he next enters the State, or
- (c) at any time within 3 years from the date on which evidence that, in the opinion of the person by whom the proceedings are brought, is sufficient to justify the bringing of the proceedings comes to that person’s knowledge,

whichever is the later.

(5A) For the purpose of subsection (5)(c), a certificate signed by or on behalf of the person bringing the proceedings as to the date on which the evidence referred to in that provision relating to the offence concerned came to his knowledge shall be *prima facie* evidence thereof and in any legal proceedings a document purporting to be a certificate issued for the purpose of this subsection and to be so signed shall be deemed to be so signed and shall be admitted as evidence without proof of the signature of the person purporting to sign the certificate.”.

42.—(1) A company shall not be formed and registered under the *Companies Acts, 1963 to 1999*, after the commencement of this section, unless it appears to the registrar of companies that the company, when registered, will carry on an activity in the State, being an activity that is mentioned in its memorandum.

Additional requirement to be complied with before company may be formed.

(2) The registrar of companies may accept as sufficient evidence that a company, when registered, will carry on an activity in the State a statutory declaration, in the prescribed form, that the purpose or one of the purposes for which the company is being formed is the carrying on by it of an activity in the State and which declaration includes the following particulars—

- (a) if it appears to the person making the declaration that the activity belongs to a division, group and class appearing in the relevant classification system—
 - (i) the general nature of the activity, and

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(ii) the division, group and class in that system to which the activity belongs,

(b) if it appears to the said person that the activity does not belong to any such division, group and class, a precise description of the activity,

(c) the place or places in the State where it is proposed to carry on the activity,

(d) the place, whether in the State or not, where the central administration of the company will normally be carried on.

(3) For the purposes of *subsection (2)*, if the purpose or one of the purposes for which the company is being formed is the carrying on of 2 or more activities in the State, the particulars in respect of the matters referred to in *paragraphs (a) to (c)* of that subsection to be given in the statutory declaration shall be the particulars that relate to whichever of those activities the person making the declaration considers to be the principal activity for which the company is being formed to carry on in the State.

(4) The statutory declaration referred to in *subsection (2)* shall be made by—

(a) one of the persons named in the statement delivered under section 3 of the Companies (Amendment) Act, 1982, in relation to the company as directors of the company,

(b) the person or, as the case may be, one of the persons named in the said statement as secretary or joint secretaries of the company, or

(c) the solicitor, if any, engaged in the formation of the company.

(5) The form prescribed for the purposes of the statutory declaration referred to in *subsection (2)* may enable the declarant to include therein a declaration as to the matters referred to in section 5(5) of the Companies (Amendment) Act, 1983, and such a declaration that is so included shall suffice for the purposes of that section 5(5) as if it had been separately made and delivered to the registrar of companies.

(6) Without prejudice to its construction for the purposes of any other provision of that section, the expression “the requirements mentioned in subsection (1)” in subsection (5) of section 5 of the Companies (Amendment) Act, 1983, shall not be construed as including the requirements of this section.

(7) In this section—

“activity” means any activity that a company may be lawfully formed to carry on and includes the holding, acquisition or disposal of property of whatsoever kind;

“relevant classification system” means NACE Rev.1, that is to say, the common basis for statistical classifications of economic activities within the European Community set out in the Annex to Council Regulation (EEC) No. 3037/90 of 9 October 1990⁽¹⁾ on the statistical

⁽¹⁾O.J. No. L.293/1, 24 October 1990

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classification of economic activities in the European Community, as amended for the time being. Pt.IV S.42

43.—(1) Subject to *subsection (3)* and *section 44*, one, at least, of the directors for the time being of a company, not being a company referred to in *subsection (2)*, shall, on and from the commencement of this section, be a person who is resident in the State. Company to have director resident in the State.

(2) Subject to *subsection (3)* and *section 44*, one, at least, of the directors for the time being of a company, being—

- (a) a company the memorandum of which was delivered to the registrar of companies for registration under section 17 of the Principal Act before the commencement of this section, or
- (b) an existing company (within the meaning of the Principal Act),

shall, on and from the date that is 12 months after the commencement of this section, be a person who is resident in the State.

(3) *Subsection (1)* or *(2)*, as the case may be, shall not apply in relation to a company if the company for the time being holds a bond, in the prescribed form, in force to the value of £20,000 and which provides that, in the event of a failure by the company to pay the whole or part of—

- (a) a fine, if any, imposed on the company in respect of an offence under the *Companies Acts, 1963 to 1999*, committed by it, being an offence which is prosecutable by the registrar of companies, and
- (b) (i) a fine, if any, imposed on the company in respect of an offence under section 1078 of the *Taxes Consolidation Act, 1997*, committed by it, being an offence that consists of a failure by the company to deliver a statement which it is required to deliver under section 882 of that Act or to comply with a notice served on it under section 884 of that Act, and
(ii) a penalty, if any, which it has been held liable to pay under section 1071 or 1073 of the *Taxes Consolidation Act, 1997*,

there shall become payable under the bond to a person nominated for the purpose (“the nominated person”) by the registrar of companies or the Revenue Commissioners, as appropriate, (or jointly by the registrar and the Commissioners in the case of both a fine referred to in *paragraph (a)* and a fine or penalty, or a fine and penalty, referred to in *paragraph (b)*), a sum of money for the purposes of that sum being applied by the nominated person in discharging the whole or part, as the case may be, of the company’s liability in respect of any such fine or penalty, and any sum that becomes so payable shall be applied by the nominated person accordingly.

(4) The bond referred to in *subsection (3)* may be entered into and shall have effect according to its terms notwithstanding any rule of law whereby any agreement to insure or indemnify a person in respect of any punishment or liability imposed on him or her in

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relation to any offence or unlawful act committed by him or her is void or unenforceable.

(5) The bond referred to in *subsection (3)* shall also provide that, in addition to the sum referred to in that subsection, there shall become payable under the bond to the nominated person, on demand being made, with the consent of the Revenue Commissioners, by him or her in that behalf, a sum of money, not exceeding such sum as the Revenue Commissioners and the Minister may sanction, for the purpose of defraying such expenses as may have been reasonably incurred by that person in carrying out his or her duties under *subsection (3)*.

(6) The nominated person shall keep all proper and usual accounts, including an income and expenditure account and a balance sheet, of all moneys received by him or her on foot of the bond referred to in *subsection (3)* and of all disbursements made by him or her from any such moneys.

(7) The Minister, after consultation with the Minister for Finance, the Revenue Commissioners and any other person whom, in the opinion of the Minister, might be concerned with or interested in the matter, may prescribe—

- (a) that arrangements in relation to the bond referred to in *subsection (3)* shall only be entered into with persons of a prescribed class or classes,
- (b) the form of that bond and the minimum period to be specified in the bond as being the period for which it shall be valid.

(8) A copy of the bond referred to in *subsection (3)* held by a company shall be appended—

- (a) in case none of the directors of the company is resident in the State on its incorporation, to the statement required by section 3 of the Companies (Amendment) Act, 1982, to be delivered to the registrar of companies in relation to the company,
- (b) in case a notification is made under *subsection (9)* to the registrar of companies in relation to the company, to that notification,
- (c) in case during the period to which an annual return concerning the company relates none of the directors of the company is resident in the State, to that annual return (unless such a copy has been appended to a notification under *subsection (9)* made to the registrar of companies in that period).

(9) Without prejudice to anything in section 195 (as amended by this Act) of the Principal Act, if a person ceases to be a director of a company and, at the time of that cessation—

- (a) he or she is resident in the State, and
- (b) to his or her knowledge, no other director of the company is resident in the State,

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that person shall, within 14 days after that cessation, notify, in writing, the registrar of companies of that cessation and the matter referred to in *paragraph (b)*. Pt.IV S.43

(10) A notification in writing to the registrar of companies of the matter referred to in *subsection (9)(b)* shall not, of itself, be regarded as constituting defamatory matter.

(11) If a person fails to comply with *subsection (9)*, he or she shall be jointly and severally liable with the company of which he or she has ceased to be a director for any fine or penalty referred to in *subsection (3)* imposed on the company or which it is held liable to pay after that cessation, and any such fine or penalty for which that person is so liable may be recovered by the registrar of companies or the Revenue Commissioners, as appropriate, from him or her as a simple contract debt in any court of competent jurisdiction.

(12) Any provision of a company's articles shall be void in so far as it has the effect of prohibiting a person who is resident in the State from being a director of the company.

(13) If *subsection (1)* or, as the case may be, *subsection (2)* is not complied with, the company concerned and every officer of the company who is in default shall be guilty of an offence.

(14) Summary proceedings in relation to an offence under *subsection (13)* may be brought and prosecuted by the registrar of companies.

(15) The provisions of section 311 of the Principal Act shall apply for the purposes of this section as they apply for the purposes of that section 311, subject to the following modifications—

- (a) for subsections (1) and (2) thereof (inserted by the Companies (Amendment) Act, 1982) there shall be substituted the following subsections:

“(1) Where the registrar of companies has reasonable cause to believe that *subsection (1)* or, as the case may be, *subsection (2)* of *section 43* of the *Companies (Amendment) (No. 2) Act, 1999*, is not being complied with in relation to a company, he may send to the company by post a registered letter requesting the company to furnish to him evidence that the provision concerned is being complied with and stating that, if that request is not complied with within 1 month from the date of that letter, a notice will be published in *Iris Oifigiúil* with a view to striking the name of the company off the register.

(2) If the registrar does not, within 1 month after sending the letter, receive evidence from the company that satisfies him that *subsection (1)* or, as the case may be, *subsection (2)* of *section 43* of the *Companies (Amendment) (No. 2) Act, 1999*, is being complied with in relation to the company, he may publish in *Iris Oifigiúil* and send to the company by registered post a notice that, at the expiration of 1 month from the date of that notice, the name of the company mentioned therein will, unless cause is shown to the contrary, be struck off the register, and the company will be dissolved.”,

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(b) in subsection (8), there shall be substituted for “if satisfied that the company was at the time of the striking off carrying on business”, “if satisfied that *subsection (1)* or, as the case may be, *subsection (2)* of *section 43* of the *Companies (Amendment) (No. 2) Act, 1999*, was at the time of the striking off being complied with in relation to the company”.

Section 43:
supplemental
provisions.

44.—(1) *Subsection (1)* or, as the case may be, *subsection (2)* of *section 43* shall not apply in relation to a company in respect of which there is in force a certificate under this section.

(2) The registrar of companies may grant to a company, on application in the prescribed form being made by it in that behalf, a certificate stating that the company has a real and continuous link with one or more economic activities that are being carried on in the State.

(3) The registrar of companies shall not grant such a certificate unless the company concerned tenders proof to him or her that it has such a link.

(4) A statement referred to in *subsection (5)* that is tendered by the applicant shall be deemed to be proof, for the purposes of *subsection (3)*, that the applicant has such a link.

(5) The statement mentioned in *subsection (4)* is a statement in writing that has been given to the company concerned by the Revenue Commissioners within the period of 2 months ending on the date on which an application is made under *subsection (2)* by the company and which states that the Revenue Commissioners have reasonable grounds to believe that the company has a real and continuous link with one or more economic activities being carried on in the State.

(6) If, in consequence of information that has come into the possession of the registrar, the registrar of companies is of opinion that a company in respect of which a certificate under *subsection (2)* has been granted has ceased to have a real and continuous link with any economic activity being carried on in the State, he or she shall revoke that certificate.

(7) If, in consequence of information that has come into their possession, the Revenue Commissioners are of opinion that a company in respect of which a certificate under *subsection (2)* has been granted has ceased to have a real and continuous link with any economic activity being carried on in the State, then notwithstanding any obligations as to secrecy or other restrictions upon disclosure of information imposed by or under statute or otherwise, they may give a notice in writing to the registrar of companies stating that they are of that opinion and such a notice that is received by the registrar shall constitute information in his or her possession for the purposes of *subsection (6)*.

(8) For the purposes of *section 43*, a person is resident in the State at a particular time (“the relevant time”) if—

(a) he or she is present in the State at—

(i) any one time or several times in the period of 12 months preceding the relevant time (“the immediate

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12 month period”) for a period in the aggregate amounting to 183 days or more, or

(ii) any one time or several times—

(I) in the immediate 12 month period, and

(II) in the period of 12 months preceding the immediate 12 month period (“the previous 12 month period”),

for a period (being a period comprising in the aggregate the number of days on which the person is present in the State in the immediate 12 month period and the number of days on which the person is present in the State in the previous 12 month period) in the aggregate amounting to 280 days or more,

or

(b) that time is in a year of assessment (within the meaning of the Taxes Consolidation Act, 1997) in respect of which the person has made an election under section 819(3) of that Act.

(9) Notwithstanding *subsection (8)(a)(ii)*, where in the immediate 12 month period concerned a person is present in the State at any one time or several times for a period in the aggregate amounting to not more than 30 days—

(a) the person shall not be resident in the State, for the purposes of *section 43*, at the relevant time concerned, and

(b) no account shall be taken of the period for the purposes of the aggregate mentioned, in *subsection (8)(a)(ii)*.

(10) For the purposes of *subsections (8) and (9)*—

(a) references in this section to a person’s being present in the State are references to the person’s being personally present in the State, and

(b) a person shall be deemed to be present in the State for a day if the person is present in the State at the end of the day.

(11) An application under *subsection (2)* may be made, and a certificate under that subsection may be granted, before the commencement of *subsection (1) or (2) of section 43*.

45.—(1) A person shall not, at a particular time, be a director of more than 25 companies. Limitation on number of directorships.

(2) In *subsection (1)*, (but not any other subsection of this section) “director” includes a shadow director (within the meaning of the Companies Act, 1990).

(3) In reckoning, for the purposes of *subsection (1)*, the number of companies of which the person concerned is a director at a particular time the following provisions shall apply—

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(a) without prejudice to *paragraph (b)* or *subsection (4)*, there shall not be included any of the following companies of which he or she is a director at that time, namely—

(i) a public limited company,

(ii) a public company (within the meaning of the Companies (Amendment) Act, 1983),

(iii) a company in respect of which a certificate under *section 44(2)* is in force,

(b) there shall not be included any company of which he or she is a director at that time (not being a time that is before the date of the giving of the certificate or direction referred to hereafter in this paragraph) if—

(i) he or she, or the company, delivers to the registrar of companies a notice, in the prescribed form, stating that the company is a company falling within one or more of the categories of company specified in the Table to this section, and

(ii) either—

(I) the registrar of companies, having considered the said notice and having made such enquiries as he or she thinks fit, certifies in writing, or as the case may be the Minister under *subsection (6)* so certifies, that the company is a company falling within one or more of the categories aforesaid, or

(II) the Minister directs, under *subsection (6)*, that the company is not to be included amongst the companies that shall be reckoned for the purposes aforesaid,

(c) there shall be counted as the one company of which he or she is a director at that time, 2 or more companies of which he or she is a director at that time if one of those companies is the holding company of the other or others.

(4) Without prejudice to *subsection (3)*, in reckoning, for the purposes of *subsection (1)*, the number of companies of which the person concerned is a director at a particular time, being a time that is before the expiration of the period of 12 months from the commencement of this section, there shall not be included any company of which the person is a director at that time if he or she was such a director immediately before such commencement.

(5) For the purposes of *subsection (3)(b)(ii)*, the registrar of companies may accept as sufficient evidence that the company concerned falls within a category of company specified in the Table to this section a statutory declaration, in the prescribed form, to that effect made by an officer of the company or the other person referred to in *subsection (3)(b)(i)*.

(6) If the registrar of companies refuses to certify that the company to which a notice under *subsection (3)(b)* relates is a company falling within a category of company specified in the Table to this section, the company or the person referred to in that subsection may appeal to the Minister against such a refusal and the Minister

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may, having considered the matter and made such enquiries as he or she thinks fit, do one of the following— Pt.IV S.45

- (a) confirm the decision of the registrar of companies,
- (b) certify in writing that the company is a company falling within a category aforesaid, or
- (c) notwithstanding that he or she confirms the decision of the registrar of companies, if—
 - (i) the person concerned was a director of the company before the commencement of this section, and
 - (ii) in the opinion of the Minister the inclusion of the company amongst the companies that shall be reckoned for the purposes of *subsection (1)*, in so far as that subsection applies to the person concerned, would result in serious injustice or hardship to that person, and
 - (iii) the giving of a direction under this subsection would not operate against the common good,

direct that the company is not to be included amongst the companies that shall be reckoned for the purposes of *subsection (1)* in so far as that subsection applies to the person concerned.

(7) A notice referred to in *subsection (3)(b)(i)* may, for the purposes of that provision, be delivered to the registrar of companies before the person concerned becomes a director of the company to which the notice relates.

(8) If a person, in contravention of *subsection (1)*, becomes or remains a director or shadow director of one or more companies he or she shall be guilty of an offence.

(9) An appointment of a person as a director of a company made after the commencement of this section shall, if it contravenes *subsection (1)*, be void.

(10) An appointment of a person as a director of a company made before the commencement of this section, being an appointment which, but for this section, would subsist on or after the expiration of the period of 12 months from that commencement, shall, if its subsistence at any time on or after the expiration of that period contravenes *subsection (1)*, cease to have effect upon that contravention occurring.

(11) For the avoidance of doubt—

- (a) each appointment, in excess of the limit (reckoned in accordance with *subsections (3) and (4)*) that is provided for by *subsection (1)*, of a person as a director of a company shall constitute a separate contravention of that subsection,
- (b) an appointment, not in excess of the said limit, of a person as a director of a company shall not, by virtue of this section, become unlawful, be rendered void or cease to have effect by reason of a subsequent appointment, in

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excess of that limit, of the person as a director of a company,

- (c) in determining whether one particular appointment referred to in *subsection (10)*, as distinct from another such appointment, has ceased to have effect by virtue of that subsection or whether a person's remaining in office under one such appointment, as distinct from another such appointment, constitutes an offence under *subsection (8)*, the provisions of this section (other than *subsections (3)(b), (5), (6), (7) and (8)*) shall be deemed to have been in operation at the time of the making of that appointment.

(12) If—

- (a) the appointments of a person as a director of 2 or more companies are made at the same time, or
- (b) the times at which the appointments of a person as a director of 2 or more companies were made are not capable of being distinguished from one another,

then those appointments shall, for the purposes of this section, be deemed to have been made at different times on the day concerned and in the same order as the order in which the companies to which the appointments relate were registered under the *Companies Acts, 1963 to 1999*.

(13) Summary proceedings in relation to an offence under *subsection (8)* may be brought and prosecuted by the registrar of companies.

TABLE

1. A company that is the holder of a licence under section 9 of the Central Bank Act, 1971, or is exempt from the requirement under that Act to hold such a licence.
2. A company referred to in the *Second Schedule*.

Power of registrar to strike company off register for failure to make annual return.

46.—The Companies (Amendment) Act, 1982, is hereby amended by the substitution of the following sections for section 12 (as amended by the Companies Act, 1990):

“12. (1) Without prejudice to the generality of section 311 of the Principal Act, where a company does not, for one or more years, make an annual return required by section 125 or 126 of the Principal Act, the registrar of companies may send to the company by post a registered letter stating that, unless all annual returns which are outstanding are delivered to him within 1 month of the date of the letter, a notice will be published in *Iris Oifigiúil* with a view to striking the name of the company off the register.

(2) If the registrar of companies either receives an answer to the effect that the company is not carrying on business, or does not within 1 month after sending the letter receive all annual returns which are outstanding, he may publish in *Iris Oifigiúil* a notice stating that, at the expiration of 1 month from the date of that notice, the name of the company mentioned therein will, unless all outstanding returns are delivered to the registrar, be struck off the register, and the company will be dissolved.

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(3) Subject to subsections (1) and (2) of section 12B of this Act, at the expiration of the time mentioned in the notice, the registrar of companies may, unless cause to the contrary is previously shown by the company, strike its name off the register, and shall publish notice thereof in *Iris Oifigiúil* and on the publication in *Iris Oifigiúil* of this notice, the company shall be dissolved. Pt.IV S.46

12A. (1) Where the Revenue Commissioners give a notice in writing under subsection (3) of section 882 (inserted by the Finance Act, 1999) of the Taxes Consolidation Act, 1997, to the registrar of companies stating that a company has failed to deliver a statement which it is required to deliver under that section, then, without prejudice to section 311 of the Principal Act or section 12 of this Act, the registrar may send to the company by post a registered letter stating that, unless the company delivers to the Revenue Commissioners the said statement within 1 month of the date of the letter, a notice will be published in *Iris Oifigiúil* with a view to striking the name of the company off the register.

(2) If the statement referred to in subsection (1) of this section is not delivered by the company concerned to the Revenue Commissioners within 1 month after the sending of the letter referred to in that subsection, the registrar of companies may publish in *Iris Oifigiúil* a notice stating that, at the expiration of 1 month from the date of that notice, the name of the company mentioned therein will, unless the said statement is delivered to the Revenue Commissioners, be struck off the register, and the company will be dissolved.

(3) Subject to subsections (1) and (2) of section 12B of this Act, at the expiration of the time mentioned in the notice, the registrar of companies may, unless cause to the contrary is previously shown by the company, strike its name off the register, and shall publish notice thereof in *Iris Oifigiúil* and on the publication in *Iris Oifigiúil* of this notice, the company shall be dissolved.

12B. (1) The liability, if any, of every director, officer and member of a company the name of which has been struck off the register under section 12(3) or 12A(3) of this Act shall continue and may be enforced as if the company had not been dissolved.

(2) Nothing in subsection (1) of this section or section 12(3) or 12A(3) of this Act shall affect the power of the court to wind up a company the name of which has been struck off the register.

(3) If any member, officer or creditor of a company is aggrieved by the fact of the company's having been struck off the register under section 12(3) or 12A(3) of this Act, the court, on an application made (on notice to the registrar of companies, the Revenue Commissioners and the Minister for Finance) by the member, officer or creditor, before the expiration of 20 years from the publication in *Iris Oifigiúil* of the notice referred to in section 12(3) or, as the case may be, 12A(3) of this Act, may, if satisfied that it is just that the company be restored to the register, order that the name of the company be restored to the register, and, subject to subsection (4) of this section, upon an office

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copy of the order being delivered to the registrar for registration, the company shall be deemed to have continued in existence as if its name had not been struck off; and the court may by the order give such directions and make such provisions as seem just for placing the company and all other persons in the same position as nearly as may be as if the name of the company had not been struck off or make such other order as seems just (and such other order is referred to in subsection (4) of this section as an 'alternative order').

(4) An alternative order may, if the court considers it appropriate that it should do so, include a provision that, as respects a debt or liability incurred by, or on behalf of, the company during the period when it stood struck off the register, the officers of the company or such one or more of them as is or are specified in the order shall be liable for the whole or a part (as the court thinks just) of the debt or liability.

(5) The court shall, unless cause is shown to the contrary, include in an order under subsection (3) of this section, being an order made on the application of a member or officer of the company, a provision that the order shall not have effect unless, within 1 month from the date of the court's order—

(a) if the order relates to a company that has been struck off the register under section 12(3) of this Act, all outstanding annual returns required by section 125 or 126 of the Principal Act are delivered to the registrar of companies,

(b) if the order relates to a company that has been struck off the register under section 12A(3) of this Act, all outstanding statements required by section 882 of the Taxes Consolidation Act, 1997, are delivered to the Revenue Commissioners.

(6) The court shall, in making an order under subsection (3) of this section, being an order that is made on the application of a creditor of the company, direct that one or more specified members or officers of the company shall, within a specified period—

(a) if the order relates to a company that has been struck off the register under section 12(3) of this Act, deliver all outstanding annual returns required by section 125 or 126 of the Principal Act to the registrar of companies,

(b) if the order relates to a company that has been struck off the register under section 12A(3) of this Act, deliver all outstanding statements required by section 882 of the Taxes Consolidation Act, 1997, to the Revenue Commissioners.

(7) The court, on an application made by the registrar of companies (on notice to each person who, to his knowledge, is an officer of the company) before the expiration of 20 years from the publication in *Iris Oifigiúil* of the notice referred to in section 12(3) or, as the case may be, 12A(3) of this Act, may, if satisfied that it is just that the company be restored to the register, order that the name of a company which has been struck off the register under the said section 12(3) or 12A(3) be restored to the register and, upon the making of the order by the court,

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the company shall be deemed to have continued in existence as if its name had not been struck off; and the court may by the order give such directions and make such provisions as seem just for placing the company and all other persons in the same position as nearly as may be as if the name of the company had not been struck off or make such other order as seems just (and such other order may, if the court considers it appropriate that it should do so, include a provision of the kind referred to in subsection (4) of this section).

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(8) A letter or notice to be sent under this section to a company may be addressed to the company at its registered office, or, if no office has been registered, to the care of some officer of the company, or, if there is no officer of the company whose name and address are known to the registrar of companies, may be sent to each of the persons who subscribed to the memorandum, addressed to him at the address mentioned in the memorandum.

(9) Without prejudice to section 2(1) of the Principal Act where such an application is made by any other person, in the case of an application under this section that is made by a creditor of the company or the registrar of companies, 'the court', for the purposes of this section, means the Circuit Court.

(10) An application under this Act to the Circuit Court by a creditor of the company concerned shall be made to the judge of the Circuit Court for the circuit in which the registered office of the company was, immediately before it was struck off the register, situated or, if no office was registered at that time, for the circuit in which the creditor resides or, in case the creditor resides outside the State, for the Dublin Circuit.

(11) An application under this section to the Circuit Court by the registrar of companies shall be made to the judge of the Circuit Court for the Dublin Circuit.

12C. (1) Without prejudice to the provisions of section 311(8) or 311A(1) of the Principal Act or subsection (3) or (7) of section 12B of this Act, if a member or officer of a company is aggrieved by the fact of the company's having been struck off the register under section 12A(3) of this Act, the registrar of companies, on an application made in the prescribed form by the member or officer before the expiration of 12 months from the publication in *Iris Oifigiúil* of the notice striking the company name from the register, and provided he has received confirmation from the Revenue Commissioners that all outstanding, if any, statements required by section 882 of the Taxes Consolidation Act, 1997, have been delivered to the Revenue Commissioners, may restore the name of the company to the register.

(2) Upon the registration of an application under subsection (1) of this section and on payment of such fees as may be prescribed, the company shall be deemed to have continued in existence as if its name had not been struck off.

(3) Subject to any order made by the court in the matter, the restoration of the name of a company to the register under this section shall not affect the rights or liabilities of the company in respect of any debt or obligation incurred, or any contract entered into by, to, with or on behalf of, the company between the date of its dissolution and the date of such restoration.

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12D. If the question of whether a statement which a company has failed to deliver to the Revenue Commissioners in accordance with section 882(3) of the Taxes Consolidation Act, 1997, has or has not been subsequently delivered to them falls to be determined for the purpose of the exercise by the registrar of companies of any of the powers under sections 12A to 12C of this Act, the Revenue Commissioners may, notwithstanding any obligations as to secrecy or other restriction upon disclosure of information imposed by or under statute or otherwise, disclose to the registrar any information in their possession required by him for the purpose of that determination.”.

Amendment of section 195 of Principal Act.

47.—Section 195 of the Principal Act (inserted by section 51 of the Companies Act, 1990) is hereby amended—

(a) by the deletion of subsection (8), and

(b) by the insertion after subsection (11) of the following subsections:

“(11A) If a company fails to send, in accordance with subsection (6), a notification, in the prescribed form, to the registrar of companies of the fact of a person’s having ceased, for whatever reason, to be a director or secretary of the company and of the date on which that event occurred that person may serve on the company a notice—

(a) requesting it to send forthwith the notification of that matter, in the prescribed form, to the registrar, and

(b) stating that if the company fails to comply with that request within 21 days of the service of the notice on it, he will forward to the registrar of companies and to every person who, to his knowledge, is an officer of the company a copy of any notice of resignation by him as a director or secretary of the company or any other documentary proof of his having ceased to be such a director or secretary together with—

(i) in the case of the registrar of companies, such additional information as may be prescribed (which may include a statutory declaration made by the person stating the names of the persons who, to his knowledge, are officers of the company), and

(ii) in the case of every other person as aforesaid, a written request of the person that he take such steps as will ensure that the failure of the company to comply with the notice continues no further.

(11B) If a company fails to comply with a request made of it under a notice referred to in subsection (11A) the person who served the notice may forward to the registrar of companies and to every person who, to his knowledge, is an officer of the company a copy of the notice of resignation or other documentary proof referred to in subsection (11A) if, but only if, there is forwarded

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together with that notice or proof, in the case of the registrar, the additional information referred to in that subsection and, in the case of every other person as aforesaid, the written request referred to in that subsection. Pt.IV S.47

(11C) No notice of resignation or other documentary proof of a person's having ceased to be a director or secretary of a company which is forwarded to the registrar of companies by that person (other than such a notice or other proof which is forwarded by him under and in accordance with subsections (11A) and (11B), or section 43(9) of the *Companies (Amendment) (No. 2) Act, 1999*) shall be considered by the registrar.

(11D) No additional information referred to in subsection (11A)(b)(i) that is included in a notice of resignation or other documentary proof referred to in this section which is forwarded, under and in accordance with the foregoing provisions, to the registrar of companies shall, of itself, be regarded as constituting defamatory matter.

(11E) Any person may give notice (accompanied by such proof of the matter concerned as may be prescribed) to the registrar of companies of the fact that a person holding the office of director or secretary of a particular company has died.”.

48.—The fact that, for the time being, in consequence of the forwarding to the registrar, under and in accordance with subsections (11A) and (11B) of section 195 of the Principal Act, of a copy of a notice of resignation or other documentary proof of a person's having ceased to be a director of the company concerned, there are no persons recorded in the office of the registrar of companies as being directors of a particular company shall, for the purposes of section 311 of the Principal Act, afford the registrar of companies good grounds for believing that the company is not carrying on business, and for so believing with the cause requisite for the exercise by him or her of the powers conferred by subsection (1) of that section 311 in relation to the company.

Exercise of power to strike company off register where it is not carrying on business.

49.—Section 311 of the Principal Act is hereby amended—

Amendment of section 311 of Principal Act.

(a) in subsection (8), by the substitution for “as if the name of the company had not been struck off.” of “as if the name of the company had not been struck off or make such other order as seems just (and such other order is referred to in subsection (8A) as an ‘alternative order’).”, and

(b) by the insertion after subsection (8) of the following subsection:

“(8A) An alternative order may, if the court considers it appropriate that it should do so, include a provision that, as respects a debt or liability incurred by, or on behalf of, the company during the period when it stood struck off the register, the officers of the company or such one or more of them as is or are specified in the order shall be liable for the whole or part (as the court thinks just) of the debt or liability.”.

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Amendment of section 311A of Principal Act.

50.—Section 311A (inserted by the Companies Act, 1990) of the Principal Act is hereby amended by the substitution in subsection (1) for “Without prejudice to the provisions of section 311(8) of this Act and section 12(6) of the Companies (Amendment) Act, 1982,” of “Without prejudice to the provisions of section 311(8) of this Act or subsection (3) or (7) of section 12B, or subsection (1) of section 12C, of the Companies (Amendment) Act, 1982,”.

Amendment of section 8 of Companies (Amendment) Act, 1983.

51.—Section 8 of the Companies (Amendment) Act, 1983, is hereby amended in subsection (3) by the substitution for “(7) and (8)” of “(7), (8) and (8A)”.

Performance of duties of registrar of companies.

52.—(1) Any act referred to in subsection (4) of section 368 of the Principal Act which, before the commencement of this section, was done to or by—

- (a) an assistant registrar appointed under subsection (2) of that section, or
- (b) any other person employed in the office of the registrar of companies to perform generally duties under any enactment referred to in that subsection,

shall be valid and be deemed always to have been valid as if the Minister had directed under that subsection (4) that such an act was to be done to or by such an assistant registrar or other such person (including in cases where the existing registrar of joint stock companies (or his or her successor) was not absent).

(2) On and from the commencement of this section, any act required or authorised by the *Companies Acts, 1963 to 1999*, the Registration of Business Names Act, 1963, or the Limited Partnerships Act, 1907, to be done to or by the registrar of companies, the registrar of joint stock companies or, as the case may be, a person referred to in the enactment concerned as “the registrar” may be done to or by a registrar or assistant registrar appointed under section 368(2) of the Principal Act or any other person authorised in that behalf by the Minister.

(3) Subsection (4) of section 368 of the Principal Act shall cease to have effect.

Amendment of sections 20 and 21 of Companies Act, 1990.

53.—(1) Section 20 of the Companies Act, 1990, is hereby amended by the substitution in subsection (3) for “any such criminal proceedings as are mentioned in section 21(1)(a) or (1)(b)” of “any proceedings for an offence mentioned in section 21(1)(a)”.

(2) Section 21 of the Companies Act, 1990, is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) No information, book or document relating to a body which has been obtained under section 19 or 20 shall, without the previous consent in writing of that body, be published or disclosed, except to a competent authority, unless the publication or disclosure is, in the opinion of the Minister, required—

- (a) with a view to the investigation or prosecution of any offence, being an offence—

- (i) under

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- (I) the Companies Acts;
 - (II) the Central Bank Acts, 1942 to 1998;
 - (III) the Exchange Control Acts, 1954 to 1986;
 - (IV) the Insurance Acts, 1909 to 1990;
 - (V) the Taxes Consolidation Act, 1997; or
 - (VI) regulations relating to insurance made under the European Communities Act, 1972;
- or
- (ii) entailing misconduct in connection with the management of the body's affairs or misapplication or wrongful retainer of its property;
- (b) for the purpose of assessing the liability of a person in respect of a tax or duty or other payment owed or payable to the State, a local authority (within the meaning of the Local Government Act, 1941) or a health board or for the purpose of collecting an amount due in respect of such a tax or duty or other payment;
 - (c) for the purpose of the performance by a tribunal (to which the Tribunals of Inquiry (Evidence) Acts, 1921 to 1998, apply) of any of its functions;
 - (d) for the purpose of assisting or facilitating the performance by any Minister of the Government of any of his functions;
 - (e) for the purpose of assisting or facilitating any accountancy or other professional organisation in the performance of its disciplinary functions with respect to any of its members;
 - (f) for the purpose of the performance by the Irish Takeover Panel or any stock exchange established in the State of any of its functions in relation to the body or any other person who, in its opinion, is connected with the body;
 - (g) for the purposes of complying with the requirements of procedural fairness, to be made to—
 - (i) any company in relation to which an inspector has been appointed under section 14 or any person required by the Minister to give any information under section 15, or
 - (ii) any body in relation to which a person has been authorised under section 19 to exercise the powers conferred by that section or any person named in a report prepared by a person so authorised;

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- (h) for the purpose of complying with any requirement, or exercising any power, imposed or conferred by this Part with respect to reports made by inspectors appointed thereunder by the court or the Minister;
- (i) with a view to the institution by the Minister of proceedings for the winding-up under the Principal Act of the body or otherwise for the purposes of proceedings instituted by him for that purpose;
- (j) for the purposes of proceedings under section 20 or 160.”.

(3) Section 21(3) of the Companies Act, 1990, is hereby amended—

- (a) by the deletion in paragraph (g) of “and”, and
- (b) by the substitution for paragraph (h) of the following paragraphs:

“(h) the Central Bank, and

- (i) any authority established outside the State in which there are vested—
 - (i) functions of investigating or prosecuting an offence similar to an offence referred to in paragraph (a) of subsection (1),
 - (ii) functions of assessing the liability of a person in respect of a tax or duty or other payment owed or payable to the state in which it is established or any other authority established in that state or of collecting an amount due in respect of such a tax or duty or other payment, or
 - (iii) functions which are similar to the functions referred to in paragraph (c), (d), (e) or (f) of subsection (1).”.

(4) The amendments effected by this section shall apply in relation to the publication or disclosure, after its commencement, of information, books or documents which have been obtained under section 19 or 20 of the Companies Act, 1990, whether before or after that commencement.

Amendment of Part XIII (Investment Companies) of Companies Act, 1990.

54.—(1) Section 253 of the Companies Act, 1990, is hereby amended—

- (a) in subsection (1)—
 - (i) by the deletion in paragraph (a) of “and”,
 - (ii) by the insertion in paragraph (b), after “nominal value thereto,” of “and”, and

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(iii) by the addition of the following paragraph after paragraph (b): Pt.IV S.54

“(c) that the issued share capital of the company for the time being shall not be less than a minimum amount nor more than a maximum amount specified in the memorandum,”

and

(b) in subsection (2A) (inserted by the Investment Intermediaries Act, 1995), by the deletion of paragraph (b).

(2) Section 256 of the Companies Act, 1990, is hereby amended—

(a) in subsections (5) and (7), by the substitution for “by promoting the sale of its shares to the public”, in each place where it occurs, of “by providing facilities for the direct or indirect participation by the public in the profits and income of the company”,

(b) in subsection (6), by the substitution for “promote the sale of its shares to the public” of “provide facilities for the direct or indirect participation by the public in the profits and income of the company”, and

(c) by the deletion of subsection (9).

(3) The following section is hereby substituted for section 260 of the Companies Act, 1990:

“Amendment and restriction of certain provisions of Companies Acts.

260.—(1) The following provisions of the Principal Act, namely sections 5(1), 36, 213(d) and 215(a)(i), are hereby amended by the insertion after ‘private company’, in each place where it occurs in those provisions, of ‘or an investment company (within the meaning of Part XIII of the Companies Act, 1990)’.

(2) None of the following provisions of the Principal Act shall apply to an investment company, namely sections 53, 56, 58, 60, 69, 70, 72, 119 and 125.

(3) None of the following provisions of the Companies (Amendment) Act, 1983, shall apply to an investment company, namely sections 5(2), 6 and 19, subsections (3) and (4) of section 20, sections 22, 23 to 25, 30 to 33, 40, 41 and Part IV.

(4) Section 14 of the Companies (Amendment) Act, 1986, shall not apply to an investment company.

(5) None of the following provisions of this Act shall apply to an investment company, namely, Chapters 2 to 4 of Part IV, section 140 (whether as regards a case in which the investment company is being wound up or a case in which it is a related company (within the meaning of that section)) and Part XI.”

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Section 32.

FIRST SCHEDULE

Specific Provisions from which Company is Exempted under Part III

1. Sections 157 and 159 of the Principal Act in so far as they relate to an auditor's report.
2. Section 160(2) of the Principal Act.
3. Paragraphs (b), (c) and (d) of subsection (3), and subsection (4), of section 49 of the Companies (Amendment) Act, 1983.
4. Section 7 of the Companies (Amendment) Act, 1986, in so far as it relates to an auditor's report.
5. Section 15 and subsections (3), (4) and (5) of section 18 of the Companies (Amendment) Act, 1986.
6. Section 19 of the Companies (Amendment) Act, 1986, in so far as it relates to an auditor's report.
7. Sections 46 and 193 of the Companies Act, 1990.

Sections 6, 32 and 45.

SECOND SCHEDULE

List of Companies for Purposes of Section 3(2)(c) of Act of 1990 and Sections 32 and 45

1. A company that is a member firm within the meaning of the Stock Exchange Act, 1995.
2. A company that is a stock exchange within the meaning of the Stock Exchange Act, 1995.
3. A company that is an associated undertaking or a related undertaking of a member firm or stock exchange within the meaning of the Stock Exchange Act, 1995.
4. A company that is an investment business firm within the meaning of the Investment Intermediaries Act, 1995.
5. A company that is an associated undertaking or a related undertaking of an investment business firm within the meaning of the Investment Intermediaries Act, 1995.
6. A company to which Chapter VII, VIII or IX of Part II of the Central Bank Act, 1989, applies.
7. A company that is engaged in the business of accepting deposits or other repayable funds or granting credit for its own account.
8. A company that is an associated body of a building society within the meaning of the Building Societies Act, 1989.
9. A company that is an associated enterprise of a credit institution within the meaning of the European Communities (Consolidated Supervision of Credit Institutions) Regulations, 1992 (S.I. No. 396 of 1992).
10. An investment company within the meaning of Part XIII of the Companies Act, 1990.
11. A company that is a management company or trustee within the meaning of Part XIII of the Companies Act, 1990.
12. A company that is an undertaking for collective investment in transferable securities within the meaning of the European

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Communities (Undertakings for Collective Investment in Transferable Securities) Regulations, 1989 (S.I. No. 78 of 1989).^{Sch.2}

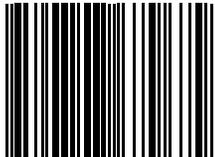
13. A company that is a management company or trustee of an undertaking for collective investment in transferable securities within the meaning of the European Communities (Undertakings for Collective Investment in Transferable Securities) Regulations, 1989 (S.I. No. 78 of 1989).
14. A company that is a management company or trustee of a unit trust scheme within the meaning of the Unit Trusts Act, 1990.
15. A company that is a general partner or custodian of an investment limited partnership within the meaning of the Investment Limited Partnerships Act, 1994.
16. A company that is an undertaking with close links with a financial undertaking within the meaning of the Supervision of Credit Institutions, Stock Exchange Member Firms and Investment Business Firms Regulations, 1996 (S.I. No. 267 of 1996).
17. Any other company the carrying on of business by which is required, by virtue of any enactment or instrument thereunder, to be authorised by the Central Bank.
18. A company that is—
 - (a) a holder of an authorisation within the meaning of—
 - (i) Regulation 2 of the European Communities (Non-Life Insurance) Regulations, 1976 (S.I. No. 115 of 1976),
 - (ii) Regulation 2 of the European Communities (Non-Life Insurance) Framework Regulations, 1994 (S.I. No. 359 of 1994),
 - (iii) Regulation 2 of the European Communities (Life Assurance) Regulations, 1984 (S.I. No. 57 of 1984),
or
 - (iv) Regulation 2 of the European Communities (Life Assurance) Framework Regulations, 1994 (S.I. No. 360 of 1994),
 - or
 - (b) a holder of an authorisation granted under the European Communities (Non-Life Insurance) (Amendment) (No. 2) Regulations, 1991 (S.I. No. 142 of 1991).
19. A company that is an insurance intermediary within the meaning of the Insurance Act, 1989.
20. A company that is an excepted body within the meaning of the Trade Union Acts, 1871 to 1990.

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