



Office of the Director  
of Corporate Enforcement  
*Oifig an Stiúirthóra um  
Fhorfheidhmiú Corparáideach*

## **ODCE Information Notice I/2006/2**

### **Investment Funds, Companies and Miscellaneous Provisions Act 2006**

Section 1(2) of the Investment Funds, Companies and Miscellaneous Provisions Act 2006 (“the 2006 Act”) provides that Parts 2 and 3 of the 2006 Act and the Companies Acts 1963 to 2005 shall be construed together as one.

Pursuant to his remit of encouraging compliance with company law, the Director of Corporate Enforcement has produced in this Information Notice a summary of these new legal provisions in company law as follows:

- Part 2: (Amendments of Companies Acts) – information on the provisions of this Part is in the following **Appendix 1**;
- Part 3: (Transparency Requirements Regarding Issuers of Securities Admitted to Trading on Certain Markets) – information on the provisions of this Part is in the following **Appendix 2**.

Part 1 of the 2006 Act contains a number of standard provisions relating, for example, to definitions, commencement and subsidiary orders and regulations, while Part 4 contains miscellaneous amendments primarily to the Irish Takeover Panel Act 1997. For further information on the Irish Takeover Panel and its legislative code, go to [www.itp.ie](http://www.itp.ie).

**Office of the Director of Corporate Enforcement**  
**22 December 2006**

## **Appendix 1**

### **Part 2 - Amendments of Companies Acts**

Section 6 of the Act provides that a Statutory Declaration made outside the State for the purpose of the Companies Acts is valid, if it is made before a Solicitor entitled to practise in the State. Such a Declaration will also be valid if it is executed outside the State before a person authorised under the law of that place to administer oaths. Provision is also made for the authenticity of signatures in these Declarations.

Section 7 substitutes a new Section for Section 33 of the Companies Act 1963 concerning the definition of a private company. It increases the number of members from 50 to 99 persons or less and relaxes in defined circumstances the general prohibition on inviting the public to invest in the company's shares or debentures. Subject to certain financial limits, private companies may make an offer of a range of investments to certain specified investors. Under Section 8, it is an offence for a company to make an offer to the public in breach of the conditions laid down. Similar words or expressions used in both Sections and in the Prospectus (Directive 2003/71/EC) Regulations 2005 (S.I. No. 324 of 2005) are stated to have the same meaning as in those Regulations.

Section 9 increases the number of companies which can qualify for audit exemption by raising the qualifying monetary threshold limits. The new qualifying turnover figure for a company under this provision has now been increased from €1.5 million to €7.3 million with a balance sheet total increase from €1.905 million to €3.65 million. This means that private companies not exceeding these thresholds and meeting a number of other specified conditions may avail of audit exemption. Under Section 10, exemption at the new levels may generally be availed of in respect of a company financial year beginning on or after the commencement of Section 9 and in respect of a company financial year ending at least two months after the commencement of Section 9, where that financial year began before the commencement of the Section.

Section 11 deals with the costs of High Court hearings in relation to applications for the restriction and disqualification of directors or other persons under Sections 150 and 160 of the Companies Act 1990. In both cases, it gives a discretion to the High Court to award not only the costs of the application but also the investigative and associated evidential costs and expenses incurred by the applicant concerned.

Section 12 extends the remit of the Minister to make regulations evidencing and transferring title to certain securities as defined in Section 239 of the Companies Act 1990 in particular markets.

Section 13 is substituted for Section 43 of the Investment Funds, Companies and Miscellaneous Provisions Act, 2005 ("the 2005 Act") and provides for a modification in regard to the liability of a guarantor in the issue of a prospectus for non-equity securities. Apart from the provisions of liability of other specified persons detailed in the 2005 Act, in such a prospectus, the liability of the guarantor is

limited to related statements or information omitted by him in the prospectus as guarantor.

Section 14 is substituted for Section 45 of the 2005 Act and provides amongst other things, that a prospectus which includes a statement from an expert is not to be issued, unless the expert has given the requisite consent or has not withdrawn his consent prior to publication. It is an offence not to comply with this provision but only where EU law requires such a statement to be included in the prospectus.

Section 15 of the 2005 Act, follows on with some consequential amendments from Section 14 above. In particular, an expert who has given the required consent for a statement in a prospectus can be made liable to persons who have acquired securities where they have suffered loss or damage by reason of an untrue statement made by the expert.

Section 17 and 18 of the Bill redefine and extends the powers of IAASA.

### **Part 3 – Transparency Requirements Regarding Issuers of Securities Admitted to Trading on Certain Markets**

The purpose of Part 3 of the Act is to give to the requirements of the EU Transparency Directive (2004/109/EC) on the harmonization of requirements to disclose information about issuers whose securities are admitted to trading on a regulated market. The Directive replaces and updates existing EU legislation in this area and is designed to enhance transparency on EU capital markets by requiring regulated market issuers to produce periodic financial reports and shareholders in such companies to disclose major holdings. The Directive also deals with the mechanism through which this information is to be disseminated and stored.

Section 19 provides for definitions used in this Part. These include the definition of the “Transparency (Regulated Markets) Directive” and “Transparency (Regulated Markets) Law” which, inter alia, encompasses measures (e.g. regulations) made to transpose the Directive and Commission level instruments providing for detailed implementing measures relating to the Directive.

Section 20 allows the Minister to make regulations under this Act or the purpose of implementing the Directive and related Commission level instruments, as appropriate.

Section 21 provides the penalty that can be imposed for a person found guilty of an indictable offence under Transparency law. It provides for a maximum fine of €1 million and/or up to 5 years imprisonment for persons convicted on indictment. Section 21 recognises also the possibility that any transparency (regulated markets) law may provide for penalties in the event of summary conviction.

Section 22 will allow the Financial Regulator the power to make supplementary rules to allow it to fulfil its role as competent authority for the purposes of the Transparency (Regulated Markets) Directive’. These rules must be consistent with Transparency law. The Financial Regulator may also issue guidelines around the steps to be taken to comply with Transparency law.

Section 23 amends the Central Bank Act of 1942 (as amended by the Central Bank and Financial Services Authority of Ireland Act 2003) to include the Transparency Directive in the list of Directives for which the Central Bank has responsibility to enforce. This will have the effect, inter alia, of ensuring that information obtained by the Financial Regulator in relation to such enforcement matters will come within the statutory regime of confidentiality under which the Financial Regulator operates generally.

Section 24 allows the Minister for Enterprise, Trade and Employment to provide, by provisional order, the market/markets, in addition to a regulated market, to which Transparency law shall apply. This will enable the Minister—if he thinks it appropriate, and after consulting with the Financial Regulator) to seek to apply the requirements under the Transparency Directive to markets outside the scope of the

Directive (for example, the Irish Enterprise Exchange Market) and to any new market that may be established in the future. However any such provisional order shall not have effect unless or until it is confirmed by an Act of the Oireachtas.